IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE CARLE FOUNDATION, an Illinois Not-For-Profit Corporation, Plaintiff	)	2008-L-202
v.	)	
ILLINOIS DEPARTMENT OF REVENUE; CONSTANCE BEAR, in her official capacity as Director of the Illinois Department of Revenue; CHAMPAIGN COUNTY BOARD OF REVIEW; ELIZABETH BURGENER-PATTON, ROBERT ZEBE and PAUL SAILOR, in their capacities as members of the Champaign County Board of Revenue; PAULA BATES, in her official capacity as Champaign County Supervisor of Assessments; CUNNINGHAM TOWNSHIP; WAYNE WILLIAMS, in his capacity as Cunningham Township Assessor; the Champaign County TREASURER in his/her official capacity; and the CITY OF URBANA, Defendants	)	

PREFACE:

The parties have waited a long time for this Opinion. There is no good reason to delay announcing the outcome – this Court finds that Carle Foundation is entitled to property tax exemptions for the four parcels in question for the tax years of 2005-2011, but not for tax year 2004. Further, this Court finds that the City of Urbana and Cunningham Township did not violate a 2002 Agreement not to contest Carle's applications for such exemptions. The Court is ruling both for and against each party, in some respect. As this Court has stated many times when ruling in matrimonial matters, when both parties are unhappy with the outcome, "perhaps the Court got it right." Some members of the public may also be critical of this Opinion. The Court reminds

those individuals that the only people who heard all the evidence and reviewed all the exhibits are the lawyers for both sides and this Court.

This Opinion is not designed to be on any best-seller list, being read by thousands of people. Lawyers will read it and perhaps thousands may read a summary of it in a local newspaper. Other than the lawyers involved in this case, many people will wonder why this Opinion does not address the healthcare crisis in the nation. That is not the purpose of this Opinion. This case is not about whether our country has a broken health care system. It is not about whether Universal Healthcare is a solution. It is not about high health insurance premiums. It is not about Medicaid/Medicare rates. It is not about highly-paid doctors. It is not about whether hospitals make too much profit. It is not about Carle continuing to build facilities. It is not about personal experiences (both good and bad) at local hospitals. It is not about how much an individual pays in property tax.

There are two very specific issues before this Court: First, on Counts 3-34, the issue is whether Plaintiff Carle Foundation (hereafter referred to as "CF") is entitled to property tax exemptions (full or partial) from 2004-2011 for four parcels because they have met both of the following: a) the statutory requirements of the Illinois Property Tax Code, 35 ILCS 200/15-86[1] initially brought under Section 23-25(e), and b) the Illinois Constitutional requirements outlined in Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968) (hereafter "Korzen") and Oswald v. Hamer, 2018 IL 122203 (hereafter "Oswald"). Second, as to Count 35, the issue is whether Defendants Cunningham Township and the City of Urbana breached a 2002 Settlement Agreement with CF which prevented those Defendants from challenging CF's requests for property tax exemptions on property they owned at the time.

This is a lengthy opinion so for ease of review, the Court will provide a table of contents.

[1] Unless otherwise noted, all references to a statutory "Section" refer to the Illinois Property Tax Code, 35 ILCS 200 et seq.

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PROCEDURAL HISTORY

The procedural history of this case is extensive and will not be repeated here in its entirety. CF filed its original complaint, in 2007, in Cook County, Illinois. The matter was transferred to Champaign County in 2008 after a defendant filed a Motion to Change Venue. In 2008, Defendants[2] filed Motions to Dismiss. The trial court (Judge Richard Klaus) denied them and Defendants sought an interlocutory appeal on numerous certified questions. The 4th District Appellate Court addressed the certified questions in Carle Foundation v. Illinois Department of Revenue, 396 Ill.App.3d 329 (4th Dist. 2009) (hereafter referred to as "Carle I"). The Appellate Court held that "court proceedings to establish an exemption" under Section 23-25 refer to a cause of action not otherwise provided for in the tax code "to establish a tax exemption for a specific assessment year for property determined to have been exempt, on comparable grounds, for a prior or subsequent year." The Appellate Court further held that such a court proceeding is not proper if the taxpayer had sought a hearing for the same tax year before the Illinois Department of Revenue (hereafter referred to as "DOR") under Section 8-35. However, because there was no law on the issue, the Appellate Court believed it would be unfair to deny CF their opportunity to go to court. Therefore, they concluded that their holding was prospective in nature as it relates to CF so that CF, on remand, could elect their remedy (administrative review or court).

In May 2010, CF filed its First Amended Complaint, adding two counts against Cunningham Township and the City of Urbana for breach of a 2002 Agreement. In June 2010, Defendants filed a Motion for Summary Determination on major issues and a Motion to Dismiss.

[2] When the term "Defendants" is used by the Court, the Court is referring to two or more Defendants. Unless it is material to the issue, they will not be identified individually.

In August 2010, the parties reached a stipulation on some injunctive issues but the trial court (Judge Chase Leonhard) rejected the proposed order because it would require the trial court to render an advisory opinion or render a declaratory judgment that was not justiciable.

In September 2010, the trial court allowed CF to file its Second Amended Complaint. Defendants filed Motions to Dismiss and other pleadings. In late 2011, most of these motions were denied. In November 2011, CF filed its Third Amended Complaint. More motions were filed including Motions to Dismiss. In early 2012, most of these were denied. Also denied was County Defendant's Motion to Dismiss the Assessor as a Defendant. CF and County Defendants each filed a Motion for Summary Determination on a major issue. In October 2013, the trial court held that PA 97-688 (Section 15-86) applied to claims initially brought under Section 23-25(e). In November 2013, CF reached an agreement with the Urbana Park District and Urbana School District and they were dismissed as Defendants. In January 2014, the trial court reiterated its position on applicability of Section 15-86 as applied to claims initially brought under Section 23-25(e) in an Order on Defendant's Motion to Reconsider. Also in January 2014, CF filed its Fourth Amended Complaint which is the basis of this Opinion.

Count 2 of the Fourth Amended Complaint sought a declaratory judgment that the not-for profit hospital charitable exemption in Section 15-86 applied to CF's efforts to establish exemptions for the four parcels in question from 2004-2011. In February 2014, CF filed a Motion for Summary Judgment. In May 2014, the trial court granted CF's Motion for Summary Judgment on Count 2 and denied the Defendant's motions. A modified order was entered in August 2014. Numerous motions were filed pertaining to a possible appeal. Defendants eventually took an interlocutory appeal under Illinois Supreme Court Rule 304(a) after which, in May 2017, the 4th District Appellate Court affirmed Judge Leonhard's determination that Section

15-86 applied to the tax years in question, but ruled that Section 15-86 was facially unconstitutional. Carle Foundation v. Cunningham Township, 2016 IL App (4th) 140795 (hereafter referred to as "Carle II"). CF and the Department of Revenue (hereafter referred to as "DOR") appealed to the Illinois Supreme Court, which vacated the 4th District decision, ruling that the 4th District did not have jurisdiction under Supreme Court Rule 304(a). They did not address the merits of the issues. Carle Foundation v. Cunningham Township, 2017 IL 120427 (hereafter referred to as Carle III"). After that decision, in June 2017, CF dismissed Count 2. This matter was assigned to Judge Rosenbaum after the retirement of Judge Leonhard.

Count 1 sought a judgment declaring that CF's exemptions for the four parcels were never lawfully terminated and local taxing authorities lacked the legal authority to assess the parcels at their full market value. In August 2017, CF filed a Motion for Summary Judgment (later denied in September 2018). Also in August 2017, County Defendants filed a Motion to Reconsider the denial of their Motion for Summary Determination of a Major Issue (that had been denied by Judge Leonhard). State Defendant filed a similar motion in October 2017. This Court denied the Defendant's motions. Numerous motions were filed regarding discovery and other issues.

In September 2018, CF filed a Motion to Voluntary Dismiss any claims for exemptions under Section 15-65; this was granted over objection. At the same time, County Defendants filed a Motion for Summary Judgment on numerous counts. In October 2018, the parties submitted motions pertaining to the applicability of Oswald. In November 2018, this Court granted Defendant's Motion for Summary Judgment on Count 1 only and that Count was dismissed. The

Court also entered an Order finding that Oswald is applicable to the pending case. There were motions filed about trial issues.

On January 2, 2019, the parties made opening statements in this bench trial. Over the course of 20 days, the parties called a total of 25 witnesses. The Court allowed into evidence almost 400 exhibits, many of which were hundreds of pages long. The parties were allowed to file written closing arguments. CF filed their closing argument on March 22, 2019. From May 13-29, 2019, the Defendants filed their closing arguments. On June 17, 2019, CF filed a Reply Brief. On June 26, 2019, County Defendants filed a Motion to Amend Brief and other relief due to what they perceived to be, in part, misstatements by CF. On July 29, 2019, CF filed a Reply to the County's Motion. This Court has taken the matter under advisement.

FACTS:

This Court cannot adequately outline every fact produced during the 20 day trial. The failure to note a fact does not mean that it was not considered by this Court. The following is a summary of the witness testimony.

PLAINTIFF'S CASE

JAMES LEONARD:

He received his medical degree in 1981 and worked for the Carle Clinic Association (hereafter referred to as "Clinic"), a multi-specialty group of doctors. He practiced there until 1999 at which time he became interim CEO/President of CF. He was hired as the permanent CEO/President in 2000 and continues to hold those positions. His main role is to keep focus on CF's Mission Statement and vision, to ensure that this message is conveyed to others and to put together a high-level team of experts. He reports to the CF Board of Trustees.

CF Hospital, beginning in the early 1900s, has always been not-for-profit. *See* TR 1 (Articles of Incorporation stating purpose is to engage in "exclusively charitable, scientific and educational pursuits"). CF was created by the Clinic and its doctors in 1964 with the mission of delivering quality healthcare. CF has always been not-for-profit, meaning that they pay their bills, give to charity and re-invest in themselves. Their By-Laws, which were amended over time, have always listed charitable purposes and that "no part of net earnings of the corporation shall inure to the benefit of...members...except that the corporation shall be authorized and empowered to pay reasonable compensation of services rendered." *See* TR196. He described some of the entities within CF. In 2004, Carle Foundation Physician Services (hereafter referred to as "CFPS") was started as a limited liability corporation to help with the hiring, management and renting of doctors needed for certain specialties. Carle Development Foundation is a philanthropic arm of CF. They do not raise a significant amount toward CF's income. From 2003-09, the Carle Development Foundation raised over $26 million. As Chair of the Illinois Hospital Association, he is not aware of any hospital who receives most of its income from donations. Health Systems Insurance Limited (hereafter referred to as "HSIL") is an offshore captive insurance company, created in about 1980; its purpose is to provide malpractice insurance to CF. It is for-profit and the premium rates are set by actuaries. Carle Risk Management Company (hereafter referred to as "CRIMCO") is an onshore captive insurance company. It is 100% owned by CF. Prior to merging with the Clinic in 2010, it was equally owned with the Clinic.

CF went through an IRS audit from 2004-08. They agreed to some changes based on the audit including changing the composition of boards. Despite the close financial relationship between CF and the Clinic, CF did not lose its Federal income or sales tax exemptions. In 2008-

09, there was a national economic crisis and an epidemic of uninsured and underinsured patients. CF employed cost-cutting measures such as a wage-freeze, so they did not have to lay off employees. *See* TR 1157-58 (News-Gazette articles).

The Clinic merged with (or was acquired by) CF in 2010 and became a "subsidiary." The fiscal year changed to calendar year; it had been July 1-June 30. Both organizations hired outside accountants to value the purchase and the transaction was at arms-length. The negotiations were contentious. He believed that the Clinic's value itself was negative and that most of the overall Clinic value came from its ownership of the Health Alliance Medical Plan (hereafter referred to as "HAMP"). Prior to the merger, HAMP was the Hospital's largest commercial payor. It is for-profit and, after the merger, profits are reinvested into CF. In return for the Clinic doctors' agreement (they owned the Clinic), after the merger each Clinic doctor received approximately $910,000 (over time). This was more than each doctor's investment in the Clinic, which had not been at a fair market amount to buy in. After the merger, Carle Physician Group was created, also a not-for-profit subsidiary, to provide doctors the opportunity to talk about healthcare issues. He believes the merger turned out better than he hoped for, improving healthcare, communication, etc. and setting the groundwork for the new College of Medicine at the University of Illinois.

In 2004, the CF Hospital service area was about 50 sq. miles around Champaign-Urbana. In 2007-08, the national economy caused smaller hospitals to close and by 2012, the Hospital's footprint grew to Iroquois County to the North, Leroy to the West, into Indiana to the East and South 2/3 of the way to Kentucky. The service area has a population of about 1.4 million. The Hospital is a Level 1 Trauma Center and a Level 3 Perinatal Center (both highest designations).

It is also certified as a Primary Stroke Center. The closest hospitals with those designations are in Springfield and Peoria.

CF's By-Laws prevent earnings to inure to employees. They are only paid reasonable compensation. TR 9 is an example of amended By-Laws from 2007. TR 109 is the Form 990 to CF's 2004 taxes; other years were discussed as well. It shows executive compensation of the top 10 earners, totaling $2.3 million. They are paid from a variety of sources including the Hospital, CF, etc. *See* FY 2009 in TR 1037. No stock is issued and no one purchases capital in CF. It is true that CF usually has more revenue than expenses, also known as net income or profit. This is used to pay bills/bonds, invest in technology, recruit doctors and other staff and create the College of Medicine. Throughout his tenure, CF has received numerous accolades for positive outcomes, including one of the "Top 50 Hospitals" in the country.

Going back to at least 1931, CF's (and Hospital) Mission Statements have always been to provide healthcare to everyone, regardless of ability to pay. From 2004-12, this was conveyed to staff in documents, electronic communications, etc. There are no limits on how many people receive free or discounted care, no limit on how much loss CF will absorb and no restrictions on when patients can be seen. When a budget is being prepared, the amount of free/reduced charity to be dispensed is unknown. Community Benefit Reports are produced annually and were done from 2003-2012. *See* TR 2027A-J. They outline the actual cost of Community Care[3], unreimbursed loss from Medicaid, bad debt and other financial metrics. CF works with the community in many ways. They have educational programs on diabetes and CPR. They created a mobile clinic, giving immunizations and school physicals; this shows a commitment to provide services outside the Hospital. They established a Parish Nurse Program. They also provided

[3] This was originally called "charity care" but CF believed that the name might deter patients from applying. They changed the name of their program to "Community Care." Witnesses oftentimes used the terms interchangeably.

translational research which means research that is close to being implemented to help people. CF also provided services from 2004-12 that were at a financial loss to them. These include geriatric services, an Emergency Room, low vision center, an airlift helicopter, an auxiliary guesthouse, breastfeeding clinic, palliative medicine, the St. Joseph Institute for the Deaf and ECHO (helps children with hearing problems). These all help the community. CF has also provided grants to the community such as $100,000 to the C-U Public Health District in 2007, to provide dental care for those unable to pay.

The Community Care program is designed to help patients deal with the cost of services. It grants anywhere from a 25% discount to a 100% discount. It expanded in 2004 due to the rising cost of healthcare and the impact on uninsured patients. The upper income level to receive a discount was raised to 250% of the Federal poverty guidelines; CF also agreed to write off some past debts for patients. They also agreed to not seek body attachments for those who failed to appear in court in collection matters. CF could deny Community Care if the patient did not return the application within 14 days. CF required a patient to liquidate assets over $2,000 (similar to federal programs). CF tried to reach patients as early as possible such as at registration. In June 2005, the policy changed again to not require a patient to liquidate assets over $2,000 but that the excess amount would be considered as income. CF also determined they would exclude retirement funds as an asset. In Oct. 2005, the policy expanded to income up to 300% of the Federal poverty level. Community Benefit Reports show an increase in Community Care from $7.6 million in 2007 to $9.9 million in 2008. He testified at length from the Community Benefit Reports, discussing the amount of Community Care and other charitable services that were provided to the community.

In the early 2000s, CF was buying a building in Urbana to use for therapy services. They were concerned about a property tax exemption. They reached an agreement with the City of Urbana, Cunningham Township, the Urbana Park District and Urbana School District. TR 20. The agreement was to allow a partial exemption for the property in return for CF paying $775,000 over 5 years; CF made the payments. The taxing bodies agreed to dismiss an administrative review and agreed to not challenge, during the time of the agreement, the tax-exempt status of any CF property they owned at the time. Dr. Leonard stated that the four parcels in the present lawsuit were owned by CF at the time of the agreement but the tax exemptions have been challenged by the City of Urbana and the Cunningham Township.

The four parcels at issue in this lawsuit were all exempt (full or partial) for many years. In 2004, the Champaign County Assessor assessed them and CF paid the taxes over protest. All the properties are in Urbana, IL: First: The Main Hospital is at 611 W. Park. The buildings are connected and provide medical services such as surgery, patient rooms, therapy, etc. They have provided charity care, education and research at this location. CF owned this property during 2004-12. The same use existed during that time. Before the merger in 2010, parts of the Main Campus had been leased to the Clinic. CF is not seeking an exemption for these portions. Second: The North Tower is at 607 N. Orchard. It connects to the Hospital. CF owns this but portions have been leased. There has been no change of use/purpose during 2004-12 but they did add two floors. They provide charity care, education and research. Third: The Power Plant is at 503 N. Coler. This provides heat, air conditioning and back-up power generators for all buildings. The same use existed from 2004-12. It is important to have the Power Plant in case of emergency power loss, etc. Fourth: The Caring Place is at 809 W. Park, about 2 blocks from the Hospital. CF owns this. It is a child-care facility, available to employees and, if spots are

available, to the public. The same use existed from 2004-12. The daycare is important to employees to have children close by and to know their kids are safe and treated well. The tuition does not meet the costs; CF absorbs the difference.

ROBERT TONKINSON, JR.:

He has worked in finance for over 30 years. He had been chief financial officer at several companies before joining CF in 2002. He worked there until April 2010. He oversaw several divisions/subsidiaries of CF such as the Hospital, patient finance, patient access, and general accounting. Community Care was under patient financial services. CF intentionally did not call it charity care to avoid people not wanting to apply. He was very involved in monitoring the program and making changes to it. He wanted people to know about the program and for as many people as possible to apply. The program existed before he joined CF in 2002. In 2003, there was national attention about collections and other practices of not-for-profit hospitals. He and Dr. Leonard worked with local consumer groups to stop seeking body attachments. In 2003, the guidelines provided for a 100% discount when income was at 100% of the federal poverty guidelines. In 2004, and numerous times during the following few years, the policy changed to try and include more people. CF expanded ways to engage the public with radio ads, newspaper ads, bus ads, etc. and, translating documents into Spanish and Mandarin Chinese. They tried to auto-qualify people if they were homeless or eligible for Medicaid. The Illinois Hospital Association and the American Hospital Association developed similar guidelines. *See* TR 51.

In February 2005, the community healthcare coalition met monthly to give input about Community Care. CF took many of their suggestions such as publishing about the program in the paper, on the radio, and on buses. They even put information on the outside of CF envelopes because the coalition worried that some people would not open the envelope, believing it to be a

bill. The policy applied to medically-necessary procedures and applied regardless of citizenship. At the onset, CF required a person to liquidate assets over $2,000, likely due to the Medicaid spend-down which was required. Staff at CF used checklists to ensure that patients knew their options and were told to apply for public aid. This is helpful to the patients because public aid can help them pay for other items such as prescriptions. CF had auto-qualifiers, meaning that patients would not have to apply for Community Care. These included a person receiving public aid and the homeless. Discounts applied after all third party payments (such as insurance) were made. The policy changed to where a person could apply even if the matter had been sent to collections (but not yet to judgment). CF's policy lasted one year and thus was like an insurance policy. It applied not only to the patient but also the patient's family.

In June 2005, the policy was revised by making information about the program available earlier for patients and it was advertised on CF's website. Applications were to be completed within 14 days or the billing process would start. Later it was extended to 21 days. The application required income verification such as a tax return. If a person was not required to "spend down" for Medicaid, they were given a 100% discount and bills for services going back 3 months were erased. A patient was no longer required to liquidate assets over $2,000. They also added an appeal process which probably stemmed from the community coalition. The policy was again amended in October 2005, moving the income limit to 300% of the poverty guidelines. A patient's financial responsibility was further capped at 40% of his/her gross annual salary. Any bills above that would be written off. In June 2008, the policy was revised again. The application deadline was extended to 60 days and would be accepted even if a patient had been making payments.

In March 2010, shortly before the merger, Community Care was revised again. Any person could apply but s/he must reside in CF's primary or secondary service area unless referred by

another hospital or if the services were medically necessary. A community advisory group was added as part of the appeal process and CF would not authorize body attachments. They also added a prompt-pay program for uninsured patients such as a 25% reduction if a bill was paid within 30 days. He was aware that CF was attempting to use Self-Pay Compass, a product that would screen people with a "credit score" to determine if a debt was collectible. When he left CF in 2010, it was not yet being used.

The IRS audited CF from about 2004-08. They looked at all facets of the relationship between CF and the Clinic. In the end, the IRS did not penalize CF or revoke their income tax exempt status. An agreement was reached which allowed CF and the Hospital to continue leasing space to the Clinic but CF was encouraged to recruit doctors from outside the Clinic.

He testified at length about annual reports, Community Benefit Reports, etc. He also discussed Community Care statistics provided to the State of Illinois (reports to the Attorney General). In these, the Community Care provided to patients was, for FY 2005-09 - $2.5 million, $4.7 million, $6.8 million, $8.6 million and $7.8 million respectively. *See* TR 123, 137, 1003, 179, 211. He discussed other years as well. This included the actual cost of services, not the charge for services. Bad debt is the amount they attempted to collect and could not. They write it off as uncollectable. This is not the same as Community Care. He could not identify the amount but agreed that there could be some bad debt that could have been listed as Community Care. This is because some people do not apply for Community Care but would have qualified. Nonetheless, they are billed, do not pay their bills and the amounts are uncollectible. He also testified consistent with Dr. Leonard about community benefits. One benefit was that CF helped Frances Nelson Health Center by buying their building and leasing it to them for $1/year. Other benefits included operating an ER, having mobile clinics, establishing a Parish Nursing Program, etc.

There were hundreds of agreements between CF and the Clinic, many of which were to not duplicate services/equipment and to rent doctors for specialty services. He also knew the Clinic had a "do not service" list of patients. He recommended that, after the merger, CF wipe out Clinic debt for some patients who would qualify for Community Care and then to reinstate services to the patient. CFPS was a legal entity that dealt with leasing doctors from the Clinic to provide services at the Hospital. It started with the ER and expanded. Community Care applied to these services. Everyone was charged the Charge-Master-rate (a set of prices for services) but providers, such as insurance companies, could get discounts.

GRETCHEN ROBBINS:

She worked for CF for 23 years, ending in 2013. She had several jobs including Director of Public Relations and Director of Corporate Outreach. She dealt with public relations as well as tracked community benefits such as programs and activities focused on public health. She worked with the community coalition. She testified consistent with other witnesses about letting the public know about Community Care on radio, the paper, etc. CF spent over $100,000 in each of 2004 and 2005 for that purpose. TR 110. A concerted effort was made in 2005-06 to reach more people and increase the reach of Community Care. She documented the increase in number of persons receiving Community Care. More patients were served, going from 4,500 in 2007 to 6,442 people in 2008. At first, bad debt was not considered a community benefit but the Illinois Attorney General later determined that it should be. She did not know how much Community Care was from past debt. She knew that CF had services aimed at low income and underserved families. *See* TR 408/500. Some were at the Hospital but some were off-campus such as at Planned Parenthood and Frances Nelson.

VON LAMBERT:

He worked for CF from 1998-2005 and, for most of the time, was the Director of Engineering Services and Facilities. He had a staff between 42-50 employees. He was aware that CF and the Clinic had a lease agreement for space. Part of his job was to create a book to help the parties' allocate space, and subsequently, for billing. The "Square Foot Book" was created in about 1995 and listed locations by floor, department, etc. He and his staff reviewed it annually. The Power Plant supplied support for most of the campus in Urbana, including the Hospital, the North and South Clinics and the Caring Place. This included chilled water, steam, backup power generators, etc. No physical space at the Power Plant was allocated to any department or entity. Allocation for its services were first divided by utility consumption. After 2004-05, when records were digitized and new meters installed, it became very accurate and some allocation adjustments were made. TR 86/204 are summaries of exempt and nonexempt use. As to the Caring Place, there was no designated space for CF or Clinic children vs. children admitted from the public.

PATRICIA OWENS:

She is the Chief Financial Officer at Promise Healthcare. She worked at CF from 1987-2010, starting as the Director of Patient Accounts for about 10 years. She dealt with patient accounts from their inception until an account was closed. In her last 2-3 years, she was the Director of Revenue Cycle Systems. Throughout her time at CF, she worked with the Community Care program. She testified at length about the billing process, beginning with a bill going out within 30 days. If a patient has insurance, insurance is billed and a new statement is sent out to the patient without a request for payment. An adjustment is made after insurance is contacted and a new bill goes to the patient. Each bill provides information about Community Care. She and others would help people apply for government assistance, including Medicare and Medicaid; the goal

was to get a patient enrolled in these because these programs help patients outside of CF, such as at pharmacies. She said that some patients were auto-qualified by being homeless, or they were on public aid (Medicaid or received aid from Cunningham Township). She helped make sure the public was aware of Community Care by advertising on buses, billboards, paper ads, and on CF statements and their envelopes. An application applied to past debt. Two collection agencies were used but one was stopped due to complaints of being rude.

The Charge-Master had many lines/codes for various services. They were standardized for the healthcare industry. Each year it would be reviewed. She reviewed numerous exhibits. The forms break down into numerous categories such as charity care for inpatient service and outpatient services. She defines net revenue as the amount she expected to receive – the Charge-Master less adjustments. An expense is accrued when you receive benefit, not when paid. Without more details, she cannot ascertain when an expense accrued or when particular medical services were provided. TR 2378 is an email with Mr. Tonkinson where he suggested debt and charity should be no more than 4% of gross revenue.

TR 333 is the Community Care database. It lists patients and details about approvals and denials for 2004-2012. The main reason for a denial was because the patient did not return the application or supply necessary documentation. That shows why they had a focus on getting out the applications and getting the information returned to them.

TEARINEE BOYD:

She started working at CF in 2004 as a commercial collector. Until 2010, she worked with Community Care and was a supervisor for three years. After the merger in 2010, her position was dissolved and she no longer worked on Community Care. She believed that her work in that area was rewarding because she helped people. She was aware that patients had many ways of learning

about the program. She had a checklist of items she may want to request from patients but she never pressed the issue. At first, patients had 14 days to return an application. That went to 21 days. She got a lot of phone calls from people seeking financial help. She admitted that some were for Clinic bills and she had to explain that they were separate. She never had a target number of applicants to approve or deny. TR 314-26 are letters that went out with her name. They describe the appeal process, the program is good for one year and that it applies to everyone in the household. TR 333-334.1 show data such as numbers for approvals and denials. Most data was from 2004-2012. She stated that the vast majority of applicants get a full 100% discount.

GUY HALL:

He has been an attorney since 1983. He had a general practice from 1990-2004. He has represented CF on property tax exemption matters. The Caring Place is open to CF employees and the public. There is no specific space for CF children. In 1983, Champaign County Judge Einhorn ruled that it was entitled to a partial exemption from 1987 forward, based on the percentage of CF children there. In 1991, it received a partial exemption from the DOR. *See* TR 13. Throughout the years, he would send the appropriate information to the Board of Review or Supervisor of Assessments.

LAUREN STOUFFE:

She started with State government in 1974 in local governmental affairs, which later merged with the Department of Revenue in 1983. She retired in January 2019. Part of her job was reviewing requests for property tax exemptions. From 2012-18, she exclusively worked on hospital requests. She would review numerous supporting documents including affidavits, Community Benefit Reports, Board of Review recommendations, legal opinions, etc. She looked at statutes and the Illinois Constitution which, in her mind, required charitable ownership and use of the

property. She had the authority to grant or deny exemptions and she did grant and deny applications. In her analysis, she believes she could look at the entire hospital system and that, under Section 15-86, she did not need to find charitable use on a particular parcel. It is not uncommon for an application/certificate to list multiple PIN numbers if a building or property is on multiple parcels. Even after the Illinois Supreme Court case of Oswald, she granted exemptions. She has even granted exemptions for hospitals that made a profit; exemptions are not limited to hospitals that work at a financial loss.

She reviewed CF's exemption applications and is aware that DOR denied exemptions for the four parcels from 2004-2008. She was not aware that CF applied for 2009-11. She did not review the application for 2012 but believed that they were correctly decided. She was shown some exhibits with CF applications for various parcels from 2013. In deciding on an exemption, it was not significant to her whether charity was a particular percentage (e.g. 2% or 5%) of net patient revenue. Based on other facts as well, either could result in being granted an exemption.

STAN JENKINS:

He was on the local Board of Review from 1997-2008; he was the chair for a time. Their job was to make a non-binding recommendation about exemptions to the DOR. He would review submitted documents as well as conduct his own investigation. He was the Champaign County Supervisor of Assessments from 2012-15. The duties there included helping taxpayers and being the clerk for the Board of Review. He knows that CF sought property tax exemptions in 2012 on the 4 parcels in question and that the Board of Review recommended exemptions. He reviewed TR 454-455. He is aware that the DOR approved the exemptions in January 2013. He did not recommend an exemption in 2004 because he did not believe that CF's use was exclusively charitable.

CHERYL STASKE:

She started at CF in 1973 as a housekeeper. She moved up the ranks into administration. She obtained undergraduate and graduate degrees in healthcare administration and joined HAMP. She was the Director of the Hospital Administration Center from 2004-11, reporting to Mr. Tonkinson. She had a staff of over 100. She is currently the Director of Patient Access. She has been active in the Community Care program since 1997, trying to get information to patients as quickly as possible. She was aware the information was given at preregistration and in the ER. Patient handbooks were given to all patients and updated annually. TR 327 shows one from 2003 where it asks patients "Need help with a bill?" She and her staff would help patients check for insurance coverage, holes in coverage, help with public aid, etc. She had a checklist of topics to discuss with patients. Her role was simply to provide the information but not make decisions about Community Care. From 2004-10, she knew that Clinic doctors did not provide Community Care to their patients and knew that, back in 2004, CF limited the program to Illinois residents.

LAURENCE (LJ) FALLON:

He has had various roles at CF from 1992-2002, including executive Director of CRIMCO and Vice-President of Legal Affairs. Since November 2018, he has been Executive VP and Chief Legal Counsel. He reports to the CEO, Dr. Leonard. He described many of the subsidiaries of CF in the same fashion as did Dr. Leonard, including HSIL and CRIMCO. As to HSIL, he also described the staff and how the profits are retained, in case a claim must be paid, or paid as a dividend. Sometimes premiums are refunded to owners. Premiums are based on industry experience. As to CRIMCO, he was not sure why there was profit in 2004 but there are no profits now. The offices were located at the Hospital from 2004-10 but now they are off-campus. The organization helped streamline management of claims in many respects. He was involved in the

IRS audit review from 2004-08. The parties agreed to change the ownership structure of HSIL, but it did not affect CF's federal tax status.

He described how executive compensation was set, meaning VP or up. An executive committee of the Board of Trustees made a list of positions and it was sent to an outside consultant, Sullivan-Cotter. That group looked at national data and created a table with matching positions to assist CF in making sure that compensation was within the national range. He received Sullivan-Cotter's report which then went to the CEO, the executive committee and ultimately a vote at the CF annual meeting. The goal is to pay fair market value and there is a rebuttable presumption that paying such is reasonable. TR 285-7. He is aware of some incentive pay for all CF employees when the organization reached certain budget goals. It was generally to align behavior to strategic goals/Mission Statement. He is not aware of any incentives that are directly related to Community Care.

The PTAX-300-H was a newly-created government form after Section 15-86 was enacted; hospitals filled it out and attached supporting documentation to request a property tax exemption. passed. These forms were filled out for 2004-2011 as demonstrative evidence for trial. The form was used in 2012 and the DOR granted full or partial exemptions for the four parcels at issue. TR 1153 is the 2012 DOR decision granting a 100% exemption for the Caring Place. TR 1154-55 contain several PIN numbers, including the North Tower, green space and North Tower concourse. He believes that the Community Care numbers are only from the Hospital and not the affiliates.

He knows of the Agreement between CF and the Urbana School and Park Districts regarding the current property tax exemption litigation. Those districts received $6 million and CF got $6.75 million. He is aware that CF has, all along, been attempting to resolve the property

tax exemption with the City of Urbana, Cunningham Township and other defendants. Lawyers have had the power to negotiate all along.

DENNIS HESCH:

He has worked in a variety of capacities at the Clinic and CF. He was the Clinic Chief Financial Officer from 2006-10. He then became the CFO at CF, replacing Mr. Tonkinson. His job is to be responsible for CF's financial health. When at the Clinic, he dealt with CF about service agreements and lease agreements. There were many disputes over the years between the two entities. The Clinic had been for-profit and had shareholders (doctors). When a doctor joined the Clinic, they bought shares per their By-Laws; this was not based on the value of the Clinic because it would be prohibitive for people to join. *See* TR 2687. He was involved in the merger between the Clinic and CF. Each side hired outside consultants about valuation of the Clinic. Clinic hired Deloitte which valued HAMP at $270 million and the Clinic at a loss of $15 million; the overall the value was $255 million. The final sale was for $250 million. After the merger, most Clinic doctors received about $910,000 for their ownership, usually paid over 5 years. *See* TR 4057. TR 204. The last time HAMP was valued was in 2017 and was at $550 million.

He and his staff provided information for the individuals who filled out the PTAX-300-H form. TR 446.01 is for the Carle system for 2003-04; it lists the four parcels. TR 447-53 are for 2005-11. The amount of Community Care he obtained from Community Benefit Reports, etc. They included $2 million in 2004 and rising to $15.7 million in 2011. He did not know how much of line 12 are from debts owed to the Clinic or bad debt of Hospital.

TR 417 is the Medicaid cost report for 2011. *See* TR 410-416 for earlier years. The cost-to-charge ratio was .256, meaning charges were about 4 times that of cost. The difference between the cost and Medicaid revenue was $58.2 million (shortfall). TR 4001 and 4010 have financial

ratios for certain fiscal years; these are important when issuing bonds, etc. The goal was 3-5% and they generally exceeded it. He knows that, as of 2011, the Community Care program had geographic limitations but that many people were auto-qualified such as people who were referred from Frances Nelson. He knows that approval lasts for 12 months. He knows that Self-Pay Compass was a tool to help identify people who could prequalify.

RENITA JACKSON:

She began working at the Clinic in 1975 until the merger in 2010. Since then she has been the CF Director of Patient Financial Services. In the past, she has handled coding, record audits, projections, etc. She has also managed claims, self-pay receivables and bad debt. She helped individuals find insurers and set up payment plans. She also administered the Transaction-master for the Clinic which is an internal coding system for services, supplies, etc. There was a fee schedule which would be reviewed annually. Prior to the merger, she had no dealing with Community Care because the Clinic did not have such a program; Clinic also had a no-service list of patients. After the merger, she dealt with the Charge-master (similar to Transaction-master). She also dealt with CFPS by managing their receivables. In 2016, she stopped working on the Charge-master. From 2010-16, service and revenue codes were input. A prompt pay discount was off the Charge-master rate. From 2004-10, the Clinic would send letters to patients who owed money and, at some point, it was counted as bad debt. The Community Care program applied to Carle Physician's Group and there were auto-qualified patients such as the homeless, Frances Nelson patients and those qualifying for government assistance. TR 2426 is the policy in 2011. She notified patients 90 days before the expiration of the one-year discount so there would be no gap in coverage. She attended the community coalition meetings starting in 2010. After the merger, CF looked at legacy debt to see if any persons would qualify for Community Care. That

process took a month and she believed that $4.8 million was written off as Community Care. She believes the total value was more but did not know the amount. She was not involved in reporting Community Care to the Attorney General.

MICHAEL KELLY:

He is a licensed real estate appraiser and has been doing so for over 40 years. He has a degree in finance and an MBA from the University of Chicago. He has all necessary designations to be an appraiser. The nature of his practice includes hospitals, industrial buildings, malls, etc. Since Section 15-86 was enacted in 2012, he has regularly prepared estimated property tax liability for numerous hospitals in Illinois, following uniform standards in Illinois. He was asked by CF to determine its property tax liability of the property, not the fair market value. He had done similar work for CF in the past.

Section 15-86 has a specific methodology and he followed it. For the four parcels at issue, he obtained information from Mr. Koch and others to obtain lot sizes, gross size, age of buildings, use of buildings, etc. He also obtained County information such as tax rates, assessments for nearby land/property, etc. There are three approaches to his work: cost, income and sales. Section 15-86 is closest to the cost approach. He looked at each parcel for each tax year.

As to the Main Hospital, after applying its Class A average designation (required by Section 15-86) and applying appropriate multipliers, he found the total replacement cost to be $7.7 million. He used the "Marshall Rules" because Section 15-86 requires it. He considered depreciation based on the age and expected life of the building (40 years per the Illinois Hospital Association). After consideration of the depreciation and the assessment ratio, the assessed value of the Hospital was $13.4 million. He also looked at comparable land, applied equalization factors and tax rates. When all was considered, his opinion was that CF's 2004 property tax liability for

the Main Hospital would be $1.1 million. This is based on no exempt portions, making the tax higher than it would be if some portions of the Main Hospital were, in fact, exempt. He followed the same process for each property that CF sought an exemption (all four parcels for years 2004-2011). *See* TR 443. He did the same analysis for CF for 2012. He did not prepare CF's reports that were sent to the State.

EUGENE KOCH:

He began at CF in 1984 as a staff accountant. He is now the General Account Manager. He deals with the financial ledger, payroll, accounts receivable, etc. He was responsible for filing the 2012 application for CF's property tax exemption. He filed the PTAX-300-H pursuant to Section 15-86. TR 406 shows each of the parcels/properties. He filed it on Dec. 31, 2012 and delivered it to the Board of Review. He had supplied some statistics for 2011 because they had not completed 2012 and local County rules required filing the PTAX-300-H before the end of 2012. He attached the 2011 tax bills which were based on the whole properties and not leased portions (which could be exempt). He added together all the estimates which is conservative because taxes would be higher than in reality. The estimated taxes would be $4.8 million and charitable activities were $33 million. He gave all the information to attorneys who completed the PTAX-300-H. The form outlined not only the actual Community Care dollar amounts but also statistics on other programs, including money-losing activities such as education. The DOR approved the applications and CF was granted property tax exemptions (at least in part) for all four parcels in question for 2012.

Part of his job is to know the uses of the buildings. There was no change in use in any of the four parcels from 2004-2012. He provided some information to Mr. Kelly. He reviewed his numbers and those that Mr. Kelly produced; they matched.

He was responsible for making the tax payments for 2004-2012. TR 503-504 are the tax bills and the summaries of payments. He paid the taxes on time, under protest, with a letter expressing his disagreement with the Treasurer of Champaign County. From 2004-2011, CF paid taxes in the amount of $17.8 million for the four parcels (including Park and School districts) due to the loss of exemption status.

KEVIN CORNISH:

He was deemed an expert by the Court in the areas of the healthcare industry and not-for-profit and charity programs. He testified about CF's compliance with Section 15-86. He testified about his background and submitted his CV. *See* TR 444. He started working in hospitals in the mid-1980s, setting up units, hiring staff, finance, etc. He then moved into administration where he dealt with billing, cost reports and Charge-master issues. In 1994, he became a consultant, including working with Ernst and Young. He spoke nationally. He began to focus on providing litigation investigation and compliance in the healthcare area. He did a lot of healthcare audits. In 2004, he left Ernst and joined Navigant. He only works on healthcare issues. He has been retained by many hospitals to assist them in litigation and compliance work; in particular he helped hospitals navigate changes in federal law and legal opinions. He has represented dozens of not-for-profit hospitals and helps them deal with their unique issue (Mission Statement being different than for-profit businesses). He has testified 20-30 times in most states but not on property tax exemptions. He is familiar with Section 15-86 and the Korzen factors. He was retained by CF in 2011 to review documents, mostly from CF, but also from public sources and others he obtained on his own. TR 165 shows what he reviewed. He gave CF, and the Court, the following 5 opinions.

1.CF provided medical care to anyone who wanted care regardless of ability to pay. He looked at CF's charter, By-Laws, Mission Statements, Community Care policies, etc. He found

that from 2004-2011, CF's policy was to encourage those who had financial problems to apply for their program. CF made extensive effort to notify the community. He noted that Community Care was on the outside of envelopes, provided at registration, on the radio, etc. He found CF's policy unique in many ways. It was not typical for the discount to go to 100% of the bill. He found that the vast majority of people who applied for the program got services for free. He also found it unique because the program had "catastrophic coverage" meaning that a person would not pay more than 40% of their annual income. Further, patients would qualify even if they qualified for Medicaid or had insurance; most hospitals disqualify you for a charity program if there is insurance. CF's policy was also unique because it auto-qualified people who were homeless, qualified for government benefits, etc. The policy was also unique because the discount was valid for one year which effectively gave a person an insurance policy for a year. Finally, a patient can apply for it at any time and it applied to the entire family. He thought it was high that 68% of patients filled out an application TR 510 shows 87.5% of people approved received a 100% discount. He stated that a person with a 50% discount could possibly pay more than cost but stated that each department has a different cost-to-charge ratio and services are unique to a patient. It is not proper to look at the overall hospital cost-to-charge ratio because each line item is different. In some situations, patients pay less than cost and others may pay more. Further, he believes that far more people received free or discounted services than reflected on the exhibits; the exhibit shows applications; those auto-qualified people are not on this list so many more people are paying nothing. He also looked at community health and wellness programs and education/research initiatives because they are a part of overall charitable goals. There are no National or State benchmarks to meet in terms of dollar amounts, ratios of certain financial metrics or number of patients receiving charity. He simply reviewed CF's situation and came to his opinions.

He testified about the policy starting in 2003 when it did not have guidelines or criteria. In 2003, CF simply used the poverty guidelines and had no sliding scale. He stated in 2004, it changed to 100% discount when income was at 150% of poverty guidelines and increasing up to 250% of that level. He knows that the policy changed over time. Because Community Care is not collected, it is not added to net patient services revenue. CF offered charity of $12.2 million in 2006 and $6.3 million in 2005, representing 1.7% and 1% of gross patient service.

2.CF extended significant effort and resources to promote the Community Care program and to remove obstacles for people to participate. The Community Care program only applied to the Hospital prior to the merger but then applied to all services. CF went to great effort to tell patients, in and out of the facilities, about the Community Care program. CF lengthened the time to apply to the program and eventually allowed people to apply long after medical treatment. They worked with a local community coalition to find ways to reach more people, including putting up signs and sending letters in Spanish and Mandarin Chinese. By helping patients apply for government aid, it helped them because it auto-qualified them for Community Care and also assisted them with prescriptions, housing, food assistance, etc.

3.There is no capital stock or shareholders. This was evident from reviewing CF's By-Laws, Articles of Incorporation, financial statements, etc.

4.There is no gain or profit to any private person and they paid reasonable executive compensation. He reviewed the compensation process at CF which included the special committee which was a part of the CF Board. Sullivan-Cotter, a nationally recognized group, helped determine fair market guidelines. When he reviewed the process used by CF, including using outside, independent resources, he found that CF executives were paid reasonable amounts. He also reviewed information from before, during and after CF's acquisition of the Clinic. The

relationship changed over time. It was not unusual for hospitals to contract for medical services such as ER doctors, etc. He reviewed the merger documents that showed CF paid the Clinic $250 million. Both sides hired independent firms to help determine valuation. In the end, the two assessments were close and the parties, in an arms-length transition, settled on an amount. How the Clinic chose to deal with giving their doctors money from the purchase (their equity) had nothing to do with CF. He acknowledged that it far exceeded what doctors paid to get into the Clinic but noted that their buy-in was not based on fair market value of the Clinic. He also found that it was not a private gain to doctors by having HSIL be the captive insurance company for both CF and the Clinic because the premiums were based on an independent and actuarially determined process. Having offshore captive insurance companies is not uncommon for hospitals.

5.There are no dividends and CF re-invested net income into CF. He reviewed financial documents, By-Laws, the Articles of Incorporation, etc. and found it obvious that CF issued no dividends. The fact that CF had income does not change his opinion because it was re-invested into CF. This was for new equipment, improving capitol facilities, and creating/expanding programs. There is no right or wrong level of income to get an exemption nor is there a cap on income to get an exemption. There is no law or industry practice as to the amount a not-for-profit can earn; no business can survive if it is in the red. CF's By-Laws forbid private inurement. There was no evidence that any profits went to particular individual.

DEFENSE CASE

JOHN SNYDER:

He has been an administrator in the Carle system for 30 years. He has served as Chief Operating Officer at both the Hospital and the Clinic. From 2004-2010, his duties included covering operations, patient care and Clinic doctors. He is aware that all CF employees got some

incentive pay but it was generally to meet system-wide goals and had no correlation to Community Care. CF's quality standards have to do with mortality rate, length of stay, staffing ratios, etc. and have nothing to do with Community Care. He often spoke to Mr. Tonkinson and Mr. Hesch about improving patient's access to Community Care and ensuring they treated all patients regardless of ability to pay.

It is common for hospitals to rent doctors from other entities. CF paid fair market prices for the services of Clinic doctors before the merger. He thought CFPS was set up between 2004-07. It had been a Clinic enterprise that was then taken over by CF. It started in Mattoon and later expanded to other locations and involved Clinic ER doctors and hospitalists. The Clinic and CF had contracts and agreements about labs, radiology, etc. to eliminate duplicative services. Most admissions to the Hospital were through CFPS doctors rather than those at the Clinic. From 2004-2010, about 90% of doctors working in the Hospital were Clinic doctors. Before the merger, departments had a medical director and an administrator. After the merger, each department had an administrator and a doctor; it did not change the dynamics. Clinic doctors were then employees of CF. Some of these changes came from the IRS audit. He was aware that the Clinic, prior to the merger, sometimes did not contract with Blue Cross. This caused some operational problems because those Clinic doctor fees might not be covered by CF's Community Care. This practice was common with hospitals that have relationships with clinics.

CAROL ELLIOTT:

She began in the Cunningham Township office in 1980, starting as a secretary. She moved up to administrative assistance and accountant. She was appointed as the Supervisor of Cunningham Township in 1996 and was elected in 1998. She served in that capacity until 2013. She acted as the Treasurer of Cunningham Township, which included preparing budgets and

running the general assistance program. If a citizen applied and was eligible, they would receive $265/mo. as general assistance. Criteria for eligibility included living in Cunningham Township, income and other benefits such as unemployment. If someone went to Carle, standard forms were used and sent to Springfield to determine how much Cunningham Township would remit to Carle. At some point in early 2000s, they had a manual with the charges so they no longer had to send papers to Springfield. At about that same time, she became aware of CF's Community Care. She said that Cunningham Township believed they were the payor of last resort but CF thought the same of themselves. The disagreement ended when Cunningham Township could submit Community Care applications for their clients, which made them automatically qualified for Community Care. *See* TR 58-59 (Elliott's letter to Town Board members and letter to CF officials, in April 2004). In the end, if a citizen received Community Care, Cunningham Township would not pay the Hospital bills.

After she would prepare a budget, it went to the Cunningham Township Board for a vote. The Board did not tell her how to run her office and she did not need to ask them for permission to take certain actions. Her office was in the same building as the Cunningham Assessor but they did not direct each other's activities. She was the Supervisor of Assessments when the four parcels at issue were assessed.

MICHELLE MAYOL:

She currently works for the Illinois Department of Corrections in Danville. She started at the front desk in the Office of the Supervisor of Assessments in 1996. She was promoted to Director of Accounting and general assistance. In 2013, she was elected as Cunningham Supervisor of Assessments. She remained there until her retirement in May 2017. She was the CEO and Treasurer for the Township. She would prepare budgets for the Board to approve. They

did not direct her day-to-day decision-making; she did not need their permission. For general assistance, at first she would receive a bill, confirm the person was on their assistance, send the bill to Springfield for pricing and then paid the bill. The pricing was later put online so she did not have to contact Springfield. In August 2004, she learned of CF's Community Care. She would help people fill out the application. She believed it was limited to those with medical cards because they paid at the public aid rate. She was not aware that citizens were confused between CF and Clinic bills. If a client was denied Community Care, they could apply at Cunningham Township; financial standards were the same but Cunningham Township requirements were more restrictive in terms of needed documentation. If there were problems with CF, she would call them and work it out.

BRUCE WELLMAN:

He graduated medical school in 1974 and joined Mercy Hospital in the 1980s. After several years, he joined the Clinic, buying shares pursuant to their By-Laws. Doctors could buy-in at an annually-inflated rate and be an Associate for about 2 years. The price was kept down to keep up with recruiting new doctors. At some point, the buy-in was about $25,000. He became the Interim Clinic CEO in 1999 and later as permanent in 2001. His duties included operations, strategy, recruitment, etc. He dealt with CF for many years and helped negotiate many contracts and agreements. The Clinic was for-profit.

He was on the Board of HSIL which was to provide medical liability; as a captive group, it saved them money. From 2004-2010, 90-95% of doctors in the Hospital were employees of the Clinic. During that time, the Clinic did not have a charity program. When people could not pay, the Clinic worked with them to set up payment plans. If people could not do that, the Clinic had bad debt that was eventually written off. The Clinic also had a no-service list for patients due to

their behavior, not following treatment or lack of payment; they would still provide care for emergencies.

The Clinic also leased space from the Hospital, starting in the 1950s. CF built the structure and the Clinic would rent space, pay utilities, etc. Contracts were for many things including radiology, pathology, etc. This was for efficiency. It was hard to have reliable funding for Clinic doctors to staff the ER and other areas. These are services in the Hospital. Since ER work fluctuates, it was better to contract doctors as needed. CFPS was created as a professional organization to employ doctors. A physician's council was also created. Doctors wanted to continue having a voice in, and be able to interact with, CF. Clinic doctors would have access to any area necessary for medical purposes. He was not aware of restricted areas. The square foot and usage were more the area for the CFO; space was used to determine rent and not who had access.

He knew that Medicaid/Medicare paid less than commercial rates but it covered their cost so the Clinic accepted them. He recalled at least one time in about 2002 when the Clinic did not accept Medicaid. A lot of doctors stopped looking at Medicaid patients. This caused the volume to go up and it cost too much. They tried to limit the number of Medicaid patients. He recalled an agreement with the Illinois Attorney General in about 2007-08 about whether they should take more Medicaid patients. The fees charged for doctors varied based on specialty and other factors.

HAMP was started in the 1980s. It is now owned by CF. There were talks of a merger between CF and the Clinic in the 1990s but no discussion at that time about selling HAMP to CF. Decisions by the Clinic affect HAMP and vice versa. The Clinic also did not contract with Blue Cross in part because the Clinic reaps the benefits of HAMP and the Clinic wanted to protect the value of HAMP. In April 2010, the Clinic merged with CF. The decision-making process started

in 2008. There was national legislation that was part of the discussion. Many clinics were integrated with hospitals but not Carle Clinic. He thought they were the only system in the country working their way because the Clinic owned some ancillary services. They wanted it to avoid duplication of costs and services. TR 2701 reflects some information from a retreat when the merger was discussed. They knew many agreements needed to be changed. They agreed that each entity would hire an independent company to assist in valuation. After the merger, Clinic doctors received a share of the Clinic purchase price based on their shares in the Clinic. After the merger, they all worked as a team.

CATHY EMMANUEL:

Since the early 1980s, she has worked at both the Clinic and CF doing marketing and strategic planning. She has been retired for about 2 years. Her duties have included research, communication and strategic planning. She has done work for CF entities such as Arrow Ambulance, Carle Medical Supply, etc. She acknowledged that the Carle name (as well logo, website, etc.), is the same for CF and the Clinic. It was important to build on the Carle name but there was no intent to co-brand. She did not want people who used the Clinic to necessarily be thinking of the CF. For strategic planning, she spoke to doctors, department heads, outside agencies, industry experts, etc. CF looked at national and local trends that had an impact on the Clinic or CF. They did consider economic trends in the community including poverty rates, income trends, etc. They also considered which services were profitable or not. They did not look at profitability of Clinic departments. They also looked at access – if impoverished people could not make it to the hospital, for instance, that prompted the creation of the mobile unit. Both entities coordinated planning in areas of mutual interest.

Strategic plans rarely listed Community Care even though it was always considered. Nursing issues were also rarely listed. These were added only if there was a specific initiative. In about 2002, there was a national movement for hospitals to buy insurance companies so one of her duties was to develop a network for HAMP ownership. CF did not buy HAMP then. TR 4207. HAMP was larger than any other private insurer. TR 107. HAMP contracted with hospitals other than CF. Its goal was to get the best rate as possible. There were arms-length and contentious negotiations during the merger. Dr. Leonard gave her a towel with the word "tenacious" on it. That strategic plan also addressed concerns about when other hospitals sent to Carle Hospital someone with Blue Cross. A portion of the plan was to evaluate their commitment to the UI and the community such as a medical scholar's program, and community health and wellness programs. TR 4210 is the strategic plan for 2005. That plan addressed assisting Frances Nelson so patients have better access to services. Other strategic plans were developed in other years. TR 4082 reflects partnering with community resources to provide access to uninsured and underinsured patients and to start programs such as palliative care, Parish Nursing Program, ECHO, etc.

JOANNE CHESTER:

She started in the Cunningham Township office in about 1974. Her job was to value property and deal with homestead exemptions. She was the elected Cunningham Assessor from 1978-2009 and she had the same duties. The Cunningham Township Board and Supervisor do not supervise or control her. They do not tell her where to assess or how to assess. Cunningham Township pays her salary and she attends their meetings. But she makes her budget which is approved by the Board. She is aware of a settlement between CF and the Urbana Park and School

Districts. She was not a party to it. In June 2004, she assessed the four parcels at issue on the CF main campus in Urbana. No one told her to do so. She determined the fair market value.

MARK HALL:

He was deemed an expert by the Court in the areas of healthcare policy and finances and not-for-profit enterprises. He testified about CF's compliance with the Illinois Constitution (Korzen). He discussed his background and his CV was admitted as TR 2847. He graduated law school in 1981 and clerked for a law firm dealing with hospital law. He received a post-graduate fellowship in healthcare finance. He has taught at several universities and is now at Wake Forest University, teaching and doing research as a Professor of Law and Public Health. He also teaches at a local medical school. He has done research on health care regulations, charging rates and negotiated prices with private insurers. He has associations with the Brookens Center and the American Law Institute. He has published about 250 articles in law journals. He was paid by the Defendants in this case but it did not affect his opinion. He has not worked in a hospital's billing or accounting division, does not have a finance degree and is not a CPA. He has not worked with hospitals to draft strategic plans and has not worked with the Charge-master. He has never done a valuation for any hospital. He is not an expert in Illinois law. He did consult with University of Illinois Law Professor John Colombo about tax issues since he was not familiar with that. Colombo told him that, in his view, hospitals should not be property tax exempt. The witness said that, as a matter of public policy, hospitals should be able to receive charitable tax exemptions but he said it depended if it did enough charitable work. He could not name a hospital in Illinois that met that threshold. He stated that he was not testifying about a legal opinion. He is not testifying about Section 15-86. He did not analyze CF's 2012 finances but knows that DOR granted at least partial exemptions for the four parcels in question.

He reviewed many of CF's financial documents, Community Benefit Reports, CF's website, etc. He conducted his own research, including information from public interest groups, levels of poverty and books on CF's history. He knows the Korzen case and understands the factors. He understands that each State has its own standards. About 25 years ago, he wrote an article that dealt with the donative theory of exemptions being the better model to determine what is charitable for tax purposes. This states that an important factor to look at is the amount of public donations an entity receives; if people give out of their own pocket, this shows that the entity's activity is worthwhile and merits additional support (tax exemptions). He admitted that this was an academic theory and has not been adopted by any jurisdiction. He believes it is relevant under Korzen. He gave the following opinions:

1.CF's properties were not primarily used for charitable purposes and do not relieve the burdens of government. He characterized their business to be a successful hospital/enterprise. He looked at CF overall and found that charity is a minor part. Many of CF's entities were for-profit; he was not concerned about this from a business standpoint but because of the integration of all the entities. He said this amount of integration would be seen in large hospitals such as Mayo (he knew CF was based on the Mayo model). His special concern was the amount of integration between CF and the Clinic prior to the merger - shared space, shared insurance risks, numerous agreements, etc. He acknowledged that some were to not duplicate services such as IT, security, etc. He admitted this integration created large efficiencies. He agrees that the contract prices were fair market value. He admitted that HAMP was the largest part of the merger and that doctors gave up their rights to HAMP profits after the merger. Although the companies hired by both sides were OK, he preferred a different valuation method where the doctors at the Clinic should have donated the market value of the Clinic shares so as to assume charitable status. He said he knew

of other organizations that did that but could not name one. He also noted the similar logos, website, etc. between CF and the Clinic.

He was not aware that other not-for-profit hospitals associated with for-profit physician's associations. He believed that the amount of fundraising by CF was small. He thinks that charity is secondary to CF. He knows that parts of the parcels at issue are leased and partial exemptions are sought. He did not look at how CF leased property. He stated that he is not intimately knowledgeable about Illinois law or its Constitution (for ownership or use). His definition of charitable is where there is no intention of billing at the time of services being provided but agrees that is not feasible in some situations such as emergency rooms. He believes that CF would provide services and then deal with payments. When asked if that is how CF works, he said that he was not aware of CF not performing services to a patient when they knew the patient would not pay.

He compared actual charity care at cost versus specific expenses. In 2004, it was .8%, rising to 5% in 2011; overall it was 2.5%. He is concerned about lengthy delays in determining if a patient can pay and thinks over one year is too long. He notes that the Community Care program was not always in strategic plans. He believes that at least 50% of operating income (profit) should go to charitable services but admitted there is no such standard. He is not aware of Illinois law that requires charity care to be compared to any other financial metric but he thinks it should be compared to total income. He says there is no litmus test but having a majority of total income going to charity "feels nice." He acknowledged that the total community benefit expenses ranged from 3.6-13.5% of operating expenses and 24.2-142.2% of total income; the latter averaging 69.8% from 2004-2011. *See* TR 536. He believes that services should be deeply discounted or it should not count as charity. He understands Section 15-86 does not require this. He agrees that CF is not counting bad debt as charity care. He knows that CF is taking on the Medicaid and

Medicare shortfalls but is not counting that as charity. He argues that cost is less than list price and that even at the 50% discount level, the bill may still be over cost. He acknowledged that the majority of patients receiving discounts received 100% off. TR 510.

He does not believe it is appropriate to look at charity to include Medicaid shortfalls (hospitals have other reasons to contract with them other than being charitable), volunteers (he did not know but they could have been counted in some other metric), and free health screenings and the like (more for goodwill than public service). He was also critical of research because much of that is paid by grants. Finally, he believed that many hospitals have ERs and provide other services that the public expects hospitals to have. The high number of Medicaid and Medicare patients reflect that CF does not relieve the government of burdens as well.

2. CF did not receive its funds primarily from charity. He knows that CF does not contest this finding. CF got most of its income from private pay and insurance (private and public). His concern is that CF is making more income than needed (excessive) to run the business. The average operating margin for 2004-2011 was 5.3%. TR 535-7 show it was 2.3% for 2011 and 2012. CF is doing well financially. He believes not-for-profits should not have excess income; they should not be accumulating excess profits. He thinks a 2-3% surplus is enough but there is no law stating this. He knows that a business can have profit and get a property tax exemption. He could not name a hospital that received a majority of its funding from donations.

3.Doctors receive a private a gain or benefit. He was concerned about the time before the merger where the Clinic entered into many contracts with CF for services. The Hospital provided a place for most of the Clinic doctors to practice. He thinks CF had influence over the Clinic and could have gotten them to change their policies to follow Community Care, accept Medicaid patients, end the no-service list, etc. He did not know how many doctors themselves in the area

had a charity care policy. He thinks that the transactions between the entities provided a private gain or benefit to doctors. He thinks CF gave private gain/benefit to doctors by giving them a place to treat patients. He questions the valuation process used by entities to set the merger/acquisition purchase price. He knows by scholarly research that the best method is the discounted cash flow but he does not know how to do the analysis. He thinks that if valuation it is based on expected income, that is a form of inurement. He thinks that for-profit hospitals have ERs because the public expects hospitals to have them. It is a loss leader but many people are admitted which makes money for the hospital. He is not familiar with trauma centers but believes most high level ones are associated with the government. He noted that for-profits also give to the local community (banks and insurance companies) for good will. He believes in the community benefit theory which is that these should not count as charitable. He recognizes that Section 15-86 allows research, education, Medicaid shortfall, etc. and does not fault CF for listing them. He believes that all important issues should be in the strategic plan. If something is not in the strategic plan then it is not important. He could not recall if he saw nursing listed in strategic plans but agreed that they are essential to CF's mission so it does not have to be listed.

4.There are obstacles in the way CF provides charity. He knows that the Community Care policy changed from 2004-2011, the inference which is that delivery of charity could have been better before then. TR 2004, table 11, shows bad debt reduced over time which meant that CF did a better job of identifying those in financial need.

He is concerned that Clinic doctors do most of the referrals to the hospital. He believed that strategic plans encouraged doctors to help indigent persons. He looked at TR 2004, p 26 which showed poverty and other statistics. In 2005, Champaign County had 21.2% uninsured and 18.4%

underinsured. He concluded that CF did not provide proper proportionate care to uninsured patients.

He claims that CF said bad debt was charity but he acknowledges that forms allowed it. He notes that CF is not a safety-net hospital which is designed to help those in need; they are often government-run. He does not know where the nearest safety net hospital is but thinks it is likely in Chicago. They tend to have high Medicaid and uninsured patients. He knows government-run hospitals get money from the government and they also bill patients, insurance, etc. CF has an average of 2.5% charity care to operating expenses. He thinks government hospitals are 6.6%. In his view, a hospital needs this designation to qualify for a tax exemption because it shows they are serving a reasonable number of uninsured patients, etc. He knows CF changed the Community Care policy over time and it became more generous. He knows CF stopped seeking body attachments. He knows they cross-qualified with Frances Nelson, Cunningham Township, etc. and that they did extensive advertising. He was aware that from 2004-12, there was an increase in the number of Community Care patients and that most (87.5%) received a 100% discount. About 93% got at least a 75% discount. He knows that these numbers do not include auto-qualified patients. He knows the benefit is for one year, applies to past debt and to a whole family. He did not do a parcel by parcel analysis.

MARGARET EVERETTE:

She began at CF in 1979 as a cashier. She then became a patient account representative and then, in 1986, became a supervisor. She retired in 2008. Part of her job was to process Community Care applications which included verifying income. At first, she needed pay stubs or tax returns. She could request documentation if she needed it. She had the final word on most application approvals and denials. It was not common for a patient to request her supervisor to review the

decision and she did not recall any reversals of her decisions. Most of the time, a denial was because the patient did not supply necessary information or she needed more information; rarely was it because the person did not meet income guidelines. She would personally speak with people multiple times. She also sent out letters. The factors she used were income and family size, not their assets or the size of the bill. She was unfamiliar with auto-qualifying; she believed that people on food stamps or Cunningham Township assistance still needed to fill out an application. She knew CF sometimes used collection agencies and filed over 100 lawsuits per year. The Community Care discount applied to the full charge and if a case was sent to collections, it was at the full charge amount. They used all efforts to try to collect. The collection agency got a percentage of the recovery. After 2007, there was an increase in people requested Community Care because there were more unemployed and uninsured patients. For billing purposes, the process was to determine if there was insurance or public aid. Once an amount was determined to be owed by a patient, then the process was to send three form letters followed by 2 phone calls. If there was no reply, then it was written off as bad debt. If they believed they could collect, they would send it to the agency. At one point, they started sending a letter about Community Care with one of the form letters. She knew the program's income level increased over time. TR 4080 is a form letter.

MIKE BILLIMACK:

He started with CF in 1985 and left in March 2018. He was a manager in marketing and communications and in 2000 was made Executive Director. He became VP for marketing and strategic planning in 2006. He worked with the leadership team and outside consultants to talk about national trends. He would look at hot-button issues in the healthcare field; most of the data he studied was not-for-profits. The role of strategic planning is to provide goals and objectives for

the future. They do not always list nursing or Community Care even though they are essential. They initiated a partnership with community resources to provide access for uninsured and underinsured patients. They also wanted to develop collaborations with Frances Nelson, the Clinic, Provena Hospital, etc. He was not aware that, from 2004-2011, patients could apply for Community Care online; he thought the applications may have been online. This was probably in 2008-09. TR 4084 is a strategic plan for the period ending 2012. Community Care was not listed because it was not the critical issue at the time. He knew the close relationship between the Clinic and CF over the years and the 100s of agreements and contracts. One concern was that a patient could have insurance covered by one entity and not the other (such as Blue Cross or Medicaid).

PRELIMINARY ISSUES:

Credibility:

As a threshold matter, this Court must comment on the credibility of the witnesses because determinations of fact inevitably rest on "the parties' temperaments, personalities, and capabilities, and the witnesses' demeanor." In Re Marriage of Spent, 342 Ill.App.3d 643 (4th Dist. 2003). In evaluating the credibility of witnesses, the Court may consider the witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case. *See* Illinois Pattern Jury Instructions - Civil 1.01(5). A finder of fact may consider circumstantial evidence which is a fact or a group of facts, based on logic and common sense, that lead to a conclusion as to other facts. A fact may be proved by circumstantial evidence. Circumstantial evidence does not need to exclude all other possible inferences, but it must justify an inference of probability, not mere possibility. McCullough v. Gallaher & Speck, 254 Ill. App. 3d 941 (1st Dist. 1993). Positive, direct and uncontradicted testimony from a witness who has

not been impeached cannot be disregarded. Anderson v. Zamir, 402 Ill.App.3d 362 (5th Dist. 2010).

To a great extent, the facts are not in dispute. Rather, the main arguments of the parties are what weight to give to the facts and how the Court should interpret the facts. Except as the Court will discuss later, almost all the witnesses were credible. Some certainly have an interest in the outcome but every witness appeared to this Court to be making an effort to be as genuine and honest as possible. Virtually every witness, if not all witnesses, frankly admitted if they could not recall something or were not sure of an answer. Many stated that some other witness would be better to answer a particular question. This leads the Court to believe that, as a general matter, the witnesses were credible.

Prior Decisions:

Prior to trial, this lawsuit has gone up on appeal two times, with three different appellate decisions. In Carle I, the Fourth District Appellate Court ruled on a number of certified questions. Carle I is binding precedent on this Court and stands for the proposition that Section 15-86 claims can be brought even though they were initially brought under Section 23-25. Further, it allowed CF to file this lawsuit in court even though they had filed an administrative proceeding. In Carle II, an interlocutory appeal was taken after which the same appellate court found that Section 15-86 is retroactive but that is also facially unconstitutional. That appellate decision was appealed to the Illinois Supreme Court. In Carle III, the Supreme Court vacated the ruling in Carle II because the appellate court did not have jurisdiction. Therefore, Carle II has no precedential value whatsoever. Carle III is binding but it did not rule on the merits of any trial issue.

All parties, although the Defendants more so, rely on Provena Covenant Med. Ctr v. Dept. of Revenue, 236 Ill.2d 368 (2010) (hereafter referred to as "Provena"). The Illinois Supreme Court was split in its decision, rending two different opinions. The main opinion was signed by three of the Court's seven Justices. They held that Provena, a hospital, did not prove that it was a charitable institution or that their uses of the property were charitable. This was under a predecessor law to Section 15-86. The other opinion was signed by two Justices. They agreed that the Hospital did not prove they were a charitable institution but disagreed about charitable use, finding that setting a numerical value should be left to the legislature. Two Justices took no part in the decision-making. Because this is a "plurality" opinion and the different opinions do not agree on charitable use, it has no binding precedential value. *See* Marks v. United States, 430 U.S. 188 (1977). In Roark v. Macoupin Creek Drainage Dist., 316 Ill.App.3d 835 (4th Dist. 2000), it was stated that if a majority of the Illinois Supreme Court merely agrees to a particular result, without agreeing as to the grounds for a decision, the parties are bound by the decisions but the case provides no binding authority beyond the immediate parties. In short, such a "plurality opinion" in which no majority agrees as to the reasoning is not binding under the doctrine of stare decisis. Nonetheless, this Court may consider it and give it persuasive authority.

County Defendants ask this Court to compare its potential ruling with rulings of the Honorable Jeffrey Ford, a 6th Circuit Judge (Champaign County) who had made some preliminary findings in an unrelated, pending, matter – Presence Hospital v. Champaign County Board of Review, et al, Champaign case 2015-L-75. Trial rulings in a pending and unrelated case have no precedential value to this Court. Each judge must base decisions on his

understanding of the law and the facts of the case. Regardless, Judge Ford's rulings and this Court's rulings have been consistent on relevant matters.

Qualification for Section 15-86 Exemptions:

State Defendants argue that the Court must first determine that CF even qualifies for a Section 15-86 exemption in the first instance. They quote the Supreme Court in Carle III. At the end of that plurality opinion, the Court states the reason for denying a review of the matter on its merits. In dictum, they stated "Likewise, there has yet to be any determination in this case that plaintiff even qualifies for a Section 15-86 exemption in the first place." Carle III at para 34.

With respect, this Court believes that determination has already been made. In October 2013, Judge Leonhard entered a lengthy docket entry finding that PA 97-688 (Section 15-86) applied to claims initially brought under Section 23-25(e). He explained his rationale, stating that "application" is to be used in its ordinary meaning and that the rules of statutory construction reflect Section 15-86's temporal reach to be brought under Section 23-25. In May 2014, Judge Leonhard entered another docket entry granting CF's Motion for Summary Judgment on Count 2. It definitively stated that Section 15-86 applied to claims first brought under Section 23-25(e) that were pending, or filed after, the enactment of PA 97-688. He found, in this matter, that CF met its burden of showing retroactivity. In August 2017, after the Carle III decision, County Defendants (and later State Defendants) filed a Motion to Reconsider some of Judge Leonhard's rulings. (At that point, this case had been assigned to this Judge). This Court was hesitant to do so because a successor judge should exercise restraint in using the power to reconsider a prior judge's ruling. *See* Travelport v. American Airlines, Inc, 2011 IL App (1st) 111761. Nonetheless, on October 24, 2017, this Court did reconsider Judge Leonhard's rulings and

affirmed them, explicitly finding that CF met its burden of showing that it should be allowed to proceed under Section 15-86. During trial, Defendants continued to raise the issue of whether CF even qualifies for a Section 15-86 exemption. They raised it at length in their written closing arguments. This Court believes that the issue has been resolved.

To be clear to the parties and a Court of Review, this Court finds that CF qualifies for a Section 15-86 exemption, as did Judge Leonhard (and Judge Ford, for that matter, in Presence). The test for retroactivity is found in Allegis v. Realty Investors v. Novak, 223 Ill.2d 318 (2006). There are two steps. The first is to look to whether the legislature expressly prescribed the statute's temporal reach. Second, if there is no express provision, the trial court must determine whether the new statute would have retroactive effect, keeping in mind the general principle that prospectability is the appropriate default rule. Public Act 97-688, incorporating 35 ILCS 128/90, states in part, that:

> Changes made by this amendatory Act...shall apply to: ... (3) all applications for property tax exemptions filed by hospitals...that have either not been decided by the Department before the effective date of this amendatory Act...or for which any such Department decisions are not final and non-appealable as of that date.

First, CF argues that this applies because their lawsuit challenges the DORs denial of their property exemption applications and that DORs denials were not final and nonappealable on the date the law changed. This Court agrees. State Defendants argue that this is tortured reasoning because Section 15-5 states that an "application" shall be filed with the County Board of Review or Board of Appeals. However, that Section deals with a person wishing to claim an exemption "for the first time." Defendants further argue that Section 15-86(h) says that a Hospital applicant "shall use an application form provided by the Department" and that it shall contain a verification by the Chief Executive Officer. They cite Carle I which held that court

proceedings to establish an exemption are an action to establish an exemption which is "not otherwise specifically provided by the Code." Since a Section 23-25(e) proceeding is an equitable suit for injunction rather than an application for property tax exemption, CF cannot proceed under Section 15-86 because it is not an application. The Court disagrees with Defendants. The present lawsuit was filed pursuant to Section 23-25. In response to Carle II, although having no precedential value, CF filed under Section 15-86 because the appellate court offered it an election of remedies. Section 90(3) includes actions pending before the Court under Section 23-25 and that claims are governed by the same standards.

Second, CF relies on Section 23-25(e). Prior to 1998, the only way to obtain a non-homestead property tax exemption was from the DOR or on a complaint for administrative review of a DOR decision. Section was 23-25(e) was added in 1998 which allowed for a judicial determination of a property's tax exempt status, bypassing the administrative application process. Section 23-25(e) states, in part:

> "The limitation in this Section [against seeking a "judicial determination as to tax exempt status"] shall not apply to court proceedings to establish an exemption for any specific assessment year, provided that the plaintiff...has established an exemption for any subsequent or prior assessment year on grounds comparable to those alleged in the court proceedings."

It is undisputed that the Champaign County Board of Review recommended that CF was entitled to exemptions under Section 15-86 for tax year 2012 for the four parcels in question. *See* TR 454-455. It is also undisputed that the DOR accepted those recommendations and determined that CF was entitled to the exemptions. *See* TR 271-274. CF argues that 2012 can be compared to 2011, back to 2004. These are years in which they were denied exemptions. CF claims these are comparable years and nothing material changed from 2004-2011 and 2012 when they got the

exemption. This is a fact-issue the Court must determine. But this Court agrees that CF is properly before this Court.

Defendants have not argued or proved that the DOR granting the exemption for 2012 was erroneous or unlawful. Loren Stouffe, the long-time DOR official who was primarily responsible for exemption decisions and personally determined CF's exemption for 2012, testified that she continued to believe it was correct. Further, although Defendants attack many of the actions of CF during the subject years of 2004-2011, they have never argued or proven that there was a material difference between CF's entitlement to the exemption in 2012 and the subject years. Mr. Kelly specifically testified that part of his job was to know the uses of the properties. He said there was no change in use on the four parcels from 2004-2012.

Defendants argue that Carle I held that Section 23-25(e) effectively revives the traditional suit in equity for injunction and that the reasoning of Carle II should not apply (comparing the years). State Defendant believe that the first view in Carle II is appropriate – that is, a DOR-favorable view serves merely as an "admission ticket" to the circuit court and then the circuit court conducts a de novo determination whether an exemption is appropriate. In essence, the circuit court would function as a "super agency." State defendants argue this is more consistent with the traditional suits in equity for an injunction.

CF believes Carle II's second view is more appropriate because it does not turn the trial court into a clone of the DOR. In this view, the trial court would compare two sets of facts: those existing during the assessment year in question and the facts on which the DOR relied when finding the parcel to be exempt for some "other year." Despite State Defendant's arguments, CF's position does not conflict with the precedent that a taxpayer may be required each year to

demonstrate entitlement even with no change of circumstance. State Defendant argues that comparable grounds is merely a condition on the exemption to the requirement of exhaustion of administrative remedies. As noted above, this Court finds that CF has the right to be in court and did not have to exhaust its administrative remedies.

Carle II has no binding precedential value on this Court. But the issue addressed there is noteworthy because it addresses how this Court is to analyze the properties. Defendants ask this Court to apply Carle IIs first test while CF asks to apply its second test. Both parties have made persuasive arguments but this Court agrees with CF. CF argues that this means that this Court should focus on a comparison between the grounds supporting an exemption for the base year (2012) and the subject years (2004-2011) and that they should be entitled to an exemption under either a) the facts for the base year and subject years are not materially different or b) the DOR or court decision for the base year was erroneous (no evidence of the latter). Although Carle II is not binding, its rationale is sound. This Court cannot find another reasonable way of interpreting Section 23-25(e). There is no law on the issue and this case will likely be appealed. This Court, and the partiers, do not want the matter remanded for new hearings because this Court applied the wrong analysis. Therefore, in an abundance of caution, this Court will do both – a) conduct a de novo review of the entitlements for 2004-2011 and b) conduct a comparison between the base year of 2012 and subject years of 2004-2011. As will be shown later, the Court finds that the outcome is the same under both analyses.

DISCUSSION OF EXEMPTIONS

This Court has found that CF is properly before this Court. A brief discussion of property tax exemptions is necessary. Article IX, Section 6, of the Illinois Constitution provides

that "the General Assembly by law may exempt from taxation only…property used exclusively for …charitable purposes." "Charitable use is a constitutional requirement." Oswald, para 15. "Under Illinois law, taxation is the rule. Tax exemption is the exception." Oswald, par 12. The word "exclusive" does not mean "only" but has been interpreted broadly to mean "primary" and not merely incidental. *See* Chicago Bar Association v. Department of Revenue, 163 Ill.2d 290 (1994); Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971).

The Constitutional test acts as both an authorization and limitation on the powers of the General Assembly to exempt property from taxation. *See* Eden Retirement Ctr, Inc v. Dept of Revenue, 213 Ill.2d 273 (2004). Although the General Assembly cannot grant exemptions beyond those authorized, it may "place restrictions, limitations, and conditions on…exemptions as may be proper by general law." N. Shore Post No. 21 of the Amer. Legion v. Korzen, 38 Ill.2d 231, 233 (1967). Any statute granting tax exemptions must be strictly construed in favor of taxation. Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill.2d 542 (1986). The burden of establishing entitlement to a tax exemption rests upon the person seeking it. City of Chicago v. Illinois Dept of Revenue, 147 Ill.2d at 491 (1992); Rogers Park Post No 108 American Legion v. Brenza, 8 Ill.2d 286 (1956). "The party claiming an exemption carries the burden of proving clearly that the use of the subject property is within both the constitutional authorization and the terms of the statute under which the claim of exemption is made." Oswald, par 18. The burden is by clear and convincing evidence. *See* Provena. Taxpayers may be required to demonstrate entitlement to an exemption each and every year, even if there has been no change of circumstances. Jackson Park Yacht Club v. Illinois Dept of Local Affairs, 93 Ill.App.3d 542 (1st Dist. 1981).

SECTION 15-86:

In December 2007, CF initiated this lawsuit. The matter has been the subject of three appellate decisions. In 2012, the General Assembly enacted Section 15-86. This Section was the direct result of the Illinois Supreme Court's 2010 decision in Provena, where, in a plurality opinion, they denied a property tax exemption for a not-for-profit hospital because, as the DOR found, the hospital had an inadequate amount of charitable activity. The Court noted that there was uncertainty about the application of a quantitative or monetary threshold and two justices opined that determining that is a complex decision which should be left to the legislature since they make public policy, not the Courts. When the General Assembly enacted Section 15-86, they included a number of statements in its preamble, including some direct quotes from the Provena decision:

> "The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens...
>
> Hospitals relieve the burden of government in many ways, but most significantly through their participation in and substantial financial subsidization of the Illinois Medicaid program, which could not operate without the participation and partnership of Illinois hospitals."

Further, Section 15-86 states that the General Assembly has worked with "the Illinois hospital community and other interested parties..." to develop a comprehensive combination of related legislation that addresses "hospital property tax exemptions, significantly increases access to free health care for indigent persons, and strengthens the Medical Assistance program." Finally, the statute states:

> It is the intent of the General Assembly to establish a new category of ownership for charitable property tax exemptions to be applied to not-for-profit hospitals and hospital affiliates in lieu of the existing ownership category of "institutions of public charity." It is also the intent of the General Assembly to establish quantifiable standards for the issuance of charitable exemptions for such property. It is not the intent of the General Assembly to declare any property exempt ipso facto, but rather to establish criteria to be applied to the facts on a case-by-case basis.

In January 2014, CF filed the current Fourth Amended Complaint. In Counts 3-34, CF seeks entitlement to property tax exemptions for four parcels from 2004-2011 under Section 15-86. So what is the policy of the General Assembly and what is the method used for determining whether a not-for-profit hospital meets the test for charitable activity? In short, Section 15-86(c) sets forth a formula –

> A "hospital applicant satisfies the conditions for an exemption under this Section with respect to the subject property, and shall be issued a charitable exemption for that property, if the value of services or activities listed in subsection (e) for the hospital year equals or exceeds the relevant hospital entity's estimated property tax liability, as determined under subsection (g), for the year for which exemption is sought."

The Court must therefore conduct an analysis of charitable activity and estimated taxes.

Estimated Taxes:

Section 15-86(g) sets forth the process of how to determine estimated taxes, noting that this method "for purposes of this Section 15-86 shall not be utilized for the actual valuation, assessment, or taxation of property pursuant to the Property Tax Code." "Estimated property tax liability" means:

> The estimated dollar amount of property tax that would be owed, with respect to the exempt portion of each of the relevant hospital entity's properties that are already fully or partially exempt, or for which an exemption in whole or in part is currently being sought, and then aggregated as applicable, as if the exempt portion of those properties were subject to tax, calculated with respect to each such property by multiplying:
>
> (A) the lesser of (i) the actual assessed value, if any, of the portion of the property for which an exemption is sought or (ii) an estimated assessed value of the exempt portion of such property as determined in item (2) of this subsection (g), by
> (B) the applicable State equalization rate (yielding the equalized assessed value), by
> (C) the applicable tax rate.

The estimated assessed value of the exempt portion of the property equals the sum of the estimated fair market value of buildings on the property multiplied by the applicable assessment

factor, and the estimated assessed value of the land portion of the property. The "estimated fair market value of buildings on the property" means

> The replacement value of any exempt portion of buildings on the property, minus depreciation, determined utilizing the cost replacement method whereby the exempt square footage of all such buildings is multiplied by the replacement cost per square foot for Class A Average buildings found in the most recent edition of the Marshall & Swift Valuation Services Manual, adjusted by any appropriate current cost and local multipliers.
>
> Depreciation is applied by:
>
> Utilizing a weighted mean life for the buildings based on original construction and assuming a 40-year life for hospital buildings…In the case of hospital buildings, the remaining life is divided by 40 and this ratio is multiplied by the replacement cost of the buildings to obtain an estimated fair market value of buildings. If a hospital building is older than 35 years, a remaining life of 5 years for residual value is assumed; and if a building is less than 8 years old, a remaining life of 32 years is assumed.

The estimated assessed value of the land portion of the property shall be determined by multiplying the per square foot average of the assessed values of three parcels of land (not including farm land, and excluding the assessed value of the improvements thereon) reasonably comparable to the property, by the number of square feet comprising the exempt portion of the property's land square footage.

It is not the Court's job to determine whether the foregoing procedure for determining estimated property tax is appropriate. The General Assembly outlined the process and defined the classification of the building, the life of hospital, etc. This is the process that is set forth by law.

Defendants do not contest, to any great degree, what the estimated property tax liability would be for CF during the years in question. Mr. Kelly is a licensed real estate appraiser and the nature of his practice includes hospitals, industrial buildings, malls, etc. Since Section 15-86 was enacted in 2012, he has regularly prepared estimated property tax liability for numerous hospitals

in Illinois. He followed the procedures of Section 15-86 and conducted an analysis of the four parcels in question for 2004-2012. He gathered information from a variety of sources including using numbers from the sample PTAX-300-H forms (TR 446-453). They show what the estimated property tax would be. The summary of estimated taxes is in TR 505. The summary listing the actual property tax from tax bills is in TR 504. They show the following:

	Estimated Tax	Actual Tax
2004	3,087,637	n/a[4]
2005	3,137,170	n/a
2006	3,167,987	n/a
2007	3,188,630	3,126,113
2008	3,108,572	3,537,120
2009	3,658,017	4,050,343
2010	4,777,214	4,143,463
2011	4,846,265	4,334,558
2012[5]	4,864,167	n/a

CF argues that TR 505 (and 506 dealing with a summary of the relationship between qualifying charitable actives and estimated taxes) is substantive evidence while Defendants argue they are not. Both TR 505-506 are mere summaries of other evidence. In fact, both list other exhibits that were relied upon (e.g. TR 505 reflects information came from TR 446-453). The Court believes that this summary is simply demonstrative evidence to put together, on one chart, a large amount of information. Illinois Rule of Evidence 1006 allows for summaries of this type to be admitted.

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[4] Because CF's exempt properties (not the 4 here) were not returned to the tax rolls until 2007.

[5] CF was granted tax exemptions for 2012. This number comes from the 2012 PTAX-300-H in TR 1152.

The Court should note that the foregoing calculations of estimated taxes are based on no portion of the property being exempt. From past years (prior to 2004) and for 2012, it is clear that some portions of each parcel have been exempt. Therefore, the taxes should actually be less than those suggested by CF. They claim, however, that even using the higher numbers, their charitable activities are far in excess.

Value of Charitable Services and Activities:

Now that the Court has determined the amount of estimated property taxes, the Court must now compare that to CF's value of charitable services or activities. Defendants take issue with many of CF's activities and whether they should be considered charitable. Nonetheless, Section 15-86(e) addresses the health care needs of low-income or underserved individuals and relieving the burden of government with regard to health care services. It states, in part, that the following services and activities "shall be considered for purposes of making the calculations."

1. Charity care. Free or discounted services provided pursuant to the relevant hospital entity's financial assistance policy, measured at cost, including discounts provided under the Hospital Uninsured Patient Discount Act.
2. Health services to low-income and underserved individuals. Other unreimbursed costs of the relevant hospital entity for providing without charge, paying for, or subsidizing goods, activities, or services for the purpose of addressing the health of low-income or underserved individuals. Those activities or services may include, but are not limited to: financial or in-kind support to affiliated or unaffiliated hospitals, hospital affiliates, community clinics, or programs that treat low-income or underserved individuals; paying for or subsidizing health care professionals who care for low-income or underserved individuals; providing or subsidizing outreach or educational services to low-income or underserved individuals for disease management and prevention; free or subsidized goods, supplies, or services needed by low-income or underserved individuals because of their medical condition; and prenatal or childbirth outreach to low-income or underserved persons.
3. Subsidy of State or local governments. Direct or indirect financial or in-kind subsidies of State or local governments by the relevant hospital entity that pay for or subsidize activities or programs related to health care for low-income or underserved individuals.
4. Support for State health care programs for low-income individuals. At the election of the hospital applicant for each applicable year, either (A) 10% of payments to the relevant hospital entity and any hospital affiliate designated by the relevant hospital

entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) under Medicaid or other means-tested programs, including, but not limited to, General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program or (B) the amount of subsidy provided by the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) to State or local government in treating Medicaid recipients and recipients of means-tested programs, including but not limited to General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program. The amount of subsidy for purposes of this item (4) is calculated in the same manner as unreimbursed costs are calculated for Medicaid and other means-tested government programs in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly; provided, however, that in any event unreimbursed costs shall be net of fee-for-services payments, payments pursuant to an assessment, quarterly payments, and all other payments included on the schedule H of the IRS form 990.

5. Dual-eligible subsidy. The amount of subsidy provided to government by treating dual-eligible Medicare/Medicaid patients. The amount of subsidy for purposes of this item (5) is calculated by multiplying the relevant hospital entity's unreimbursed costs for Medicare, calculated in the same manner as determined in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly, by the relevant hospital entity's ratio of dual-eligible patients to total Medicare patients.
6. Relief of the burden of government related to health care of low-income individuals. Except to the extent otherwise taken into account in this subsection, the portion of unreimbursed costs of the relevant hospital entity attributable to providing, paying for, or subsidizing goods, activities, or services that relieve the burden of government related to health care for low-income individuals. Such activities or services shall include, but are not limited to, providing emergency, trauma, burn, neonatal, psychiatric, rehabilitation, or other special services; providing medical education; and conducting medical research or training of health care professionals. The portion of those unreimbursed costs attributable to benefiting low-income individuals shall be determined using the ratio calculated by adding the relevant hospital entity's costs attributable to charity care, Medicaid, other means-tested government programs, Medicare patients with disabilities under age 65, and dual-eligible Medicare/Medicaid patients and dividing that total by the relevant hospital entity's total costs. Such costs for the numerator and denominator shall be determined by multiplying gross charges by the cost to charge ratio taken from the hospitals' most recently filed Medicare cost report (CMS 2252-10 Worksheet C, Part I). In the case of emergency services, the ratio shall be calculated using costs (gross charges multiplied by the cost to charge ratio taken from the hospitals' most recently filed Medicare cost report (CMS 2252-10 Worksheet C, Part I)) of patients treated in the relevant hospital entity's emergency department.

7. Any other activity by the relevant hospital entity that the Department determines relieves the burden of government or addresses the health of low-income or underserved individuals.

Before going further, the Court must address an issue raised by the Defendants - whether CF's charity policy was good enough. The Court will analysis the actual policy later. This Court specifically asked County Defendant's counsel whether the Court's assessment should be based on what CF did or what CF could do. The answer was that it should consider both. The Court disagrees. Section 15-86 states that the amounts are to be based on the Hospital's financial assistance policy. Every hospital has a different policy. This is an assessment based on what CF had in place, not what other hospitals did or even what CF could do. CF over the years expanded the program and made more people eligible for assistance. No matter what the policy was, even if an eligible person's income was at 1,000% of the Federal poverty guidelines, Defendants could always argue, it should be 1001%. There is no caselaw stating that one policy shows charitable use and another does not. The Court gives little weight to Defendant's argument that CF could have done better.

The first eligible charitable activity listed under Section 15-86 is the amount of charity care provided; that is, free or discounted services provided pursuant to the relevant hospital entity's financial assistance policy, measured at cost, including discounts provided under the Hospital Uninsured Patient Discount Act. CF claims that those amounts alone exceed the amount of estimated taxes for years 2006-2011. In fact, the sample PTAX-300-H forms for those years only reflect the cost of free or discounted care. The numbers are reflected on a number of trial exhibits, including TR 506 (summary), TR 446-453 (sample PTAX-300-H forms), TR 454-456 (actual PTAX-300-H forms) and TR1001-1008 (annual nonprofit hospital community benefits plan reports). They show the following amounts for free or discounted services:

FY 2004	$2,034,496
FY 2005	2,501,317
FY 2006	4,790,874 / 4,904,086
FY 2007	6,874,446
FY 2008	8,659,332
FY 2009	7,831,344
FY 2010	9,025,099 + 32,400,000
CY 2011	15,753,168
CY 2012	15,753,168 / 19,336,085

As to 2006, There are two PTAX-300-H's in evidence, TR 448 and 448.1. In their summary on TR 506, CF uses the lower amount, which is consistent with the testimony of Mr. Tonkinson. As to 2010, CF changed its fiscal year from July -June 30 to a calendar year. The $9 million figure was for FY 10 (July 2009-June 2010). The additional amount comes from TR 242, CF's financial report. In that report, on P. 28, note 9, charges foregone totaled $32.4 million for the six-months ending December 31, 2010. These numbers are significantly higher than other years, likely due to absorbing Clinic patients. A serious effort was made to contact those patients, who had not been covered by Community Care when the entities were separate but who were then eligible after the merger in 2010. As to CY 2012, the amount of Community Care is either $15 million or $19 million. There was testimony by Mr. Koch that Champaign County rules required the PTAX-300-H forms to be turned in by December 31 of the tax year. Therefore, for the tax year 2012, forms were due by December 31, 2012. However, CF did not have final numbers for 2012 on that date and therefore submitted the forms using 2011 numbers. *See* TR 406. The inference is that CF did the same for the subsequent year of 2013. As of December 31, 2012, they would not have had final numbers and therefore, on their 2013 forms, submitted the final 2012 number of $19 million.

The Community Benefit Plan Reports, sent to the Illinois Attorney General, state that these charity care numbers do not include bad debt and are based upon the actual cost of

services. [6]Further, they are used to determine the total cost to charge ratio derived from the Hospital's Medicare Cost Report (TR 410-418). Defendants have attempted to show that these free and discounted amounts may not be accurate. They argue that some of the numbers could include bad debt even though the forms indicate they do not. They also argue that not all of the services may have been provided on the four parcels in question. They also argue that property taxes are based on a calendar year and CF cannot establish Community Care for specific calendar years because CF's fiscal year, until 2011, was July 1-June 30. This argument is contradicted by the language of Section 15-86 itself that requires charity care to be determined by the "hospital's calendar year." However, this point will be addressed later as to FY 2004 vs. CY 2004.

Section 15-86 allows other amounts, in addition to charity care, to be considered when determining whether an exemption is warranted. CF did not supply such numbers on the sample PTAX-300-H forms for years 2006-2011 because they argued the amounts were unnecessary; they already exceeded their estimated taxes with Community Care alone. On the PTAX-300-H for 2004 and 2005, they provide numbers for unreimbursed cost for health services provided to low-income and underserved individuals ($248,736 in 2004 and $479,227 in 2005). They also list amounts where CF provided relief to government as it relates to healthcare for low-income individuals. They listed $760,836 for 2004 and $647,373 for 2005. For 2004, CF also lists $2,744,993 as an amount that CF gives to support Illinois healthcare programs to low income individuals. As stated previously, Defendants do not dispute these to a great degree. The chart

[6] The Illinois Community Benefits Act of 2003 allowed hospitals to consider bad debt and government shortfalls as benefits. This was noted on CF's Community Benefit Reports.

noted above could therefore change for 2004-2005 to reflect total allowable services to be as follows:

2004 $5,789,063
2005 $3,627,917

CF's Community Benefit Plan Reports outline some of the activities for those years. The Court will not list all of them but highlight some of them. The exact programs and their costs are reflected in numerous documents such as TR 407-408 for 2004-2005.

In 2004, beyond free and discounted care, CF provided Air Life, an airborne emergency room, the Community Parish Nurse Program, Community Prenatal Care (offering financial support to make prenatal care low-cost), Carle Having Your Baby Programs (a free service to teach about pregnancy and baby care),Carle Breastfeeding Clinic (free consultations with nurses), the Auxiliary Guest House, Carle Mobile Clinic, Carle Sports Medicine (free injury evaluations for youth). They also gave grants to the U of I's breast cancer research, Cunningham Children's Home, Parkland College's Nursing Program and the Life-Span Center. Corporate Contributions totaled $2.7 million and expenses for community health programs totaled $4.9 million.

In 2005, CF laid the groundwork for enhancements to their charity care programs "which was actualized in 2006." CF partnered with community leaders to provide modernized and expanded space for France Nelson Center, an organization providing medical services to uninsured adults and children. The Carle Development Foundation donated over $1 million in corporate and in-kind community grants and services. The expanded the Community Care program to include persons with incomes up to 200% of the Federal poverty guidelines and a sliding scale up to 300%. They also capped the maximum amount due to 40% of a person's gross income if they earn up to 400% of the poverty level. Hospital officials met regularly with the

local healthcare consumer's group to get community feedback on the program. CF developed a portable field hospital that could be set up in the region in the event of a natural disaster or terrorist attack. This was because CF was designated a POD. CF also put on an interactive family safety fair, through SAFE KIDS, showcasing 40 injury prevention areas. The fair draws an estimated 1,200-3,000 annually. The program is in conjunction with local civic and community groups. The Development Foundation provided $344,000 to the community and corporation contributions totaled over $1 million.

In 2006, CF continued to support AirLife, ECHO, Low Vision Center, Auxiliary Guesthouse, St. Joseph Institute for the Deaf, Parish Nurse Program and other programs. They also made community contributions to Family Services, Center for Women in Transition, Develpmental Services Center and the Urban League. Because Frances Nelson needed additional space and lacked the funding, CF invested $1.2 million to purchase and renovate a building for their use. CF rents the facility to Frances Nelson for $1/year. They also provided medical students and staff for prenatal educations. CF expanded space for a Pediatric and Young Adult Hematology/Oncology Center, providing the latest technology and treatment options. CF continued its translational research and participated in 20-25 research projects. Corporate contributions totaled about $1.9 million and program and research expenses for community health totaled $6.9 million.

In 2007, due to the rise in uninsured and underinsured persons, CF donated $100,000 to support the Champaign-Urbana Public Health District's dental and vison programs. The money allowed CUPHD to buy a mobile unit for dental work as well as vison screenings. CF donated $7,000 to the Central Illinois Dental Education and Services in Rantoul, IL to provide preventative and restorative care for Head Start students and their families. CF also provided

medical staff for AirLife, which provides smaller hospitals the ability to get critical patients to CF. CF works with the Land of Lincoln Legal Assistance Foundation, which provides free legal service to low-income persons in civil matters. (CF started a pilot program to assist patients with Medicaid and Social Security disability applications). CF contributed to many local community organizations including Family Service of Champaign County, Center for Women in Transition, Developmental Services Center, etc. They provided the Auxiliary Guest House, welcoming 1,460 family members to free lodging while their loved ones were in the Hospital. CF continued its Parish Nurse Program, training nurses from local churches so that they can, in turn, train congregants about healthcare issues. CF pays for the tuition for the program. They have trained 399 nurses from 210 congregations in 29 counties. The Carle Mobile Clinic partners with community providers to help screen for sexually transmitted disease, HIV and other health conditions. Corporations contributions totaled $3 million, expenses and research for community health totaled $9.1 million.

In 2008, CF opened the Mills Breast Cancer Institute. They announced plans to build a $6.25 million facility for Expanding Children's Hearing Opportunities (ECHO) and its two related programs. Employees of CF, Clinic and HAMP donated $225,000 to support CF programs including a music series and care bags for cancer patients and community programs such as Camp Healing Heart and Safe Sitter. Carle Development Foundation contributed $3.9 million in new gifts and pledges. CF received approval to renovate its Urbana campus to include constructing a 9-story tower, including the new Carle Heart and Vascular Institute. The area will include the latest equipment and technology. They also provided 9,467 events within their educational facilities, with over 192,000 people scheduled for attendance at seminars, classes and meetings. As of June 2008, CF had 113 active research projects with 17 more pending. The

ideas began with translational research, which means turning the latest medical knowledge into practical applications for the bedside. CF also spent $578,000 on its Senior Impact Project to help in numerous ways, including transportation for seniors, teaching medication management and providing dental care. CF received a POD designation which meant they are prepared for disasters and preparedness response. Federal grant money allowed them to educate and train for such disasters to assist the public. Overall, they received $2.7 million in corporate contributions and had $1.2 million in community health program expenses and provided $11.6 million in community health expenses and research.

In 2009, CF continued programming from the past including the Parish Nursing Program, AirLife, etc. They began several new programs focusing on injury prevention for children: Risk Watch, Playing it Safe and Center for Rural Health and Farm Safety. These programs reached 36,600 children.

In 2010, CF and the Clinic merged, becoming an integrated delivery system. This brought together a hospital, a physician's group and an insurance provider to offer a coordinates network of services. Because they acquired the Clinic, which did not have a charity policy, CF was now able to grant financial assistance not just for hospital services but also for doctor's visits and outpatient procedures. This year, CF received the advanced certification as a Primary Stroke Care Center which meant that they met the highest national standards of safety and care. CF is the only Primary Stroke Center in the area that is based in a Level 1 Trauma Center with a neurointerventional team available 24/7.

In 2011-12, the Community Benefit Plan Reports are abbreviated, only one page. They do not list all the programs as in earlier reports. In 2011, corporation contributions totaled $3.7

million and expenses and research for community health totaled $25 million. For 2012, those numbers are $1.9 million and $31.8 million, respectfully.

CF was granted an exemption for 2012 despite the fact that CF's community benefit expense for 2012, as a percentage of its operating expenses, was half the average for the period of 2004-2011 when the exemption was not granted. TR436. Further, the expense for 2012, as a percentage of CF's total income was likewise significantly lower for 2012 than the average for 2004-2011.

A summary of unreimbursed costs for health services provided by the Hospital is listed on TR 501 for years 2004 and 2005. These include emergency services (e.g.AirLife, ER), neonatal, research, other services/education and medical education. The largest portion for each of these years is for medical education. The total for 2004 was $4.8 million for medical education of which $2.8 million was for graduate medical education and $1.3 million for medical scholars. The total for 2005 was $1.7 million of which $1.4 million was graduate medical education and $12,000 for medical scholars. Of all the unreimbursed costs listed on TR 501, the Court finds that the public benefit, or reduction of burden on the government, is not felt much by CF giving money to students to relieve themselves of educational expenses.

As will be discussed later, Defendants argue that some of the charitable activity was not done on the four parcels. That may be true but the Court finds that many, if not most, are in fact on the parcels. Further, this argument only carries weight, if at all, if this Court is conducting a de novo review of the four parcels for each of the subject years of 2004-11. Why? There is no evidence that the types of charitable activity that was done in these years is any different than those activities taken in 2012. Therefore, when the DOR granted CF exemptions for these parcels

for 2012, they must have considered where these activities took place. If they believed that CF complied with the law in 2012 and there is no material difference between that year and the subject years, Defendants essentially forfeit the argument under the comparative analysis test.

Billing, Debt and Other Defendant Concerns:

Defendant's expert, Mr. Hall, said that charity care should be limited to care that is provided with no intent to bill at the time it is provided. This is contrary to CF's mission which is to provide care to all without regard to ability to pay. Their argument would actually require CF to determine an ability to pay prior to rendering services. No caselaw provides support for such a claim. He later said that eligibility should be made at "some reasonable point in time" after treatment but that a year is too long. Numerous witnesses, including Mr. Tonkinson and Dr. Leonard, testified about the difficulty in differentiating between those who could pay and had not from those who were unable to pay. There were outreach efforts before people came in the door – advertising, press releases and press conferences. Within the Hospital there were signs, brochures and applications at every registration point and social workers who met with patients during their inpatient stays. Efforts continued after they left the hospital. Five days after a discharge, a self-pay account was sent to an agency CF hired to assist patients in how to pay their bills. Arc Ventures sent back about 50% of the accounts to have them apply for charity care. Notices on statements and envelopes let people know about charity care. Before sending to a collection agency, staff called patients. Efforts took time, especially close to and after the merger when CF took on all Clinic patients who were then covered by Community Care but were not before. CF provided care first and sorted out the financial details after delivery of care in 2012 and in 2004-11.

County Defendants argue that CF was unable to document how much of the costs of Community Care in any given year (as reported to the Attorney General) compared to medical bills that had been deemed an accrued expense or to medical services provided in the year for which it was reported. CF argues that there is no legal support for this claim. They argue, and this Court agrees, that there is no reason that Section 15-86 requires cost associated with charity care to be recognized other than in accordance with generally accepted accounting principles. If Defendants argument were correct, then hospitals would have to regularly issue restated financial statements to update their reporting of charity care expenses. This is burdensome and impractical. Further, there is no reason to believe the amount of additional charity care expenses to be recognized in restated financials for a certain year be materially different than restated financials for the subsequent year, and so forth going forward.

It is true that Community Care included costs incurred treating patients who were not deemed eligible for charity care until after the costs had initially been deemed to be bad debt. Ms. Robbins could not identify the amount. State Defendants claim that this reclassified cost should not be included in charity care numbers. State Defendant supplies no legal support for their claim in their post-trial brief. The reclassification is merely a timing issue. But even Mr. Hall, the defense expert, as well as Ms. Owens, acknowledged that the timing of Community Care would not affect the average amount of charity care. CF offered patients an application prior to sending to a collection agency. It took time to engage patients and to obtain the necessary information to determine whether they would qualify for charity care. Ms. Staske, Ms. Jackson and Ms. Boyd all stated that they had checklists to follow. Defense witness Ms. Everette said that 3 letters were sent and two phone calls were made before sending the matter to collections and calling it bad debt. There were occasions when the cost was written off as bad

debt but CF later learned that the person qualified for Community Care. As soon as CF found out a patient was unable to pay, all amounts due were deemed charity and efforts to collect were stopped and the patient was no longer responsible for the charges. This benefited patients.

Defendants criticized CF's practice of reviewing bad debt that had already been deemed an accrued expense, for accounting purposes, and later determining whether it should be retroactively deemed charitable under its financial assistance policy. State Defendant claims this undermines CF's claim of exemption because it could not determine how much medical debt claimed as charity in any given year had previously been characterized as an accrued expense. They argue this recharacterized debt is not "free or discounted services provided pursuant to the relevant hospital entity's financial assistance policy" as required under Section 15-86; rather, it is a forgiveness of accrued debt. The Court finds that most relevant as to 2004 (as will be discussed later).

It is correct that writing off bad debt is not "tantamount to providing charity." Alivio Medical Center v. Department of Revenue, 299 Ill.App.3d 647 (1998). However, there was testimony that in the early 2000s, there was national and state uncertainty about how to treat bad debt. In January 2004, Ms. Robbins was communicating with Mr. Tonkinson about how to treat bad debt, noting that other state and national organizations treat it differently. She recommended that CF remove bad debt from their reports unless they can estimate in good faith the portion of which should have been charity care. Tonkinson replied that "At worst, we should footnote the bad debt amount and say that we believe an indeterminable portion of bad debt relates to people who would have qualified for charity care had they completed their charity care application or something along those line." *See* TR 44.

CF argues that writing off bad debt is a benefit to patients. But so is counting it as charity. Once one person is qualified, then the whole family is covered; CF even went back and looked to see if they had qualified for Medicare or Medicaid and had prior balances. Those were wiped out as well. They used Self-Pay Compass to look at incomes after internal review and before sending to collections. This expanded after the merger because they reviewed what was owed to Clinic. In the end, counting something as bad debt v. charity care is oftentimes a timing issue. Further, changing its characterization simply moves the item from one year to another. Defendants criticize CF for noting the Medicaid/Medicare shortfalls. This is the difference between the amount CF is reimbursed by government payors and its costs for the same services. They miss the mark. CF never claimed that this is charitable activity but submitted the information only for 2004 and it was for the sole purpose of demonstrating its satisfaction of the statutory exemption requirements of Section 15-86. Like all hospitals, CF was required to submit the shortfall amounts to the Attorney General. They then reported it to the public.

Defendants also criticize CF based on the Charge-Master rates. These are set fees within CF's system for particular services and not the actual costs. They particularly note that the rates are high, that some insurance companies get better rates that others, that CF would seek collections at this rate and that, even if a patient receives a discount less than 100%, that patient's actual out of pocket could be higher than the actual cost. These are interesting arguments but, in the end, do not impact this Court's decision. First, as Mr. Tonkinson said, few patients paid the Charge-Master rates. He estimated that CF collected 10% or less of the Charge-Master rate from uninsured patients. Further, CF gave patients many opportunities to apply for Community Care and the vast majority received a 100% discount. For those few who were not granted the 100% discount, it is in unknown how many people would have paid, even with the discount, over cost.

The fact is, though, that those patients paid less than they would otherwise had paid without the charity program. Finally, Mr. Cornish testified that each department had different cost to charge ratios and services were unique to a patient; it was not appropriate to look at overall hospital cost to charge ratios.

Township Defendant argues that the forms required are unreasonable. However, the short two-page application and the income verification, such as tax return or pay stubs, are consistent with the Fair Patient Billing Act and Uninsured Patient Discount Act, 201 ILCS 89/15; 77 Ill.Admin.Code 4500.30.

CF's Expert:

CF called Mr. Cornish as their expert on compliance with Section 15-86. He was paid for his work which may show a bias. Nonetheless, this Court finds that he was credible. He had extensive experience in the healthcare field and has worked with hospitals in the past on Section 15-86 applications. He has practical experience in the field, working in Hospital administration, dealing with billing, cost reports and Charge-master issues. He has been a consultant to many hospitals and has testified in court many times. He has conducted healthcare audits. His demeanor on the stand was cordial and he directly answered questions, even those posed by Defendants. He had a good memory, his manner on the stand was appropriate and his testimony was consistent with his reports to the parties. He did not only rely on documents provided by CF but also those he obtained himself from the public domain and elsewhere. What did Mr. Cornish say? His opinion was that CF should qualify for property tax exemptions. Of note, he stated the following.

1. CF provided medical care to anyone who wanted care regardless of ability to pay. He looked at CF's charter, By-Laws, Mission Statements, Community Care policies, etc. He found

that from 2004-2011, CF's policy was to encourage those who had financial problems to apply for their program. The effort was made within CF as well as in the community. He noted that Community Care was on the outside of envelopes, provided at registration, on the radio, etc. He found CF's policy unique in many ways, first because the discount went to 100%. He found that the vast majority of people who applied for the program got services for free. He also found it unique because the program had "catastrophic coverage" meaning that a person would not pay more than 40% of their annual income. Further, patients would qualify even if they qualified for Medicaid or had insurance; most hospitals disqualify you for a charity program if there is insurance. CF's policy was also unique because it auto-qualified people when homeless, qualified for government benefits, etc. Finally, the policy was unique because the discount was valid for one year which effectively gave a person an insurance policy for a year; a patient can apply for it at any time and it applied to the entire family. He also looked at community health and wellness programs and education/research initiatives because they are a part of overall charitable goals. There are no National or State benchmarks to meet in terms of dollar amounts, ratios of certain financial metrics or number of patients receiving charity. In 2003, CF simply used the Federal poverty guidelines and had no sliding scale. Over the years, CF's policy was amended and expanded to reach more people.

2.CF extended significant effort and resources to promote the Community Care program and to remove obstacles for people to participate. CF went to great effort to tell patients, in and out of the facilities, about the Community Care program. CF lengthened the time to apply to the program and eventually allowed people to apply long after medical treatment. They worked with a local community coalition to find ways to reach more people, including putting up signs and sending letters in Spanish and Mandarin Chinese. By helping patients apply for government aid, it helps

them because it auto-qualified them for Community Care and also assisted them with prescriptions, housing, food assistance, etc.

3.There is no capital stock or shareholders. This was evident from reviewing CF's by-laws, Articles of Incorporation, financial statements, etc.

4.There is no gain or profit to any private person and they paid reasonable executive compensation. He reviewed the compensation process at CF which included the special committee which was a part of the CF Board. When he reviewed the process used by CF, including using outside, independent, resources, he found that CF executives were paid reasonable amounts. He also reviewed information from before, during and after CF's acquisition of the Clinic. The relationship changed over time. It was not unusual for hospitals to contract for medical services such as ER doctors, etc. He reviewed the merger documents that showed CF paid the Clinic $250 million. Both sides hired independent firms to help determine valuation. In the end, the two assessments were close and the parties, in an arms-length transition, settled on an amount. How the Clinic chose to deal with giving their doctors money from the purchase had nothing to do with CF. He acknowledged that it far exceeded what doctors paid to get into the Clinic but noted that the Clinic buy-in was not based on fair market value. CF's By-Laws forbid private inurement. He also found that it was not a private gain to doctors by having HSIL be the captive insurance company for both CF and the Clinic because the premiums were based on an independent and actuarially determined process. Having offshore captive insurance companies is not uncommon for hospitals.

5.There are no dividends and CF re-invested net income into CF. He reviewed financial documents, By-Laws, the Articles of Incorporation, etc. and found it obvious that CF issued no dividends. The fact that CF had income does not change his opinion because it was re-invested

into CF. This was for new equipment, improving capitol facilities, and creating/expanding programs. There is no right or wrong level of income to get an exemption nor is there a cap on income to get an exemption. There is no law or industry practice as to the amount a not-for-profit can earn; no business can survive if it is in the red. There was no evidence that any profits went to particular individuals.

Findings on Eligibility of Under Section 15-86:

It is undisputed that CF employed a conservative methodology under Section 15-86 in that they:

(a) Only relied on the charitable activities of the Hospital, when the costs associated with the system-wide charitable activities could have been included (*See* Section 15-86(b)(7)).

(b) Limited evidence of the qualifying charitable activities for 2006-2011 to Community Care, rather than including other charitable activities allowable under Section 15-86(e).

(c) Relied on the estimated property taxes associated with CF's exempt parcels, rather than the actual property tax on the parcels when the actual tax was lower, generally.

(d) Did not consider partial exemptions that would have reduced the calculation of estimated tax.

There is no evidence, or reason to believe, that any adjustments sought by the Defendants with respect to the calculation of Community Care would affect the outcome for any year in question (except 2004, discussed later). The Court has conducted a de novo review of the tax years 2004-2011 as well as conducted a comparison between these years and 2012. Under both analyses, the Court finds that CF has met its burden of proof for exemptions for the four parcels for 2004-2011. In each of the years, 2004-2012, the amounts listed for Community Care and services far exceed the amount of estimated or actual taxes paid. Defendants cannot credibly argue that CF did not meet the statutory criteria for exemptions for years 2004-2011 in terms of charity care v. estimated taxes. For 2004 and 2005, the amount of free or discounted care, in

addition to other eligible services, far exceed the amount of estimated or actual taxes paid. For years 2006-2011, CF relies only on the amount of free and discounted care. However, they continued to provide other charitable services as noted in the Community Benefit Plan Reports. Further, the testimony was uncontradicted that the use of the properties was the same during the years in question, 2004-2011, and the comparable year of 2012, when CF received exemptions for the properties. Whether this Court is conducting a de novo review of the 2004-2011 or comparing those years to 2012, there is simply no way that any reasonable trier of fact could conclude other than CF has met the criteria for property tax exemptions under Section 15-86 for the four parcels for 2004-2011.

CONSTITUTIONAL TEST:

In this matter, there has been considerable litigation over what CF must prove to be entitled to property tax exemptions. They clearly must comply with Section 15-86, which the Court has found they did. However, Section 6 of Article IX of the Illinois Constitution requires a property owner to have a "charitable use." In Korzen, the Illinois Supreme Court identified numerous factors to help determine charity: "the primary purpose for which the property is used and not any secondary or incidental purpose." The constitution does not prevent a taxing district from allowing a proportional exemption for property shown to be physically separated into exempt and nonexempt uses. *See* People ex rel Kelly v. Avery Coonley Sch, 12 Ill.2d 113 (1957). The Korzen factors are not be formulaically applied but are a "frame of reference" from which the court must arrive at a determination of whether or not such use " is, in fact, exclusively used for charitable purposes." *See* People ex rel Nordlund v. Ass'n of Winnebago Homes for the Aged, 40 Ill.2d 91 (1968).

The Illinois General Assembly created Section 15-65, a statutory requirement for the entity to be a charitable institution. They then created Section 15-86 which created a new classification of ownership for hospitals. There have been many court cases over the years discussing both the Constitutional and statutory requirements. Appellate decisions are all over the place and both sides cite ones that favor them. The Illinois Supreme Court provided little guidance. They have sent mixed messages to trial courts and practitioners. In Provena, they stated that the General Assembly should create a policy to determine a formula for which a hospital owner can be exempt. The General Assembly did so with Section 15-86. At previously noted, they established that a hospital should be entitled to a property tax exemption should their charitable activities be larger than their estimated property tax. In Oswald, the Illinois Supreme Court found Section 15–86 to be facially Constitutional. However, they went on to state that a hospital must meet not only the criteria of Section 15-86 but also the Constitutional requirements for tax exemption. That begs the question of what a hospital must prove to meet the Constitutional requirements.

The Court must address the relationship between Section 15-86 and the Constitutional test in Korzen. There is no case that directly addresses this. On the one hand, the Illinois Supreme Court in Provena stated (in 2010 and before Section 15-86 was enacted) that the General Assembly should be the entity that creates what the policy should be in terms of level of charitable activities. In that case, the plurality opinion, noted that the hospital in question was spending less than 1% of its net patient revenue for charity care and that this amount was insufficient under the Illinois Constitution. But they left it to the General Assembly to create "the test." They did so not by comparing charity to net patient revenue but rather comparing the amount of overall charitable activity to the estimated/actual property taxes. In Oswald, the Illinois Supreme found that the procedures and policy set forth in Section 15-85 were facially constitutional. It would be hard to

imagine that the Illinois Supreme Court would deny property tax exemptions if a hospital met the Section 15-86 test for two basic reasons. First, the Supreme Court has always determined that the issue of property tax exemptions should not be limited to one specific piece of information but rather after a review of the totality of the circumstances. Section 15-86 does not just look at charity vs net patient revenue but rather takes into account charity care, unreimbursed costs provided to low-income and underserved individuals, considering if the hospital gives a subsidy to a state or local government, considering if the hospital gives support for Illinois health care programs to low-income individuals, considering if the hospital provides a dual-eligible subsidy by treating Medicaid/Medicare patient and considering if the hospital provided relief for the government as it relates to healthcare services for low-income individuals. Therefore, Section 15-86 provides an opportunity for a Court to determine if the hospital is providing charity in a number of ways which the General Assembly found to be appropriate.

Second, the direct issue involved in these matters is property tax – should a hospital be required to pay property taxes, which would then be distributed to taxing bodies to provide for the well-being of its citizens. The formula in Section 15-86 ties charity to the community (as noted above) to what the taxes would be. In other words, does a hospital provide the same, or more, in charitable services and activities to the local community such that it offsets what the taxing bodies would receive in taxes. Therefore, Section 15-86 provides an appropriate and reasonable comparison between overall charity and taxes paid.

It seems to this Court that, if a hospital complies with Section 15-86, this should be sufficient to meet the Constitutional test as well. However, the Oswald decision stated otherwise – that Section 15-86 is facially Constitutional but that hospitals must still meet the Constitutional test of Korzen. That is the rub, in terms of what else must a hospital prove, particularly when most

of the Korzen factors deal with charitable ownership and not charitable use. Under section 15–86, hospitals have already been required to produce significant evidence of charitable activities. The Illinois Supreme court has always been hesitant, and never has, set a fixed dollar amount or percentage for entitlement to a tax exemption - they left that to the General Assembly. It was insightful of Justice Burke to state, in her concurring/dissenting opinion in Provena, that:

> "The plurality has set a quantum of care requirement and monetary requirement without any guidelines. This can only cause confusion, speculation, and uncertainty for everyone: institutions, taxing bodies, and the courts. Because the plurality imposes such a standard, without any authority, I cannot agree with it."

This comment supports this Court's belief that complying with Section 15-86 also meets the Constitutional requirement. This is because Section 15-86 encompasses the legislature's policy determination of what should be considered charitable and outlines them with specificity.

Initially, it appears that CF may have argued that the Korzen factors were inapplicable under an analysis of Section 15-86. In Oswald, the Illinois Supreme Court upheld the Constitutionality of Section 15-86. In that opinion, they used specific language from Korzen about certain factors but not others. CF now argues that those mentioned-factors are applicable but that Korzen factors left out of Oswald, which deal with charitable ownership, are now irrelevant to the analysis. Defendants argue that Oswald did not change any requirements for trial. Where they disagree with CF is that they believe the latter test involves all the Korzen factors, not just those listed in Oswald. Defendants argue that the Illinois Supreme Court simply noted the basic definition of charitable use and did not repeat all the Korzen factors.

As stated pretrial, this Court agrees with the Defendants that Oswald does not eliminate or reduce the Korzen factors. The Illinois Supreme Court has noted many times, even in Oswald itself, how difficult it is to define charitable use. They have used the phrase "frame of reference"

to help guide lower courts, practitioners and property owners to understand what must be applied to determine if there is exclusive charitable use. Some of the Korzen factors refer to "use" while others refer to "ownership." Depending on the facts and circumstances of a particular case, some factors may be inapplicable or should be given greater or lesser weight. In the present case, State Defendants argued that the "ownership" factors may be relevant as they could affect the way in which Plaintiff uses it property. The Court agrees. This Court finds that Oswald did not change the requirements to obtain a charitable exemption and that all Korzen factors are a part of the Constitutional "charitable use" test. Having said that, the Korzen factors dealing with ownership are only relevant if they can be shown to have affected the way in which Plaintiff uses its property. Nonetheless, the Court will analysis all the Korzen factors. This Court incorporates its factual findings and conclusions from its analysis of Section 15-86 and will not repeat them again.

Community Care Policy:

Before discussing the factors per se, the Court will discuss CF's Community care program. The Community Care policy changed over time. In 1998, the policy was not very specific or refined. TR 16 shows that a patient could apply regardless of citizenship. Applications could be found at the business office, with social services, etc. Income eligibility was based upon the Federal poverty guidelines. Verification of income for the prior 12 months was required. CF required a recent tax form and could also include paystubs, letters from employers and copies of bank statements. If a patient appeared to qualify for Public Aid, they would apply there first. Patients with no verifiable address would be exempted from the Public Aid application requirement. Patients with third-party payment sources in excess of the public Aid per diem were also exempted from the application process. Assets were considered and a patient could be required to liquidate some before an application is approved. A review of an application's status could be conducted

with a manager and Director. The uncompensated care discount would be applied to the balance after third-party payments were received. If an account had been sent to a collection agency, it will not be considered for the uncompensated care program. An application must be completed and returned within 10 days of being picked up or mailed. Individual cases may be considered for hardship case (catastrophic expenses).

In July 2003, the policy was revised (TR 40): In particular, it stated that liquidation of assets in excess of $2,000 may be required and a patient could reapply in 6 months with change of financial circumstances. Also, patients whose cases had been sent to collections could apply if a judgment had not been entered in court. An application must be returned within 14 days instead of 10 days.

In February 2004, a press release was sent to the public about changes to the policy. *See* TR 51-52. It stated that the previous policy was a sliding scale to provide some financial assistance to those earning up to 200% of the Federal poverty guidelines and that the new policy would be 100% discount up to 150% of the poverty guideline and discounted care for up to 250% of the poverty guidelines. There were also conversations between Carol Elliott of Cunningham Township and CF. In one letter from her to CF officials, she asks them to consider auto-qualifying patients if they receive Cunningham Township aid. *See* TR 59. Although Cunningham Township is not listed in the policy, it was considered as an auto-qualifier. In 2004, there was extensive advertising for the program with direct mailers, signs, etc. It cost $100,956 in 2004. (This continued with $103,494 in 2005 and $67,461 in 2006). *See* TR 110.

In February 2005, the policy was revised (TR 93): In particular, only medically-necessary procedures would be covered by the policy; certain types of procedures listed included

cosmetic surgery. In June 2005, it was revised again (TR106). In particular, liquid assets over $2,000 would be added to a patient's income, changing from the requirement that a patient had to liquidate the funds. Retirement funds would not be considered as liquid assets. Specific guidelines were listed, although they may have been in effect in 2004: If an applicant's income is equal to or less than 150% of the Federal poverty guidelines, there will be a 100% discount. If it is greater than 150% but less than or equal to 180%, then it is a 75% discount. If it is greater than 180% but less than 210%, then it is a 50% discount. If it is greater than 210% but less than or equal to 250%, then it is a 25% discount. *See* TR 94. Finally, applicants could appeal the decision to the Director of Patient Accounting Office or the Chief Financial Officer. Applications could also be found at CF's website. The time to return the application was extended to 21 days. Income verification was required but tax returns were needed, if applicable. All applications would be shared with all CF facilities.

In October 2005, the policy was revised (TR 117): The income guidelines were expanded. If an applicant's income is equal to or less than 200% of the Federal poverty guidelines, there will be a 100% discount. If it is greater than 150% but less than or equal to 230%, then it is a 75% discount. If it is greater than 230% but less than 270%, then it is a 50% discount. If it is greater than 270% but less than or equal to 300%, then it is a 25% discount. Patients with income up to 400% of the Federal poverty guidelines would have their personal financial possibility capped at 40% of their annual gross income.

In June 2008, the policy was revised (TR 165): In particular, the discount applied to a patient's financial responsibility that was remaining three months prior to the date the application

was signed. The application deadline was extended to within 60 days of discharge or service, instead of when the patient picked up the application.

In October 2009, the policy was revised (TR 199): In particular, it specifically stated that it applied to many entities: the Hospital, Carle Physician Group, CFPS, Carle Arrow Ambulance, Champaign Surgicenter and Carle Home Care. It also defined what was meant by "medically necessary." It further provided that patients must reside in CF's primary (9 counties in Illinois) or secondary service area (24 counties in Illinois and 7 counties in Indiana) or be referred to CF for medically-necessary treatment from another hospital or provider. The policy also states that CF would not authorize body attachments or assert liens against owner occupied homes or other personal property (The policy change was in 2004 per TR 52). Shortly after the policy was amended, and in anticipation of the merger with the Clinic in 2010, Mr. Tonkinson and Ms. Owens emailed each other about dealing with debts from the Clinic which were not subject to the Community Care program. Tonkinson stated that for anyone who qualified in the last 12 months could have their Clinic debt wiped out. For Clinic patients who were no longer being serviced, for many reasons, CF would reach out and give them the opportunity to apply for the program. *See* TR 203.

In March 2010, the policy was revised (TR 216): Applications were to be returned with 30 days of discharge or service "whenever possible." A prompt discount was added to uninsured patients: 25% if fully paid within 30 days, 20% if paid in 60 days and 10% of paid in 90 days of billing. The appeal process was expanded through multiple steps, beginning with the Director of Patent Accounting Office, the Chief Financial Officer and the Community Care Review

Committee (an advisory committee containing representatives from Land of Lincoln Legal Services, the Champaign County Health Care Consumers and other similar organizations).

In September 2011, the policy was revised (TR 2426): In particular, more CF entities were covered by the policy included Carle Therapy Center, Carle Surgicenter (Danville), Carle Medical Supply, etc. It also specifically states that Illinois Medicaid recipients and patients at Frances Nelson are automatically qualified at 100%. Patients over 18 years old can use their parent's income if they can still be claimed a dependent for tax purposes. The policy further stated that a patient can apply for the program "at any time including before care is received" and the level of discount is available for 12 months. CF would attempt to notify patients by mail 90 days before expiration of that year. Emergency out-of-state Medicaid patients would not need to apply for the program. Emergency out-of-network care for those who qualify would be eligible for the program. Proof of income could also include divorce decrees and a notarized statement from family and friends; if no verification is available, a patient can explain why.

It is important to note that, throughout the trial, Defendants made use of many numerical metrics in an attempt to show that CF's Community Care program was not charitable enough. For instance, they look at the charity cost as a percentage of total revenue, charity cost as a percent of total expenses, and charity care as a percent of income from operations. These are shown on TR 1094.1, 1094.2 and 1094.3. Defendants also propose other comparisons such as the dollar expense per charity care patient (*See* TR 1098.1), the ratio of charity care cost to charity care charges (and vice versa) (*See* TR 1099), charity care patients as a percentage of in-patient vs. out-patient (TR 1097.1), and charity care as a percent of all uncompensated care (including bad debt). There is no case law that discusses what comparisons are appropriate when

considering whether a hospital should be granted a property tax exemption. This Court is not saying that these are all entirely inappropriate. However, since there is no Federal or Illinois standards, this Court has no basis to know what these numbers mean. For instance, is spending $798 in charity care per patient good or bad? Is the ratio of charity charges to charity cost of 4.67 good or bad? This Court simply cannot look at statistics of all sorts and assume that they good or bad. There is no reference point. Therefore, although it has reviewed and considered these other metrics, the Court gives them less weight than other, established, metrics.

The only metrics that have been discussed in case law to any great extent are the charity care at cost in relation to net patient revenue and number of charity patients. As stated earlier about Provena, and more recently in Midwest Palliative Hospice and Care Center v. Beard, 2019 IL App (1st) 181321, there is a suggestion, but not a line in the sand, that less than 1% charity v net patient revenue does not rise to the level of an entity qualifying for being exclusively for charitable use. In the present case, this ratio is shown on TR 1094.1, 1094.2, and 1094.3. These exhibits are summaries and are based on actual numbers found in CF's Consolidated Financial Statements and Community Benefit Plan Reports. *See* TR 68, 495-96, 1001-1008, 2210 and 2027B-L. A summary from these exhibits is below for columns 1-3. Column 4 is from CF's Hospital profile reports submitted to the Illinois Department of Public Health. These reports, TR 1017-1025, separate net revenue by payor source and separates it between in-patient and out-patient revenue. When combined, this last column shows the total charity care expenses as a percent of "net revenue":

% of charity care at cost to net patient revenue

	CF	Hospital	Hospital Div.	In/Out patient revenue
FY 2004	.69	.72	.69	not listed
FY 2005	.77	.84	1.13	not listed
FY 2006	1.38	1.54	1.97	not listed
FY 2007	1.8	1.82	2.27	2.3%
FY 2008	2.29	2.20	2.58	2.6%
FY 2009	1.98	1.88	2.16	2.4%
FY 2010	2.24	2.50	2.22	n/a
CY 2010	3.35	3.9	2.75	2.4%
CY 2011	5.07	3.90	3.93	3.9%
CY 2012	x	4.41	4.44	4.5%

Another metric that is relevant is the number of individuals being provided free or discounted care. In Midwest Palliative, where the 1st Appellate District denied an exemption, it was significant that the record was devoid of how many patients were being served. In Provena, they noted that "a mere 302 of its 110,000 admissions received reductions in their bills based on charitable considerations." In the present case, there is significant evidence as to the numbers. TR 333-334.2 and 510 show that from 2004-2012, there were about 56,000 approvals for Community Care of which 49,186 received 100% discounts. These are large numbers. But they are, in fact, low. Those are numbers based on "applications." It is unknown the exact number but it is undisputed that many patients were auto-qualified and did not have to fill out an application. These persons included the homeless, those receiving treatment at Frances Nelson and persons who receive public aid or assistance from Cunningham Township.

Further, CF provided actual numbers of patients served, not just applications and transactions (for which one patient could have several). There is some discrepancy in the numbers. The chart below reflects number of Community Care patients. Column 1 is from

Community Benefit Plan Reports. Column 2 is from Illinois Department of Public Health Reports (these are in-patient and out-patient numbers):

FY 2004	>1,800	not listed
FY 2005	3,400	not listed
FY 2006	>4,000	619 / 395
FY 2007	>4,500	1,971 / 9,230
FY 2008	5,033[7]	2,225 / 10,615
FY 2009	4,463	1,842 / 10,043
FY/CY 2010	4,355	1,947 / 11,485
CY 2011	8,100	1,545 /16,082
CY 2012	25,593	1,756 / 21,729

State Defendants argue that the inconsistency in the numbers reflect the inability of CF to establish actual numbers served. CF replies, appropriately, that all the numbers are significant but also that reports are for different purposes. Ms. Robbins testified that a person who received care more than one time in a year was only counted once. The reports to the State, on the other hand, contain information regarding the number of in-patient and out-patient visits. A person could therefore be counted more than once. CF also states: "Despite indicating that all the data except for 2011 and 2012 showed the number of Hospital charity care patients, the data for 2006-2008 actual shows the number of charity care patients from the entire Foundation system…In addition, while the table indicate that the figure for 2011 includes charity care provided by physician groups, that figure is actually limited to the Hospital." *See* CF Post-Trial Reply, p.7.

In Sisters of the Third Order of St. Francis v. Board of Review, 231 Ill. 317 (1907), the hospital received a property tax exemption despite only 5% of patients receiving charity care. In this case, CF provided a greater percentage. According to the Hospital Profiles from the Illinois Department of Public Health, the percentage of Community Care patients was 4% in 2004, dipping lower though 2006 then rising to double digits in 2007 for several years. In 2008 and

[7] Ms. Robbins testified to 6,442

2010, it was 11.7%. In 2011, there was a dip to 4.4%. For 2012, it was 5.7%. The numbers were below 5% from 2004-06 but then increased as the Community Care program expanded. The average for 2004-2011, the subject years, was 6.8%. This is higher than in Sisters and higher than 2012, the year in which CF was granted exemptions. In Streeterville Corp. v. Department of Review, 186 Ill.2d 534 (1999), the hospital received an exemption without the Court noting a specific percentage of patients receiving charity care. CF argues, and this Court accepts as true, that hospitals primarily use its property for charitable purposes as long as it stands ready, at all times, to treat everyone who seeks care, regardless of their ability to pay. *See* Sisters, at 273-274.

It is also significant the number of applications that were completed and approved. Several witnesses testified that many applications were denied because the person did not complete the application or supply sufficient supporting documentation. TR 509 outlines approved completed requests (column 1) and approval of completed requests (column 2):

2004	1,459	90.3%
2005	2,778	93.4%
2006	2,496	92.5%
2007	2,594	92.2%
2008	2,616	71.4%
2009	2,653	53.4%
2010	14,717	81.7%
2011	18,867	88.7%
2012	8,055	93.1%

TR 510 shows the distribution of discount level for patients approved by the program from 2004-2012; the first column is the number of accounts approved and the second column is the overall percent:

100%	49,186	87.5%
76-99%	39	.01
75%	2,939	5.2
51-74%	38	.01
50%	2,666	4.7
26-49%	1 3	0
25%	1,348	2.4
1-24%	6	0

These numbers suggest that the approval rating for completed requests is high and, when a patient receives a discount, the vast majority receive 100%.

Defendants claim that there were problems with the Community Care policy. State Defendants argue that the earliest CF policies from 1998 and then in 2003 (TR 16 and 40) do not outline eligibility for uncompensated medical care or its discounts. That is true but they predate the subject at issue. Further, this bolsters CF's argument that expansion of the program was necessary.

State Defendant argues CF made too much money and there was not enough charity per patient. TR 1098.1 shows the percentage charity care of net revenue is low. They noted that Courts, like Midwest Palliative, state that it is not charitable when the overwhelming majority of operating revenue came from "net patient services" and, in particular, 88% of which came from Medicare or Medicaid reimbursement. They note 94% of the revenue generated was from billing patients, "exchanging medical services for payment, as a business." But the Appellate Court also went on to note that the plaintiff's charitable contributions composed only .4% of operating revenue and less than 1% of the net services revenue of $30M generated that year. In short, the Appellate Court found that the small amount represented an incidental act of beneficence that is legally insufficient to establish that the plaintiff exclusively used the property for charitable purposes.

Defendants argue that the bulk of the revenue came from Medicaid/Medicare, private insurers and private pay. That is correct but the amounts from charity care is not insignificant. The Illinois Department of Public Health Hospital Reports reflect number of patients (and %) served by revenue source; the top numbers are in-patient and the bottom numbers are out-patient:

	Medicaid/Care	Other Gov.	Private Insur.	Private Pay	Charity Care
2004[8]	31.6%	32.3	29.9	2.4	4.0
2005	46.5	.3	48.7	2.0	2.5
2006	45.3	.3	47.5	3.1	3.7
	36.4	.5	56.3	6.5	.4
2007	41.0	.8	45.6	1.4	11.2
	34.3	1.4	49.9	4.2	10.3
2008	40.3	.8	45.8	1.0	12.2
	35.1	1.5	48.6	3.2	11.6
2009	42.5	.9	44.9	1.8	9.8
	37.4	1.4	46.1	5.0	10.1
2010	43.7	.9	42.1	2.9	10.4
	38.0	1.2	43.7	5.1	12.0
2011	47.4	1.5	40.3	2.4	8.3
	37.4	2.2	53.6	2.6	4.3
2012	46.5	.7	45.1	2.7	8.6
	37.5	.3	53.7	2.8	5.6

The Court notes the following. First, in 2004 "other government revenue" was significantly higher than in other years while the amount of private insurance was significantly lower than other years. Second, with few exceptions, CF received more money from private insurance than from government programs. Third, although the amount of Medicaid and Medicare patients is significant, that shows that CF was not rejecting patients due to inability to have private insurance or self-pay. Further, it is less than half that in Midwest. Fourth, the percentages are affected by whether the patient is in-patient or out-patient, with charity care generally being higher for those in the Hospital. Fifth, except for a few areas, a category remained relatively consistent over time. Sixth, and important to this Court, is that, with the

[8] 2004 and 2005 do not separate between in-patient and out-patient.

exception of out-patient revenue in 2006, the income from Community Care always exceeded that of private pay patients.

Strategic Plans:

Defendants stress that Community Care was not always listed in strategic plans. This argument makes little difference to this Court. Their expert, Mr. Hall, said that anything important should be in a strategic plan. He later changed that and said nursing is essential so it did not need to be in the strategic plan. This is confirmed by defense witness Mr. Billimack, the head of strategic planning, who also said that nursing was not listed because it is essential. Not all important issues are listed as a goal on every strategic plan. Many important activities take place even when they are not listed in the strategic plan such as nursing. Dr. Leonard said: "Charity care is always there." The program was mentioned in some of them such as in 2007. The problem with adding Community Care into strategic planning is the difficulty of having a goal; there is no control over the number of patients who apply for and qualify for the program. Ironically, CF was granted exemptions in 2012 and CF had no strategic goal in that year related to charity care.

Korzen Factors:

This Court has reviewed CF's Community Care policy. The Court must now consider the policy, along with all other evidence in this case, and apply the Korzen factors which outline distinctive characteristics of a charitable institution/use under the Illinois Constitution.

First is whether the entity has no capital, capital stock or shareholders; and whether it earns no profits or dividends but rather derives its funds mainly from private and public charity

and holds them in truest for purposes expressed in their charter. It is undisputed that CF has no shareholders, no person has invested capital in CF and no capital stock has ever been issued to anyone. This came from Dr. Leonard's testimony as well as a review of CF's Articles of Incorporation and By-Laws. For instance, *See* TR 8, 180. Further, CF never issued any dividends and all the proceeds from CF's operations were reinvested in the organization. Even Defendant's expert, Mr. Hall, conceded that he saw no evidence that the CF did anything other than reinvest its net income. Although a lay person may presume that profit and net income are the same, they are not. One of the first cases finding a property tax exemption for a hospital is Sisters. It held that profit relates to private gain obtained by those involved in the operation of the organization as opposed to the organization operating on the black. Except for FY 2009, which was negative for CF, all other years brought profits for CF, the Hospital only and the Hospital Division, anywhere from $14.2 million (CF for FY 2005) to $128.9 million (CF for FY 2010 – coinciding with the purchase of the Clinic). Although these are significant amounts, it is undisputed that the profits were reinvested into technology, infrastructure and the like. CF is a not-for–profit entity and all such organizations must operate in the black to survive. Both Mr. Cornish and Dr. Leonard stated that CF needed to stay in the black to meet bond obligations, pay bills, recruit top talent, purchase new technology and invest in the future. Further, Ms. Stouffee, from the DOR, stated that a hospital can be profitable and still receive a property tax exemption.

CF concedes that, like most hospitals, it does not derive funds mainly from public and private charity. Dr. Leonard testified that he does not know of a single not-for-profit hospital in Illinois which receives most of its revenue from donations. The defense expert, Mr. Hall, did not know if any but speculated that perhaps the Shriner's Children's Hospital may. However, this has never been a bar for hospitals to be entitled to exemptions. *See* Board of Review v. Chicago

Policlinic, 233 Ill. 268 (1908)(donations were less than 1/6 of hospital's revenues); People ex rel Cannon v. Southern Illinois Hosp. Corp, 404 Ill. 66 (1949)(hospital entitled to exemption with no mention of relative amount of donations and other income); Memorial Child Care v. Department of Revenue, 238 Ill.App.3d 985 (4th Dist. 1992)(hospital day care center granted exemptions without quantifying revenue sources). CF makes a powerful argument that, for hospitals to receive most of their income from donations, they would likely have to reject funding from Medicare, Medicaid and general assistance. As noted in Sisters, hospitals have never been faulted for providing services for a fee to those not in need of financial assistance. CF also makes a persuasive argument that this part of the Korzen factor has little relevance to CF's charitable use as opposed to its ownership requirements. Even if it had some relevance, TR 535 compares revenue and income from CF's fundraising affiliate, Carle Development Foundation, with the percentage of CF operating revenue that comes from the Carle Development Foundation. E.g. .6% in FY 2008, .04% in FY 2009, .03% in FY 2010, .01 in both FY and CY 2011. Although these are small, the percentage was also .01% in CY 2012, a year in which CF was granted property tax exemptions by the DOR. There was also no material difference between CF's satisfaction of this Korzen factor in 2012 from any years from 2004-2011.

Second is whether the Hospital dispenses charity to all who need it and apply for it. It is undisputed that CF's Articles of Incorporation, By-Laws and Mission Statements have provided that they care for anyone, at all times, without regard to ability to pay. The Mission Statement outlined in the Community Benefit Plan Report for 2003 states, for instance, "to provide everyone in the community regardless of financial situation with compassionate, exceptional medical care." Dr. Leonard explained that this statement embodied their mission from its funding in 1931.

Defendants have been unable to identify a single incident from 2004-2011 where CF did not provide services to a person due to their inability to pay.

There was no cap placed on the number CF could serve at all, or any limit on the number of persons who could apply for, and receive, free or discounted care. Although there may have been goals set, there was never a limit on how much CF was willing to absorb to provide for free and discounted care. When budgeting, the charity care expenses were "written in pencil" and were a road map. There were no limits placed on the number of individuals who could be served even in CF's money-losing activities such as being a Level 1 Trauma Center, Level 3 Perinatal Center, a Primary Stroke Center, the Air Life helicopter, etc. Further, the medical education CF provided was not limited to health care professionals such as doctors and nurses but to the public who attended programs on diabetes, hypertension, etc. There is an indefinite number of individuals who would benefit from the outcomes from over 100 research projects.

Many of CF's witnesses from the CEO to business office staff all stated that there was no fixed number of individuals who could apply for free or reduced services and there was no set limit on the budget in terms of how much loss CF would incur. As noted earlier, the numbers are not insignificant, both in terms of patients served, applications considered and dollar amounts foregone. The Court will not repeat them again. But the Court emphasizes that the policy expanded over the years, providing more people with free or discounted care. Significant effort was made to get input from the community healthcare coalition and take steps to ensure that patients, and the public, were aware of Community Care.

Defendants stress that a significant number of persons were denied Community Care. That is true. But the vast majority who did apply were granted a discount, most received 100%. But Defendants forget what Korzen requires – dispensing charity to those who need it and apply

for it. As noted in Sisters, the Board of Review objected to the exemption because of the discrepancy between the number of charity patients and those who paid. "This objection seems to us without merit, so long as charity was dispensed to all those who needed it and who applied therefor..." All of the foregoing make it clear that CF was providing a benefit to an indefinite number of persons.

Defendants argue that the 2009 amendment limiting service to those who generally live in the service area shows that that CF did not open its doors to everyone. This has little merit. First, there is no evidence that any patient was denied medical service for this reason. Second, CF is a business and cannot be in the red year after year or it would close its doors. They are not-for-profit and need to stay in the black. The Community Care policy by 2009 was quite generous. CF's concern was that the public would take inappropriate advantage of it. They did not want people coming from Chicago, New York or London to get service, knowing that their income would allow them a generous discount, if not free service. This is the reason that CF allowed provisions for servicing people who are from outside the service area only if they were referred by another hospital, etc. If they did not do so, CF would be in the red every year. The Court notes that the service area is quite large and covers over 1 million people.

Third is whether the hospital places any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses. The difficulty, as Mr. Tonkinson stated, was identifying those who could pay and had not, from those who were unable to pay. The Court finds that CF took all reasonable steps to find those who could not pay and assist them in applying for government assistance and/or Community Care. Patricia Owens stated that CF hired Arc Venture to contact patients within 5 days of leaving the hospital to help a patient figure

out how they could handle the charges. About half the time, Arc believed the patient qualified for Community Care and they returned the account to the hospital for submission of an application. Tearinee Boyd testified that they would send the application to the patient and later follow-up if she had not heard anything. Of those applications approved, 97.5% received a 100% discount for their care. TR 510. Several witnesses, including Michelle Mayol and Mark Hall, stated that there was no evidence that CF denied Community Care to an applicant who qualified for the program.

CF did not place obstacles in the way of patients receiving medical care. Expert Cornish said that CF's efforts to promote charity care from 2004-2011 were unique and effective (specifically that the program allowed even those with insurance to apply). He noted that, both within and outside the company, there were numerous "touch points" were a patient learned about Community Care; this was done through different mechanisms as well. CF even changed the name to Community Care when they were told that some people may be discouraged to apply (being too proud) if it continued to be called charity care. In 2003, the program was advertised in the newspaper. When they were told that some people do not read the paper, they expanded this by advertising on buses and on the radio in 2004. CF also started placing information and the application on its website. CF held press conferences and issued press releases. Through the years 2004-2011, CF also discussed Community Care internally. Pamphlets and brochures about the program were displayed at various locations in the hospital. In 2004-2005, the brochures and applications were translated into Spanish and Mandarin Chinese. There were signs about the program in the admitting area and the Emergency Department. All registration staff had checklists, brochures and applications for patients. During a patient stay, social workers would discuss Community Care with uninsured patients or any patient who expressed concern about

paying their bill. In 2004-05, CF's annual training included teaching all the hospital staff on the policy so they were aware of it and could tell family, friends and others. Beginning in 2003, all bills and statements mention the availability of financial assistance and whom to call. When CF heard some people did not open mail, CF put a notice about Community Care on the outside of the envelope in red letters.

CF also worked to make the application process easier. In 2003-04, it required applicants to submit income verification with documentation. These requirements were relaxed and they later allowed handwritten letters, for instance, when tax returns or pay stubs were unavailable. CF also extended the period of time in which to submit an application. At first it was 10 days from getting it but then moved to 14 days and then 60 days. Finally, there were provisions for families who have catastrophic expenses as well as an appeal process. Some patients did not even have to fill out an application such as those on Medicaid and those who were homeless. In 2004, patients who received Cunningham Township General Assistance were automatically qualified for Community Care (no application needed). In 2005, a letter went out to people in Section 8 housing to attempt to auto-qualify low-income residents. In 2011, the policy was revised once again to auto-qualify any patient referred from Frances Nelson. Mr. Cornish believed that the program was essentially a free insurance program because, if a person qualified, the whole household qualified, and they qualified for a year. The Court does not find that CF placed obstacles on individual seeking charity.

As noted before, Defendants are critical of the fact that the policy did not apply to those outside the service area. The Court has already addressed this. They also claim that CF's policy is a payor of last resort; in other words, a patient must use private insurance or apply for

government assistance before the policy is applied. This is not an obstacle. In fact, it is a benefit to the patients. If a patient is eligible for government assistance such as Medicaid or Cunningham Township, they do not even have to apply to the program. Further, there are tangible benefits to requiring patients to apply for government aid. First, if they are on government assistance, they receive a 100% discounts through the Community Care program without even applying. Second, having government assistance provides for more financial assistance for such things as prescriptions. Finally, the Illinois Supreme Court has rejected the argument that a hospital places obstacles for patients to receive charity by asking about non-emergency patient's ability to pay and by assisting eligible patients in receiving government benefits. In Cannon, the Illinois Supreme Court stated that "Sound business dictates that hospitals inquire into the ability of a prospective patient to pay, and it is the generally accepted practice of all hospitals."

Fourth is whether the hospital provides gain or profit in a private sense to any person connected with it. Defendants spent a substantial amount of the trial on this issue. This issue is whether "any portion of the money received by the organization is permitted to inure to the benefit of any private individual engaged in managing the organization." Provena plurality at p. 392. Township Defendant argues that high management salaries are not appropriate for charitable organizations. They give no legal support for this claim. In the present case, the CF Board of Trustees are not paid. CF officers are paid fair market values after an independent process is used to determine this. Sullivan-Cotter is a nationally known and respected consultant with regard to compensation in the healthcare field. The report addressed compensation of all CF executives at or above the level of Vice-President. CF's executive committee (as a compensation committee) made final decisions on compensation and all such compensation was reasonable.

TR 285-286. Mr. Cornish testified that this process was used across the industry for not-for-profit hospitals. The Court finds that payments to officers is not private inurement.

Defendants argue that the relationship between CF and the Clinic suggests that the anti-inurement rule has been violated. One such way is the many favorable contracts between the entities and doctors working for the Clinic. They claim that the doctors were paid handsomely before and after the merger in 2010. This argument fails for several reason. First, as noted above, the anti-inurement clause limits dealing with individuals who are managing the organization, not merely doctors and other staff. Second, the relationship between the CF and Clinic was not as friendly as the Defendants suggest. Numerous witnesses testified that contract negotiations between CF and the Clinic were frequently contentious and always at arms-length. Defendants cannot show that the Clinic paid less than fair market value for anything it received from the CF and even the Defendant's expert, Mr. Hall, agreed that contracts were paid at fair market value and were appropriate. Further, although Defendants argue that contracts between CF and the Clinic are improper, the Court finds them to be proper, and consistent with other hospitals/entities because they were mostly designed to eliminate duplication of services and to create efficiencies.

It is true that there were increasing operational ties between CF and the Clinic between 1980-2010. There was a focus on partnership, including HMO risk-sharing, the Hospital leasing Clinic physicians, coordination of strategic planning, specialty centers and technology investments. Although the Hospital maintained an open medical staff, more than 90% had been physicians at the Clinic from 2004-2011. The Clinic's main office was on the CF Hospital campus. They also leased property in outlying areas and towns. Clinic physicians also sat on

CF's Board of Trustees (although the percentage was reduced) after 2008 and the IRS involvement. Medical directors were involved, appropriately in department operations, but also gave input on staffing issues, use of space and setting operational goals. HAMP is a health insurance company created by the Clinic in about 1980. From 2004-2010, it was a for-profit subsidiary of the Clinic and was CF's biggest commercial insurer in its primary and secondary service area. From 2004-08, per Ms. Emmanuel, HAMP was responsible for a larger portion of receivables than any other private insurer, ranging from 12-18%. HAMP was CF's largest payer for the hospital, paying about 20% of its revenues. From 2004-10, CF's percentage of its annual net patient service revenue from HAMP HMO ranged from 28.5-32.8%. There were numerous contracts between CF and Clinic to avoid duplication of services, including ancillary services such as radiology, lab and diagnostic cardiology.

CF started HSIL in 1980. This is an offshore captive liability insurance company which allowed CF to efficiently share information about quality of care, ensure affordable malpractice insurance is available and, prior to the merger, to sell malpractice insurance to the Clinic in a way that made it more efficient to share information. Per Mr. Fallon, this arrangement reduced the risk of cross-claims and finger-pointing between the organizations, and reduced overhead costs. Onshore claims management services for HSIL, Clinic and CF were provided by CRIMCO which was jointly owned by CF and Clinic before the merger and owned solely by CF after the merger. CF and Clinic had some joint strategic planning about facilities, market share development and strategic plans. E.g. joint cardiology plans, promoting growth of Clinic. They looked together at areas of growth or divestment because they were mutually dependent on each other for success in the future. All of these contracts and agreements were in the interests of both CF and Clinic and entered into at arms-length. They benefitted patients by streamlining

processes and lowering costs. Nothing was inappropriate about any of them and none reflect private inurement to doctors or others.

In particular, Defendants suggested that it was improper for CF to create the Carle Foundation Physician Services (CFPS) and the contract with Clinic doctors to staff the Emergency Department. Mr. Snyder explained that all hospitals lose money with emergency departments and they must either employ the doctors (with a subsidy) or pay a company for the service. CF wanted to keep the ED open and provide this service to the public. The Clinic owned lab and radiology operations. The evidence suggested that patients paid less than if CF had invested in and owned its own services. The Court will not discuss the 100s of other contracts between CF and the Clinic/doctors because all were necessary and appropriate and none gave a particular individual private inurement.

TR 178 is the settlement agreement between the IRS and CF in 2008 after a 4-year audit. The IRS scrutinized the relationship between the CF and Clinic, the composition of the Hospital staff, the use of medical directors, the lease, the deferred compensation agreement and HSIL. The IRS found no violations of the law, did not assess any penalties and did not revoke or terminate the Federal tax-exempt status of the CF or Hospital.

Defendants spent significant time arguing that the purchase of the Clinic by CF created private inurement to the doctors. CF's purchase of the Clinic was reasonable and the product of an arms-length transaction. Both sides hired valuation consultants. CF hired Ernst and Young who valued the Clinic at between $224-264 million while the Clinic hired Deloite who valued the Clinic at $255 million (HAMP at $270 million and the Clinic at a loss of $15 million). The final sale was for $250 million. After the merger, most Clinic doctors received about $910,000

for their ownership, usually paid over 5 years. *See* TR 4057. Mr. Cornish stated that this was a fair market value for the sale. The defense expert, Mr. Hall, agreed that the price was reflective of a fair market value.

Defendants argue that Clinic owners (the doctors) received far more money after the merger than the value of their interest pursuant to the Clinic By-Laws. That is correct. But it does not mean that there has been private inurement to the doctors (even assuming they were management). The Clinic By-Laws were not intended to reflect the fair market value of the doctor's interest. A defense witness, Dr. Wellman, indicated that the low price for a doctor to join the Clinic was to allow them to afford a share; they could not recruit good doctors without a low price. The sale price was a fair market price and the doctors should be allowed to obtain that value. The fact of the matter is that, had the doctors not been offered the $910,000, they may not have voted to approve of the merger. After the merger in 2010, the Community Benefit Plan Report stated they "became an integrated delivery system, bringing together a hospital physician group and insurance provider to offer a coordinated network of services." There is no private inurement.

Fifth, although not a Korzen factor specifically, is whether the actions of the Hospital relieve some burden on the government. *See* People v. Young Men's Christian Association of Chicago, 365 Ill. 118 (1936). This is specifically outlined in Section 15-86. The reason for exempting certain property from public taxes arises from the fact that such property, in its charitable purposes, tends to lessen the burdens of government and to affect the general welfare of the public. *See also* People ex rel Carr v. Alpha Pi et al, 326 Ill. 573 (1927). As noted in Provena, each tax dollar lost to a charitable exemption is one less dollar the government has to

meet their obligations directly. They also noted that "Illinois has never required there be a direct, dollar-for-dollar correlation" between the value of the tax exemption and the value of good/services provided by the charity.

Section 15-86 provides some guidance to hospitals by allowing them to count, as charitable services, programs and services other than charity care alone. In CF's mission statement, they account for this by focusing on 1) providing medical education to healthcare professionals and the general public, 2) assisting in medical research in general and translational research in particular and 3) devoting resources to provide important healthcare service to the community, even though they lose money. The record is filled with such programming. CF argues that they supplied services that, if they did not provide them, would require the government to undertake them or the public would be required to go great distances to be provided with the same services. The Court re-states its earlier statement that it finds that many of these activities were on the four parcels. CF cites numerous activities. The Hospital is a Level 1 Trauma Center and a Level 3 Perinatal Center (both highest designations). It is also certified as a Primary Stroke Center. The closest hospitals with those designations are in Springfield and Peoria. They created a mobile clinic, giving immunizations and school physicals; this shows a commitment to provide services outside the Hospital. They established a Parish Nurse program. They also provided translational research which means research that is close to being implemented to help people. CF also provided services from 2004-12 that are done at a loss to them. These include geriatric services, an emergency room, low vision center, an airlift, an auxiliary guesthouse, breastfeeding clinic, palliative medicine, the St. Joseph Institute for the Deaf and ECHO (helps children with hearing problems). These all help the community. CF has also provided grants to the community such as $100,000 to the C-U Public Health District in 2007, to provide dental care for those unable to pay. That plan addressed assisting

Frances Nelson so patients have better access to services. Through strategic plans, CF partnered with community resources to provide access to uninsured and underinsured patients and to start the foregoing programs.

It may be true that some for-profit hospitals provide some of the same services. It is unclear how many do so and to what extent. The fact is that if CF did not provide for some of these services, the burden would fall on the government or individuals. As to government, for instance, they may have to provide more funding to the C-U Public Health District or to Frances Nelson. When the State cut funding, CF supported Frances Nelson Health Center by buying a building and leasing it to them for $1/year so they have the space they need as a federally qualified health center. CF helps patient obtain Medicaid and other government benefits so they can have access to prescription medication and primary care. They may have to fund and provide for programming for low-income individuals such as school immunizations, breastfeeding clinic, an airlift and the like. Ms. Elliott and Ms. Mayol stated that Cunningham Township paid for many medical bills of its residents but that ended when these persons applied for and received Community Care. As to patients, without CF having the Level 1 Trauma Center and Level 3 Perinatal Center, patients would have to travel long distances to Springfield or Peoria. All of the foregoing make it clear that CF was providing services which, in some way, reduces the burdens of government. Medical education also persuades those who receive it to an educational conviction. *See* Sisters, at p.322-24 (training for nurses); Lutheran General Health Care System v. Illinois Department of Revenue, 231 Ill.App.3d 652 (1st Dist. 1992)(charitable purposes include medical education and medical research). CF offered its services to anyone who entered their facilities. Section 15-86 confirms the General Assembly's view that the foregoing helps to relief burdens of government.

Defendant's Concerns:

Defendants raise a number of other issues that the Court finds have little relevance. The Court cannot list all of them (there are so many) but will address several. First, they criticize the use of HSIL, the offshore company dealing with insurance issues. This is common in the industry and there is no allegation of impropriety. The same applies to CRIMCO, the onshore provider. Even defense witness Dr. Wellman said that they streamlined procedures and helped reduce costs to everyone. Second, they criticize the structure on Hospital floors. Prior to the merger, each floor had a doctor and an administrator. Afterwards, they had a medical director and an administrator. Witnesses, including defense witness Dr. Wellman, said that the changes had no effect on the operations or dynamics on the floors. Third, they compare financial metrics between not-for-profit hospitals and for-profit hospitals. The Court allowed the evidence but gives it little weight. It is a comparison between apples and oranges, to a great extent, because there are significant differences in corporate structure, Mission Statements, etc. Defendants also want to compare CF to safety-net hospitals. Again, there is no basis for comparison, especially when most safety-net hospitals are government-run. The Court gives no weight to defendant's expert who believed that hospitals should have this designation to be tax exempt. That is his opinion but this is not the law. Fourth, Defendants criticize CF because they believe that CF controlled, or could have had influence over, Clinic prior to the merger. There is no basis for this. All of the 100s of contracts were negotiated at arms-length and were contentious. As to the merger and its price, it was also at arms-length and contentious. Further, Mr. Cornish stated that CF probably could not have forced the Clinic to comply with CF's charity policy because it would have been a violation of the "Stark Act." Fifth, Defendants raise the issue whether there were inappropriate incentive to employees. Witnesses, including defense witness Mr. Snyder,

testified that there were incentive pay programs but that they applied to all CF employees when the entire organization met goals. Goals were never tied to Community Care.

Defendant's Expert:

The defense called their expert, Mr. Hall. The Court gives little weight to the fact that he was paid by Defendants since that applied to CF's expert as well. On the stand, Mr. Hall's demeanor was defensive. He attempted to split hairs on many answers. The Court did find him an expert based on his training, education and experience. Unlike Mr. Cornish, though, Mr. Hall has spent most of his career in research and as faculty at universities, publishing extensively. He has not worked in a hospital's billing or accounting division, does not have a finance degree and is not a CPA. He has not worked with hospitals to draft strategic plans and has not worked with the Charge-Master. He has never done a valuation for any hospital. His experience in the matters at hand are of an academic nature as opposed to practical experience working in the field. Of note also is that he admitted he was not intimately knowledgeable about Illinois law or its Constitution (for ownership or use). He also was not an expert in tax law and had to consult a law professor about that.

Of more importance to this Court is his interest in the outcome of the case. In his research and writings, Mr. Hall had floated some unique ideas on what should be charitable. He acknowledged that no State had adopted his view of determining charitable use. He claims that it did not affect his view in this matter. However, he admitted to consulting with a University of Illinois Law Professor who told him that, in his view, hospitals should not be property tax exempt. The witness' theories are not the law of any jurisdiction, including Illinois. Mr. Hall's opinions suggest he was, in fact, relying on his unique ideas when coming to his opinions. The Court does not find Mr. Hall to be incredible but the Court has some concerns about the reasonableness of his

interpretations of the evidence. Therefore the Court gives his testimony less weight than that of Mr. Cornish.

Nonetheless, what did Mr. Hall say? His opinion was that CF did not qualify for property tax exemptions under the Illinois Constitution (Korzen). He did not testify about Section 15-86 and did not analyze CF's 2012 finances; he knows that DOR granted at least partial exemptions for the four parcels in question for 2012. He believes that there should be a very high threshold for hospitals to be property tax exempt. He could not name a hospital in Illinois that met that threshold. About 25 years ago, he wrote an article that dealt with the donative theory of exemptions being the better model to determine what is charitable for tax purposes. This states that an important factor to look at is the amount of public donations an entity receives; if people give out of their own pocket, this shows that the entity's activity is worthwhile and merits additional support (tax exemptions). He admitted that this was an "economic ivory tower theory" that has not been adopted by any jurisdiction. This appears to be Mr. Hall's test; this is important and is, in fact, one factor set forth in Korzen. He made the following findings:

1.CF's properties were not primarily used for charitable purposes. He characterized their business to be a successful hospital/enterprise. He looked at CF overall and found that charity is a minor part. He was concerned about the amount of integration, particularly before the merger, of CF and the Clinic. He said this amount of integration would be seen in large hospitals such as Mayo. The irony is that he knew CF was based on the Mayo model. He acknowledged that some integration was to not duplicate services such as IT, security, etc. He admitted this integration created large efficiencies. He did not know that other not-for-profit hospitals associated with for-profit physician's associations.

He also agreed that the purchase price of the Clinic was fair market value, that HAMP was the largest part of the deal and that doctors gave up their rights to HAMP profits after the merger. He believed that the doctors at the Clinic should have donated the market value of their Clinic shares so as to assume charitable status. He said he knew of other organizations that did that but could not name one. He also neglected to recognize that the Clinic was a separate entity and the doctors may not have agreed to sell if they each had to donate almost $1 million. He admitted that it was appropriate for both sides to hire independent valuators for the sale. However, he questions the valuation process used by entities to set the purchase price. He knows by scholarly research that the best method is the discounted cash flow. He does not know how to do it. He thinks that if valuation is based on expected income, that is a form of inurement.

Mr. Hall's definition of charitable is where there is no intention of billing at the time of services being provided but agreed that is not reasonable in some situations. He agrees that CF provided services and then dealt with payments. He was not aware of CF not performing services to a patient when they knew the patient would not pay. He believed that at least 50% of operating income (profit) should go to charitable services but admitted there is no such standard. He is not aware of Illinois law that requires charitable care to be compared to any other financial metric but he thinks it should be compared to total income. He says there is no litmus test but having a majority of total income going to charity "feels nice." He believes that services should be deeply discounted or it should not count as charity. He understands Section 15-86 does not require this. He agrees that CF is not counting bad debt as charity care. He knows that CF is taking on the Medicaid and Medicare shortfalls but is not counting that as charity. He acknowledged that the majority of patients receiving discounts received 100%.

2. CF did not receive its funds primarily from charity. He knows that CF does not contest this finding. His concern is that CF is making more income than needed (excessive) to run the business. The average operating margin for 2004-2011 is 5.3%, excess margin (total margin) was 9.5% CF is doing well financially. He believes not-for-profits should not have excess income; they should not be accumulating excess profits. He thinks a 2-3% surplus is enough but there is no standard on this. He knows that a business can make a profit and get a property tax exemption. He could not name a hospital that received a majority of its funding from donations.

3.Doctors receive a private a gain or benefit. He was concerned about the time before the merger where the Clinic entered into many contracts with CF for services. He thinks CF had influence over the Clinic and could have gotten them to change their policies about Community Care, accepting Medicaid patients, stop the no-service list, etc. This is speculation. There was extensive testimony from witnesses on both sides that negotiations were often contentious. Mr. Cornish stated that CF probably could not have forced the Clinic to comply with CF's charity policy because it would have been a violation of the "Stark Act." He also looked at the tight leadership relationship of Clinic doctors at CF. He feels that doctors at the Clinic should have followed CF policies such as applying charity care, etc. He did not know how many doctors themselves in the area have a charity care policy. He thinks CF gave private gain/benefit to doctors by giving them a place to treat patients but admitted he did not know there were other hospitals who had relationships with for-profit clinics. He noted that for-profits also give to the local community (banks and insurance companies) for good will. He believes in the community benefit theory which is that these should not count as charity. He recognizes that Section 15-86 allows research, education, Medicaid shortfall, etc. and does not fault CF for listing them. He believes

that all important issues should be in the strategic plan. If something is not in the strategic plan then it is not important.

4.There are obstacles in the way of CF providing charity. He knows that the Community Care policy changed from 2004-2011, the inference which is that delivery of charity could have been better before then. TR 2004, table 11 shows bad debt reduced over time which meant that CF did a better job of identifying those in financial need. That shows they could have done better in 2004. He is concerned that Clinic doctors do most of the referrals to the hospital but this is a positive in that Community Care applied at the hospital. In 2005, Champaign County had 21.2% uninsured and 18.4% underinsured. He looked at other years and concluded that CF did not provide proper proportionate care to these individuals.

CF is not a safety-net hospital which is designed to help those in need; they are often government-run and/or not-for-profit. They tend to have high Medicaid and uninsured patients. He knows government-run hospitals get money from the government and they also bill patients, insurance, etc. He does not know where the nearest safety net hospital is but thinks it is likely in Chicago. CF has an average of 2.5% charity care to operating expenses. He thinks government hospitals are 6.6%. In his view, a hospital needs this designation to qualify for a tax exemption because it shows they are serving a reasonable number of uninsured patients, etc. He knows CF changed the Community Care policy over time and it became more generous. He knows CF stopped seeking body attachments. He knows they cross-qualified with Frances Nelson, Cunningham Township, etc. and that they did extensive advertising. He was aware that from 2004-12, there was an increase in the number of Community Care patients and that most (87.5%) received a 100% discount; about 93% got at least a 75% discount. He knows that these numbers

do not include auto-qualified patients. He knows the benefit is for one year, applies to past debt and to a whole family. He did not do a parcel by parcel analysis.

The Court does not criticize Mr. Hall because he is an academic. An expert's knowledge can certainly be based on education. *See* In Re JJ, 327 Ill.App.3d 70 (1st Dist. 2001). It is also not necessary to actively be practicing in the area of expertise or even have complete knowledge of a subject. *See* Lopez v. Northwestern Memorial Hosp., 375 Ill.App.3d 637 (1st Dist. 2007); Buford ex rel Buford v. Chicago Housing Authority, 131 Ill.App.3d 235 (1st Dist. 1985). Having said this, an expert's credentials and qualifications go to the weight of his testimony. *See* People v. Outlaw, 388 Ill.App.3d 1072(4th Dist. 2009). One concern this Court has is that expert opinion should be based on facts that are the type reasonably relied upon by others in the field. *See* Wilson v. Clark, 84 Ill.2d 186 (1981); People v. Jones, 2015 IL App (1st) 121016. The party calling such a witness has the burden of showing these. Rios v. City of Chicago, 331 Ill.App.3d 763 (1st Dist. 2002). In this case, Defendants rely on their expert, Mr. Hall, to support their claim that CF should not receive exemptions. They have heartily adopted his view that CF "could have done better." As this Court previously noted, Mr. Hall's theories, that are the basis for his opinions, are not the law of any jurisdiction, including Illinois.

Parcels:

Defendants made the assertion that the "charitable activities must be broken down parcel by parcel" and the Court should not consider charitable activities provided on other properties than the four parcels. Defendants rely in Oswald which stated a hospital must show that the "subject property" meets the Constitutional requirements of exclusive charitable use. They also rely on several cases including Kiwanis Intern v. Lorenz, 23 Ill.2d 141 (1961) where the Court

rejected an exemption claim where a club's national headquarters were not where the activities were. Defendants cite City of Lawrenceville v. Maxwell, 6 Ill.2d 42 (1955) but that can be distinguished. That case denied exemption to farmland that was used to generate income to help fund operation of a municipal airport. Here, offsite activities are administered and managed by hospital employees (such as health screenings, etc.) or where additional charitable activities take place. (Frances Nelson Health Center). CF replies that these cases were based, not on a failure to isolate data for certain properties, but rather for lack of any data at all about the use on the property. CF further argues that exemptions have been approved without imposing such requirements. *See* Lutheran General, supra.

The issue for the Court is whether CF used the four parcels for its charitable purposes. The evidence showed CF used portions of the four parcels for which it seeks exemptions exclusively for the operations of the hospital. The Main Hospital and North Tower properties are core aspects of the Urbana campus. CF's activities on those properties include, to a great extent, medical care at free or discounted rates. Thy also provided important, money-losing healthcare services that benefit the entire community, conducting medical research, providing medical education and providing healthcare to all regardless of ability to pay. No case has ever required a parcel by parcel breakdown of the costs associated with charitable activities on an exempt parcel. *See* Lutheran General.

It is true there has to be a showing that these activities are related to the properties at issue. Appellate decisions applaud entities for charitable activity and yet deny exemptions. This is often because there is insufficient data about the activities and where they occur. In the present case, Community Care provides free or discounted medical care, specifically at the Hospital, one

of the parcels at issue. This is where medical research is done. This is where education of doctors, nurses and others take place. Thousands of seminars take place in their educational space, much of it free and for the public. The planning for activities outside the Hospital are done in administrative offices at the Hospital.

It is noteworthy what the DOR official, Ms. Stouffe, said. In her analysis, she believes she could look at the entire hospital system and that, under Section 15-86, she did not need to find charitable use on a particular parcel. It is not uncommon for an application/certificate to list multiple PIN numbers if a building or property is on multiple parcels.

As to the other parcels, the Caring Place and Power Plant, they are entitled to exemptions because the ancillary services provided by these properties are reasonably necessary to the operations of the Hospital. Parcels that are reasonably necessary to accomplish the charitable purposes of a hospital may be exempt even when "no healing, health care or hospital administration" takes place on those parcels. Norwegian Amer. Hosp. v. Dep't of Revenue, 210 Ill.App.3d 318 (1st Dist. 1991). Parcels deemed to be reasonably necessary to the operation of a hospital include administrative offices, childcare facilities and parking lots. *See* Evangelical Hosp Corp v. Dept. of Revenue, 223 Ill.App.3d 225 (2nd Dist. 1991); Memorial Child Care v. Dept of Revenue, 238 Ill.App.3d 985 (4th Dist. 1992); Northwestern Mem. Hosp. v. Johnson, 141 Ill.App.3d 309 (1st Dist. 1986).

The Power Plant provides the Main Hospital campus with steam for sterilization, salt water, heat, chilled water, centralized medical waste, etc. These are necessary for operations of the hospital. Dr. Leonard called the backup generator as absolutely critical. The Caring Place provides child care to employees of the hospital and is reasonably necessary to the operations of

the Hospital. It helped address the nursing shortage, was a close and available resource for staff and accomplished the efficient administration of the Hospital.

Provena and Midwest Palliative Care:

The Court must confront two appellate cases where exemptions were denied. Defendants cite them not only for the outcome but for some of the analysis by the courts. The Court does not dismiss the holdings or rationales of the Courts but, upon closer readings, these cases are significantly different from the pending case and can be distinguished. The first case, relied on heavily by Defendants, is the Provena case. In that matter, the Illinois Supreme Court denied property tax exemptions. The central point of that decision is that Provena was providing less than 1% of its net patient revenue for charity. Provena can be distinguished in numerous ways. First, the case was a plurality decision and therefore the decision is not binding on trial courts. Second, the case was decided under Section 15-65 and not Section 15-86. Third, although the Court stated that the charitable percentage for Provena was too low, they specifically noted that setting a specific threshold is a policy decision and should be left to the General Assembly and not left to the Courts. Fourth, subsequent to Provena, the General Assembly enacted Section 15-86 which clearly set a numerical threshold for property tax exemptions. Although Defendants could argue that the threshold is too low, the Illinois Supreme Court found the statute to be facially constitutional. Fifth, disregarding the forgoing, this Court finds that CF's charitable level to be higher than those in Provena.

Provena also uses strong language that helping the community by service or grants is noble but that the issue is about how the property is used. In that case, there was little shown that was actually done on the property. In the present case, witnesses testified about educating

thousands of persons at the Main Hospital, both doctors and staff and community members. There were a number of free clinics at the Hospital including one for breastfeeding. There were also dozens of research projects at the hospital. But more importantly, there was extensive medical care provided there for free or at a discounted rate.

Provena is mostly about numerical data. In that case, only .27 of total patients received charity care. CF provided charity to far more people. But most importantly to this Court is the nature of the charity polices. In Provena, it was important to the Supreme Court that the policy was not advertised. Further, the hospital automatically billed patients and when there was no payment automatically sent the matter to a collection agency. Further, the hospital only applied their discounts to patients who proved that they had no insurance or did not qualify for government assistance. In the end, the Provena Court was concerned that the hospital acted mostly like a business. In the present case, there was extensive testimony that CF advertised its Community Care program to the public. They helped patients apply for government assistance so that the patient could also get other benefits such as prescriptions. They had a lot of personal contact with patients and never automatically sent matters to collections. They worked with their patients from the beginning to get them applications for the program. After the merger in 2010, CF took on the no-service patients from the Clinic as well as the uncollected debt from Clinic patients. CF made significant effort to reach out to them and try to qualify them for Community Care, a one-year insurance policy. Ms. Jackson testified that she would contact patients 90 days before the one year period ended (to get them to reapply) to ensure that there was no gap in coverage. The bottom line is that, unlike Provena, CF did not act like a business but was focused on making sure their patients could obtain financial assistance.

The second appellate decision to consider is Midwest Palliative. This is a recent case but also decided under 15-65 and not 15-86. An in-patient hospice care center filed for property tax exemptions on the basis that it was a charitable institution. The property in question was a hospice care pavilion built on the same property as the palliative care center (which had previously been granted tax exemptions). DOR denied the applications because the care center failed to show by clear and convincing evidence that the property was put to an exclusive charitable use. An administrative review came to the same conclusion and the matter was appealed. The Administrative Law Judge (ALJ) found that only .4% of Midwest's operating revenue came from charitable contributions; the overwhelming majority of its operating revenue came from net patient services of which 88% came from Medicaid or Medicare reimbursement. The ALJ also found that the primary purpose of the hospice care was not to provide charity but to serve paying customers. The ALJ also found that care center did not reduce the burdens on government as many charitable endeavors do but rather received monies from the government in exchange for providing services. In short, the care center was not providing free services but were being paid. The ALJ noted charitable activities such as bereavement counseling and training medical students but did not find these sufficient to justify a tax exemption, finding these community benefits actually served the care center as a business, not as a charity. The ALJ discounted some evidence by the care center as to "possibly overstated" financial information and noted that they did not produce evidence as to the number of patients receiving charity care or the dollar amount of their charitable expenditures. Accepting the numbers, the ALJ found that it would still be less than 1% of the net services revenue, "an incidental act of beneficence." Nonetheless, it appears that they provided charitable services to 8% of patients.

The Appellate Court found that the DOR did not clearly err in finding that the care center failed to meet its burden. They stated that the care center "is a noble institution" but just because it does good deeds "does not mean that the institution is using its real property exclusively for charitable purposes as that term is used in the Illinois Constitution." The Appellate Court noted the care center's argument that the ALJ/DOR relied so heavily on the quantitative analysis. They rejected this argument because the low amount of charitable expenditures was "just one part of his [the ALJ] inquiry. The Court went on to state that "the use of revenue should not be the sole focus, the critical issue is the use to which the property itself is devoted." (citing Provena)

There are some important facts that distinguish Midwest from the current case. First, CF is open 24/7 and anyone can enter and be granted medical services. It open to all and anyone can apply for charity. In Midwest, that particular hospice did not provide services even to its own, existing residents, much less to any prospective resident, without regard to their ability to pay. The evidence in Midwest showed that the care center ordinarily expected to be fully compensated for its services. This is the key to the Constitutional requirement of charitable use. Second, the Midwest trial court did not have actual numbers of patients receiving charity or discounted care. That is important. A court is far less likely to find that a hospital has a charitable use if it grants a $1,000,000 waiver of fees to one patient who suffered a tragedy as opposed to granting $1,000 waivers to 1,000 different patients. In the present case, the number of patients is known. Also important is that Midwest provided only .4% of net patient revenue to charity care; CF gave substantially more than that. Further, Midwest received about 88% of its revenue from Medicaid/Medicare while CF has always received less than half that much from the government, thus relieving the government of burden more than in Midwest. Finally, in that

case, the trial court was determining the initial use of the new building. In the present case, there is no evidence of a change in use of any CF property from 2004-2012.

Midwest and other cases discuss how some activity helps the entity, whether for goodwill or to increase its revenue. ANY activity by an entity has more than one purpose and potential outcome. If an entity provides free medical screenings, that certainly is charitable. But does it also create goodwill? Yes. Does it create the potential for participants to want to go to the entity for other, paying services? Possibly. Just because an entity provides charitable activities does not, in and of itself, mean that it should be discounted due to some potential benefit to them. The Court must look at the type of activity, the number of individuals reached and how, if at all, it could financially benefit the entity.

Each case must be decided on its own facts. Although Midwest denied the exemption, the facts are different from the present case. Further, Midwest supports this Court view that a) the focus should be on what CF provided and not what they could have provided and b) the critical issue is the use to which the property itself is devoted, not the financial issues alone.

The Past Exemptions:

What is striking to this Court is the following – CF was granted property tax exemptions prior to 2004 and after 2011. What is so significant about the ownership or use of the four parcels from 2004-2011? Have there been changes to any charitable use? There has been significant growth to CF over the years (population area, merger with the Clinic, etc.). But was there any significant change in use from 2003 from 2004? Was there any significant change in use from 2011 to 2012? CF argues that there were no changes in use over any of the years in question. Mr. Kelly's job was to keep track of the uses of property. He stated that there was no

change in use of the subject properties from 2004-2012. Defendants cannot credibly argue that that there has been in any change of use over any of these years. It begs the question why should CF be exempt in 2003 and not 2004? Why should CF be exempt in 2012 and not 2011? If anything, CF increased its charity care over the years, advertising it in numerous ways to reach more people. The substance of the program expanded to increase the financial threshold, to give people more time to apply, to apply to family, to last one year, etc. It is true that CF has the burden of establishing an exemption for each year but it appears that Defendant's defense has simply been "CF cannot prove their case."

Findings on Korzen Factors:

This Court finds the testimony of Ms. Stouffe compelling because she is the DOR employee who decides property tax exemptions. She is knowledgeable about Section 15-86 and the Constitutional requirements. If she is misapplying the law, then hundreds, perhaps thousands, of properties around the State may have been inappropriately designated either exempt or nonexempt. Her testimony must be considered seriously. From 2012-18, she exclusively worked on hospital requests. She would review numerous supporting documents including affidavits, Community Benefit Reports, Board of Review recommendations, legal opinions, etc. She had the authority to grant or deny exemptions and she did grant and deny applications. In her analysis, she believes she could look at the entire hospital system and that, under Section 15-86, she did not need to find charitable use on a particular parcel. It is not uncommon for an application/certificate to list multiple PIN numbers if a building or property is on multiple parcels. Even after the Illinois Supreme Court case of Oswald, she granted exemptions. She has even granted exemptions for hospitals that made a profit; exemptions are not limited to hospitals that work at a financial loss.

She did not review CF's applications for 2012 but believed that they were correctly decided. In deciding on an exemption, it was not significant to her whether charity was a particular percentage (e.g. 2% or 5%) of net patient revenue. Based on other facts as well, either could result in being granted an exemption.

As to the Korzen factors themselves, the factor dealing with deriving funds mainly from private and public charity clearly favors Defendants. The evidence was not contradicted and CF did not argue otherwise. They, like all non-for-profit hospitals (except possibly the Children's Shriner but that was not in evidence), receive a small portion of their revenue from charity. The Court gives this factor little weight for that reason and also because courts have permitted exemptions despite this fact. Hospitals have properly been granted exemptions without proof that their funds are generally derived from charity. Cannon; Evangelical Hosp. Ass'n v. Novak, 125 Ill.App.3d 439 (2nd Dist. 1984). Further, this is only one Korzen factor.

Of much more significance is that this Court finds all the other Korzen factors in favor of CF. CF has no stock, makes no profit, provides no private gain, dispenses charity to all those who apply and they place no obstacle to those persons. The Court must look at the totality of the circumstances. The Court finds that, above the Community Care dollars spent, CF has provided millions of dollars' worth of services, programs and grants to the community, much of it on the main campus. These were outlined in detail during the Court's analysis of Section 15-86 and will not be repeated here. During that discussion, the Court did not even list all of those benefits but only some of them. But they were significant.

After consideration of all the facts in this matter, and giving due weight to prior caselaw, this Court finds that CF has met its burden of proof, entitling it to property tax exemptions on the

four parcels for 2005-2011. But the Court declines to find they met their burden of proof for 2004. Why does this Court find that CF has not sufficiently shown that it is entitled to property tax exemptions in 2004 but does for the other years? The Court stresses that CF did provide many services and programs to the community and should be applauded for doing so. Many of those programs continued through 2011. It is not that they did not provide such services in 2004. Of great concern to this Court is timing. The Court must consider exemptions for each year individually. The Property Tax code works on calendar years. Section 15-86 works under a hospital's fiscal year. This is in conflict, particularly in this case where CF switched from a July1-June 30 fiscal year to a calendar year in 2010. At some point along the continuum, this conflict must be reconciled and this Court finds that 2004 is that year. The Court has numerous documents, and there was extensive testimony, about CF's finances and charitable efforts in FY 2004 which would run from July 1, 2003 through June 30, 2004. Some of the statistics would be for the calendar year 2003 and some would be for the calendar year 2004. There was insufficient evidence to show how much charity care and charitable activities and services took place during the last 6 months of 2003 vs the first 6 months of 2004. The PTAX-300-H shows $2 million for FY 2004. Pages 1-2 of worksheet in TR 1068 show FY 2003 charity care at cost of $1.3 million and FY 2004 of $1.9 million. Therefore, this Court cannot state with certainty that the amount of charitable activity (Community Care or otherwise) was in CY 2004.

To the extent that the plurality in Provena and the Midwest Court have set a "rule" that having less than 1% of charity care in relation to net patient revenue, is binding, 2004 did not meet that threshold. Under all three analyses (CF, Hospital and Hospital Division), this ratio was under 1% in 2004. TR 334.1 reflects the number of applications approved. It appears that there were 1,580 applications in 2004. A cursory review shows that some of those were approved in

2004. However the overwhelming majority were actually approved in 2005 or later, a few as late as 2010-12. The Community Care program expanded greatly in 2004-2005, specifically not requiring a patient to liquidate assets and CF would not consider retirement income. Although CF made great efforts to announce program changes in early 2004, it would take some time after 2004 for it to make an impact on the community. Other reasons for not exempting 2004 are that the Community Benefit Plan Report does not mention the number of individuals served, unlike in later reports. The Court finds this significant in light of the Midwest opinion. Also, it is the most distant year from 2012, the year which CF wishes to make a comparison (although this Court is also making a de novo determination).

CY 2005 was a close call for this Court. Just looking at the percentage of Community Care provided of net patient revenue, 2005 was under 1% using two different metrics – CF and Hospital. However, it was 1.13% for the Hospital Division. Per Midwest, this should not be the only criteria. There were extensive changes to Community Care in 2005 and CF provided millions of dollars in other allowable services under Section 15-86. From 2004 to 2005, applications for Community Care went up, the number of approvals went up and the number of patientsnt up. The Court finds that CF has proven the requirements for property tax exemptions for 2005.

This Court must stress that the statute, Section 15-86, is about numbers – charitable activity and property taxes. As the Court stated earlier, it is of the opinion: "If a hospital meets the criteria of the constitutionally-approved procedures of Section 15-86, then it generally should be entitled to a property tax exemption." However, Oswald tells us that there must still be an analysis under the Illinois Constitution (via Korzen). The Court has done that since the state-of-

the-law is unclear. The Constitutional analysis is much more nebulous than under Section 15-86. There is no defined contour as to what to consider and what weight to give to certain factors or evidence. When it comes to the latter analysis, as Dr. Leonard stated in one of his Community Benefit Plan Reports, "Charity cannot simply be measured by dollars." This Court is impressed that CF spent over 1% of its net patient revenue on free or discounted care. Although that may not seem like much as a percentage, it exceeds the Illinois Supreme Court's apparent threshold of 1%. But it is also significant in terms of actual dollars spent. But there is much more beyond the numbers. First, the Community Care program is impressive. The expert, Mr. Cornish, said that CF's policy is unique from virtually any other charity policy he has ever seen. There are auto-qualifiers so that many patients do not even have to apply. It is generous in terms of applying to people who earn well over the Federal poverty guidelines. It also caps an out of pocket at 40% of the patient's income. The policy can wipe out past debt. It applies not just to the patient but to all members of the family, including adult children. It is also valid for one year, meaning that it is effectively a health insurance policy for one year. All of these facts suggest that the policy is unique and beneficial to the public.

Section 15-86 allows other charitable activity to be considered for its purposes. CF only used such other activity for 2004-05. After that, they no longer used these numbers because their Community Care numbers were well over the property tax amounts. But CF provided, through all the subject years, significant assistance to the community. Some certainly relieved the governmental burden while others may not have as much. Nonetheless, CF provided services, and donated money for services, that clearly benefit the community: Air Life, an Emergency Room, the Community Parish Nurse Program, Community Prenatal Care, Carle Having Your Baby Programs, Carle Breastfeeding Clinic, the Carle Auxiliary Guest House, Carle Mobile

Clinic, Carle Sports Medicine, a portable field hospital, SAFE KIDS, ECHO, Low Vision Center, St. Joseph Institute for the Deaf, Camp Healing Heart, Safe Sitter, Senior Impact Project, Risk Watch, Playing it Safe and Center for Rural Health and Farm Safety. There were many others. They also provided grant money which included: the U of I's breast cancer research, Cunningham Children's Home, Parkland College's Nursing Program, the Life-Span Center, Champaign County Family Services, Center for Women in Transition, Development Services Center, the Urban League, Champaign-Urbana Public Health District and the Central Illinois Dental Education and Services. They also purchased a building for Frances Nelson and charges them $1/year in rent. They also participate in numerous research projects.

Percentage for Exemptions:

Where property is used both for exempt and non-exempt purposes, "there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation. Illinois Institute of Technology. For a partial exemption, "there is no requirement that the entire property be used primary for charitable purposes." Highland Park Hospital v. State Department of Revenue, 155 Ill.App.3d 272 (2nd Dist. 1987). In Streeterville Corp, the Supreme Court rejected the notion that a property owner had to designate specific parking spaces for exclusive use by hospital personnel to obtain an exemption. Where the statistical evidence showed 74% of customer parking was for employees, it was proper to conclude that 74% of the parking garage was used for charitable purposes. If a property is "reasonably necessary" for accomplishing the charitable purpose, then it qualifies for an exemption. Northwestern Memorial Foundation v. Johnson, 141 Ill.App.3d 309 (1st Dist. 1986).

CF concedes that the four parcels may have some non-exempt portions. Although Defendants contest CF's right to exemptions in the first instance, they do not loudly contest the allocation of space for exemption purposes. The Caring Place is a daycare facility that serves the employees of CF as well as children in the community. A daycare facility can constitute an appropriate auxiliary use of an exempt hospital. Memorial Child Care (hospital entitled to exemption for child care facility). The Court finds the Caring Place to be reasonably necessary to CF to accomplish its charitable purpose. The Caring Place is exempt based on the number of children of CF employees. The practice has been, prior to 2004, to have CF identify that number and notify the taxing authority. That is an appropriate practice of the future under Streeterville. Based on the uncontradicted testimony, and shown in TR 303-304, the exempt percentages are as follows:

2005 38.31%
2006 48.41%
2007 50.39%
2008 49,21%
2009 52.29%
2010 64.83%
2011 66.22%

The Power Plant provides services to the entire CF Urbana campus for chilled water, steam, emergency power and waste management. CF could not operate without the Power Plant. The Court finds the Power Plant to be reasonably necessary to CF to accomplish its charitable purpose. Up until 2010, it supplied power to the Clinic which leased space from CF. Those portions would not be exempt. Based on the uncontradicted testimony, and shown in TR 312, the exempt percentages are as follows:

2005 64.01%
2006 64.15%
2007 69.39%
2008 65.33%

2009 66.14%
2010 92.14%
2011 99.89%

As to the Main Campus and the North Tower, CF submitted exhibits which outline each property and the portions that should be non-exempt. These are based on square footage data from TR 305. Based on the uncontradicted testimony, the exempt percentages are as follows:

	'05	'06	'07	'08	'09	'10	'11
North Tower .	98.73	99.69	99.86	99.3	99.3	99.82	100
Main Campus.	62.30	62.27	61.85	61.97	62.47	90.99	99.68

PREJUDGMENT INTEREST

The next issue to address on the exemption counts is that of prejudgment interest. CF claims that they are entitled to prejudgment interest under 735 ILCS 200/23–20 which reads, in part:

> "If the final order of... a court results in a refund to the taxpayer, refunds shall be made by the collector from funds remaining in the protest fund until such funds are exhausted and thereafter from the next funds collected after entry of the final order until full payment of the refund and interest thereon has been made. Interest from the date of payment...or from the date payment is due, whichever is later, to the date of refund shall also be paid to the taxpayer at the annual rate of the lesser of i) 5% or ii) the percentage increase in the Consumer Price Index for all Urban Consumers during the 12-month calendar year preceding the levy year for which the refund was made, as published by the Federal Bureau of Labor Statistics.

County and Township Defendants argue that CF is not entitled to prejudgment interest under this provision for several reasons. County Defendants argue that prejudgment interest is in derogation of the common law, and as such is generally recoverable only where allowed by agreement of the parties or by statute. First National Bank of LaGrange v. Lowrey, 375 Ill. App. 3d 181 (1st Dist. 2007). They claim that there is no agreement to pay prejudgment interest and that Section 23-20 is inapplicable. Defendants argue the plain language of the statute shows that

Section 23-20 only applies to tax objection matters where paid taxes are placed into a protest fund. Defendants do not cite caselaw to support their argument but rely on the fact that the title of Article 23 is "Procedures and Adjudications for Tax Objections." However, CF's cause of action is also under Article 23, Section 23-25(e). Further, as cited by County Defendants themselves in a footnote, the legislature provided that "language in titles, articles, etc. are not to be used in construing the meaning of substantive provisions of the Property Tax Code." *See* 35 ILCS 200/32-15(c).

The statute must be given its plain meaning and considered in light of all statutory provisions. The primary objective in construing a statute is to "ascertain and give effect to the intent of the legislature." Alvarez v. Pappas, 229 Ill.2d 217 (2008). Despite the heading, Section 23-20 clearly applies to tax objection cases only. When a taxpayer pays taxes under protest, a protest fund is set up. This provision states that if the court orders a refund, it is paid out of the protest fund. In this case, although Mr. Koch paid under protest, he could not produce any letter to that effect. He was not even sure he did so in each year from 2004-2011. Dr. Leonard wrote several letters to the BOR including TR 3013/3016, in September 2004. In the letters, he stated that, as owners, they elected not to file a "real estate assessment complaint" because they accept the Assessor's value. However, he stated that the properties had been exempt, all proper certificates had been filed and that the Cunningham Township Assessor lacked the authority to assess the properties for 2004. He ended by stating that CF did not waive its rights to take action to re-establish the tax exempt status. He never used the word "protest" nor did he request a fund to be set up.

The Court also notes that the legislature is presumed to know the law. Further, it has been the law for 150 year that it is not the role of the courts to "attempt to reform legislation, and to correct the supposed mistakes of the legislature." *See* Dutcher v. Crowell, 10 Ill. 445 (1849). The General Assembly could easily have amended the Property Tax Code to allow for prejudgment interest in the context of an injunction. They could also have added it in Section 15-86 as it applies to hospitals in particular. They chose not to do so. The only provisions are for refunds for tax objections and for certificates of error (pursuant to Section 20-178). The Court finds that prejudgment interest under Section 23-20 is not applicable in this case.

The most powerful argument for CF is fundamental fairness and equity. This can be seen by comparing two scenarios. The first is a tax objection case where a property was assessed in the prior year, for example, at $100,000 and in the next year at $200,000. The taxpayer can pay the increase in taxes, filed a tax objection and the money would be placed in a protest fund for which they may be granted prejudgment interest under Section 23-20. The second, like in the present case, is a property that was tax exempt in the prior year and is assessed a value the next year at $200,000. In this scenario, there is no tax objection, no protest fund and no prejudgment interest. What qualitative difference is there in these two scenarios? The Court finds none. Nonetheless, this should be addressed by legislation. This Court cannot create new rules.

An exception can be made in equity but Evangelical can be distinguished from the present case. The most glaring difference is that, in Evangelical, the taxpayer paid the taxes under protest and the money was held, and could accrue interest. That differs from the present case where the money was not officially made under protest and the money was not held for safekeeping to earn interest. Other appellate cases support this view. In Lakefront Realty Corp. v.

Lorenz, 19 Ill.2d 415 (1960), the Illinois Supreme Court rejected a claim for interest where there was no statutory authority and where, once the Treasurer disburses tax money, there is no source of funds from which to generate interest. In Shell Oil Co v. Department of Revenue, 95 Ill.2d 541 (1983), the same court held that a taxpayer is entitled to interest on "the income earned from money it was determined it had no legal duty to pay as taxes." This was decided under former law and taxes were paid under protest. In City of Springfield v. Allphin, 82 Ill.2d 571 (1980), the same court recognized the allowance of interest to be discretionary in chancery proceedings. In that matter, they held that a trial court could not enter a money judgment against the State. The Director of Revenue was required to collect funds and distribute them to the Treasurer. He was not authorized to invest the money. In Village of Pawnee v. Johnson, 103 Ill.2d 411 (1984), there was no longer an identifiable source from which interest could be reimbursed. Any recovery would be derived from the general revenue fund of the State and any such judgment against the State are impermissible. That party could not recover past sums of interest which had already been placed by the Treasurer in the general revenue fund.

Of all the issues in this case, this may perhaps be the closest call for the Court. The Court finds that Section 23-25 does not apply. But does equity? If not, there would be no adequate remedy for a taxpayer when his/her situation in an injunction matter is not qualitatively different from a tax objection case. In the present case, it appears that the taxes that CF paid were given to the Champaign County Treasurer. As Defendant's note, the duty of the Treasurer is to disburse the funds to taxing bodies. Unless there is a protest funds established, the Treasurer cannot hold on to taxpayer's money. Based on the holdings of the foregoing cases and the facts of this case, the Court is compelled to find that CF cannot recover prejudgment interest even under the principle of equity.

BREACH OF AGREEMENT:

In Count 35, CF claims that Defendants City of Urbana and Cunningham Township violated an Agreement from March 8, 2002. That Agreement was between CF and the City of Urbana, the Urbana Park District, Cunningham Township and the Urbana School District. At the time, one of CF's properties, located at 810 W. Anthony Dr, Urbana, was granted a property tax exemption by the DOR. Defendants intervened in an administrative review action to contest this exemption. The taxing body Defendants agreed to compromise and settle their differences by entering into a written Agreement. CF agreed to pay $100,000 to the taxing bodies over five years as well as make community service endowment grants, totaling $675,000, in furtherance of the CF's tax exempt purpose: $50,000 to the Urbana Free Library children's programs, $450,000 to the Urbana School District and $175,000 to the Urbana Park District. CF further alleges that in consideration for these payments the taxing bodies agreed to not challenge either directly or indirectly, publicly or privately, and through any form of cause of action of any kind, the tax exempt or charitable status of CF property owned at the time of the Agreement. The length of the Agreement was until 2017. CF alleges that the four parcels in question were owned by CF at the time the agreement. CF alleges that the Cunningham Township Assessor lacked the authority to assess these four parcels; they argue that the Assessor is an agent of the Township because she is an elected officer of the Township, the Township exercises fiscal control over the Assessor, the Township's budget contains three divisions including for the Assessor, the Assessor and Township share office space, and the Township can fill the vacancy of the Assessor and set the salary for the Assessor. CF claims that the City of Urbana and Cunningham Township are liable for the actions of Township Assessor. CF further argues that the City of Urbana and Township violated the Agreement for participating in the current litigation between CF and the local taxing

bodies. CF alleges that they performed all of its financial obligations under the 2002 Settlement Agreement.

Cunningham Township and Urbana Defendants argue that the Agreement is invalid because one legal entity could not bind future entity for years to come. They further argue that, even if it were a valid agreement, it lasted a shorter period of time because it was a PILOT agreement (payment in lieu of taxes) which can only last 5 years. Finally, they argue that the Township Assessor was not the agent of the Township and therefore the Township and City of Urbana cannot be responsible for her actions.

The first step in the analysis is to determine whether the Agreement was a binding and valid contract. An agreement/ contract is a promise between two or more competent parties, supported by legal consideration, to do or not do a particular act. Steinberg v. Chicago Medical School, 69 Ill.2d 320 (1977). Therefore the requirements of a valid contract are offer and acceptance, consideration, and competent parties. Consideration is the promise or performance bargain for or given in exchange for the promise. Libertyville Township v. Woodbury, 121 Ill.App.3d 587 (2d Dist.1984). The burden of proving the existence of a contract rests on the party who seeks enforcement of the contract. C. Iber & Sons, Inc. v. Grimmett, 108 Ill.App.2d 443 (3d Dist.1969). If there is no dispute as to the language used by the parties or the facts essential to the purported contract, the issue of the existence of a contract is a question of law to be decided by the court. Bank of Benton v. Cogdill, 118 Ill.App.3d 280 (5th Dist.1983);

In the present case, CF has met its burden to establish that a valid contract existed at the time that it was created. There was a controversy at issue (tax exemption for a particular property) and extensive negotiations between the parties, including the City of Urbana and

Cunningham Township. The CEO of CF as well as the Mayor of Urbana signed the document. Both of these men had the power and authority to enter into such an Agreement. It outlined, in significant detail, what the purpose of it was for as well as the parties' obligations. The purpose, in simple terms, was to resolve a dispute over a property tax exemption for a particular property. The parties agreed that each would be required to perform, or not perform, certain acts. CF was required to make a total payment to taxing bodies of $775,000.

> "In consideration of the payments agreed to be made...the Taxing Bodies, their legal representatives, successors and assigns agree to...withdraw their challenge [to the property in question and]...agree that, throughout the entire term of this agreement, they will not challenge, either directly or indirectly, publicly or privately, and through any form of cause of action of any kind available, ...the tax exempt or charitable status of Carle and/or Carle Foundation Hospital and the tax exempt status of the Property or any other property currently owned and/or occupied by Carle on the date of execution of this Agreement.."

The Agreement went on to state that "The taxing bodies do not waive actions regarding the valuation, as opposed to tax exempt status, of any Carle properties." It is clear to this Court that there were negotiations which resulted in offers and acceptances. It is clear that the signatories had the legal authority to enter into the Agreement on behalf of the Taxing Bodies. Finally, both sides gave consideration, CF paid money and the Defendants agreed to not contest CF's applications for tax exemptions.

Cunningham Township and City of Urbana Defendants argue that their representatives could not bind future governing bodies beyond the terms of their office. They argue, for instance, that the Mayor of Urbana, a signatory for the City, was not authorized to bind future mayors over the subsequent 15 years. They cite several cases including Cannizzo v. Berwyn Township, 708 Community Mental Health Board, 318 Ill.App.3d 478 (1st Dist. 2000). Defendants admit that the cases cited generally deal with employment contracts and hold that

persons dealing with municipal corporations are charged with knowledge of the limitations and the power of that corporation. It may be correct that in personnel issues, binding future boards or commissions is improper. That makes rationale sense when viewing statutes that authorize the duties of an officeholder. For instance, mayors, township assessors, etc. are elected officials. They have the power to appoint suitable persons to assist in the operation of the office. *See* 60 ILCS 1/77-5; 65 ILCS 5/4-5-2. An officeholder should be allowed, and is allowed, to hire their own staff. Therefore, one officeholder should not be allowed to enter into employment contracts that exceed the period of their time in office.

This rationale does not apply to other agreements and contracts. In fact, Illinois statutes and the Illinois Constitution allow such entities to enter into lengthy contracts that would exceed any period of time that officeholders may be in office. Article 10, Section 10 of the Illinois Constitution states that "units of local government may contract among themselves, with the State, persons and corporations to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or ordinance." An example of such a lengthy contract is a city contract for water services. 65 ILCS 5/11-124-1(a) allows a city to contract with service providers for a period not to exceed 40 years. Also, case law specifically allows contracts to stand even though they bind future decision-makers. Going back 140 years, the Illinois Supreme Court said, in East St. Louis v. East St. Louis Gas, Light and Coke Co., 98 Ill.415 (1881), a 30-year contract between the city and electric company was not void because it bound future city councils. *See also* Ryan v. Warren Township High School Dist., 155 Ill.App.3d 203 (2nd Dist. 1987). Therefore, Cunningham Township and the City of Urbana Defendants have provided no lawful authority for their position that their representatives cannot enter into long-term contracts such as the Agreement in question.

The Court must next determine the length of the contract because that will dictate the time frame for potential violations by Defendants. CF argues that the Agreement lasts from 2002 until 2017. Section 2 of the Agreement states that it would end either a) March 7, 2017 if there has been no merger before then with Carle clinic or b) on the last date of CF's payments pursuant to Section 3, paragraph 3, should CF merge with the Clinic prior to March 8, 2017. Section 3 states that, if CF buys or merges with the Clinic between March 8, 2002 and March 7, 2017, and said purchase or merger "results in real estate occupied by Carle Clinic Association prior to said purchase or merger becomes tax exempt, then Carle agrees to pay a community service endowment specifically related to those parcels of real estate to the Taxing Bodies." The Section outlined how that amount would be calculated and paid over 5 years. It is uncontradicted that CF merged/bought the Clinic in 2010.

The issue for the Court is whether or not real estate occupied by the Clinic then became tax exempt. That is the requirement that would trigger the extra payment and potentially shorten the length of the Agreement. The fact is that Clinic was leasing space from CF from 2002 (date of Agreement) until the acquisition in 2010. During that time, CF was not allowed a property tax exemption for those leased spaces. The purpose of this Section in the Agreement was to allow the taxing bodies to be able to obtain money, in lieu of taxes, for the former taxable real estate that would no longer arguably be taxed when acquired by CF. The fact is, though, that the Defendants rejected CF's claim for a tax exemption from 2004-2011. That is the basis of the current litigation. CF was assessed and paid taxes for the properties in question. They have not been tax-exempt after the acquisition. Therefore, CF's argument is that the Agreement is effective from March 8, 2002 until March 7, 2017.

Urbana and Cunningham Township argue that, if the 2002 Agreement is valid, it should be limited to 5 years in duration. They base this on a statutory provision in the Property Tax Code, referred to as PILOT (payments in lieu of taxes). 35 ILCS 200/15-30 specifically requires the duration of any PILOT Agreement to last no more than 5 years. There is scant case law on such agreements. Both parties make sound arguments and this is a close call for the Court. On the one hand, CF claims that the Agreement does not state that it is a PILOT agreement and was simply a resolution of a dispute. Defendants argue that CF made large payments, in lieu of taxes, to taxing bodies in order to resolve a property tax issue. The Court agrees with Defendant's arguments. There is nothing in the statute that requires a PILOT agreement to be named as such in the Agreement. The Court must look at the facts and circumstances under which the contract was made. There was a property tax dispute. The Agreement was to resolve the dispute. Payments were made to the taxing districts directly and in terms of what were called "community grants." Ironically, payments were to be made in installments within 5 years which is consistent with the PILOT statute. In the Court's view, these payments were in lieu of taxes.

But there is also compelling other evidence – CF's admission. This was not raised by Defendants but the Court took judicial notice of the contents of the court file. The Count in question is Count 35 of the Fourth Amended Complaint. This Count did not exist when the case began in 2007 in Cook County in 2007 or when it was moved to Champaign County in late 2008. In its First Amended Complaint, though, CF added two counts dealing with the Agreement. Count 26 raised breach of contract. It is similar to the current Count 35. Count 27 alleged the same facts but the legal theory was "unjust enrichment." In Count 27, CF stated:

> "..if the Foundation were determined not to be entitled to a charitable exemption for any of the Fourth Parcels for any tax assessment years, then the Local taxing Bodies would be

> unjustly enriched by receiving both sums paid by the Foundation pursuant to the Agreement – *which sums were intended to be in lieu of the payment of property tax* that would be paid by the Foundation if it did not possess charitable exemptions – and the Local Taxing Bodies' share of the additional property taxes paid by the Foundation due to it loss of any such exemptions." (emphasis added).

The contents of a verified complaint constitutes a binding judicial admission. Ringgold Capital IV, LLC v. Finley, 2013 IL App (1st) 121702. *See also* Konstant Products, Inc. v. Liberty Mutual Fire Insurance Co., 401 Ill. App. 3d 83 (2010). Such statements are binding judicial admissions that cannot later be contradicted. *See* Crittenden v. Cook County Comm'n on Human Rights, 2012 IL App (1st) 112437. Judicial admissions are deliberate, clear, and unequivocal statements. *See* North Shore Community Bank & Trust Co. v. Sheffield Wellington LLC, 2014 IL App (1st) 123784. A sworn statement of fact in a verified pleading remains binding on a party even after an amendment, and the party cannot subsequently contradict the factual allegation. L.D.S., LLC v. Southern Cross Food, Ltd., 2011 IL App (1st) 102379. When the Court reviews the circumstances under which the Agreement was made, the terms of the Agreement as well as CF's admission, this Court finds that the 2002 Agreement was an agreement to make payments in lieu of taxes. Under Section 15-30, the length of the Agreement cannot exceed 5 years. Therefore, the time frame that was binding on the Defendants was from 2002 to 2007.

These Defendants allege that CF decided to add the "contract claim" essentially to put salt in the wound and to increased litigation. The Court does not know the motivations of CF but the procedural history shows that the filing of this Count was appropriate. When CF brought the suit in 2007, Defendants City of Urbana and Cunningham Township were not parties. The Cunningham Township Assessor was named and was represented by attorney Grosser (who later entered his appearance for Cunningham Township and the City of Urbana). The initial

Defendants, including Grosser for the Assessor, actively participated in the litigation, contesting CF's right to obtain exemptions. After two years of contesting CF's efforts, CF elected to file the contract claim in its First Amended Complaint. That was understandable. It was at that time that Cunningham Township and the City of Urbana were named as Defendants. The Court agrees with them that they have the right to defend themselves on this particular count. The real issue, though, is what action did Cunningham Township and City of Urbana take during the period of the Agreement that shows they contested CF's efforts to obtain exemptions.

The first argument that CF makes is that the Cunningham Township Assessor violated the Agreement by assessing the four parcels in 2004; the Assessor was an agent of the Township. This Court is not going to discuss this at length because it already determined the issue when deciding the issue of summary judgment on Count 1. In essence, this Court has previously found that the Cunningham Township Assessor did, in fact, have the authority to assess the four parcels and that the Assessor is not an agent of Cunningham Township. There was uncontradicted testimony that the Assessor assessed the parcels of her own choice. She was not asked or directed to do so and she did not need permission to do so. The assessments were what started the present litigation. Neither the City of Urbana nor Cunningham Township had anything to do with the assessments. The Assessor was neither a party to nor a signatory of the 2002 Agreement. Therefore, the Assessor's actions cannot be imputed to that of the Defendants. CF's arguments such that being paid or housed in the same building make the Assessor an "employee" or "agent" of the Township has not been upheld. *See* Harris v. Eckersall, 331 Ill.App.3d 930 (1st Dist. 2002). It is correct that the Township pays the Assessor's salary and provides a workplace but that does not mean that they are in an agency relationship. Proof of actual agency requires a) such a relationship existed, b) the principal controlled, or had the right to control, the conduct

of the agent and c) the alleged conduct of the agent fell within the scope of the agency. *See* Bogenberger v. Pi Kappa Alpha Corp.., 2018 IL 120951. After reviewing all the evidence, this Court does not find that an Agency relationship existed between the Cunningham Township Assessor and Cunningham Township. This is the same ruling that Judge Leonard made in October 2011 (Assessor is not an employee of the township. Instead, she is an elected official. As such, a township assessor is no more an employee of a township than is a sheriff or a state's attorney as employees of the county in which they are elected. *See* Moy v. Cook County, 159 Ill.2d 519 (1994) and National Casualty Co. v. McFatridge, 604 F.3d 335 (7th Circ. 2010)). For all the forgoing reasons, the Court rejects CF's argument that Cunningham Township and the City of Urbana Defendants are liable for the actions of the Township Assessor.

The second argument CF makes is that, after the current litigation began in 2007 in Cook County, Cunningham Township and City of Urbana "insinuated themselves into the litigation" by filing pleadings and participating in pretrial matters and trial. The Agreement was broad, requiring the signatories to not "challenge either directly or indirectly…the tax exempt of charitable status" of the four parcels. It allows Defendants to challenge the valuation, "as opposed to tax-exempt status," of any Carle properties. The current litigation is about tax exemption and not valuation. CF stresses that the only count against Cunningham Township and the City of Urbana is Count 35. They were not named in Counts 1-34 and therefore were not required to participate in those adjudications. Nonetheless, they did participate voluntarily by expressly challenging the CF's entitlement to exemptions. As noted by CF, said Defendants devoted 28 pages of their Post-Trial Brief to Counts 3-34.

It is undisputed that Cunningham Township and City of Urbana Defendants have been participating in the current litigation. They have filed dozens of motions, petitions, objections, etc. They have participated in numerous acts of discovery including depositions. They have been active in the trial. They have also clearly contested CF's right to exemptions in this matter, arguing far beyond Count 35. But this is irrelevant because these actions took place after the period that the Agreement was in effect. As stated before, this Agreement was in effect from 2002 until 2007. What evidence has been introduced that Cunningham Township and City of Urbana challenged CF's attempt to obtain exemptions for the four parcels during that time? There is none. The conflict began in 2004 when the Township Assessor assessed the parcels. The Treasurer then issued tax bills. CF took an administrative review with the DOR. Eventually, the case was filed in Cook County in 2007. No contract count existed in the original complaint.

For the forgoing reasons, this Court finds that CF has failed to meet its burden of establishing that Cunningham Township or the City of Urbana violated the 2002 Agreement.

ATTORNEY FEES:

CF is seeking attorney fees, not against Cunningham Township and City of Urbana but against County and State Defendants. *See* CF Reply Brief, p. 76. They claim that, but for Assessor's breach of the 2002 Agreement and assessing of the four parcels in 2004, CF would not have been forced to litigate Counts 1-34. It may well be true that without the Assessor's actions in 2004, there may never have been a lawsuit filed. However, this Court has determined that the Township Assessor had the right to assess the four parcels and that the Assessor was not the agent of the County or State Defendants (or any Defendant for that matter). Further, the award of attorney fees is generally a matter of statute. If a statute permits attorney fees, then it can or must be assessed. *See* 750 ILCS 5/501 and 508 (dissolution of marriage). The Illinois

Property Tax statute does not have a provision for attorney fees. In the present matter, CF likely has spent far more on attorney fees than the Defendants, although the Court does not know that for a fact. This is because Mr. Buysse (DOR) and Mr. Fletcher (County) all work for governmental entities and are likely paid a salary for their work on this case. The status of Mr. Grosser (for the City of Urbana and Cunningham Township) is unknown. Because there is no statutory authority for the granting of attorney fees, CF's request is denied.

COSTS:

CF argues that it is entitled to costs of this litigation pursuant to 735 ILCS 5/5-108 which reads:

> "If any person sues in any court of this state in any action for damages personal to the plaintiff, and recovers in such action, then judgment shall be entered in favor of the plaintiff to recover costs against the defendant, to be taxed, and the same shall be recovered and enforced as other judgments for the payment of money…".

No party discusses this at length; CF argues that the award of costs is mandatory. Vicencio v. Lincoln-Way Builders, Inc, 204 Ill.2d 295 (2003); Boehm v. Ramey, 329 Ill.App.3d 357 (4th Dist. 2002). County Defendants argue that costs are usually awarded when there is a claim of bad faith by the non-moving party. Hopedale Medical Center v. Tazewell Collector, 59 Ill.App.3d 816 (3RD Dist. 1978). They argue that, although this has been lengthy litigation, there is no claim of bad faith where CF's cause of action had never been raised in Illinois before. County Defendants claims that CF protracted the litigation, in part, by appealing a non-final order in Carle II. However, they neglect to note that this was an agreement of the some of the parties. The Court also notes that Defendants have raised multiple issues multiple time throughout the proceedings. E.g. applicability of Section 15-86, etc. When all the facts and circumstances are considered, this Court finds that an award of costs is appropriate and grants CF's request.

Defendants are to be jointly and severally liable to pay CF costs which entail filing fees, statutory witness fees, subpoena fees and other such appropriate fees.

FINAL THOUGHTS

The four parcels at issue are within the borders of Cunningham Township, the City of Urbana and Champaign County. The brick and mortar building on the four parcels, as well as buildings on other CF properties, are within those same boundaries. It is unlikely that CF can pick up and move such a large enterprise to a new location. The Hospital and its affiliates have been there for decades and will likely remain there for decades. Leaders within CF and the governing bodies change over time. Sometimes personalities are such that everyone can work together. Other times they are such that they cannot. Defendants Urbana School and Park Districts settled with CF years ago. The Court makes no comment on whether that particular settlement was appropriate or not. But they worked it out. They realized that they need to have a working and ongoing relationship. This Court was unable to obtain a settlement among the remaining parties. This Court's Opinion was not affected, in any way, by facts that it heard about negotiations. Those were admitted for limited purposes. But it is clear to this Court that the parties, and their leaders, are either unable or unwilling to make peace. They must recognize that they are in a symbiotic relationship. What one entity does affects the other. They need to be aware of that. As with personal relationships, the leaders do not have to be best friends, but they need to be cordial with each other. They must work together. If they do not, the Court suspects there will be continuing litigation year after year after year. This has taken a huge financial toll on the parties and local taxpayers. But it has also taken a toll on everyone in terms of the time

and energy taken in litigation, essentially since 2004. The parties need to put aside past differences and think about how to create a mutually- beneficial future.

ORDER

This matter comes before the Court following a trial on the merits, post-trial briefing, and argument. IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. With respect to Count 1 of the Fourth Amended Complaint in accordance with the Order entered by this Court on December 4, 2018, Judgment is entered in favor of Defendants: Champaign County Board of Review and its members, Champaign County Supervisor of Assessments, Champaign County Treasurer, and Champaign County (collectively "County Defendants") and Defendant Cunningham Township Assessor, and against Plaintiff the Carle Foundation ("Foundation"), dismissing with prejudice the claim asserted in Count 1.
2. With respect to Count 2 of the Fourth Amended Complaint, pursuant to the decision of the Illinois Supreme Court in this case, Carle Foundation v. Cunningham Township, 2017 IL 120427, Judgment is entered in favor of Defendants Illinois Department of Revenue ("DOR") and Brian Hamer, in his official capacity as the Director of the DOR (collectively "State Defendants") and the County Defendants, and against the Foundation, dismissing with prejudice to claim asserted in Count 2.
3. With respect to Counts 3-10 of the Fourth Amended Complaint, Judgment is entered in favor of the Foundation and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 LCS 200/23-25(e), that the Foundation is entitled to exemptions for the Hospital's Main Campus parcel (PIN 91-21-08-310–001) for tax assessment years 2005 through 2011 pursuant to 35 ILCS 200/15-86 in accordance with the following exempt percentages:

   A. 2005 tax assessment year 62.30%
   B. 2006 tax assessment year 62.27%

C. 2007 tax assessment year 61.85%
D. 2008 tax assessment year 61.97%
E. 2009 tax assessment year 62.74%
F. 2010 tax assessment year 90.99%
G. 2011 tax assessment year 99.68%

4. With respect to Counts 11-18 of the Fourth Amended Complaint, Judgment is entered in favor of the Foundation and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 LCS 200/23-25(e), that the Foundation is entitled to exemptions for the Power Plant parcel (PIN 91-21-08–307–004 through 006) for tax assessment years 2005 through 2011 pursuant to 35 ILCS 200/15-86, in accordance with the following exemption percentages:

A. 2005 tax assessment year 64.01%
B. 2006 tax assessment year 64.15%
C. 2007 tax assessment year 69.39%
D. 2008 tax assessment year 65.33%
E. 2009 tax assessment year 66.14%
F. 2010 tax assessment year 92.14%
G. 2011 tax assessment year 99.89%

5. With respect to Counts 19-26 of the Fourth Amended Complaint, Judgment is entered in favor of the Foundation and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 LCS 200/23-25(e), that the Foundation is entitled to exemptions for the North Tower parcel (PIN 91-21-08-309-001 through 009) for tax assessment years 2005-2011 pursuant to 35 ILCS 200/15-86, in accordance with the following exemption percentages:

A. 2005 tax assessment year 98.73%
B. 2006 tax assessment year 99.69%
C. 2007 tax assessment year 99.86%

D. 2008 tax assessment year 99.30%
E. 2009 tax assessment year 99.30%
F. 2010 tax assessment year 99.82%
G. 2011 tax assessment year 100%

6. With respect to Counts 27-34 of the Fourth Amended Complaint, Judgment is entered in favor of the Foundation and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 LCS 200/23-25(e), that the Foundation is entitled to exemptions for the Caring Place parcel (PIN-91-21-08–304-018) for tax assessment years 2005-2011 pursuant to 35 ILCS 200/15-86, in accordance with the following exemption percentages:

A. 2005 tax assessment year 38.31%
B. 2006 tax assessment year 48. 41%
C. 2007 tax assessment year 50. 39%
D. 2008 tax assessment year 49.21%
E. 2009 tax assessment year 52. 29%
F. 2010 tax assessment year 64.83 %
G. 2011 tax assessment year 66.22%

7. With respect to Counts 3-34, Defendant Champaign County Treasurer is ordered to issue a refund to the Foundation in the sum of $6,240,491.53.
8. Said refund shall be assessed on a pro rata basis against all relevant taxing districts, with the exception of the Urbana School District #116 and the Urbana Park District (collectively called the Settling Parties).
9. The Court denies Plaintiff's request for prejudgment interest on Counts 3-34.

10. As to Count 35, the Court finds that Plaintiff has failed to prove that Defendants City of Urbana and Cunningham Township breached their 2002 Agreement. Count 35 is dismissed.

11. The parties are to pay their own attorney fees.

12. Costs are awarded to the Plaintiff and against all Defendants, joint and severally.

13. Any post-trial motion must be on file on or before March 31, 2020. Any court date will be set by this Court after consultation with the Parties.

14. Champaign County 13-CH-170 will be set for status on the date, to be determined, for any post-trial motion hearing in this matter.

2/5/2020

Date

R Lee B Rosenbaum

Circuit Judge Randall Rosenbaum