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

THE CARLE FOUNDATION,	)	
Plaintiff	)	
v.	)	**No. 2008-L-202**
ILLINOIS DEPARTMENT OF REVENUE, et al.,	)	
Defendants.	)	

COUNTY DEFENDANTS' POST-TRIAL BRIEF

TABLE OF CONTENTS

Introduction

Plaintiff's sweeping exemption claims are both legally and factually defective. Part One of this brief addresses the historical backdrop of this case. It addresses both the history of the constitutional standard at issue and the constantly evolving industry in which it is to be applied here. Part One also addresses the history of intertwined relationships between Plaintiff and Carle Clinic Association (CCA), the for-profit physician practice that shared space with Plaintiff throughout much of the period at issue int his case. Part Two examines the constitutional standard of exclusive charitable use. Specifically, it examines the charitable activities of Plaintiff in relation to the total use of the specific parcels at issue in this case. After refuting several of the alternate standards Plaintiff has put forward, it demonstrates Plaintiff has not met this constitutional standard. Part Three addresses Plaintiff's failure to demonstrate it is entitled to exemption under the statutory standards of Section 15-86. This Part renews the argument that this Section is not applicable to this case. Assuming Section 15-86 applies, Plaintiff has failed to put forth an adequate record that it has met the statutory offset in Section 15-86(c) in any given year. Part Four addresses the constitutional and statutory defects in Plaintiff's claims to partial exemptions. Finally, Part Five addresses several issues that may arise in framing relief should this Court rule in Plaintiff's favor.

Part One: Background

I. A historical perspective

"The language we use in the State of Illinois to determine whether real property is used for a charitable purpose has its genesis in our 1870 Constitution. It is obvious that such language may be difficult to apply to the modern face of our nation's health care delivery systems." 35 ILCS 200/15-86(a)(2), quoting, Provena Covenant Med. Ctr. v. Dept. of Rev., 384 Ill. App. 734, 769 (2008).

A. The Illinois Constitution

This case centers on the constitutional requirement that property granted a charitable property tax exemption be exclusively used for a charitable purpose. See Ill. Const. 1970, Art. IX, Sec. 6. This clause is rooted in the 1870 Illinois Constitution, which was enacted as part of a movement of state constitutional conventions after the Civil War. One legal historian described this movement as follows:

> "The constitutions of the 1870s, in particular, stressed the idea of cutting down on the power of the legislature. The third Illinois Constitution, adopted in 1870, revamped the judiciary, increased the power of the governor, and put greater controls over legislative power. The constitution outlawed many kinds of 'local or special laws'***
>
> What was the point of these restrictions? Basically, it was fear of gross economic power, so gross it could buy and sell an upper and lower house." L. Friedman, A History of American Law (3d Ed. 2005), p. 262.

This concern about special interests benefiting from state legislation extended, specifically, to property tax exemptions. The whole point of this provision was to check the power of the legislature.

This remains true today. Interpretations of the 1870 constitution are still binding on this Court. See Small v. Pangle, 60 Ill.2d 510 (1975). When the 1970 constitution was passed, many of the state constitutional checks on special interest legislation were eliminated, returning primary control over these issues to the political process. The framers of the 1970 constitution specifically chose not to change course with respect to property tax exemptions:

> "The Committee [on Revenue and Finance] was urged by representatives of several organizations to broaden the exemption or to make it self-executing so as to insure that the property of these organizations would be exempt. The Committee does not deny that most of these organizations are deserving, but it is also aware of the danger of further erosion of the property tax base. While the Committee was not able to determine the value of the property already exempt from taxation, the testimony indicated that it is considerable. Any attempt to include additional property within the charitable, educational and religious exemption provisions could result in further erosions in the tax base which would result in still higher property tax rates upon non-exempt property." Vol. VII, Record of Proceedings, Sixth Constitutional Convention, at 2157 (hereinafter cited as "1970 Proceedings") (Report of Committee on Revenue and Finance)

In debates, one delegate made this point more succinctly:

> "To grant an exemption is, in effect, to grant a subsidy to some group – a special interest group or some group of taxpayers –which is, in effect, paid for by the other taxpayers." Vol. V, Record of Proceedings, Sixth Constitutional Convention, at 3845 " (statements of Delegate Karns on August 9, 1970, p. 3845).

In the words of Delegate Karns, "Illinois has a record of being perhaps the most restrictive state in the union as far as granting exemptions from the real property tax, and the [C]ommittee [on

Revenue and Finance] thinks that's good. " Vol. V, Record of Proceedings, Sixth Constitutional Convention, at 3845

Delegate Karns elaborated:

> "They are not mandatory exemptions ***; they are permissive. But I think, in our committee we were told many times, even by those that proposed the broader, wide-open revenue article, that in this area they would recommend a restrictive provision, because if you allow a broad range of exemptions which the legislature may grant, I think it is obvious that under the force of pressure from time, and over the period of time, that they well might succumb to the temptation to grant unwise exemptions.
>
> In this area we feel, I think –and I think I speak for the committee—that restrictiveness is a virtue." Vol. V, Proceedings, at 3845.

The Committee of Revenue and Finance specifically reaffirmed that this clause would "still serve as a limit on the General Assembly's power to exempt property on the basis of property use and ownership". VI Proceedings at 2152 (Report of Committee of Revenue and Finance, Proposal No. 2).

It is easy to see why the 1970 Constitution reaffirmed this limit on the legislature. Property taxes support local government, not state government. Because the state legislature never sees the bill for property tax exemptions during the state budget process, those with concentrated political power can obtain unwise exemptions at the expense of a diffuse majority. Exemptions are provided through an obscure process before the Department and the Board of Review, and only affect other taxpayers indirectly in calculation of the tax rate. Accordingly, they provide an ideal method of subsidizing special interest groups while hiding the true cost to other taxpayers. Hilbert, *Illinois Property Tax Exemptions: A Call for Reform*, 25 DePaul Law Rev. 585, 586 (1976) (Hilbert, *Call for Reform*).

Because the whole point of this provision is to limit the legislature, the Courts have a primary role in defining the constitutional standard of exclusive charitable use. The Convention's Committee of Revenue and Finance stated that this clause would "still serve as a limit on the General Assembly's power to exempt property on the basis of property use and ownership". VI Record of Proceedings of Sixth Illinois Constitutional Convention (Proceedings) at 2152 (Report of Committee of Revenue and Finance, Proposal No. 2). When asked specifically to define "charitable", as used in the proposed 1970 constitution, Delegate Durr responded, "I would want to see what the courts say. It's up to them to determine – to define it ***". III Proceedings at 1918

(Comments of Delegate Durr on June 19, 1970). Delegate Karns stated the delegates were pleased with pre-existing judicial interpretations of the constitutional limit on charitable property tax exemptions, and did not want to change the constitution for that reason. V Proceedings at 3845 (Comments of Delegate Karns on August 9, 1970). Those pre-existing interpretations required the court to play an active role in limiting the legislature. See VI Proceedings at 2152 (summarizing precedent, noting "the Court has been very reluctant to validate purported exemptions") (Emphasis added).

Accordingly, the Illinois Supreme Court has long recognized the primary role of the Courts in this area. See Eden Retirement Ctr, Inc. v. Dept. of Revenue, 213 Ill.2d 273, 290 (2004) ("It is for the courts, and not for the legislature, to determine whether property in a particular case is used for a constitutionally specified purpose") (citations omitted); Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968), citing, People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). While statutory descriptions of exempt uses may be deemed descriptive or illustrative, this "in no way modifies the limitations imposed by our constitution". See Chicago Bar Ass'n v. Dept. of Rev., 163 Ill.2d 290, 299-300 (1994).

In comments in the course of this trial, this Court expressed sympathy for the views of the partial dissent in Provena Covenant Medical Center, 236 Ill.2d 368 (2010). Two justices critiqued the plurality for "setting a monetary or quantum standard [which is] a complex decision which should be left to our legislature, should it so choose". See Provena, 236 Ill.2d at 412, 925 NE.2d at 1157. The legislature cited this language in its findings for Section 15-86. See 35 ILCS 200/15-86(a)(2). Of course, the legislature—the very body to be checked by this constitutional provision -- cannot bootstrap authority to itself by citing language of a partial dissent: The opinion of two justices of the Supreme Court does not overrule the majority in Eden Retirement Center. In 2018, a unanimous Supreme Court interpreting Section 15-86 reaffirmed that where the legislature provides for exemption, it must remain within constitutional limitations, and the legislature cannot add to or broaden the exemptions specified in the constitution. Oswald v. Hamer, 2018 IL 122203, Par. 14 (2018).

B. Hospitals in general

The charitable property tax exemption for hospitals arose at a time when hospitals served a very different function in the delivery of health care than they do now; and the medical safety net for the poor was very different than it is now. While the Illinois Constitution has remained

constant on this point, health care today would be barely recognizable to the delegates of the constitution of 1970, much less 1870. "Few institutions have undergone as radical a metamorphosis as have hospitals in their modern history. Paul Starr, The Social Transformation of American Medicine (1982), p. 145.

> "The first American hospitals were established in the mid-eighteenth and early nineteenth centuries as charities for the diseased poor and the mentally ill. The helplessness of the diseased poor led to the creation of the first American hospital – the Pennsylvania Hospital. The hospital was 100 percent charitable – developed with donations from Pennsylvania's elite along with matching funds from the Pennsylvania Assembly – and had a staff of volunteer physicians. Those who could afford to do so sought the preferred method of care – treatment in comfort of their own homes. Physicians routinely made home visits to monitor patients and even performed invasive surgical procedures in a patient's kitchen. Very few physicians practiced medicine in a hospital because the hospital was not yet 'central to the practice of medicine'. In fact, care at a hospital was looked at with disdain as the hospital was considered a 'primitive institution treating [a] *** marginal constituency ****.' Beyond this hospitals were traditionally viewed as the place people went to die. Surgical mortality rates were actually higher in a hospital than they were if the surgery was performed at home. Thus, the hospital was considered a 'house of death'.
>
> As a result of technological advances and increasing concern for hygiene and sanitation, hospitals underwent somewhat of a facelift in the late nineteenth and early twentieth centuries. Self-paying patients began to populate hospitals at increasing rates. By 1903, self-paying patients accounted for more than seventy percent of the operating income for hospitals in over a dozen states and U.S. territories. With the rise of surgery, hospitals became attractive to the more affluent members of society, as hospitals were expensive and catered to the whims of paying patients. By 1920, the number of hospitals across the country had grown dramatically—totaling over six thousand. These hospitals had 'emerged as the center of advanced medical practice.' Even though they were originally viewed as 'institution[s] whose use stigmatized patients, the hospital had become an emblem of the community. In staunch contrast to their humble beginnings, hospitals had become models for sanitary and coordinated health care.
>
> As hospital-based medicine evolved into the preferred method of medical care, hospitals became 'peculiar hybrids economically.' They were still charities because private donations accounted for the vast majority of money that the hospitals used as capital for buildings and other investments. Beyond these capital expenditures, hospitals carried on their affairs much more like businesses. Having a greater number of paying patients would increase the income of the hospital and provide it with the resources it needed to expand and furnish paying patients with more advanced and medical facilities. With the goal of increasing its income,

> hospitals expanded to meet the demand it created with patients who could afford to pay for its services."

T. Coley, "Extreme Pricing of Hospital Care for the Uninsured: New Jersey's Response and the Likely Results", 34 Seton Hall Legis. J. 275, 279-81 (2010) (Internal citations omitted).

In short, comparing hospitals a century ago with hospitals today is like comparing a Model T to the Space Shuttle. "During the nineteenth century, hospitals had been conducted on a largely charitable basis mainly for the poor, but antiseptic surgery and other scientific advances had turned the hospital into a medical workshop for doctors treating patients from all classes." P. Starr, Remedy and Reaction: The Peculiar American Struggle Over Health Care Reform (Rev. 2013), p. 36.

This history matters. Given this dramatic and constant change in the hospital industry, there can be no presumption that practices that are standard for the non-profit hospital industry today are entitled to exemption simply because non-profit hospitals have, historically, been tax exempt. As hospital systems have grown exponentially in size and service area, the financial impact of the exemption on units of local government has grown proportionately. This is significant in evaluating what it means for property to be primarily used for a charitable purpose; and whether the focus of this analysis should be on an individual parcel or the hospital system as a whole.

II. Plaintiff's relationships with CCA

Plaintiff's corporate structure is incredibly complex. See TR-2004, p. 8 (Figure 2), TR-348, TR-2412; TR-2415. So much so that its executives had difficulty recalling which aspects were for- or not-for profit. Leonard (1/4/19) 173:21-174:6; Tonkinson (1/9/19) 142:18-143:2. This structure undermines Plaintiff's claim that its property was exclusively used for charitable purposes. Plaintiff's relationships with CCA relate to several issues in this case, as discussed below.

A. Relationship prior to the merger

Professor Hall noted that a tight integration between a hospital and a large multi-specialty group is seen in the case of integrated delivery systems around the country, such as the Mayo Clinic or the Cleveland Clinic. Hall (1/25/19) 102:15-20. There is inherent mutual benefit in the relationships between a hospital and its physicians. However, what Professor Hall found distinctive here was the magnitude of the benefit to the physicians here, and its concentration in

CCA, specifically. Hall (1/28/19 p.m.) 236:9-14. Professor Hall also found it unique that this integration occurred across the non-profit/for-profit divide. Hall (1/25/19) 114:14-19. Professor Hall was "not aware of another example of a well-integrated health care delivery system in the country that has a non-profit hospital-based structure on one side and a profit-based physician structure on the other side" Hall (1/25/19) 115:2-8. Although CCA was nominally independent of Plaintiff, in the words of Plaintiff's own financial reports, CCA's "operations and activities influence the operations and activities of [Plaintiff], HSIL, and its affiliates". TR-179, p. 35; Hall (1/25/19) 212:10-15.

1. History of the two organizations

Plaintiff was intertwined with CCA from its inception. Plaintiff's organization was inspired by the Mayo Clinic, based upon a letter referring to a site in Champaign as "an ideal location for a medical group to set up a clinic and hospital". Carle: Concept and Growth, J.C. Thomas Rogers (Carle Foundation, 1978) ("Concept and Growth"), p. 21; Leonard (1/3/19) 20: 4-13, 146:16-21. The author of the letter wrote "It sounds attractive to me to hear that a certain sanitarium is now being run by certain physicians from the Mayo Sanitarium". Concept and Growth, p. 22 (Emphasis added). Plaintiff was organized by physicians of CCA, who donated the buildings and property of the hospital. Leonard (1/3/19) 21:14-17, 22:14-21. There were increasing operational ties between Plaintiff and CCA between 1980 and 2010, starting with the introduction of Health Systems Insurance Limited (HSIL) in 1981, and a Level 1 Trauma and Heart Program in 1980. In the period from 2000 through 2010, there was a focus on partnership, including HMO risk sharing, CFH leasing CCA physician; coordination of strategic planning; specialty centers; and technology investment. TR-4000, p. 22; TR-2004, p. 22.

2. Commercial ties

Although CFH maintained an open medical staff, more than 90% of this staff had been physicians employed by CCA in the period from 2004 to 2011. Leonard (1/7/19) 15:19-16:6; Tonkinson (1/9/19) 89:24–90:6. As of April 2007, CCA physicians admitted over 80% of their patients to Plaintiff's hospital. TR-4084, p. 15; Billimack (1/31/19) 64:20-65:4. At some point in the period at issue here, CCA represented roughly 95% of admissions to CFH. Tonkinson (1/8/19) 37:1-12.

Plaintiff marketed itself to sophisticated bond-holders as physician-led. Hall (1/25/19) 218:8-219:22. Plaintiff stressed CCA as a source of admissions. TR-1132, p. 68; Tonkinson

(1/9/19) 126:23-127:10; TR-1132; Leonard (1/4/19) 180:15-181:21. In 2004 bond documents, Plaintiff described itself and CCA together as "the Carle Health System", a "vertically integrated provider of a broad spectrum of inpatient, outpatient and long-term healthcare services to a large and predominantly rural service area in east central Illinois and west central Indiana surrounding the cities of Champaign and Urbana, Illinois". TR-1132, p. 67. As Plaintiff told its bond-holders, CCA's operations and activities "greatly impact the operation and activities of" Plaintiff and its affiliates. TR-1132, p. 67 (2004); TR-1133, p. 6(2009).

3. Real estate arrangements

CCA's main office was on Plaintiff's hospital campus. TR-2112; Leonard (1/7/19) 14:1-10, 16-19. CCA had leased properties from Plaintiff since the properties were first donated, in 1946. CCA also leased other facilities owned by Plaintiff in the Champaign-Urbana area, and satellite facilities in outlying towns, resulting in a substantial investment by Plaintiff in such facilities. Leonard (1/7/19) 19:16-20:16. Plaintiff leased clinical office space to CCA in Urbana and at satellite clinic buildings in Rantoul, Mahomet, Monticello, Normal, Danville, Tuscola, Champaign, and Mattoon-Charleston, Illinois. TR-107, p. 26. Plaintiff and CCA had intertwined uses of space in the parcels at issue here, discussed in more detail in Part Four, below.

4. CCA's involvement in Plaintiff's management

a. Governing boards

CCA physicians sat on Plaintiff's board of trustees. Leonard (1/3/19) 147:21-24. In fact, prior to September 2007, five of 11 of Plaintiff's voting trustees were CCA physicians. Leonard (1/7/19) 19:1-15. As a condition of a 2008 closing agreement with the Internal Revenue Service (IRS), Plaintiff was required to change its cap on physicians as voting members of the board from 30% to 20%. Tonkinson (1/8/19) 96:10-20; Hesch (1/15/19) 130:11-14.

b. Medical directors

CCA physicians provided services as medical directors for Plaintiff throughout the period from 2004 to 2010. 1/7/19, Transcript (Leonard), p. 73:9-15. There is nothing inherently unusual or inappropriate, as an operating matter, in having physicians direct operations in hospital departments. However, the extent, breadth, and depth of this involvement, across the for-profit/not-for-profit divide is impossible to reconcile with the constitutional standard.

Medical directors received their salary from CCA, and if they were CCA associates, they were paid dividends on CCA shares, reflecting earnings on revenues by CCA doctors. Leonard (1/7/19) 77:1-14. Medical directors were intended to provide "medical leadership over certain

hospital areas". Hesch (1/15/19) 228:20-21. According to CCA's consolidated financial statements for December 31, 2008 and 2007, they would be responsible for "coordinating and directing the functions of various departments of CFH". TR-210, p. 200.

The directors worked in a "dyad" relationship, working in conjunction with a business person. Leonard (1/7/19) 77:19-78:8; TR-2071, p. 5. Snyder testified both the medical director and the non-physician administrator would be involved in "programmatic oversight" and planning. Snyder (1/23/19) 85:17-86:1. Dr. Leonard described this management structure as a co-equal relationship. Leonard (1/7/19) 78:21-22. In fact, medical directors could be called upon to assist in interviewing and selecting this administrative department manager or other staff members. TR-4066, p. 7, ¶ 8.

The medical director contracts included functions such as developing and implementing patient care protocols, and they could be called upon to direct Plaintiff's staff. TR-2781, § 3.3; Tonkinson (1/9/19) 213: 13-215:18. Tonkinson testified medical directors "provide[d] advice and quality review and other services in working with the administrative personnel who run those departments". Tonkinson (1/9/19) 210:1-5. Medical directors were expected to make decisions relating to patient care, and to give input on the administrative side about whether the resources were inadequate. Wellman (1/24/19) 58:8-10. This would include advising on decisions about the use of space. Wellman (1/24/19) 58:14-15; Tonkinson (1/9/19) 217:1-15; Snyder (1/23/19) 86:4-6. Medical directors would be involved with strategic planning for Plaintiff's departments and could be involved in setting operational goals. Tonkinson (1/9/19) 217:5-17; TR-4066, p. 8 ¶16. Medical directors were to "Assist in strategic and financial planning for future services provided by Department as well as the development and operating and capital budgets, new technologies, and equipment for the Department". TR-4066, p. 8 ¶16.

In 2008, Plaintiff agreed with the IRS to recharacterize these medical directors (CCA physicians) as Plaintiff's own employees. TR-2497, p. 11 ¶14; Tonkinson (1/8/19) 95:8-14. However, Dr. Leonard did not recall any significant change in the operating relationships with them at that time, and it did not meaningfully change the operations of the medical directors on the floor in any way. Leonard (1/7/19) 79:8-20 Tonkinson testified their functions were generally the same. Tonkinson (1/9/19) 212:11-18. Snyder noted that this change was "just a function of how they got paid. Their jobs didn't change." Snyder (1/23/19) 87:6-10. Specifically, it had no

effect on the directors' physical access to the hospital, and no direct effect on their degree of oversight over Plaintiff's employees. Snyder (1/23/19) 87:6-20.

After the acquisition of Plaintiff by CCA, the management structure of individual departments remained largely unchanged. CCA-employed medical directors were replaced with Plaintiff-employed managing physicians, both of which worked in a dyad structure with a non-physician administrator. Snyder (1/23/19) 97:9-98:7. When asked how these relationships differed from those before the merger, Snyder responded "I don't know [that] they changed much at all", commenting that in both instances, the doctors had an "integral role" in the clinical operations of the enterprise. Snyder (1/23/19) 98:2-7.

5. HAMP

Health Alliance Medical Plans (HAMP) is a health insurance company founded by CCA in 1979 or 1980. Leonard (1/3/19)115:19-116:4. From 2004 to 2010, HAMP was a for-profit subsidiary of CCA. It is a multiline commercial medical insurance company that was wholly owned by CCA. Wellman (1/24/19) 33:24-34:4. HAMP was the biggest commercial insurer in Plaintiff's primary and secondary service area. Tonkinson (1/9/19) 246:17-19. As of 2004, CCA and CFH provided the majority of the HAMP HMO and PPO medical services. TR-1132, p. 72. In addition, patients requiring secondary and tertiary services were generally referred back to CFH and CCA for treatment. TR-1132, p. 72. In the local service area, a majority of HAMP enrollees seeking hospital care were seen at CFH. Wellman (1/24/19) 34:5-7. As of December 31, 2008, CFH was the major provider of hospitalization, operating room, emergency room, and therapy services for members of HAMP. TR-210, p. 200; Hesch (1/15/19) 231:10-18. HAMP insured members representing a greater percentage of CFH's commercial insurance than any other payor. Emmanuel (1/24/19) 213:23-214:6-10. HAMP was responsible for a significantly larger portion of receivables than any other individual private insurer (Emmanuel (1/24/19) 221:12-16), ranging between 12% to 18% of all of Plaintiff's receivables each year between 2004 and 2008 (TR-107, p. 27; TR-2198, p. 27; TR-2199, p. 28; TR-166, p. 30; TR-222, p. 54). Prior to the merger, HAMP was Plaintiff's largest payer for CFH, paying about 20% of its revenues. Leonard (1/4/19) 4:19 - 5:6.

Plaintiff and CCA entered joint risk-sharing agreements with regard to HAMP, through a health maintenance organization (HMO). TR-1132, p. 72. This was part of a strategic "focus on partnership" between Plaintiff and CCA in the period from 2000 through 2010. TR-4000, p. 22.

Between 2004 and 2010, the percentage of Plaintiff's annual net patient service revenue from the HAMP HMO ranged between 28.5% and 32.8%. Tonkinson (1/9/19) 31:20-32:9; TR-68, p. 16; TR-130, p. 15-17; TR-2200, p. 15; TR-2201, p. 18; TR-199, p. 19; TR-222, p. 32. This arrangement indicates a high degree of "virtual integration" in that it results in shared risk among providers, between doctors and hospitals, to a greater extent than is typical in other community hospitals. Hall (1/25/19) 92:22-93:6.

6. Overview of contractual services

CCA and Plaintiff had over 100 agreements going back and forth relating to various functions at the hospital. Tonkinson (1/8/19) 38:23-39:3; TR-2112, p. 2; Leonard (1/7/19) 14:1-19. Snyder testified there was very little duplication of services between Plaintiff and CCA, and the for the most part if one entity needed a service that it did not provide itself, it would be provided by the other entity. Snyder (1/23/19) 79:9-16. CCA provided radiology, laboratory, communications and printing services to Plaintiff; and (in addition to leasing space) Plaintiff provided parking, security, storeroom, purchasing, utilities, record room, housekeeping and dietary services to CCA. TR-1132, p. 7 (2004); TR-1133, p. 75 (2009); Tonkinson (1/8/19) 40:3-15; Leonard (1/3/19) 149:12-17; Snyder (1/23/19) 78:7-79:3. CCA provided telephone services to CFH. Snyder (1/23/19) 77:15-18.

Quantitatively, Professor Hall summarized payments for all these contractual relationships as follows:

(Dollars in $1000s)	**CCA service purchased by CF**	**CF service purchased by CCA**	**CCA lease payments to CF**	**CF payments for physician services**
FY2004	$15,400	$5,100	$12,600	[Missing]
FY2005	$30,700	$6,700	$11,700	$22,027
FY2006	$40,500	$7,500	$13,300	$25,088
FY2007	$61,700	$7,900	$13,400	$28,816
FY2008	$67,300	$13,700	$10,900	$31,533
FY2009	$75,700	$12,700	$13,100	$75,729
Average	**$48,550**	**$8,933**	**$12,500**	**$30,457**

TR-2004, p. 23 (Table 10).

Professor Hall noted there did not appear to be overlap between these categories of payments. Hall (1/25/19) 216:5-11. Professor Hall found it significant that all of these contractual relationships were between Plaintiff and CCA, as opposed to other non-Carle entities. Hall (1/25/19) 217:1-3.

7. Ancillary services agreements

Plaintiff and CCA had agreements relating to ancillary services, services "considered not direct physician services, but [services that] are more technical or support staff in nature", services "with a technical base that is relied upon to generate information", such as imaging, laboratory, sleep lab, and radiation therapy, cardiovascular services, electrocardiogram (EKG), and other diagnostic services. Wellman (1/24/19) 146:14-147:9. CCA and Plaintiff had an ancillary services agreement whereby CCA provided Plaintiff radiology, lab, and diagnostic cardiology services. TR-82; Tonkinson (1/8/19) 52:18-20. This was entered in November 2004 (TR-82) and amended in April 2006 (TR-2725). Tonkinson (1/8/19) 53:19-54:4. Ancillary services have two components, the professional fee and the technical fee. CCA billed for the professional component, because physicians were doing the work. Tonkinson (1/8/19) 59:14-24. CFH billed for the technical component for inpatient services for some but not all patients, depending on the insurer, and then billed CCA for those services. Tonkinson (1/8/19) 56:4-57:17. At some points between 2004 and 2010, the same services provided by the same staff would be billed in the one instance by CCA and in another instance by CFH, because of the payor source. Owens (1/11/19) 157:3-9. Plaintiff's charity care policy would apply only to those services it billed. Tonkinson (1/8/19) 60:20-24.

Wellman acknowledged that ancillary services provided by CCA were profitable. Wellman (1/24/19) 53:9-11. Wellman testified that "our system was fairly unique in that it had physician ownership of all the ancillary services and ancillary laboratory x-ray, imaging of other types, radiation, oncology, primarily, and then some cardiology services". Wellman (1/24/19) 48:22-49:2. According to Wellman, there was "not another system in the country that was structured like ours" between 2004 and 2010. Wellman (1/24/19) 50:10-18. This relationship was a product of the degree of integration between CCA and Plaintiff. Wellman (1/24/19) 51:21-52:3. Specifically, this was a byproduct of the effort of CCA and Plaintiff to "keep it all integrated within a single point of access" and avoid duplication of services. Wellman (1/24/19) 51:11-20. This relationship made operational sense because, unlike other physician practices and hospitals elsewhere in the country, Plaintiff and CCA had a single technology base. Wellman (1/24/19) 53:1-4.

8. HSIL and CRIMCO

Health Systems Insurance Limited (HSIL) is an offshore captive liability insurance company started by Plaintiff in 1980. Leonard (1/3/19) 121:23 -122:16. Between 2004 and 2012, it sold liability insurance to both Plaintiff and CCA. Leonard (1/3/19) 123:21-24. Between 2002 and 2006, CCA and its subsidiaries paid approximately two thirds of the premiums received by HSIL. TR-2112, p. 7 ¶ 22. Prior to January 2008, 40% of the board members of HSIL were CCA physicians, officers, or employees. TR-2112, p. 7 ¶ 21; Leonard (1/7/19) 67:23-68:2. According to Leonard, Plaintiff's ownership of HSIL allowed it to: (1) efficiently share information about quality of care; (2) ensure affordable malpractice coverage is available; and (3) (prior to the merger) sell malpractice insurance to CCA in a way that allowed it to more efficiently share information with it. Leonard (1/3/19) 122:21-123:5. Leonard served on HSIL's governing board before he was CEO, when he was a CCA doctor. Leonard (1/3/19) 12:10-14, 123:17-19. Both the CCA CEO and the chairman of the CCA Board of Trusties were on the HSIL governing board prior to the merger. Wellman (1/24/19) 16:2-17. CCA doctors were on HSIL's board because CCA was the only insured other than Plaintiff, and they represented HSIL's largest insured. Fallon (1/14/19) 206:1-7.

The savings HSIL allowed were due to the degree of integration between Plaintiff and CCA. Professor Hall saw the use of HSIL as "one of many indications [of] the extent of integration between [CCA] and [CFH] and the extent to which the two were run as essentially a single enterprise for, in this case, purposes of liability risk". 1/25/19, Transcript (Hall), p. 86: 9-13. This arrangement reduced the risk of cross claims and "finger-pointing" between the organizations. Fallon (1/16/19) 29:5-9; Fallon (1/15/19) 298:11-16; 299:1-4.Hall (1/25/19) 86: 9-13. This joint liability insurance both reflected and promoted the integrated operations of CCA and Plaintiff: if the two are not "pointing fingers at each other", it makes them more willing to cooperate on management decisions and other activities. Hall (1/25/19) 86:14-20. In the words of Dr. Wellman, this arrangement reduced overhead costs, and it "was better to have the money go towards our coverage than to an <u>outside</u> company". Wellman (1/24/19) 14:23-15:5 (Emphasis added).

On-shore claims management services for HSIL, CCA and Plaintiff were provided by Carle Risk Management Company (CRIMCO), a company jointly owned in equal shares by CCA and Plaintiff prior to the merger and owned solely by Plaintiff after the merger. Leonard (1/3/19) 125:15-126:9; TR-348. This was designed to promote financial efficiencies and efficiencies in

gathering information, including having one entity collect information about claims on behalf of both Plaintiff and CCA. Leonard (1/7/19) 69:11-23. This avoids duplication of investigative resources, it allows everyone to work with the same information for service improvement, and it also avoids finger-pointing between Plaintiff and CCA. Leonard (1/7/19) 69: 19-70:8. CCA was the only physician service in the area that had this cooperative arrangement with Plaintiff through HSIL and CRIMCO. Leonard (1/7/19) 71, 1-7.

9. Information technology

Plaintiff and CCA had common information technology. Leonard (1/7/19) 18:13-22; Snyder (1/23/19) 77:7-10. Patients could access Plaintiff and CCA through a single website, with the address www.carle.com. Emmanuel (1/24/19) 216:14-24. Similarly, employees of both Plaintiff and CCA had internal e-mail addresses ending with "@carle.com". Hesch (1/15/19) 141:9-142:8. Plaintiff, CFH, and CCA maintained a single integrated medical record for each patient, maintained by CCA. Leonard (1/7/19) 15:8-18; Tonkinson (1/9/19) 111:09-112:1. CCA provided data processing services to Plaintiff under contract. TR-1132, p. 7 (2004); TR-1133, p. 75 (2009); Tonkinson (1/8/19) 40:3-15; Snyder (1/23/19) 77:10-14. CCA either owned or leased the hardware, including the network infrastructure, but Plaintiff owned the desktop devices it used. Tonkinson (1/9/19) 40:16-22. Plaintiff overpaid for its share of some of CCA's information technology investment and was repaid with a 5 year loan over the period at issue here. Tonkinson (1/9/19) 38:17-39:4, 41:1-13; TR-37, p. 15.

10. Charging and collection activity

Plaintiff's manager of accounts receivable had access to portions of CCA's financial system, including its collection notes. Owens (1/11/19) 84:11-23; Everette (1/29/19) 19:13-16. Everette indicated this was to determine if CCA had insurance information it didn't have. Everette (1/29/19) 20:1-3. Plaintiff also had access to CCA's transaction-master, the equivalent of Plaintiff's charge master (or, colloquially, "sticker price" list for services). Owens (1/11/19) 86:21-87:5. CCA also had access to Plaintiff's collection notes between 2004 and 2010. Owens (1/11/19) 113:14-19. Everette testified CCA would call her to confirm insurance information or to confirm whether a patient was granted charity care. Everette (1/29/19) 19:3-8. Collection agencies hired by both Plaintiff and CCA would file common suits on behalf of both entities. Everette (1/29/19) 20:12-15.

11. Integrated strategic planning

Professor Hall found the level of joint strategic planning between CCA and Plaintiff to be unusual outside of an integrated arrangement. Hall (1/25/19) 93:19-23. Between 2004 and 2010, Plaintiff and CCA were engaged in joint strategic planning with respect to facilities. Wellman (1/24/19) 66:20-24. When engaged in strategic planning for CCA, Wellman (CCA's CEO) worked with the executives who coordinated strategic planning for Plaintiff, Cathy Emmanuel and Mike Billimack. Wellman (1/24/19) 79:14-80:9; Emmanuel (1/24/19) 159:14-19; 160:1-7. Plaintiff and CCA coordinated market share development plans, and ensured their planning was in synch with one another, and each had the resources available for the other's strategic objectives. Wellman (1/24/19) 80:13-81:4. CCA's strategic plans were dependent on Plaintiff, and Plaintiff was dependent on CCA's professional recruitment. Wellman (1/24/19) 81:1-9.

Plaintiff communicated with physicians in developing its strategic plan, including CCA physicians. Emmanuel (1/24/19) 158:23-159:5. Plaintiff attempted to coordinate changes in specializations with CCA, and worked with Wellman (CCA's CEO) specifically, as part of this process. Emmanuel (1/24/19) 159:14-160:7. For instance, in the 2007 strategic plan, the two entities were working together on joint cardiology planning, and other new service lines. Billimack (1/31/19) 77:12-18; TR-4084, p. 28. In 2007, Billimack was assigned a responsibility of establishing future initiatives and identifying common priorities. TR-4084, p. 28. Emmanuel testified that, in the course of strategic planning, Plaintiff would "probably" share Compdata, reports on market trends, with CCA. Emmanuel (1/24/19) 163:1-18.

Plaintiff had strategic goals specifically relating to promoting the growth of CCA. Plaintiff and CCA looked together at areas of growth or divestment. Emmanuel (1/24/19) 164:18-20. For instance, they worked together on strategic planning for the Spine Center to determine if they could develop that service profitably. Emmanuel (1/24/19) 165:7-11. Emmanuel testified that cardiology and general surgery were particular areas targeted for growth between 2004 and 2006 because of their profitability. Emmanuel (1/24/19) 166:3-167:8. CCA provided most of the physicians and surgeons for these areas. Emmanuel (1/24/19) 167:9-19.

In the 2002 strategic plan, Plaintiff adopted an express strategy of assisting in "grow[ing the] Clinic", meaning CCA. Emmanuel (1/24/19) 169:18-20; TR-4207, p. 1. The same plan mentioned specific efforts to increase the number of Christie Clinic physicians who apply to

medical staff membership at Plaintiff, but it includes no global growth goal, as is the case with CCA. TR-4207, p. 1.

Plaintiff's 2005 strategic plan included an "environmental assessment", that mentioned internal environmental factors that affected the operations of Plaintiff. One such internal factor was changes in CCA patient volume. TR-4210, p. 3; Emmanuel (1/24/19) 180:22-181:10. The 2005 strategic plan emphasized key targeted areas of growth, including several service lines that CCA was having some growth in. TR-4210, p. 4; Emmanuel (1/24/19) 181:18-182:4 This plan targeted for growth radiology and imaging services being performed by CCA. Emmanuel (1/24/19) 190:13-16. Emmanuel testified it believed its ability to increase its market share was dependent on how CCA grew its radiology and imaging. Emmanuel (1/24/19) 191:15-192:4. Emmanuel testified the fact radiology and imaging was handled by CCA required Plaintiff to coordinate with CCA in developing a strategic plan. Emmanuel (1/24/19) 192:5-9.

Plaintiff's strategic goals from 2008 to 2012 included making sure Plaintiff was "highly aligned with the entire medical staff around quality of care, service delivery and program development". TR-2027F, p. 2. Plaintiff made physician relationships a "key component of its strategic plan". TR-1133, p. 114. Plaintiff "made strong progress" against its comprehensive staff development plan in 2008, recruiting doctors in identified "key specialty areas", such as neurosurgery, emergency medicine, general surgery and cardiology. TR-1133, p. 114. In performing its environmental assessment as part of this planning process, Plaintiff listed physicians as a set of "internal stakeholders". TR-4084, p. 5. "External" factors, factors "outside of the organization" were listed separately. TR-4084, p.5; Billimack (1/31/19) 44:20-22. It noted that medical staff, including CCA doctors "Had the opportunity for participation in the planning process through interviews and retreats". Billimack (1/31/19) 31:2-19; TR-4084, 1.

The plan notes a "strong interdependency exists between [Plaintiff] and CCA". TR-4084, p. 3. Elsewhere, this plan notes that Plaintiff and CCA "will continue to be mutually dependent on each other for success in the future". TR-4084, p. 16. According to Billimack, this was an "obvious dynamic in strategic planning". Billimack (1/31/19) 68:1-2. Billimack notes this was because there were more than a hundred contracts between the two organizations, governing various parts of the relationship, they shared a common history, and CCA leased space from Plaintiff. Billimack (1/31/19) 36:2-8. This plan listed the relationship with CCA as a strategic strength. TR-4084, p. 15.

12. Marketing

The April 7, 2007 strategic plan for 2012 noted that "Public perception of [Plaintiff] and [CCA] as one organization requires full participation of both parties to achieve excellence." TR-4084, p. 3. Professor Hall saw the common branding and presentation to the public as reflecting "tight or virtual integration". Hall (1/25/19) 95: 22-96:2. According to Staske, patients "looked at Carle as one". Staske (1/14/19) 181:2-5. It was important to Plaintiff to identify strengths in its medical staff to promote it, and the CCA medical staff was considered a marketing asset for Plaintiff. Emmanuel (1/24/19) 152:11-14. At trial, Emmanuel identified the similar logos of CCA and CFH, together with a common logo used for both entities together. Emmanuel (1/24/19) 153:8-24; TR-4000, p. 22. According to Billimack, the logos were "substantially identical". Billimack (1/31/19) 91:3-6. They each had the word "Carle" in the same font, the same striped cross icon, and the same color scheme, and these similarities were intentional. Emmanuel (1/24/19) 154:4-155:4. This was part of an effort to increase the visibility of the Carle name, generally. Emmanuel (1/24/19) 155:19-21. This was in response to market research suggesting the strength of the Carle name, generally, and they "were trying to have people think of Carle". Emmanuel (1/24/19) 156:22 -157:6. Billimack testified the common image between the two was seen as a strength because some patients seek integrated healthcare. Billimack (1/31/19)91:21-23.

Emmanuel testified that when she was Vice President for Marketing and Strategic Planning for Plaintiff, those under her supervision would communicate with CCA about marketing plans. Emmanuel (1/24/19) 151:17-24. In 2006, CCA sold Plaintiff services "pertaining to primary and secondary market research, strategic, operational, managerial, and facility planning". TR-2804, p. 1. On a regular basis between 2007 and 2010, CCA purchased services from Plaintiff "pertaining to marketing planning and consulting". TR-2792; TR-2793; TR-2795. In 2008, Plaintiff entered a Planning and Market Research agreement with CCA in which it purchased services from CCA with a goal to "[d]evelop coordinated communications and outreach plans through collaborative working relationships between CFH and CCA to enhance outcomes in the region." TR-2794, p. 9; Billimack (1/31/19) 92:18-93:6. The two entities agreed to share basic provider information for these purposes. TR-2794, p. 9. A further example of this joint marketing is the October 2009 Business Health Services Marketing Agreement, whereby Plaintiff purchased the time of CCA physicians and marketing personnel to market business services cross-promote Plaintiff's hospital services and (CCA) Occupational Medicine services. TR-2802, p. 9, 10.

13. Physician recruitment

Prior to the merger, Plaintiff collaborated with CCA in physician recruitment. Snyder was involved in determining what physicians were needed, and in identifying priorities for physician recruitment when it came to hospital and community needs. Snyder (1/23/19) 89:3-19.

B. 2010 Merger

According to Plaintiff's 2010 Community Benefit Report "2010 was a historic year for health care and for the Carle Foundation". TR-2027H, p. 2. Plaintiff "became an integrated delivery system, bringing together a hospital physician group and insurance provider to offer a coordinated network of services". TR-2027H, p. 2.

Although different witnesses placed different emphasis on Stark IV regulations, it is clear these regulations played a significant role in prompting the merger. Wellman (1/24/19) 48:15-24. In fact, these regulations were noted in CCA's planning documents as the most significant market pressure impacting CCA. TR-2071, p. 12; Wellman (1/24/19) 61:7-11. According to CCA's internal strategic planning documents, as of October, 2008, CCA anticipated that "Stark IV changes will potentially eliminate a substantial amount of contribution from hospital technical services that CCA currently provides", with the margin on lab hospital tech services calculated at $8.6 million; and the margin on radiology hospital tech at $11.6 million. TR-2701, p. 14.

Because of the high degree of integration between Plaintiff and CCA prior to the merger, these regulations were disruptive and would force Plaintiff and CCA to have duplicative services. Wellman (1/24/19) 52:1-3. CCA's 2008 strategic planning documents noted that Stark IV changes would eliminate a substantial amount of contributions to CCA from hospital technical services. TR-2071, p. 14. Wellman testified that, on a broader level, increasing regulatory scrutiny of the relationship, and the lack of a clear roadmap on navigating the working relationships between CCA and Plaintiff further motivated the merger. Wellman (1/24/19) 64:18-65:2.

Part Two: Plaintiff does not meet the Constitutional standard of exclusive charitable use

Plaintiff bears the burden of proving its entitlement to exemption. Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill.2d 286, 290 (1956). This burden extends not just to any statutory criteria for exemption, but also to the constitutional standard. See Korzen, 39 Ill.2d at 155; Oswald, 2018 IL. 12203 ¶ 18. "[A]ll facts are to be construed and all debatable questions resolved in favor of taxation". Korzen, 39 Ill.2d at 155. Every presumption is against the intention

of the state to exempt property from exemption. Reeser v. Koons, 34 Ill.2d 29, 36 (1966). The Constitution requires that Plaintiff use the properties at issue exclusively for a charitable purpose. This raises two sets of issues: (1) what counts as a charitable purpose; and (2) what does it mean for the property to be exclusively used for these purposes. Under any meaningful constitutional standard, Plaintiff fails to use its property exclusively for charitable purposes.

I. What counts as charity

Several of the practices Plaintiff claims to be charitable cannot be counted as such under the constitutional definition.

A. Plaintiff's practice of repackaging bad debt as charity care

While Plaintiff points to several of its activities as charitable, the only metric consistently quantified across the period at issue here is charity care. This claim is undermined by Plaintiff's practice of recharacterizing bad debt as charity care, sometimes long after the fact. TR-51, p. 3; Leonard (1/4/19) 74:18-20.

1. Overview of the billing process

Each month, a collector assigned to a particular account would review collection notes and make an individualized determination whether an account should be deemed bad debt after efforts had been made to contact the patient. Owens (1/11/19) 63:22-64:7. This determination would then result in the account being designated inactive and posted to the general ledger as an accrued expense, and the debt was then automatically transferred to a collection agency. Owens (1/11/19) 64: 18-24. If a debt went to a collection agency, it was booked as bad debt. Owens (1/11/19) 68:20-21; Everette (1/29/19) 28:16-20. Tonkinson indicated that, at the point at which bad debt was deemed an accrued expense, Plaintiff did not intend to treat it as charity care. Tonkinson (1/9/19) 147:20-147:5.

However, the status of a debt could later change. Tonkinson testified that as of the 2006 report, it had changed its policy so that once a debt had been written off to bad debt it could still be eligible for charity care Tonkinson (1/9/19) 145:4-21. Tonkinson testified that once a person became qualified for charity care, the entire household would, as well. Tonkinson (1/9/19) 147:14-16. At that point, Plaintiff made an effort to search the accrued debts of family members of the patient and recharacterize them as charity care. Tonkinson (1/9/19) 148:3-15. If someone then qualified for Medicaid and had prior balances "we could then go back and wipe out those balances

because we knew that they qualified for charity care". Tonkinson (1/8/19) 21:1-4. Everette testified that someone could have an account four or five years old at a collection agency before applying for charity care on the account. Everette (1/29/19) 49:7-11.

2. Self Pay Compass

This process of repackaging old debt was eventually accelerated with tools like the Self Pay Compass. Billimack testified this program was designed to identify patients who would not be able to pay for their medical care, who were likely to be eligible for the charity care program. Billimack (1/31/19) 82:20-23. Plaintiff decided to use this program "at the point where we had finished our internal collections, before we sent [the debt] out to a collection agency", to screen debts so that they could then "write those off to charity rather than send them to a collection agency". Tonkinson (1/8/19) 31:1-9. The program would gather indicators of the patient's potential to qualify for charity care, such as their credit rating, estimated income, and where they live. Owens (1/11/19) 46:2-47:9. There was a major delay in implementing this program, but it was ultimately implemented after the 2010 merger, and updated over time. Hesch (1/15/19) 102:7-10.

In discussing charity care goals, Pat Owens e-mailed Tonkinson that "we know with [Self-Pay] Compass we're going to clean out self-pay." TR-2378, p. 1. Tonkinson explained that Plaintiff's intent was to take the Self Pay Compass system and run it against all outstanding accounts receivable balances they had, including those with debt collection firms, and see how many of them should be treated as charity care under the community care policy. Tonkinson (1/9/19) 158:2-11. After the Self Pay Compass was up and running, before an account was "charged off" to collections, Plaintiff would look at information available through Self-Pay Compass to determine whether it would qualify for community care under the policy. Tonkinson (1/9/19) 148:15-24.

3. Merger with CCA

This process of recharacterizing bad debt was also expanded with the CCA merger. Tonkinson testified that he had anticipated that as soon as the merger between Plaintiff and CCA was finalized, it would review debts previously owed to CCA to determine whether the corresponding patients qualified for charity care. Tonkinson (1/9/19) 199:5-14. Jackson testified that CFH generated a list of patients who had been awarded charity care and, after the merger, Plaintiff matched that list against a list of outstanding CCA receivables and "applied or awarded

charity care" to those outstanding (or "legacy") receivables. Jackson (1/16/19) 75:11-17. There was a notice given to the public that if they had past bills owed to CCA, they could apply for charity care. Boyd (1/11/19) 69:8-15. After that notice, there was an increase in charity care applications to Plaintiff. Boyd (1/11/19) 67:11-14.

Tonkinson testified this was a "multiple year look-back", including debts five to ten years old. Tonkinson (1/9/19) 202:10-22. Jackson did not know how much of this charity care corresponds with debt over three years old. Jackson (1/16/19) 88:15-18. According to Jackson, applying the legacy receivables to those already receiving charity care from Plaintiff was a process that took about a month. Jackson (1/16/19) 75:18-22. Jackson testified this involved all debts, "from cradle to grave", including those that had previously been referred to collection agencies. Jackson (1/16/19) 87:10-18.

In e-mails between Tonkinson and Pat Owens, director of accounting, dated October 27, 2009, the two were discussed the treatment of CCA patients who had previously been designated as "no more service" (NMS) because of outstanding debt. Tonkinson wrote:

> "If they are Medicaid and are NMS due to prior balances, those are exactly the people we are looking for. We would write-off all balances to charity and they would be taken off NMS because we know they qualify for 100%". TR-203, p. 1; identified at Tonkinson (1/7/19) 103:9-22.

The policy applied to past balances at CCA. Tonkinson (1/7/19) 120:13-15. It did not matter when this debt was incurred at CCA, and Tonkinson indicated that much of it was years old. Tonkinson (1/7/19) 105:16-21. Tonkinson also proposed sending a letter to those who had been "no more serviced" in the past three to five years, offering them an opportunity to qualify for community care. Tonkinson (1/7/19) 105:22-107:4; Tonkinson (1/9/19) 202:23-203:6.

4. Effect of auto-qualification

Plaintiff's practice of repackaging old debt worked hand-in glove with its practice of auto-qualifying people. As Plaintiff got more adept at identifying people in need of charity care, prospectively, it also got more adept at identifying old debts it could retroactively recharacterize as charitable. For instance, Tonkinson testified that if someone qualified for Medicaid and had prior balances "we could then go back and wipe out those balances because we knew that they qualified for charity care". Tonkinson (1/8/19) 21:1-4. Once a person qualified, his or her whole family was qualified for care as well, and any of their past debts or their family's accrued debts were subject to the charity care policy. Tonkinson (1/7/19) 54:7-11; Robbins (1/10/19) 134:20-

24; Owens (1/11/19) 7-12; Boyd (1/11/19) 17-202. Robbins testified this practice increased between 2004 and 2011. Robbins (1/10/19) 135:1-4. According to Owens, "the tools available to us over time in health care have changed dramatically, and as more and more electronic solutions are available, you have more". Owens (1/11/19) 10-13. Owens described a shift from the early years (such as 2004), in which Plaintiff was reliant on people sharing information to other technological tools, and relationships with other agencies such as Cunningham Township. Owens (1/11/19) 40:14-41:7.

5. Amount of repackaged debt at issue

Professor Hall summarized the trend in charity patients and charity care in proportion to bad debt as follows:

	Hospital charity patients	**Charity Expense**	**Bad Debt Expense**	**Uncompensated Care Total**	**Charity % of Total**
FY 2004	1,823	$2,034,000	$4,126,284	$6,160,284	33.0%
FY 2005	3,400	$2,501,000	$3,901,116	$6,402,116	39.1%
FY 2006	4,000	$4,791,000	$2,650,526	$7,441,526	64.4%
FY 2007	4,500	$6,874,000	$4,522,569	$11,396,569	60.3%
FY 2008	5,033	$8,659,000	$4,578,036	$13,237,036	65.4%
FY 2009	4,380	$7,831,000	$6,362,212	$14,193,212	55.2%
FY 2010	3,569	$9,025,000	$7,304,387	$16,329,387	55.3%
PY 2010	2,303	$6,160,000	$4,768,277	$10,928,277	56.4%
CY 2011	6,295	$15,753,000	$6,051,719	$21,804,719	72.2%
Average	**4,153**	**$7,485,647**	**$5,207,662**	**$12,693,309**	**59.0%**

TR-2004, p. 25(Table 11). Notes: PY refers to partial year; CY to calendar year.

Here one can see the growth in charity care as a percentage of uncompensated care, from the early years, in which the auto-qualification process was first being implemented to 2006, as Plaintiff refined the art of reprocessing old debt. Hall (1/28/19 a.m.) 64:2-12.

The charity care as a percentage of bad debt spiked in 2011, with the one month look back after the acquisition of CCA. This process resulted in an additional $4.8 million in charity care being credited to Plaintiff. Jackson (1/16/19) 75:23-76:2. However, the total amount of accounts receivable Plaintiff received from CCA was "quite a bit more than" this. Jackson (1/16/19) 141:21-24. This $4.8 million figure did not include legacy debts retroactively treated as charity, if a patient with an outstanding CCA later had a new encounter with Plaintiff and qualified for charity care.

Jackson (1/16/19) 89:14-24; 155:8-10. Nor did it include debts previously owed to Carle Foundation to which the charity care policy was retroactively applied. Jackson (1/16/19) 92:14-19.

The pattern of repackaging debt with the merger is also reflected in the number of charity care applications received. According to Boyd, new applications were required of at least some of the old CCA account-holders as part of this process. Boyd (1/11/19) 10:5-21. The number of charity care applications Plaintiff received increased from 8,354 in 2009 to 23,026 in 2010. The increase in applications stayed high in the following year (at 23,699). TR-509. This increase did not reflect an ongoing change in operations with the merger: In 2012, the number of applications dipped down to a number closer to the pre-merger level (9071). TR-509.

More generally, Plaintiff was not able to document how much of the costs of charity care it reported to the Attorney General in any given year corresponded with medical bills that had previously been deemed an accrued expense of Plaintiff. Tonkinson (1/9/19) 144:3-145:4. TR-121; TR-137 (describing 2005 and 2006 Community Benefits Reports to the Attorney General); Tonkinson (1/9/19) 145:5-9, 148:16-149:5 (Community Benefits Reports from 2004 to 2009); Tonkinson (1/9/19) 166:5-17; Hesch (1/15/19) 255:12-124, 242:4-8. Nor did Plaintiff present any evidence at trial of the amount of charity care reported in any given year that corresponded with medical services provided in the year for which it was reported. Robbins (1/10/19) 135:5-9; Koch (1/18/19) 187:13-188:12. While Hesch indicated CCA kept accounting records that would allow it to determine how much of the amount listed corresponded with medical services provided in the year to three years prior to filing the form, this could not be inferred from the P-TAX 300-H form. Hesch (1/15/19) 242:12-24. Nor was this information reviewed in preparing the P-TAX 300-H form. Hesch (1/15/19) 243:16-244:21.

6. Writing off bad debt is not charity

"[W]riting off bad debt is not tantamount to providing charity". Alivio Med. Ctr. v. Dept. of Revenue, 299 Ill. App.3d 647, 651-52 (1998). In Alivio, the First District affirmed a denial of exemption to a medical center, in part, because it processed medical debts identically until 180 days, and only recharacterized them as charity after collection efforts had been made. Similarly, in Riverside Med. Ctr. v. Dept. of Revenue, 342 Ill. App.3d 603 (2003), a medical center was denied an exemption when it provided medical care without financial screening, and without regard to ability to pay, where patients were given a charity care application after the account was

sent to collections, if the patient then indicated he or she was not able to pay. See also Highland Park Hosp. v. Dept. of Revenue, 155 Ill. App.3d 272 (1987).

Professor Hall indicated debts were not appropriately characterized as charity, because the care was not given with the intent of not billing. Hall (1/25/19) 134:20-135:5; Hall (1/28/19 a.m.) 67:22-68:3. For bills to be treated as charity, they should not be "handled in a way that affects the patient's credit or creates anxiety and the like. Hall (1/28/19 a.m.) 67:18-20. Professor Hall indicated that some reasonable period of a few weeks or months may be appropriate as a hospital is attempting to determine the patient's financial resources. Hall (1/25/19) 130:23-131:8, 134:6-13. However, Professor Hall testified that more than a year would "certainly" exceed the boundaries of "whether the care was continually provided with the intent of not billing". Hall (1/25/19) 138:11-14.

Once a medical debt is deemed an accrued expense, it was not a likely source of revenue for Plaintiff. In fact, when Plaintiff set a performance goal of charity care as 3% of gross revenue, Pat Owens indicated that she had been assured that the debt was accrued, "so not a bottom line issue". Tonkinson (1/9/19) 159:6-9; TR-2378, p. 1. Tonkinson understood this to mean that Owens was focusing on the fact that using the Self Pay Compass identify bad debt as charity care would not affect the operating income of the corporation. Tonkinson (1/9/19) 159, p. 17-14. Owens testified that it was not going to be an expense to Plaintiff when self-pay accounts were moved to "the charity bucket" because it had already been accrued for that. Owens (1/11/19) 129:15-19. Tonkinson testified that this was because "after a certain number of days we assumed that we were not going to collect anything on any accounts that we were pursuing". Tonkinson (1/9/19) 159:22-24; Owens (1/11/19) 68:22-24 (designation as bad debt meant Plaintiff had no expectation of any future payment). In an e-mail exchange with Staske, Tonkinson candidly admitted he wanted credit under the community care program for debts that were not collectible. TR-4217, p. 1; Staske (1/14/19) 192:1-4; Owens (1/11/19) 122:16-23. Here, much of the debt was not seen as charitable by Plaintiff at the time services were provided or at any point prior to being deemed an accrued expense.

Plaintiff suggests that this later recharacterization of bad debt as charity demonstrates that it did not concern itself with payment at the time the services were rendered. No one disputes that it is better for the patient to have medical debt forgiven, regardless of when it happens. Owens (1/11/19) 35:1-19. However, Plaintiff did concern itself with payment in the months and years

after services were rendered and before they were recharacterized as charity. The later recharacterization is cold comfort to patients who had to endure collection efforts in the interim. Tonkinson testified:

> "We want to qualify people as early as possible, both for their peace of mind, as well as so that we don't expend effort trying to elect [sic] collect from those who didn't have the ability to pay". Tonkinson (1/7/19) 61:12-18.

At the time much of this debt was deemed charitable, the patient's peace of mind was a distant memory, and the costs of collection dwarfed the likely recovery. Plaintiff's claim that it is motivated by the desire to clear poor private debtors' credit history--albeit long after the fact—also rings hollow given that Plaintiff's pricing practices (discussed in detail as an obstacle to charity in Part Two, Section VI, below) disproportionately saddled uninsured private payors in the interim with inflated charges at the charge master rate.

B. The Medicare and Medicaid shortfall

In its community benefits reports, Plaintiff claims credit for Medicare and Medicaid shortfalls. Medicaid is a federal program administered by the states, which provides matching funds to states that provides funding for medical care to those deemed eligible based on need. In Illinois it is administered by the Illinois Department of Public Aid (IPA). In the period at issue here, Medicaid covered "primarily moms and babies". Leonard (1/3/19) 70:24-71:3. Medicare is a federally funded program that provides funding for medical services to those deemed eligible based on age or other statutorily-prescribed criteria. Funds are disbursed from both programs directly to health care providers that voluntarily choose to participate in the program.

The Medicare or Medicaid shortfall is the difference between the amount Plaintiff is reimbursed by these government payors and its average cost of care for the same services. Leonard (1/3/19) 70:9-23. With respect to Medicaid, this is also called the "unreimbursed care/IPA losses at cost". Leonard (1/4/19) 67:16-18; Leonard (1/7/19)8:22-9:1.

For the first time at trial, Plaintiff's counsel disclaimed any reliance on the Medicaid or Medicare shortfall as charity. Leonard (1/4/19) 244:5-21(Comments of Counsel Pflaum); Hall (1/28/19 a.m.) 13:16-19 (Comments of Counsel Pflaum) ("We've never argued, nor do we argue today, that Medicare is indicative of a charitable activity"). However, Plaintiff included the Medicaid shortfall in its demonstrative exhibit purporting to be the 2004 P-TAX 300-H forms.

TR-446.1; Hesch (1/15/19) 37:14-38:2; TR-2027B. The shortfall is also listed as charity on Plaintiff's Community Benefits Reports. See e.g., TR-70, p. 7 (2004); TR-2027C, p. 8 (2005).

The appellate court has consistently rejected claims that the Medicare and Medicaid shortfalls are charity. See Riverside, 342 Ill. App.3d 609-10; Alivio, 299 Ill. App.3d at 651-62; see also Provena, 236 Ill.2d at 401-02 (plurality); cf., Provena, 236 Ill.2d 397 (charity care was de minimis because, with limited exception, property was devoted to care for compensation through insurance, direct payment, or these programs); Midwest Palliative Hospice and Care Ctr v. Beard, 2019 IL App(1st) 181321, ¶ 24 (2019) (significant revenue from these programs rather than donations inconsistent with charitable use); Franciscan Communities, Inc. v. Hamer, 2012 IL App(2d) 110431, ¶ 54 (2012)("***Medicare discounts are not charity").

Medicare and Medicaid services are not a "gift": Plaintiff voluntarily enters into arrangements to provide these services for compensation. Riverside, 342 Ill. App.3d 609-10; Provena, 236 Ill.2d at 401-02, FN 12. These services ensure the hospital has a reliable stream of revenue. See Riverside, 342 Ill. App.3d 609-10. Dr. Leonard testified that Medicare does not pay average costs, because it does not fully capture overhead, though it does typically pay the cost per use. Leonard (1/4/19) 242-43. He indicated Medicaid also pays marginal cost for services. Leonard (1/7/19) 7:23- 8:1. Stated differently, these programs often reimburse the marginal cost, and so the hospital can still make money on the margin on otherwise-underutilized equipment. See Provena, 236 Ill.2d at 401-02; Hall (1/25/19) 172:4-173:7. Accordingly, Leonard testified it was common for for-profit hospitals to serve Medicaid and Medicare patients. Leonard (1/4/19) 243:10-22; see also Tonkinson (1/9/19) 176:18:19.

C. Research

Plaintiff claims a charitable exemption based, in part, on the resources it devotes to medical research. However, a charitable exemption based upon scientific research activities will not be granted where the evidence presented is vague, generalized, and indefinite. See People ex rel. Redfern v. Hopewell Farms, 9 Ill. App.3d 16, 19 (1972). Research can justify a charitable exemption only if it benefits the public generally and is disseminated to the public. Institute of Gas Technology (IGT) v. Dept. of Revenue, 289 Ill. App.3d 779, 785-88 (1997). Research that is instead designed to support a commercial enterprise is not considered charitable. IGT, 289 Ill. App.3d at 786. Accordingly, if the only way the public could use the research is through the use of Plaintiff as a commercial enterprise, the research is not considered charity. IGT, 289 Ill. App.3d

at 788. Similarly, if the primary purpose of the research is to enhance the position of Plaintiff in the market place, it is not charitable in nature. Gas Research Institute v. Dept. of Revenue, 154 Ill. App.3d 430 (1987). For instance, in International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956), the Illinois Supreme Court rejected the exemption claim of a surgical society that provided services to its members for the "advancement of the art of surgery by developing their skills".

Here, Plaintiff is not primarily interested in sharing medical knowledge with the world: it is instead using its exclusive access to research for competitive advantage. Dr. Leonard testified that research impacts healthcare outcomes, but also creates an ability to bring in providers at the highest level. Leonard (1/3/19) 78:7-17. . Dr. Leonard did not know who holds the patent rights for any development that came from medical research. Leonard (1/7/19) 88:11-14. Wellman testified that CCA, a for-profit entity, engaged in cancer research as part of a nation-wide network that allowed for-profit oncology groups to accrue large numbers of patients. Wellman (1/24/19) 12:24-13:5. Wellman testified this cancer research improved the level of care and assisted in physician recruitment. Wellman (1/24/19) 13:14-19.

Plaintiff's 2007 strategic plan noted research as a strategic planning issue. TR-4084, p. 4. This plan did not list growth in public knowledge of medicine as a benefit of research. Rather, it noted, "Competitive differentiation and physician recruitment cited as primary benefits of research". TR-4084, p. 4 (Emphasis added). Billimack noted this research could "potentially enhance the ability for the organizations to recruit physicians to the market, [and] it would have potential to recruit physicians to the market". Billimack (1/31/19) 39:16-21. Billimack testified that research allows Plaintiff to bring unique specialists that no one else in the region may have. Billimack (1/31/19) 40:3-12. In setting 5 year metrics, Plaintiff specifically targeted "marketable innovations". TR-4084, p. 24 (Emphasis added). Billimack explained Plaintiff's focus on translational research:

> "So it was desired that if we—Carle got into translational research, that there might be a couple of unique break through type of discoveries that could be put into practice and could be then marketable to the rest of the industry". Billimack (1/31/19) 74:8-12.

While this research is clearly socially valuable, so is most other research fueled by the free market.

D. Other services at loss

Other services listed in Plaintiff's community benefits reports as provided below cost also serve non-charitable purposes. Designations such as operating a perinatal Level III Center and being designated a primary stroke center have a "halo effect", allowing Plaintiff to recruit other staff. Leonard (1/3/19) 31:18-21. Plaintiff's community benefits reports included references to healthcare work force education – basically its ongoing medical training for its staff. Leonard (1/3/19) 59:20-60:9. Many of the remaining programs were not exclusive to low income individuals. Leonard (1/3/19) 59:7-10; Leonard (1/3/19) 87:15-87:22 (helicopter service).

For instance, Plaintiff listed as a community benefit salary time spent assisting patients applying for Medicaid. Robbins (1/10/19) 66:11-16. This is even though Medicaid provided a new revenue source for Plaintiff; and Plaintiff has specifically disclaimed any claim that the Medicaid shortfall is charity. Bad debt, while listed in Plaintiff's Community Benefits reports, is properly considered as an operating expense rather than as charity. Hall (1/25/19) 183:1-3. Services listed on these reports also included items such as volunteer hours by staff. TR-407, p. 2. This was on time not paid for by Plaintiff. Robbins (1/10/19) 131:3-8. Plaintiff also assigned a dollar value to time volunteered by non-employees. Robbins (1/10/19) 132:17-20. Professor Hall appropriately considered these donations to Plaintiff, rather than charitable services by Plaintiff. Hall (1/25/19) 173:22-175:10. The reports also included information on programs such as a patient advisory nurse, which is better characterized as a form of remote health care and patient service than community benefit justifying a charitable exemption. TR-407, p. 1. Similarly, free health screenings are a way of generating goodwill and business, in addition to providing a public service. Hall (1/25/19) 174:1-10.

In its Community Benefits reports, Plaintiff claimed to be providing certain medical education for future doctors and nurses. The Provena plurality appropriately rejected a similar claim, in part, because such a medical education program: "unquestionably adds to [the hospital's] prestige and enables it to supplement its medical staff with well-trained, if inexperienced physicians. While we cannot exclude the possibility that there is some charity in this relationship, it is difficult to know in which direction such charity flows, from [the hospital] to the University of Illinois, or vice versa". Provena, 236 Ill.2d at 406. Here, Robbins could not testify what services these students provided to CFH, or whether there was any reduction in cost for the value of these services. Robbins (1/10/19) 144:3-24.

II. Exclusivity of use

The plain text of the State Constitution requires that the charitable use of exempt property be "exclusive". See Ill. Const. 1970, Art. IX, Sec. 6. The word "exclusive" has been interpreted broadly - to mean "primary". Chicago Bar, 163 Ill.2d 290, 300 (1994). Under the exclusive charitable use standard, the nonexempt use has to be "merely incidental" (Illinois Institute of Technology v. Skinner, 49 Ill.2d 59, 66 (1971)), that is, it cannot be a 'major' use. The New Oxford American Dictionary 859 (2001) (definition of "incidental"); see Streeterville Corp. v. Dept. of Revenue, 186 Ill.2d 534, 536-37 (1999) ('In the instant case, Streeterville concedes that the 26% nonexempt use of the parking facility cannot qualify as merely incidental.') Any nonexempt use has to be trivial or de minimis; a reasonable reader would have to give at least that much rigor to the constitutional phrase 'used exclusively for [exempt] purposes. Ill. Const. 1970, art. IX, Sec. 6.[1] It is not enough that one of several purposes or results is charity: Charity must be the "chief, if not sole, object." People ex rel. Nelson v. Rockford Masonic Temple Building Ass'n , 348 Ill. 567, 570 (1932).

A. The role of quantitative standards

For the term "exclusive", or even "primary" to mean anything, it must involve a comparison between the exempt use of the property and the total use of the property.

1. Clear and binding precedent supports the use of quantitative comparisons

Plaintiff places great weight on precedent from the turn of the 20th century in which property was deemed exclusively used for charity, even though the majority of patients receiving care on it had the ability to pay. See Sisters of Third Order of St. Francis v. Bd. of Review of Peoria County, 231 Ill. 317, 320-22 (1907) (hospital received exemption even though it was paid by 89% of its patients); see also Board of Review v. Provident Hosp. & Training Ass'n, 233 Ill. 242 (1908) (hospital received exemption despite only 20% of its patients receiving 100% discounts).

Certainly, a charity can charge fees to those who can pay. However, the Court should ask whether the goal of such fees is to allow the entity to continue as a charity. The Court in Sisters of the Third Order stressed that the exempt hospital's board was made of members of a convent

[1] With minor formatting changes, this analysis comes, verbatim, from Carle II. See Carle II, 2016 IL App(4th) 140795 ¶126. Carle II is not binding precedent, the cases it cites on this point are.

who conveyed absolute title to all their property to the corporation and received no compensation other than room and board. Sisters of the Third Order, 231 Ill. at 319. As discussed below, it was critical to the holding of Sisters of the Third Order that, even with paying customers, the hospital could only survive with the aid of donations. See Korzen, 39 Ill.2d at 158 (discussing Sisters of the Third Order). In the language of another early exemption case, "[t]he price received, whatever it may be, makes a gift to needy persons possible to the amount so received beyond what the [exempt taxpayer] would otherwise give." Congregational Sunday School & Pub. Soc. v. Bd. of Review, 290 Ill. 108, 117-18 (1919).

To the extent this older precedent supports a standard that would give no weight at all to the actual amount of charity care provided, this suggestion has been repeatedly overruled. The Supreme Court has long since recognized that the percentage of revenue or activity on the land dedicated to specific charitable activities is still directly relevant to whether the property, as a whole, is being put exclusively to a charitable use. In People ex rel. Nordlund v. Assoc. of Winnebago Home for the Aged , 40 Ill.2d 91 (1968) and Small v. Pangle, 60 Ill.2d 510 (1975), the Supreme Court considered the few numbers of persons actually admitted without charge to a nursing home in rejecting the home's claim to charitable exemption. See also Eden, 213 Ill.2d at 293-94 (affirming ALJ denial of exemption, in part, because very few cases where person qualified for reduction in maintenance fee). In Provena, a plurality of the Supreme Court denied exempt status to a hospital when "both the number of uninsured patients receiving free or discounted care [(0.27% of the annual census)] and the dollar value of the care they received [(0.723% of revenues)] were *de minimus*". See Provena, 236 Ill.2d at 397.

The appellate court has also repeatedly recognized the role of quantitative comparisons in determining exclusive charitable use. In Riverside, 342 Ill. App.3d 603 (2003), an exemption was denied to a hospital, in part, because it budgeted only 3% of its revenues to charity care. In Community Health Care, Inc. v. Dep't of Revenue, 369 Ill. App.3d 353 (2006) (hospital not used primarily for charitable purpose when used only 27% of time to serve medically underserved community and 73% of time as not-for-profit medical clinic). In Decatur Sports Found. v. Dept. of Revenue, 177 Ill. App.3d 696 (1988), the Court upheld a finding of charitable use of a sports facility where the baseball fields at issue were used for corporate (non-charitable) purposes only 20 to 30 times out of over 500 games. In Franciscan Communities, Inc. v. Hamer, 2012 IL App(2d) 110431, Par. 43 (2012), the Second District denied a charitable property tax exemption to a

retirement community, in part, because it only dispensed charity to a minimal number of persons, and the total amount of charitable assistance was $520,294, compared to resident revenue of $15.6 million (or about 3.3%). The Court concluded the primary purpose of the community was to "provide a certain enhanced lifestyle to the elderly who can afford to pay for it".

The only (relatively) recent precedent cited by Plaintiff in its opening brief is a case in which the Supreme Court granted an "affiliate" of Northwestern Memorial Hospital a charitable exemption "without even mentioning the percentage of charity care recipients". See Streeterville, 186 Ill. 534[2]. The reason for this silence is simple: the affiliate at issue ran a parking garage being used, in part, to support a non-profit hospital. As discussed below (in Part Two, Section II.E.1), for an auxiliary exemption to be granted, the parcel at issue must be: (1) exclusively used for purposes (2) reasonably necessary to (3) a charitable use elsewhere. The sole issue presented in Streeterville was whether the "exclusive use" requirement for a supporting property could be met with a formula-based partial exemption. There is nothing in the Streeterville decision suggesting the charitable use of the hospital (the primary parcel) was ever contested. A judicial opinion is a response to the issues before the court, and these opinions must be read in light of the issues that were before the court for determination. See Avery v. State Farm Mutual Automobile Insurance Co., 216 Ill.2d 100, 189 (2005).

Recently, the First District reaffirmed the role of quantitative comparisons in defining exclusive charitable use. In Midwest Palliative Hospice and Care Center v. Beard, 2019 IL App(1st) 181321 (2019), the Department's denial of a charitable tax exemption to a hospice center under the traditional (Section 15-65) standard was affirmed, even though the charitable ownership of the center was stipulated. The sole issue presented was charitable use, the same constitutional

[2] In the course of trial, Plaintiff attempted to draw support for its position from Quad Cities Open, Inc. v. City of Silvis, 208 Ill.2d 498 (2004). Quad Cities treated a golf tournament as charitable and therefore not "carried on for gain", for purposes of qualifying for from municipal amusement taxes, even though only 7% of the tournament's revenue in a two year period was donated to charity. The Supreme Court only reached this conclusion after first contrasting the issue there (the application of a tax statute) with the issue presented here (the constitutional exclusive charitable use requirement for tax exemptions). See Quad Cities, 208 Ill.2d at 506-07. The Court specifically noted the rigorous standards in play here did not apply there because exemption was not at issue. Quad Cities, 208 Ill.2d at 506-07. If anything, Quad Cities suggests granting an exemption to an organization that devotes a small amount of revenues to charity care conflicts with the exclusive charitable use standard.

standard in play here.[3] In denying the exemption, the Department and the First District focused on several quantitative factors, including: (1) the fact 94% of the center's revenue was generated from billing patients, exchanging medical services for payment as a business (Id. ¶ 24); (2) there was no documentary evidence of the cost of charity care or testimony about the number of patients receiving it (Id. ¶ 26); and (3) the documented costs of charity care represented less than 1% of its net services revenue (Id. ¶27).

B. Policy ramifications of quantitative comparisons

1. What if Plaintiff holds its doors open and nobody comes? It does not matter and it did not happen.

At trial, this Court asked if examining the numbers of persons who actually applied for care would result in a denial of exemption simply because there was not an adequate number of persons in need of care. The plurality in Provena responded to this argument directly:

> "If the number of poor, uninsured and underinsured residents of Champaign County was as insignificant as PCMC's charitable care program reflects, the opportunities for Provena Hospitals to further its mission there would be virtually nonexistent. And if the opportunities were so limited, it is difficult to understand why Provena Hospitals would continue to devote its resources to serving that community." Provena, 236 Ill.2d at 399.

Similarly, here, if Plaintiff's charitable mission were to serve the poor, it is unclear why this would prompt it to continue to operate in an area with so little unmet need.

The constitutional standard does not give the Court power to hand out an A for effort. Nor does it promise a hospital that if it is once charitable, it will always be charitable, regardless of need. The Supreme Court has made clear that the relevant determination is how the property is "actually and factually used". Korzen, 39 Ill.2d at 157; Hall (1/28/19 a.m.) 97:22-98:8 ("To say that we're doing all that we can ***if it only produces this much, still doesn't answer the question *** is the institution as a whole primarily charitable"). Tax exemptions involve costs to units of local government and to other taxpayers. The framers of the Illinois Constitution struck a specific balance between these costs, the needs of the charitable class, and the needs of taxpayers seeking exemption. This Court is not free to disregard this constitutional choice simply because others would strike a different balance now.

[3] While Midwest involved a Section 15-65 exemption, the charitable use standards are the same. See Oswald, 2018 IL 122203, Par. 34 (Section 15-86 was constitutional because it incorporated the charitable use standard of Section 15-65, which in turn incorporated the constitutional standard of charitable use).

> "Just because the test for exemption is, in some respects, 'anachronistic, a reflection of a time without third[-]party pay[e]rs and sophisticated medical care[,] *** it does not necessarily follow that the changed circumstances still merit a tax exemption. Instead, perhaps the exemption is as anachronistic as the reasons that originally gave rise to it. Things that were once tax-exempt can become taxable if circumstances change". Provena, 384 Ill. App.3d at 768, quoting D. Hyman, *The Conundrum of Charitability: Reassessing Tax Exemption for Hospitals*, 16 Am. J. L. & Med. 327, 379(1990).

Whatever policy shortcomings the exclusive charitable use standard has can be addressed at the next State constitutional convention. Or, the legislature can decide to directly subsidize worthy institutions and activities in a different manner.

These points are academic: of course Champaign County has significant unmet need. According to Dr. Leonard's introduction to the 2007 Community Benefits Report:

> "There is no denying that the percentage of the uninsured and underinsured is on the rise, forcing people to make difficult decisions affecting their health and financial security". TR-2027e, p. 2.

Dr. Leonard testified that in 2008, the number of people who were uninsured and living at a low income was increasing dramatically. Leonard (1/4/19) 143:9-15; see also Provena, 236 Ill.2d at 399 (summarizing census data for Champaign County). According to Plaintiff's 2011 Community Benefit Report, 19% of the residents of Champaign County lived in poverty; 8.8% lived in extreme poverty; and 13.5% of the residents were uninsured. TR-2027J, p. 1. By the time of the 2012 Community Benefit report, 23.4% of Champaign County residents lived in poverty, and 15% were uninsured. TR-269. Professor Hall compared the percentage of non-elderly uninsured persons in the Champaign area with the percentage of non-Medicare services Plaintiff provided to the uninsured, and concluded Plaintiff did not come close to serving its proportionate share of unmet need. TR-2004, p. 26 (Table 12).

Moreover, Plaintiff could, and did, change its policies to limit the number of people who could be admitted. Tonkinson testified that, even before this change, he believed Owens had "ways to influence" the number of people who apply for and qualify for charity care. Tonkinson (1/9/19) 57:17-20. When Plaintiff expanded its charity care with the acquisition of CCA, it imposed geographic limits on the residence of non-emergency patients receiving charity care out of a concern people would "inundate us because of the generous nature of the policy". Tonkinson

(1/7/19) 112:10-13. Plaintiff cannot strategically stave off a flood of charity care applications, and then complain its pool of applicants is dry.

2. Quantitative comparisons are part of a proper role for the Court

At trial, this Court expressed sympathy for the partial dissent in Provena, which accused the plurality of establishing a "quantum of care", an exercise best left to the legislature. Provena, 236 Ill.2d at 412. However, the plain language of the constitution establishes a "quantum of charitable use" requirement: that charitable use be exclusive. The Court need not set exact and uniform thresholds in order to consider numbers as they are constitutionally relevant. Courts consider numbers in the course of making qualitative judgments in any number of other legal arenas. Here, the metrics considered are to be tailored to the specific charitable use claimed. See, e.g., Decatur Sports Found., 177 Ill. App.3d at 712 (comparing number of non-charitable baseball games to total games on field claimed to be used for charitable sports foundation); Morton Temple Ass'n, Inc. v. Dept. of Revenue, 158 Ill. App. 3d 794 (1987) (considering number of food baskets distributed to needy families in assessing Masonic lodge's charitable exemption claim, and comparing expenditures for these with expenditures for refreshments); Northern Illinois University Found. v. Sweet , 237 Ill. App.3d 28 (1992) (educational exemption denied to organization that managed property, where only provided programming assistance to 37% of groups renting space from it); Resurrection Lutheran Church v. Dept. of Revenue, 212 Ill. App.3d 964, 974 (1991) (comparing number of complimentary tickets offered by arts program to total number of tickets); Provena, 236 Ill.2d at 381-82, 236 Ill.2d at 397 (plurality) (comparing number of patients served to total patients; and dollar value of charity care given as a percentage of revenue). If the quantitative comparisons here are particularly complex, that is only because Plaintiff is trying to apply this standard on a scale never contemplated by the 1875 or 1970 constitutions.

While case-by case numeric comparisons may leave the health care industry in a state of flux, that uncertainty is baked in to any meaningful constitutional standard. Korzen itself noted that supreme court precedent "provide no precise formula for resolving questions of purported charitable use". Korzen, 39 Ill.2d at 156. This was precisely the state of uncertain, case-by-case decision-making that was in place when delegates to the Illinois Constitutional convention stated they were pleased with pre-existing judicial interpretations of the constitutional limit on charitable

property tax exemptions and did not want to change the constitution for that reason. See V Proceedings at 3845 (Comments of Delegate Karns on August 9, 1970).

C. Charity care numbers here

1. System-wide metrics

Whether examined at the level of the hospital or at the level of Carle Foundation, Plaintiff's charity care was dismally low for most of the period at issue here, and the statistics for the final year are highly suspect.

Charity Care Compared to Operating Expenses and Total Income ($1,000s)

	Hospital -Specific		**CF Company-Wide**				
	Hospital charity care	**% of Hospital-Specific Expense**	**Total Charity Care**	**% of Hospital Company Expenses**	**% of CF Total Expenses**	**% of Operating Income**	**% of Total Income (inc. investments)**
FY 2004	$2,034	0.8%	$2,042	0.8%	0.6%	7.6%	6.2%
FY 2005	$2,501	1.0%	$2,529	0.9%	0.7%	44.3%	6.1%
FY 2006	$4,791	1.0%	$4,904	1.6%	1.3%	16.5%	4.4%
FY 2007	$6,984	2.3%	$7,628	2.5%	1.7%	22.6%	6.9%
FY 2008	$8,659	2.6%	$9,901	2.5%	2.2%	27.4%	22.8%
FY 2009	$7,831	2.3%	$9,043	2.3%	2.0%	16.7%	N/A**
FY 2010	$9,025	2.5%	$11,522	2.8%	1.5%	23.0%	8.5%
PY 2010	$6,160	3.6%	$9,884	5.0%	1.2%	29.5%	15.2%
CY 2011	15,753	5.0%	$25,244	7.8%	1.6%	67.6%	22.9%
Average	**$7,486**	**2.5%**	**$9,729**	**2.9%**	**1.5%**	**25.8%**	**14.7%**

See TR-2004, p. 11(Table 3) **Total income was negative in 2009 due to investment losses

The Department of Revenue submitted similar metrics demonstrating how low Plaintiff's charity care numbers were, relative to its total operations. TR-1094.1; TR-1094.2; TR-1094.3.

Professor Hall concluded Plaintiff's charity care was "several times lower" than charity care typically provided by government hospitals. According to IRS records, government hospitals provided on average 6.6% of operating expenses in charity care in 2011, while Plaintiff averaged 2.5% in the period from 2004 through 2011. Hall (1/28/19 a.m.) 88:5-21.

Professor Hall placed particular weight on charity care as a percentage of operating income (or income from operations). Income from operations is the total operating revenue minus total

expenses. Tonkinson (1/9/19) 8:14-17; 170:16-17. This would include income from the operations of the hospital itself, but not income from investments. Tonkinson (1/9/19) 168:19-21. Professor Hall considered this the equivalent of "profits from patient care services". Hall (1/25/19) 138:20-21. It is reasonable to expect a charitable institution to spend at least half of its income from operations on charitable purposes. Hall (1/25/19) 139:16-21.

This standard makes sense. Two very different organizations with the same charity care expenses could have very different percentages according to this metric because of significantly different operating incomes. Tonkinson (1/9/19) 170:22-171:17. A hospital that was much more profitable would have a different metric here. Hall (1/25/19) 144:20-145:3. It would have the ability to provide more charity. Thus, a truly charitable hospital that charges its patients only what it needs to survive might provide less total "charity care" than a well-heeled hospital that provides selective discounts and strategic write-offs or recharacterizations of bad debt. Yet, in the language of Congregational Sunday School, only the former hospital is charitable, as only it charges in a way that truly "makes a gift to needy persons possible ** beyond what [it] would otherwise give". Congregational Sunday School, 290 Ill. at 117-18. A percentage of profits metric explains why it was significant to the Supreme Court in Sisters of the Third Order that the hospital was run by nuns who had devoted all of their property to its operation, and that it relied upon donations to survive: a hospital running with thin margins may well have low charity care numbers, but a relatively high percentage of income from operations devoted to charity.

Here, Plaintiff had over 50% of its operating income devoted to charity in only one year, Calendar Year 2011. TR-2004, p. 11 (Table 3). The high charity care in this particular year is misleading, as it was when Plaintiff's practice of repackaging its prior bad debt from CCA was at its peak. Jackson (1/16/19) 75:23-76:2. Professor Hall indicated he would attach less significance to this percentage if medical services listed at cost for that year could not be related to medical services actually provided that year. Hall (1/28/19 p.m.) 269:3-10. He would attach more weight to the average over time, which is 14.7% for the period at issue here.

2. The problem of timing

All of the above quantitative comparisons assume the charity care is credited in the period in which the medical services were actually provided. Wholly apart from whether repackaged bad debt is actually charitable, this practice makes it impossible for Plaintiff to meet its burden of proof as to any given year. Again, each year's tax exemption is a separate claim. People ex rel. Tomlin

v. Illinois State Bar Ass'n , 89 Ill. App.3d 1005, 1011-12 (1980). Tonkinson indicated that there is a principle in accounting of matching revenues and expenses, so that the expenses in any given year accurately reflect the activities of the year. Tonkinson (1/9/19) 142:19-23. Similarly, Professor Hall testified that the normal accounting process would attribute expenses to the same accounting period as the service provided. Hall (1/25/19) 136:21-24. Owens testified that it is "always the goal" to match expenses with the current year's revenue. Owens (1/11/19)132:18-22. Just as it is important to match income and expenses in a consistent way, so as not to mislead investors and the IRS, it is important to match charity care with other metrics in a consistent format in any given year to provide a useful picture of Plaintiff's operations.

If there is a way to know how much of the change in charity care between 2004 and 2011 reflects an actual increase in charitable medical care provided in any given year, Plaintiff did not present it. Owens (1/11/19) 135:2-14, 142:10-144:10. In fact, in the course of written discovery, Plaintiff admitted that it was not able to determine the amount of charges owed to it, CCA, or their respective subsidiaries prior to the implementation of the Self-Pay Compass that were recharacterized as charity care after the implementation of the Self Pay Compass. TR-2634, p. 6-7, Supplemental Answer to Int. 16. Plaintiff also admitted it could not determine the cost associated with these charges in any given year. TR-2634, p. 7, Supplemental Answer to Int. 17.

D. Other bases for comparison

Several other metrics demonstrate how small Plaintiff's charity care program was relative to its total operations. For instance, in its 2007 audited financial statement, Plaintiff reported charity care at one point was reported at charges, as opposed to costs. When asked about this practice, Tonkinson testified:

> "If I remember, we had gone through a number of depositions with you at the time related to an investigation you were conducting of hospitals across the state and there were lots of questions about the appropriateness of how that was calculated and it was easier and made more sense, and the difference when you use a ratio of cost to charges between showing what percent is charges and what percent is cost was immaterial". Tonkinson (1/8/19) 71:13-24.

The difference between costs to charges is reflected in the ratio of net patient service revenue to gross patient service revenue, which for that year was 49.1%. TR-151, p. 13 (Note 2). In summary, Plaintiff's former Chief Financial Officer believes charity care at cost was so small relative to measures of total operations that, even if you double it, the difference was immaterial for purposes of financial audits.

The small role of charity care is also demonstrated by Plaintiff's compensation to its executives. Plaintiff's CEO acknowledged that the compensation paid to its top ten executives in 2005 exceeded charity care costs for that year. Leonard (1/7/19) 53:8-12. In 2005, the combined total spent on charity care at cost for Carle Foundation, Carle Foundation Hospital, and Carle Development Foundation was $2,591,154. TR-2027C, p. 8 ($2,501,317 + $28,041 + $61,796). According to Plaintiff's Federal Income Tax Form 990's for that year, this is less than Plaintiff paid its highest paid executives for these three entities, $2,893,199. TR-109, p. 34 ($1,298,157.98 + $451,181.00 + $654,033.14 + $277,859.43 + $161,843.60 +$50,123.79).[4]

E. Community benefits as a whole

As noted in Part Two, Section I, many of Plaintiff's claims of community benefit and charity care are overstated. Professor Hall noted that even if you grant Plaintiff the benefit of all of its (unrealistic) claims, its community benefit ranged between 3.5% and 14.5% of its operating expenses between 2004 and 2011, with an average of 7%. TR-2004, p. 13 (Table 4). But this analysis was prepared before Plaintiff expressly --and appropriately-- disclaimed any reliance on the Medicaid and Medicare shortfall as charity. Leonard (1/4/19) 244:5-21(Comments of Counsel Pflaum); Hall (1/28/19 a.m.) 13:16-19 (Comments of Counsel Pflaum). Plaintiff has also (appropriately) disclaimed any argument that bad debts listed in its charity care reports are charity care. Robbins (1/10/19) 22:24. According to estimates put together by Plaintiff itself, unreimbursed Medicare/Medicaid costs, and bad debt together make up 65% of its claimed community benefit. TR-2004, p. 12 (Figure 3).

At trial, Plaintiff focused on its increasing interest in research as a form of community benefit. None of Plaintiff's witnesses attempted to quantify Plaintiff's efforts in this regard. Plaintiff reported research expenses from 2005 through 2011 in its community benefits reports, and these can be compared to its total expenses, as reflected in its financial reports:

Year end	**Research expenses**	**Total expenses**	**Research / Total expense**
6/30/05	**$523,071** TR-1001, p. 10	**$368,071,002** TR-1001, p. 28	**0.14%**

[4] At trial, Plaintiff emphasized that its executive compensation was set by market study. Leonard (1/4/19) 108:13-19**;** Fallon**(**1/14/19) 222:10-15; 224:20-24. The issue presented is not whether Plaintiff's executives were appropriately compensated for the job they were hired to do, but rather whether that job was to run an organization primarily engaged in providing charity.

6/30/06	**$374,161** TR-137, p. 23	**$379,264,346** TR-137, p. 34	**0.098%**
6/30/07	**$862,550** TR-1003, p. 20	**$453,565,000** TR-1003, p. 29	**0.19%**
6/30/08	**$2,544,618** TR-179, p.22	**$458,827,000** TR-179, p. 31	**0.55%**
6/30/09	**$3,478,685** TR-1005, p. 27	**$461,129,000** TR-1005, p. 36	**0.75%**
6/30/10	**$3,908,589** TR-1006, p. 2	**$767,545,000** TR-1006, p. 28	**0.51%**
12/31/10 (Partial year)	**$4,855,233** TR-1007, p. 2	**$806,664,000** TR-1007, p. 25	**0.6%**
12/30/11	**$9,285,568** TR-1008, p.2	**$1,571,538,000** TR-2204, p. 6	**0.59%**

In summary, Plaintiff never spent even 1% of its total expenses on research costs in the period at issue here.

In arguing it meets the Constitutional standard in its opening brief, Plaintiff attaches great significance to a series of other community benefits that were described in very summary testimony in the first days of trial through Dr. Leonard, such as providing a Level One Trauma Center; providing a Perinatal Center; its designation as a Primary Stroke Center; and its education and research activities. Plaintiff has made no effort, whatsoever, to compare these services with the total economic activity on the parcels at issue here[5].

F. Plaintiff fails to tie these figures to any particular parcel

The above analysis assumes the numbers given by Plaintiff as to its charitable operations are properly attributed to the specific parcels at issue in this case, as the constitution demands. Plaintiff cannot make this showing.

1. Legal Background

Plaintiff argues it is not required to provide information on a parcel-by-parcel basis. Certainly, Section 15-86 allows aggregation of parcels. See 35 ILCS 200/15-86(g)(1)(calculating estimated property tax on individual parcels, "aggregated as applicable"). In fact, Koch testified he believed Section 15-86 would allow Plaintiff to combine exemption claims from facilities in Champaign County and Lake County, Illinois. Koch (1/18/19) 160:23-161:7. Plaintiff's

[5] In fact, Dr. Leonard could not even recall whether the primary stroke center status was attained after the period at issue in this case. Leonard(1/7/19), p. 25:8-13.

application included information about Plaintiff's facilities in Coles County and Vermilion County. Koch (1/17/19) 114:23-115:8.

But the constitution requires more. The constitution allows exemption of only that property "used exclusively" for a charitable purpose. See Ill. Const. 1970, Art. IX, Sec. 6. This requirement is meaningless if property can somehow be deemed "used exclusively" for a charitable purpose by the use of geographically distinct parcels elsewhere. The Supreme Court has specifically required that a hospital seeking exemption under Section 15-86 "must show that the subject property meets the constitutional test of exclusive charitable use". See Oswald, 2018 IL 122203 ¶39 (Emphasis added). The Supreme Court has long held that it is the use of the property, not the use of the income generated from it, which determines its exempt status. See City of Lawrenceville v. Maxwell, 6 Ill.2d 42, 49 (1955); Provena, 336 Ill.2d at 404-05 (plurality).

In Kiwanis Intern v. Lorenz, 23 Ill.2d 141 (1961), the Illinois Supreme Court rejected a claim of charitable exemption for a fraternal club's national headquarters based upon the activities of the club elsewhere, noting the taxpayer "must show clearly that the specific property for which exemption is claimed is within the contemplation of the law". Kiwanis, 23 Ill.2d at 145-46 (Emphasis added, citations omitted); see also Rotary International v. Paschen, 14 Ill.2d 480 (1958); Pontiac, 243 Ill. App.3d 186, (reversing trial court that held Masonic lodge's exemption could be justified by contributions to activities of broader organization, rather than use of parcel itself).

The requirement that property be deemed exempt at the level of an individual parcel is clear from the repeated holdings of the Supreme Court that the exempt use of a neighboring tract does not relieve a taxpayer from the burden of establishing the specific parcel at issue is used exclusively for exempt purposes. See City of Mattoon v. Graham, 386 Ill. 180 (1944)(use of a small tract for exempt purposes did not allow the taxpayer to seek exemption for a much larger, adjoining tract used for farming); People ex rel. Carr v. Sanitary District of Chicago, 307 Ill. 24 (1923)(use of portion of a tract used for exempt municipal purposes would not allow a property owner to claim an exemption for the remainder, used to generate electricity for both public and private purposes); MacMurray College College v. Wright , 38 Ill.2d 272 (1967) (dwellings used for faculty and staff adjacent to school property were not exempt from taxation as used primarily for school purposes); Chicago Bar, 163 Ill.2d 20(statute authorizing exemption for certain properties adjacent to property used for exempt educational purposes does not relieve taxpayer from burden of showing subject property, itself, is used exclusively for exempt purposes); ITT ,

39 Ill.2d 59 (80 acre tract intended for development as golf course was taxable despite being contiguous to 67 acre tax exempt property); Spring Hill Cemetery of Danville v. Ryan, 20 Ill.2d 608 (1960).

This issue was addressed squarely by Community Health Care, Inc. v. Dept. of Revenue, 369 Ill. App.3d 353 (2006). There, a medical facility sought charitable exemption for a specific facility based upon organization-wide financial data, which it sought to extrapolate to the specific facility at issue. The Third District rejected this evidence as speculative. Here, Plaintiff attempts the same thing, inferring charity care for the specific parcels at issue here from evidence about its operations as a whole. See also Provena, 236 Ill.2d at 403(plurality)(rejecting charitable exemption claim based upon donations to other entities because they "do not demonstrate an exclusively charitable use of the [hospital] complex. Indeed, it tells us nothing about the use of the property at all.").

Plaintiff has previously attempted to finesse this issue by focusing on the law of auxiliary exemptions. Property that is not itself being used for direct delivery of charity care may still be entitled to a charitable exemption if its use is reasonably necessary to the provision of charity elsewhere. See, e.g., Memorial Child Care v. Dept. of Revenue, 238 Ill. App.3d 985 (1992). Plaintiff infers from this rule that it need not show the amount of charity provided on any given parcel. Fallon (1/15/19) 306:5-14 (Comments of Counsel Pflaum). But the auxiliary exemption rule just expands what it means to be "charitable"; it does not eliminate the requirement that the charitable use, however defined, be exclusive. The issue is not, as Plaintiff's counsel suggested a trial, whether there is merely a "direct nexus" between the specific hospital properties at issue and the charitable use. Fallon (1/15/19) 307:7-22 (Comments of Counsel Pflaum). Plaintiff repeats the "direct nexus" standard it has just invented in its brief. See Opening Br., at p. 54. Plaintiff must still establish the specific property at issue is primarily used for purposes reasonably necessary to support charity. See MacMurray College, 38 Ill.2d at 278.

2. Plaintiff cannot tie charity care to any particular parcel

The Court specifically directed the parties to break down their exemption claims by parcel. Here, again, Plaintiff simply ignored the Court. Plaintiff's Community Care program applied to programs centered outside of the hospital campus. TR-93, p. 4, ¶ F; Tonkinson (1/7/19) 74:18-75:7. CFH owned several dozen parcels of real estate throughout Champaign County and neighboring counties. Lambert (1/10/19) 236:8-20; TR-305 through TR-311.

Much of the increase in charity after the CCA merger occurred offsite. According to Tonkinson, CCA saw many more patients than Plaintiff did prior to the merger, and many of those patients were seen "where they did all the treatment in their facilities". Tonkinson (1/7/19) 10-12. According to Plaintiff's reports with the Illinois Department of Public Health the percentage of outpatients seen at the hospital campus in 2010 was 84%. TR-1023, p.2 (80,509/95,579). In 2011, this fell to 24%, even though the number of outpatients grew. TR-1024, p. 2 (89,339/375,617).

In the course of written discovery, Plaintiff admitted it could not provide the total number of applications for charity care, community care, or financial assistance submitted or denied, broken down by place of service and department. TR-2634, Int. 5, 6, p. 2-3. Plaintiff also admitted it could not provide information about free or discounted services provided pursuant to these policies broken down by place of service and department. TR-2634, Int. 1, p. 1-2; TR-2639, p. 3(Request to Admit No. 4). Tonkinson could not determine how much of the charity care reported in any given year correspond with community benefits reports or audit financial reports correspond with the parcels at issue in this case. Tonkinson (1/9/19) 165:7-19. Similar testimony was adduced from Koch ((1/18/19) 183:8-11; 186:23-187:7); Hesch ((1/15/19) 245:8-246:7); 252:1-6; and Jackson ((1/16/19) 95:6-12). Nor was this gap filled by any other evidence at trial.

3. The record relating to activities other than charity care is not tied to any particular parcel

The CBISA program used to track community benefits did not assign services to a given parcel. Robbins (1/10/19) 124:17-19. Robbins later testified that she may be able to provide information about the services associated with individual parcels if given additional Community Benefit report detail, but that detail was not included in the records she identified at trial. Robbins (1/10/19) 155:17-22, 160:20-161:5 (in response to the Court's inquiry).

Several of the charitable activities claimed by Plaintiff did not occur on any of the parcels at issue here. These included:

1. Donations to the public health department supported a mobile dental and optical unit. Leonard (1/3/19) 84:23-24-85:19.
2. Support provided for the Christian Health Center. Robbins (1/10/19) 141:7-10.
3. Funding provided to Frances Nelson Health Center. Tonkinson (1/9/19) 242:22-243:3; 279:3-6.
4. The Guest House. Leonard (1/7/19) 27:22-28:17; Lambert (1/10/19) 237:7-12.

5. A 2007 dental grant to the Public Health District for a mobile clinic. Leonard (1/7/19) 18-29:3.
6. Other mobile clinics. Leonard (1/3/19) 58:6-14.
7. The medical education expenses corresponding with activities at the Forum. Robbins (1/10/19) 83:17-22; 147:13-17.
8. Services associated with farm safety camps, farm safety days, mall pacers, safety machinery operation program, mobile clinic, and sports medicine. Robbins (1/10/19) 148:1-150:2.

Several key witnesses made it clear they could not determine how much of the research claimed by Plaintiff occurred on site at the parcels at issue in this case. Leonard (1/7/19) 88:19-21; Robbins (1/10/19) 145:23-146:3; Koch (1/18/19) 164:23-165:11. In fact, the only individual researcher mentioned by Dr. Leonard performed his work at on the University of Illinois campus and at the Mills Breast Center, not on the properties at issue in this case. Leonard (1/7/19) 126:1-22, 139:8-15; Robbins (1/10/19) 82:5-13. Much of the other research conducted by Plaintiff occurred there, as well. Robbins (1/10/19) 146:15-21; Wellman (1/24/19) 145:22-146:7. According to Lambert, when he worked for Plaintiff, there was a separate "education center" and a separate "medical education research center" as part of the main hospital campus. Lambert (1/10/19) 195:18-24, 259:4-17. Koch testified that this separate facility for research existed through 2011. Koch (1/18/19) 136:3:24; 143:20-144:16. According to Wellman, bears used for medical research were housed in Paxton. Wellman (1/24/19) 14:5-9. Presumably, most of the costs associated with this particular project rested in Paxton, as well.

Plaintiff notes that some activities by persons at the hospital had the effect of assisting charitable activities elsewhere. For instance, Emmanuel testified about the fact she and others at CFH assisted Frances Nelson. See Emmanuel (1/24/19), p. 204:24-205:7. Certainly, if Plaintiff wanted to establish at trial that some identifiable portion of the parcels at issue here was used primarily for purposes reasonably necessary to charitable research, Frances Nelson, other charity care, the mobile clinics, or other charitable activities elsewhere, it could have done so. Plaintiff did not.

III. The Constitutional role of the remaining Korzen Factors

To be entitled to an exemption, a taxpayer must meet both the statutory and the Constitutional standard of exclusive charitable use. Oswald, 2018 IL. 12203, Par. 18.

The constitutional standard for exclusive charitable use has been defined by reference to the Korzen Factors:

> "[T]he distinctive characteristics of a charitable institution are that it has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and [h]olds them in trust for the objects and purposes expressed in its charter, ***[and] that a charitable and beneficent institution is one which dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses ***." Korzen, 39 Ill.2d at 156-57 (citations omitted).

Throughout this litigation, Plaintiff has urged this Court to rule that some of the Korzen Factors are not constitutional in nature. Plaintiff still contests this point in its opening brief. See Opening Br., at 15.

All of the Korzen Factors were clearly intended to articulate a constitutional standard. Korzen itself referred to the factors as relating to the constitutional issue of charitable use in text both immediately before and immediately after they were introduced. See Korzen, 39 Ill.2d at 156. These factors have repeatedly been applied in cases, including Korzen itself, where no issue of charitable ownership was presented. See Korzen, 39 Ill.2d at 155. In 2004, the Illinois Supreme Court has stated, in no uncertain terms, the Korzen Factors "are not mere nonstatutory 'hurdles' intended to apply only to the [prior] version of the charitable-use property tax exemption statute. Rather, this court articulated the [Korzen Factors] to resolve the constitutional issue of charitable use." Eden, 213 Ill.2d at 290 (citation omitted, emphasis in original).

Prior to trial, Plaintiff argued the Illinois Supreme Court abandoned the Korzen Factors as a constitutional test in the Oswald decision. Oswald summarized the constitutional standard in general terms as "a gift to be applied *** for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction for their general welfare, -- or in some way reducing the burdens of government". Oswald, 2018 IL 122203 ¶¶ 15, 17. The Oswald decision then noted that the term "exclusively used" means the primary purpose for which property is used and not any secondary or incidental purpose. See Oswald, 2018 IL 122203, Par. 16. Plaintiff relies on the Court's next statement that "the above-stated 'principles constitute the frame of reference to which we must apply plaintiff's use of its property to arrive at a determination of

whether or not such use is in fact exclusively for charitable purposes." Oswald, 2018 IL 122203, Par. 17.

This Court appropriately rejected Plaintiff's argument. This passage in Oswald was intended as a summary of the Korzen standard, not an abandonment of it. When the Oswald decision then defined charity, it relied upon a passage of the Provena plurality opinion which defined charity "for purposes of applying" the Korzen Factors. See Provena, 236 Ill.2d at 390-91, cited at Oswald, 2018 IL 122203 ¶17. In Oswald, the supreme court noted that it had "repeatedly acknowledged the difficulty of framing a universally applicable definition of an exclusive charitable use". See Oswald, 2018 IL 122203 ¶17. Oswald cites two precedents in support of this proposition, both of which expressly endorse all of the Korzen Factors as part of the fact-specific analysis the supreme court would use instead of a "universally applicable definition of exclusive charitable use". See Oswald, 2018 IL 122203 ¶ 17, citing, Nordlund, 40 Ill.2d at 100-01 and Korzen, 39 Ill.2d at 156.

A judicial opinion is authority only for what is actually decided. Bd of Governors of State Colleges & Universities for Chicago State University v. Illinois Fair Employment Practices Comm'n, 78 Ill.2d 143, 149 (1979). Oswald ruled Section 15-86 was facially constitutional because the taxpayer had to show exclusive charitable use in addition to the statutory criteria for exemption. The Supreme Court simply had no reason to then opine in more detail on the constitutional standard. Moreover, there is a cogent policy against overruling cases by implication. Anderson v. Brown, 340 Ill. App. 613 (1950). In Oswald, the Supreme Court was careful to note that the action before it "is framed solely as a facial challenge to the constitutional validity of section 15-86 of the Property Tax Code. As such, we have before us only the statute itself". Oswald, 2018 IL 122203 ¶40 (Emphasis in original, citation omitted). Again, the Court eschewed any "universally applicable" definition of exclusive charitable use. Id. at ¶ 17. The Oswald decision specifically reserved the broader constitutional dimensions of its decision for another day. Id. at ¶ 43. It would be flatly inconsistent with this restrained approach for the court to have made a sea change in Illinois Constitutional law on a blank record.

Any remaining ambiguity as to the current constitutional status of each of the Korzen Factors has since been resolved by the First District's recent decision in Midwest Palliative Hospice and Care Center v. Beard, 2019 IL App(1st) 181321 (2019). In Midwest, a hospice center was denied a traditional charitable property tax exemption under Section 15-65, even though the

Department stipulated to its charitable ownership. Accordingly, the only issue presented was charitable use.[6] The First District rejected the hospice care center's argument that the Korzen Factors should not be applied because they related to ownership alone: "While it is true that the ALJ was tasked with only determining whether the property was being put to a charitable use, it does not mean that the first five Korzen factors cannot be considered insofar as they relate to how the property is being used.". Id. at ¶ 22 (internal citations omitted). The Midwest decision is binding in this trial court. State Farm Fire and Cas. Co. v. Yapejian, 152 Ill.2d 533, 539-40 (1992).

IV. Organization of Plaintiff

A. Plaintiff's planning documents

The Court has received evidence of Plaintiff's planning documents – its mission statements, strategic plans, and its incentive plans. While these documents are not dispositive (Korzen, 39 Ill.2d at 157), it is still appropriate to consider a hospital's "financial structure, policy on renumeration of officers and direction, application of fees collected, and the method and purpose of operation". People ex rel. Cannon v. Southern Illinois Hospital Corp. , 404 Ill. 66, 71, 72 (1949). Plaintiff's charity care policies are viewed in the context of the hospital's overall strategies regarding revenue. See, e.g, Provena, 236 Ill.2d at 400. Korzen itself considered by-laws and other organizational documents. See Korzen, 39 Ill.2d at 157-58. In evaluating charitable use, it is appropriate to examine records of meetings to determine whether issues relating to charity dominate them. Compare Cook County Masonic Temple Assoc. v. Dept. of Rev., 104 Ill. App.3d 658 (1982) with Pontiac Lodge No. 294 , A.F. & A.M. v. Dept. of Revenue, 243 Ill. App.3d 186 (1993); see also Kiwanis, 23 Ill.2d at 144-45 (considering published statements of purpose). One cannot examine whether Plaintiff "holds [its resources] in trust for the objects and purposes expressed in its charter" (Korzen, 39 Ill.2d at 157) without looking at the charter – and the strategic plans and incentive plans are the mechanisms used for putting this charter into action. To the extent Plaintiff points to operational concerns to explain its low charity numbers, its surpluses, or the barriers to those seeking care, these documents are helpful in evaluating these claims.

[6] The charitable use standard under Section 15-65 (at issue in Midwest) is the same as the constitutional standard at issue here. See Note 3, supra.

1. Strategic Plans

According to Leonard, the strategic plan was developed by examining the internal operations, the community need, and programmatic needs before it was presented to the Board of Trustees for approval. Leonard (1/4/19) 34:12-24. The strategic plan contains numeric goals whenever possible, that are used to measure hospital performance over time. Leonard (1/4/19) 35:3-13.

Plaintiff's strategic plans emphasized growth over charity care. Plaintiff's strategic plan for the period beginning in 2000 set specific growth targets for local admissions, growth in market share, growth in non-HAMP business. TR-2262, p. 2-3; TR-4207, p. 6-7. The 2005 plan had repeated references to growth, increasing market share, and attaining a profit margin. TR-4210, p. 10-16. Selective growth indicators were set, including attaining a 4.2% profit margin for Plaintiff and an 8.7 profit margin for the hospital. TR-4210, p. 20. No such specific indicators were set for charity care. Leonard (1/4/19) 235:17-19; Emmanuel (1/24/19) 179:20-180:13, 197:1-14; TR-4210, p. 20-21. Attaining a profit margin was listed as a "priority initiative". TR-4210, p. 13. This pattern of not emphasizing charity care was repeated in the 2006 strategic plan, though that plan did include a target for making sure the split between bad debt and charity was at 50%. TR-4210, p. 26, 30.

Plaintiff's Strategic Plan for 2007 also prioritized maintaining an operating margin and selective growth, but did not refer to charity care as a key performance indicator. TR-4082, p. 2-3. Billimack testified that in formulating the strategic plan at this point, Plaintiff considered local and regional market studies. Billimack (1/31/19) 13:23-14:1. These studies made no distinctions between for-profit and not-for-profit hospitals, with the occasional exception of comparisons with specific organizations. Billimack (1/31/19) 14:2-18.

In the 2007 Strategic Plan, a new initiative was listed as:

> "Partner with community resources to provide access to care for both inpatient and outpatient for underinsured and uninsured.". TR-4082, p. 8.

One of the action items listed under this initiative is "launch community care initiative". TR-4082, p. 8 (Emphasis added). Emmanuel testified this initiative involved promoting the charity care program, and "trying to identify action items to reach the uninsured and underinsured". Emmanuel (1/24/19) 238:15-239:3. According to Billimack, "Strategic Planning 101" is that you want to have accountability and having due dates and a person responsible were part of that

process. Billimack (1/31/19) 20: 16-18. Yet no due date was set, and no person was assigned specifically to this task[7]. This plan included a general reference to "fully develop[ing] collaborative efforts with Frances Nelson Health Center, Public Health, Carle Clinic and Provena Covenant Hospital", but these were open-ended, with no specific targeted goals. TR-4082, p. 8. According to Billimack, no goals had been set because these were expected to be generated by discussions after the strategic plan was adopted. Billimack (1/31/19) 24:18-25:8.

By contrast, several specific business growth areas in specific service lines are mentioned in this strategic plan. TR-4082, p. 5, 15; Billimack (1/31/19) 66:22-23, 70:15-18. This included cooperating with CCA in fostering diagnostic and therapeutic imaging. TR-4082, p. 6. More generally, this was accomplished by Plaintiff and CCA being aligned, and working together. Billimack (1/31/19) 69:1-18. Plaintiff set specific numeric targets relating to increasing its share of medical surgical inpatients in CFH. Billimack (1/31/19) 72:1-12.

Plaintiff's strategic planning records for a plan adopted in April 2007 for 2012 identify critical planning issues, including hospital-physician relationships and growth, but make no mention of charity care. Leonard (1/4/19) 249:20-24-250:4; TR-4084, p. 3; Billimack (1/31/19) 32:1-7. Billimack noted that increasing the number of patients receiving charity care at this point was a "planning issue", but not a critical one. Billimack (1/31/19) 32:13-17, 33:17-20. As of 2007, Plaintiff set a goal of charity care at 3% of CFH gross revenue, and was only at 2.2%. TR-44084, p. 24. In setting specific metrics, Plaintiff replaced this with a goal that had an alternative, more vague goal to "Improve access and continuity of care to underinsured population", with a suggestion that this be assigned to a quality goal. TR-4084, p. 31. Billimack was not aware of any other numeric target that had an alternate goal. Billimack (1/31/19) 1-8. In its 2007 Strategic Plan, Plaintiff recognized a need to develop a program for physician specialty care to the indigent uninsured. TR-4084, p. 31. However, Plaintiff never assigned this responsibility to anyone, and did not provide a time frame in its strategic plan. TR-4084, p. 31. "Strategic Planning 101", indeed.

[7] Emmanuel and Billimack each explained that this was simply because this headed a list of specific action items that were, in turn, assigned to specific persons. Emmanuel (1/24/19) 253:17-19; Billimack (1/31/19) 21:20-22:20. Yet of the specific action items listed, only a hearing program and palliative care took place on site. TR-4082, p. 8; Emmanuel (1/24/19) 22:1-20. No information has been given about the cost or functioning of either of these two specific programs, or their relationship to Plaintiff's current charitable exemption claim.

Plaintiff's 2008 strategic goal of a 5% operating margin was already exceeded by 2007, at 7.3% as of the first set of metrics measuring it. Tonkinson (1/9/19) 189:17-19; TR-4084, p. 24. This same plan set a target for charity care at 3% of gross revenue, measured based on charges, not cost, and Plaintiff started at 2.2%. Tonkinson (1/9/19) 190:11-20. Tonkinson testified that this was not intended as a limit on charity care. Tonkinson (1/9/19) 250:6-13. However, Pat Owens, the Director of Patient Accounting, indicated she "absolutely can't live with 4%" as a target. TR-2378, p. 1.

Monitoring progress on its charity care goal was assigned to the accounting department, rather than patient accounting. Tonkinson (1/9/19) 190:24-191:2; 197:2-6. This function was assigned to Kerry Warburton, someone with no direct interaction with persons seeking charity care, and no role in planning charity care policy. Tonkinson (1/9/19) 197:21- 198:4; TR-4520; Koch (1/18/19) 176:8-17. The functions of the accounting department related more to the overall financial health of the organization; rather than patient accounting, which was more directly responsible for charity care. Tonkinson (1/9/19) 192:11-20. This suggests charity care was more significant to Plaintiff because of its effect on its bottom line than because of its role in Plaintiff's mission. According to May 18, 2009, metrics used to monitor progress, Plaintiff was at 2.1% charity care, but at 6.7% in terms of its operating margin. Tonkinson (1/9/19) 195:19-196:7; TR-4520. Hesch testified that, when he became CFO of Plaintiff in 2010, there was a target of a 3 to 5% operating margin. Hesch (1/15/19) 152:15-23.

At trial, Plaintiff's witnesses gave various explanations for not including charity care more prominently in Plaintiff's strategic plans. Leonard testified charity has generally not been a goal included in the strategic plan but "it's always there" at the mission level. Leonard (1/4/19) 36:17-37:4. Leonard testified that the strategic plan would reflect significant anticipated future changes in the operations of the hospital. Leonard (1/4/19) 212:3-6; Leonard (1/7/19) 135:22-136:9. Leonard elaborated that, because community care was part of Plaintiff's mission, calling it out "would be redundant", and it is "already in the mix". Leonard (1/4/19) 141:10-22. Emmanuel testified that charity care was not mentioned in this strategic plan, because it was "an underlying issue and assumption". Emmanuel (1/24/19) 192:23-193:1. Emmanuel likened it to nursing: it would be mentioned in a strategic plan only if there were some specific initiative surrounding it. Emmanuel (1/24/19) 198:4-22. In Emmanuel's words, "[w]e didn't mention it unless there was a

new program associated with it". Emmanuel (1/24/19) 199:2-5. She did not recall any specific initiative surrounding community care in 2005 and 2006. Emmanuel (1/24/19) 198:10-12.

These explanations condemn Plaintiff more than they help it. They reduce charity care to just one of many different matters of possible importance to Plaintiff, rather than it being its primary or exclusive focus. This line of argument reveals that charity care was actually of lesser importance than other priorities. Presumably, "physician relationships, translational research, clinical development, and financial development" were also "already in the mix", but they were stressed in the 2008 plan. TR-1138, p. 10. Even if Plaintiff's nursing staff were taken for granted, one would expect critical problems with that staff that affected Plaintiff's mission to be reflected in a strategic plan. Plaintiff's explanation implies that, in 2005, when its charity care numbers were at 0.8% of expenses, this was not a critical problem that affected Plaintiff's mission. TR-2004, p. 11 (Table 3). Nor, apparently, was the denial of over half of charity care applications for reasons unrelated to financial need. As far as Billimack knew, the practice of persons being denied charity care for not turning in adequate documentation was never brought up in the course of strategic planning. Billimack (1/31/19) 90:4-6. Plaintiff's explanation demonstrates that its non-exempt activity was so vast that the reforms described over several hours of testimony by Tonkinson did not reflect significant changes in Plaintiff's overall operations. Alternatively, Plaintiff increased its charity care numbers by repackaging bad debt in a way that had no meaningful impact on its operations at all.

In fact, in Dr. Leonard's entire tenure at Plaintiff, he did not recall poverty statistics or rates of uninsured patients in the county being part of the demographic information collected as part of the strategic planning process. Leonard (1/4/19) 225:19-226:4. Emmanuel recalled poverty statistics coming up only as part of economic trends in the community. Emmanuel (1/24/19) 160:19-24. Emmanuel did not recall considering poverty statistics specifically in deciding what services to expand. Emmanuel (1/24/19)162:14-17. While issues relating to access were considered (Emmanuel (1/24/19) 162:19-22), Plaintiff also measured the profitability of services (the excess of revenue over costs) in formulating strategic plans (Emmanuel (1/24/19) 161:5-19). Robbins never recalled any inquiries being made of the CBISA system during the strategic planning process or physician recruitment. Robbins (1/10/19) 119:22-120:13. Billimack testified that, aside from a general demographic analysis of the market, Plaintiff did not specifically look at the Champaign County poverty level as part of its strategic planning. Billimack (1/31/19) 43:1-

6. He testified that information about the amount of uninsured people in the market was only considered at the state or national level. Billimack (1/31/19) 43:7-12. Nor was there any information considered in strategic planning relating to the number of persons in Champaign County on general assistance or food stamps. Billimack (1/31/19) 44:1-11. Snyder, who was in charge of the day-to day operations of the hospital, could not recall any conversation he had with either Tonkinson or Hesch (the CFO's of Plaintiff for the entire period at issue here) relating to the charity care program that led to a change in the operations of the hospital. Snyder (1/23/19) 94:24-96:25.

Yet Plaintiff regularly engaged in joint strategic planning with CCA (Wellman (1/24/19) 80:13-81:4), and in the words of Dr. Wellman, the profitability of CCA "was part of our analysis of everything [CCA] did". Wellman (1/24/19) 82:6-7. A recurring theme throughout all of Plaintiff's strategic plans was promoting the growth of CCA. The 2000 plan emphasized the growth of the "Carle system". TR-2262, p. 13. The 2000 plan stated an express strategy to "assist and grow the Clinic", meaning CCA. TR-2262, p. 4; Leonard (1/4/19) 217; TR-4207, p. 1. Dr. Leonard testified this was part of an effort to increase access to the hospital. 1/4/19, p. 219:1-4. However, the plan targeted this "growth" at CCA, specifically, and only set a more general goal of recruiting doctors from elsewhere. TR-2262, p. 4. Dr. Leonard was not aware of any strategic effort to grow any medical practice other than CCA, aside from a passing reference to expanding membership of the medical staff to Christie Clinic. Leonard (1/7/19) 139:23-140:6.

2. Incentive pay

The incentive plan is also relevant to the Court's inquiry. Cf., Midwest Physician Group, Ltd. v. Dept. of Revenue, 304 Ill. App.3d 939 (1999) (denying exemption after considering the fact that physicians using the property were paid from patient billing revenues generated from the property). Plaintiff's Form 990's indicate that bonuses were paid to all employees if certain financial and strategic goals were met. Leonard (1/4/19) 201:10-16; TR-1037, p. 35. The purpose of incentive pay was to align employee behavior with the strategic plan. Leonard (1/7/19) 61:6-9; Fallon (1/16/19) 6:5-8. The goals set in the strategic plan are used to develop incentive goals that are rewarded with monetary bonuses. Leonard (1/4/19) 35:14:19. Plaintiff had incentive plan goals which required the organization to make budget targets before any payments were made to anyone. TR-2291, p. 1; TR-2293, p. 2. Fallon did not recall any company-wide incentive plan targets relating specifically to charity care. Fallon (1/16/19) 23:3-5. Leonard (1/4/19) 35:14-19.

a. Executive bonuses

Executives were given significant incentive pay. For instance, Dr. Leonard's pay for fiscal year 2006 included $977,100 in base compensation and $193,000 (about 16.4% of the total) in incentive pay. TR-2329, p. 41; Leonard (1/7/19) 60:8-61:5. Typically, incentive pay had two components, one of which was a financial goal and that was related to quality. Tonkinson (1/9/19) 152:13-19. Leonard testified he never personally received a bonus or other compensation based on the level of net income. Leonard (1/4/19) 18-20.

However, executives, including the CEO and CFO, were subject to the organization-wide budget targets in the incentive plan. TR-2291, p.1; TR-2293, p. 3; Fallon (1/16/19) 20:21-21:6, 22:15-23:23; Leonard (1/7/19) 64:22- 65:2. Dr. Leonard did not recall a circumstance in which the organizational goals were different from his personal goals for purposes of incentive pay. Leonard (1/7/19) 62:18-24. According to Dr. Leonard, no organizational goal has ever been set specifically related to the provision of charity care. Leonard (1/7/19) p. 63:1-4.

Snyder testified he received incentive pay targeted to specific performance goals, but he did not recall any performance goals for any executives tied to charity care. Snyder (1/23/19) 91:21-92: 153. Snyder remembered system-wide goals tied indirectly to increasing revenues, and directly to making the budget. Snyder (1/23/19) 92:14-18. Snyder did not recall any system-wide incentive pay goal tied specifically to implementation of the charity care program. Snyder (1/23/19) 92:19-22. Snyder monitored quality indicators on a day to day basis, such as mortality, infection rates, staffing ratios, and throughput, a measure of the time-efficient treatment of patients. Snyder (1/23/19) 93:8-94:7. Snyder was not aware of any indicators relating to better identifying those in need of charity care. Snyder (1/23/19) 94:12-15.

b. Those working with the charity care program

Everyone in patient accounting was subject to the organization-wide budget targets in the incentive plan. See TR-2291, p.1; TR-2293, p. 1; Fallon (1/16/19) 21:3-9. Everette testified she received bonuses, but never one based on work in administering the charity care program. Everette (1/29/19) 27:13-15. Everette testified she was given performance targets, but they related to completing applications within a specified period. Everette (1/29/19) 27:22-28:2. Everette was never given performance targets relating to getting people to provide complete information in their application. Everette (1/29/19) 28:12-15. According to Boyd, she received incentive pay based

upon accounts receivable goals, relating to collecting money from insurance companies. Boyd (1/11/19) 72:1-73:10. However, she never received any incentive pay based upon anything other than accounts receivable. Boyd (1/11/19) 71:19-23. Jackson testified she has received incentive pay bonuses, and has supervised others who have, as well. Jackson (1/16/19) 95:13-21. Even though her department is critical to the administration of charity care, she has never personally received an incentive pay bonus based on the operation of the charity care program, and to her knowledge no one else in her department has either. Jackson (1/16/19) 95:22-96:6.

B. Merger documents

Plaintiff's acquisition of CCA was a "constitutional change in the whole corporate structure". Hall (1/25/19) 185:6-10. As noted above, Stark IV regulations played a prominent role in the strategic planning regarding this merger. TR-2071, p. 14. By contrast, charity care was not mentioned in key planning documents surrounding the merger. TR-4060, p. 3; Hall (1/25/19) 185:6-11. This is even though the acquisition had a dramatic effect on the charity care of Plaintiff, extending the charity care policy to the former doctors of CCA, and doubling the amount of charity care at cost provided. Leonard (1/4/19) 32:22-33:19; TR-2027J; TR-2203, p. 32; TR-2204, p. 25; Tonkinson (1/7/19) 35:22-37:10. Apparently, two times a number that is not significant to Plaintiff's operations is still a number not significant to Plaintiff's operations.

C. Physician recruitment

Prior to the merger, Plaintiff collaborated with CCA in physician recruitment. Snyder was involved in determining what physicians were needed, and in identifying priorities for physician recruitment when it came to hospital and community needs. Snyder (1/23/19) 89:3-19. Snyder did not recall discussing poverty statistics at any point when talking to CCA representatives about physician recruitment. Snyder (1/23/19) 90:17-21. Snyder could not name any specific physician recruitment activity targeted specifically at allowing Plaintiff to better target its services at those not able to pay. Snyder (1/23/19) 91:3-7. Again, Plaintiff identified a specific goal for physician specialty care to the uninsured in its strategic plans, but never established a timeline or assigned responsibility to this goal. TR-4084, p. 31.

D. Role of CCA physicians

Given the close relationship between Plaintiff and CCA physicians, it is appropriate to consider the incentives facing them, as well. According to Dr. Wellman, profitability "was part of our analysis of everything [CCA] did". Wellman (1/24/19) 82:6-7. As noted in Part One, Section

II, CCA-employed medical directors had a key role in managing Plaintiff's space. In the Fourth Amendment to the Emergency Room Exclusive Services Agreement contract, dated October 12, 2006, the emergency department medical director contract had an incentive goal which provided a $16,400 annual payment if the Department's operating loss was below $750,000. TR-4411, p. 32. These profit-driven goals incentivized collections and minimizing uncompensated care in this critical division of the hospital. As shareholders in CCA, these doctors already had incentives to maximize CCA's revenues.

V. Revenue

A. Profits

Korzen asks whether the entity claiming exemption earns "profits or dividends". Korzen, 39 Ill.2d at 157. This is closely related to another Korzen Factor, whether Plaintiff holds its assets in trust for the objects and purposes expressed in its charter. Korzen, 39 Ill.2d at 157. Obviously, this gets more difficult to show the more Plaintiff accumulates assets for no discernable charitable purpose. In Rotary International v. Paschen, 14 Ill.2d 480 (1958), the Supreme Court denied an exemption, in part, because the taxpayer, a social service organization, had a surplus of over $2,000,000, and there was no evidence it intended to use this fund for charity. See Rotary, 14 Ill.2d at 490. In Salvation Army v. Dept. of Revenue, 170 Ill. App.3d 336 (1988), the Salvation Army was denied an exemption for a thrift store, in part because it realized a profit of more than $200,000. The Court noted that it did not matter that this money was put toward charitable endeavors, because it is the use of the property, not the income generated from it, which must be charitable.

1. The not-for-profit form is not dispositive

The parties agree that Plaintiff is formally organized as a not-for-profit corporation, has no shareholders, and no person has been formally issued capital stock in it. Leonard (1/3/19) 98:1-21. The principal traits of non-profit corporations are that they do not have or issue shares (805 ILCS 105/106.05) and that they face constraints on distribution of assets (805 ILCS 105/109.10; 805 ILCS 105/112.16). Plaintiff has repeatedly suggested that the inurement constraint, the requirement that it put all excess revenues back into the organization rather than distribute it to those with an ownership interest, is enough to excuse its surpluses.

Plaintiff tries to make this factor carry more water than it can hold. Being formally organized as a not-for-profit is a necessary, but not sufficient, condition of exemption. See People

ex rel. Carr v. Alpha Pi of Phi Kappa Sigma Educational Ass'n of Univ. of Chicago, 326 Ill. 573, 578-79 (1927). The drafters of the 1970 Constitution specifically rejected the non-profit form as a primary criterion for exemption. See V Record of Proceedings of Sixth Illinois Constitutional Convention (Proceedings) (Statements of Delegate Karns on August 9, 1970), p. 3847. Delegate Karns (quoting an expert who spoke before committee, that "the words "not –for-profit" cover a multitude of sins"). III Proceedings, Transcript of June 19, 1970, p. 1918. One would not "allow a dry cleaner or shoe store with an inurement prohibition qualify for tax exemption". D. Hyman, *The Conundrum of Charitability: Reassessing Tax Exemption for Hospitals*, 16 Am.J.L. & Med. 327, 378 (1990) (Hyman, *Conundrum of Charitability*) ". M. Hall and J. Colombo, *The Donative Theory of the Charitable Tax Exemption*, 52 Ohio State Law Journal 1379, 1384-885 (1991) (Hall & Colombo, *Donative Theory*). The taxpayer in Korzen itself was a not-for-profit, and yet the Court listed this status as one-- and only one-- of the factors to be considered.

2. Specific measures of Plaintiff's profitability

In describing joint tort liability between Plaintiff and CCA, Plaintiff's Chief Legal Officer described Plaintiff-- not the for-profit CCA-- as the "deep pocket". Fallon (1/15/19) 297:15-19. Professor Hall tabulated several measures of Plaintiff's surpluses:

Measures of Profitability (in $1,000's)

	Operating revenue	Operating income	Operating margin	Total income	Excess margin	Net assets
FY 2004	$342,902	$16,980	5.0%	$32,929	9.6%	$380,439
FY 2005	$376,974	$5,705	1.5%	$41,209	10.9%	$407,609
FY 2006	$409,073	$29,808	7.3%	$112,034	27.4%	$490,917
FY 2007	$487,314	$33,749	6.9%	$111,299	22.8%	$636,745
FY 2008	$494,959	$36,132	7.3%	$43,468	8.8%	$602,441
FY 2009	$515,433	$54,304	10.5%	-$89,966	-17.5%	$534,524
FY 2010	$830,145	$62,600	7.5%	$135,188	16.3%	$651,046
Sub-average	$493,829	$34,183	6.9%	$55,166	%11.2%	
PY 2010	$840,161	$33,497	4.0%	$65,168	7.8%	$771,462
CY 2011	$1,608,886	$37,350	2.3%	$110,021	6.8%	$771,509
Overall average	$694,806	$36,485	5.3%	$66,041	9.5%	

TR-2004, p. 17 (Table 7)

Income from operations (operating income) is total operating revenue minus total expenses. Tonkinson (1/9/19) 8:14-17, 16:5-6. Excess revenue over expenses (excess margin) takes into account nonoperating revenue and expenses. 1/9/19, Tonkinson (1/9/19) 16:12-22. So, for instance, the negative excess margin (and negative total income) from 2009 reflect losses on investment income during the financial crisis.

Plaintiff's strategic planning documents from 2007 noted its "Financial performance is very strong and has shown improvement over time". TR-4084, p. 11. By Billimack's definition, Plaintiff was a "profitable organization", because it earned excess revenue over costs. Billimack (1/31/19) 67:11-18. In its 2007 plan, Plaintiff itself chose the metrics that are relevant to assessing this. Plaintiff's operating revenue increase from $302 million in 2003 to $409 million in 2006. Its operating income, the difference between operating revenue and expenses, increased from $21 million in 2003 to $30 million in 2006. The only year between 2003 and 2006 for which Plaintiff was at the 2004 Illinois hospital average for operating margin was 2005, at 2.4%. For the remaining years, Plaintiff's operating margin was over twice that, from 5% to 7.3%. TR-4084, p. 11. Later financial ratios identified by Hesch showed Plaintiff's operating margin between 2006 and 2009 ranged from 6.7% (in 2009) to 10.1% (in 2007). TR-4010, p. 1. Plaintiff's total net assets increased from $315 million to $491 million between 2003 and 2006. TR-4084, p. 11. Billimack acknowledged that this difference was "significantly above [the statewide] average" for these three years. Billimack (1/31/19) 57:12-18. According to information Plaintiff gave to bond holders in 2009, it had an operating margin of 4.2% and 4.4% in 2009 and 2008, respectively. TR-1138, p. 1.

Days cash on hand is a measure of how many days Plaintiff could operate without receiving money from an external source. Billimack (1/31/19) 60:23-61:9. Plaintiff's days cash on hand rose from 151.3 (in 2003) to 269.4 (in 2006). TR-4084, p. 11. Later financial ratios identified by Hesch showed that days cash on hand between 2006 and 2009 ranged from 217.6 (in 2009) to 436.3 (in 2007). TR-4010. In other words, for at least part of the period at issue here, Plaintiff could have operated the hospital for well over a year without taking any money in. The state-wide average was 105.2 days. TR-4084, p. 11.

This wealth did not happen by accident. Plaintiff set a strategic goal of maintaining an operating margin of at least 5%. TR-4084, p. 24. As of 2007, it was already at 7.3%. TR-4084, p. 23. In evaluating this strategic goal in light of the information tabulated above, Professor Hall

concluded this was a primary objective of the organization. 1/25/19) 204:5-8. It was significant that Plaintiff was targeting an operating margin substantially above the median needed to have one of the strongest bond ratings one can have. Hall (1/25/19) 204:8-11.

The bond market provides an objective and neutral measure of financial health. Professor Hall compared Plaintiff's operating and excess margins with those associated with bonds used for purposes of comparison by Plaintiff's own consultant during the CCA merger. AA- bonds were the highest rated bonds considered by Plaintiff's consultant. Hall (1/25/19) 204:7-10. Plaintiff's operating margins from 2004 to 2010 averaged 6.9%, and if the period after the merger is considered, 5.3%. TR-2004, p. 17(Table 7); TR-2004, p. 20(Table 9). According to Plaintiff's consultant, the operating margins associated with AA- bonds in in 2009 were approximately half that, between 2.7% and 3.7%. TR-2004, p. 19 (Figure 5); TR-2004, p. 20(Table 9). The excess margins associated with AA- bonds for 2009 were between 3.3% and 6.3%. TR-2004, p. 19(Figure 5). Plaintiff's excess margins averaged 11.2% for the period from 2004 to 2010, and 9.5% if the period after the merger is considered. TR-2004, p. 17 (Table 7). In short, Plaintiff's profit margins were almost twice what was needed to obtain the highest bond rating considered.

3. Reasons for the surpluses

Leonard testified that Plaintiff's revenues generally exceed its expenses, generating net income. Leonard (1/4/19) 37:5-9. Leonard testified that not operating "in the black" would have a cascade effect as Plaintiff would have to borrow money through bonds. Leonard (1/4/19) 37:18-24-38:8. Leonard testified it would not be sustainable for Plaintiff to operate in the red indefinitely. Leonard (1/4/19) 38:6-8.

Of course not. But there is a difference between simply operating in the black and continuing to accumulate large surpluses on top of a massive fund balance. A not-for-profit may have a legitimate reason for generating large pools of wealth. However, in determining whether property generating this wealth being used exclusively for charity within the Constitutional definition, one must ask how this wealth relates to the owner's charitable purposes. See J. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gaps,* 37 Loy. U. Chi. L.J. 493, 518 (2006) (Colombo, *Exploring Policy Gaps*); cf. S. Wagenmaker, *Not for Profit Corporations,* Sec. 8.19, at 8-21 (Ill. Inst. For Cont. Legal Educ. 2013) (Amassing significant wealth over the course of several years of surplus is "problematic"). While a not-for-profit is not

forbidden from earning a surplus or margin, that is not supposed to be its primary purpose. Hall (1/25/19) 195:2-6.

Plaintiff provided no such explanation. Leonard did not testify about any impact inadequate fund balances had on Plaintiff, specifically, at any point. When asked, point blank, what Plaintiff was saving for, Dr. Leonard responded with only vague statements about being good stewards of its money, and its interest in growing as an entity. Leonard (1/7/19) 55:24-56:12. Dr. Leonard was not aware of any specific charitable endeavor that required an accumulation of assets. Leonard (1/7/19) 56:20-23. While Leonard testified in very vague terms about increasing advanced practice nurse practitioners and planning for the Carle Illinois College of Medicine, and "mak[ing] a strong statement about our future", he did not relate any particular surplus to any particular charitable plan. Leonard (1/4/19) 38:14-39:1. Billimack was also not aware of any specific extenuating circumstances relating to Plaintiff's decisions regarding its operating margins between 2003 and 2011. Billimack (1/31/19) 59:19-60:11.

One indicator that Plaintiff was doing more than "saving for a rainy day" is its response to the Great Recession. This was the greatest economic downturn in the American economy since the Great Depression. Hall (1/25/19) 205:3-6. Professor Hall testified that one reason a charity may want to have excess operating revenues is to meet great need in a recession. Hall (1/25/19) 147:19-148:6. In 2007, Plaintiff started feeling the impact of the financial crisis, in terms of increased demands from other facilities. Leonard (1/4/19) 139:5-24-140:1. In 2007, Plaintiff started feeling the impact of the financial crisis, in terms of increased demands from other facilities. Leonard (1/4/19) 139:5-140:1. In 2009, Plaintiff experienced a deficiency of revenue over expenses (or loss) of $96,697,000. TR-188, p. 6. This was due to a realized loss in nonoperating gains: basically, it lost money on investments during the financial crisis. Tonkinson (1/9/19) 121:15-122:6; TR-2004, p. 17 (Table 7)(showing negative total income of $89,966,000 for 2009). Everette testified there was a lot more community care requested "[i]n the latter part of [her] employment there" (the period leading to 2008), because there were a lot more uninsured and unemployed people. Everette (1/29/19) 23:9-12. If Plaintiff were merely conserving funds for a time of increased need, one would expect operating income to go down and charity care to go up in this period: this was a rainy day if ever there was one.

In fact, charity care at cost as a percentage of total Carle Foundation expenses went down, not up, from fiscal year 2008 to fiscal year 2009. TR-1133, p. 104; TR-2004, p. 11(Table 3); TR-

2004, p. 18 (Table 8); Hall (1/25/19) 149:15-19. Everette testified the pattern of authorized collection suits increased in the period leading up to 2007 because there were more unemployed and uninsured persons. Everette (1/29/19) 24:23-25. Between fiscal year 2008 and fiscal year 2009, the total amount of uncompensated care (charity care and bad debt, combined) went up, while charity care expense alone went down. TR-2004, p. 25 (Table 11). Meanwhile, in 2008, Plaintiff set a goal for 2012 of attaining financial performance sufficient to fund strategic fund initiatives and maintaining a 5% operating margin. TR-2027F, p. 2; TR-1133, p. 115. Plaintiff's operating margin was far above its own goals, rising from 6.9% in fiscal year 2007 to 7.3% in fiscal year 2008, and again to 10.5% in fiscal year 2009. TR-2004, p. 17(Table 7).

B. Donations

Korzen asks whether the taxpayer "derives its funds mainly from public and private charity". Korzen, 39 Ill.2d at 157. Charitable donations are an excellent signal that the public views a particular entity as undertaking charitable activities. Colombo, *Exploring Policy Gaps*, at 519; M. Hall and J. Colombo, *The Donative Theory,* at 1385. Donations are also a signal that the public views the service as one that the private market would not provide on its own. Hall & Colombo, *Donative Theory*, at 1385. Finally, charitable donations are significant to the extent the charitable source of funds places restrictions on their current use for non-charitable purposes. Korzen, 36 Ill.2d at 348.

In Small v. Pangle, 60 Ill.2d 510 (1975), the Supreme Court denied an exemption, in part, because its income was derived almost entirely from contractual charges rather than donations. This reasoning has been repeated by courts of review over and over again in the succeeding years. See Small, 60 Ill.2d at 517; Midwest Palliative Hospice, 2019 IL App(1st) 181321; Meridian Village Ass'n v. Hamer, 2014 IL App(5th) 130078 (2014); Franciscan Communities, 2012 IL App(2d) 110431, Par. 43; Wyndemere Retirement Community v. Dept. of Revenue, 274 Ill. App.3d 455, 460-61 (1995); DuPage Art League, 177 Ill. App.3d at 899 ; Board of Certified Safety Professionals of Americas, Inc. v. Johnson, 112 Ill.2d 542 (1986).[8] The same is true of Plaintiff.

[8] Dr. Leonard is not aware of any not-for-profit hospital in Illinois that receives most of its revenues from donations. Leonard (1/3/19) 121:11-16. Of course, there is nothing about the Korzen Factors or the State constitution that guarantees that any modern not-for-profit hospital is entitled to property tax exemption. But one does not have to go that far: even if one does not require support mostly from donations, the degree of support is still relevant.

Plaintiff can charge fees to those who can pay. "The dispositive issue is not the existence of a fee but, rather, whether the institute makes a profit and/or the fees comprise a significant amount of the institution's operating expenses". Lena Community Trust Fund, Inc. v. Dept. of Revenue, 322 Ill. App.3d 884, 889 (2001). The Court is also to consider whether the funds are used to further the organization's charitable goals, and whether its fees are less than its operating expenses. Randolph Street Gallery v. Zehnder, 315 Ill. App.3d 1060, 1060 (2000). Plaintiff places great weight on Sisters of the Third Order, an early 20th century case which granted an exemption to a not-for-profit hospital even though the majority of its patients paid for their services. However, in Korzen, the Supreme Court made clear that the exemption in Sisters of the Third Order was justified, in part, by the fact the property it used was provided "in main, by gifts, bequests, and donation", rather than user fees. Korzen, 39 Ill.2d at 158-59.

Donations were a minimal source of revenue for Plaintiff in the period at issue here. Professor Hall collected the following information from Plaintiff's expert and financial statements:

Gifts, Grants and Contributions as a Percentage of Revenues and Income (in $1000's)

	A	B	A/B	C	A/C	D	A/D
	Gifts, grants, contributions	**Operating revenue**	**%**	**Operating Income**	**%**	**Total Income**	**%**
FY 05	$2,379	$376,974	0.6%	$5,706	41.7%	$41,209	5.8%
FY 06	$2,552	$409,073	0.6%	$29,808	8.6%	$112,034	2.3%
FY 07	$3,184	$487,314	0.7%	$33,749	9.4%	$111,299	2.9%
FY 08	$3,643	$494,959	0.7%	$36,132	10.1%	$43,468	8.4%
FY 09	$1,329	$515,433	0.3%	$54,304	2.4%	-$89,966	N/A
FY 10	$1,217	$830,145	0.1%	$62,600	1.9%	$135,188	0.9%
PY 10	$980	$840,161	0.1%	$33,497	2.9%	$65,168	1.5%
FY 11	$2,080	$1,608,886	0.1%	$37,350	6.4%	$110,021	2.2%
Avg	**$2.302**	**$654,464**	**0.3%**	**$34,488**	**6.0%**	**$62,167**	**3.3%**

TR-2004, p. 16 (Table 6)

In fact, Plaintiff launched its first formal fundraising program in 2003, approximately 57 years after it was founded. As of 2008, it had raised more than $26,000,000. Leonard (1/3/19) 93:12-17. This represented about 1.6 % of Plaintiff's total revenue for the period from 2004

through 2007 of over $1.6 billion. TR-68, p. 7 (2004 total revenue is $342,901,565); TR-1001, p. 28 (2005 total revenue is $376,974,350); TR-137, p. 34 (2006 total revenue is $409,072,567); TR-1993, p. 29 (2007 total revenue is $487,314,000). The remainder of Plaintiff's revenues came from sources such as insurance payments, investments, government payors, and private pay collections.

In 2004, prior to the CCA merger, about 32.8% of Plaintiff's net patient service revenue was earned under a health maintenance organization plan with HAMP, a for-profit entity. Tonkinson (1/9/19) 31:20-32:9; TR-68, p. 16. After the merger, in 2011, Plaintiff received $541,964,000 in patient service revenue; and it received premiums from HAMP of almost twice that amount, $1,062,304,000. Leonard (1/7/19) 106:19-107:24; TR-2204. For the entire 18 month period after the merger, 64.8% of Plaintiff's operating revenue came from HAMP premiums. TR-2004, p. 10, Table 2; Hall (1/28/19 a.m.) 60:22-61:2.

VI. Obstacles in the way of those in need

Korzen requires that charity is a gift to be applied for the benefit of an indefinite number of persons. Korzen, 39 Ill.2d at 156-57. Dr. Leonard testified that Plaintiff strives to provide health care in accordance with its mission to everyone, with no limitations on the ability of people to pay for the health care. Leonard (1/3/19) 43:21-44:9. Leonard testified there were "no exceptions" and the "doors are open and we are there for everyone". Leonard (1/3/19) 50:23-24.

Well, not everyone. Plaintiff allowed numerous obstacles to remain in the way of patients seeking charity.

A. This Korzen Factor is not a substitute for exclusive use

Plaintiff has repeatedly argued that it need not use its property primarily to provide charity care or, in fact, in the actual performance of any charitable act. Instead, it need only use the property primarily for providing charity care to all without regard to the ability to pay. Plaintiff effectively substitutes "exclusive use in attempting charity" for "exclusive charitable use". Under Plaintiff's odd argument, it could obtain a charitable exemption even if no one was actually given charity care. This argument has been rejected by binding appellate authority See Riverside , 342 Ill. App.3d at 608. It is true that Korzen listed as one of its factors defining a charitable institution that it dispense charity to all who need and apply for it. Korzen 39 Ill.2d at 157. But "[j]ust because an institution offering medical services is willing to provide charitable care, it does not mean that the institution's exclusive purpose was, in fact , to provide charity in a given year. "

Midwest, 2019 IL. App(1st) 181321 (Emphasis in original). Korzen also made clear that "the statements of agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes do not relieve such institution of the burden of proving that its property actually and factually is so used". Korzen, 39 Ill.2d at 157 (Emphasis added). Plaintiff's approach would deprive the "primary use" requirement – the only Korzen factor found in the plain text of the constitution—of any independent meaning.

B. Specific limits on charity care

When Plaintiff expanded its charity care with the acquisition of CCA, it imposed geographic limits on the residence of non-emergency patients receiving charity care. TR-216, p. 2 ¶A, Attachment 1; Jackson (1/16/19) 67:22-68:2, 123:6-24; 124:20-125:6. This was done out of a concern people would "inundate us because of the generous nature of the policy". Tonkinson (1/7/19) 112:10-13. If a patient were not referred from another hospital and did not reside in the primary or secondary service area, he or she could not apply for community care. Jackson (1/16/19) 125:16-20; TR-2426, p. 2.A. Only emergency services would be provided to patients seeking access outside of their contracted network area. Jackson (1/16/19) 133:10-17.

Staske also testified that community care was only available for Illinois residents. Staske (1/14/19) 169:8-170:10. As of November 8, 2006, out-of-network patients would also be excluded from community care. Staske (1/14/19) 172:2-5; TR-4217. This was seen as consistent with a prior approach that if the patient had insurance coverage for the service elsewhere, it would not qualify. TR-4217, p. 1. If the need for care were not urgent, Plaintiff would deny service. Staske (1/14/19) 175:12-13.

C. Denials of applications

1. Pattern of denials

The vast majority of applications for charity care were denied for reasons unrelated to need, based on their failure to turn in the application. Everette (1/29/19) 14:3-12. Rarely was it because income exceeded guidelines. Everette (1/29/19) 14:7-12. Owens identified records of Plaintiff that indicated that, between 2004 and 2012, there were 53,223 applications for charity care, of which roughly 26,720 were denied because the application was not returned. Owens (1/11/19) 165:19-23. 14,329 of these entries related to applications that were denied because the verification of income was not returned. 1/11/19, Owens (1/11/19) 165:24-166:4. So approximately 77% of the applications in this period were denied for reasons unrelated to actual need. Everette did not

remember being asked about the level of denials at any point. Everette (1/29/19) 16:19-21. Everette was not aware of any effort between 2002 and 2008 to address the problem of the vast majority of denials of charity care being because someone did not provide all of the requested information. Everette (1/29/19) 16:1-8.

This is pattern of charity care denials is reflected in the data collected by Kevin Cornish:

	Approval Rate Completed Requests	**Approval Rate Total Requests**	A **Denied Incomplete Requests**	B **Total Requests**	A/B **Percentage of total denied as incomplete**
2004	90.3%	45.8%	1569	3184	49.28%
2005	93.4%	37.8%	4384	7357	59.59%
2006	92.5%	36.5%	4137	6836	60.52%
2007	92.2%	35.6%	4475	7288	60.99%
2008	71.4%	31.7%	4594	8256	55.64%
2009	53.4%	31.8%	3388	8354	40.56%
2010	81.7%	63.9%	5004	23,026	21.73%
2011	88.7%	79.6%	2431	23,699	10.26%
2012	93.1%	88.8%	415	9071	4.6%

From TR-509[9]

The most common piece of missing information missing from an application was income verification. Boyd (1/11/19)50:11-17; Everette (1/29/19) 14:7-16. If this was missing, there would be at least two calls made to the patient, and a letter before the denial. Everette (1/29/19) 14:17-23. Everette testified that the only change in the process for contacting patients about their application was that, at some point, Plaintiff began sending out Community Care applications along with form letters. Everette (1/29/19) 51:13-16. Boyd testified that, even though other provisions of the policy changed, the income verification remained the same. Boyd (1/11/19) 82:15-20. Boyd was not aware of any efforts to improve the numbers of applications or verifications returned. Boyd (1/11/19) 83:11-15. Neither was Everette. Everette (1/29/19) 16:1-8, 16:19-21. Everette testified she examined the last 12 months of income, even if someone became unemployed within the last 12 months. Everette (1/29/19) 53:23-54:2.

Even as of 2011, Plaintiff would have to provide a check stub from each job held in the past 12 months, unemployment check stubs listing the start date and amount, divorce decrees stating child support or alimony received, the most recent bank statements, and a letter from public

[9] Plaintiff notes Professor Hall admitted he was unable to "point to a single instance where someone at [CFH] knew that a patient that was in need of charity care and failed to provide it to them". See Opening Br, at p. 30. This quote is misleading. Hall later clarified that he simply did not have access to the patient-specific data necessary to answer this question in the form in which it was asked. Hall (pm 1/28/19) p. 235:6-22.

programs, listing the amount received. If no proof was provided, a written explanation as to why must be provided. TR-2426, p. 3

Plaintiff's February 2005 policy required income verification for the previous 12 months. TR-93, p. 1; Leonard (1/4/19) 86:11-23. Plaintiff required detailed income verification, such as pay stubs, letters from employers, or copies of bank statements. TR-93, p. 3. As of June 2005, the income verification language was changed from stating that the verification "must include" certain information to that it "should include" certain information. Tonkinson (1/7/19) 88:20-89:5; TR-106. Patients were required to reapply each year, but they would be entitled to keep their status as eligible for the entire year without reapplying. Tonkinson (1/7/19) 53:9-23. At some point, Plaintiff began allowing persons to qualify for charity care in advance of receiving treatment. Tonkinson (1/7/19) 56:1-13. The information would include the patient's tax return, or copies of their last few paychecks, or confirmation from a community resource. Owens (1/11/19) 55:22-56:11.

Plaintiff failed to establish this level of detailed information was necessary. Until March of 2003, Boyd worked as an intake coordinator and billing supervisor at the Frances Nelson Health Center, a not-for-profit medical center in Champaign that focused on the needs of the poor. Boyd (1/11/19) 6:23-7:6; 59:20-21. Frances Nelson also had an income verification process. Boyd (1/11/19) 59:01-15. Frances Nelson did not request income tax forms, which was the most common item Plaintiff's patients could not produce as part of the charity care application process. Boyd (1/11/19) 58:18-20, 60:7-9. Nor did Frances Nelson request other financial information Plaintiff demanded, such as bank statements. Boyd (1/11/19) 60:23-61:1.

2. Effect of denial based on factors other than ability to pay

a. Initiation of collection

When charity care was denied, the account was referred to collections. Everette referred much more than 100 accounts to a collection agency each year. Everette (1/29/19) 23:4-7. Everette testified the collection agencies would strenuously pursue collection on accounts referred to them. Everette (1/29/19) 38:21-24. Accounts with balances as small as $240.60 were referred to court for judgment. Everette (1/29/19) 41:14-20. As far as Everette knew, once an account was referred to a collection agency, the debt was not compromised or settled, and it would be expected to attempt collection at the full charge. Everette (1/29/19) 22:3-10, 56:12-15 . Collection agencies

would receive a higher percentage of the collected amount if they filed suit. Everette (1/29/19) 22:20-23.

At some point, once a patient was referred to a collection agency, he or she was no longer eligible for community care. Tonkinson (1/7/19) 58:21-24. This was changed at least by the time of the 2005 policy. TR-93, p. 2.D; Tonkinson (1/7/19) 59:1-5; TR-93, p. 2; Leonard (1/4/19) 91:2-13. Patients were not allowed to apply for charity care after a judgment was obtained. Everette (1/29/19), p. 24:24 -25:4, 26:1-4. This was because Plaintiff had "gone through a lot of expense, and a lot of trouble", at that point. Tonkinson (1/7/19) 59:20-24; Tonkinson (1/9/19) 235:10-17.

Everette testified that in over half the times after suit was filed, Plaintiff obtained judgment, and collection efforts would then be left to the collection agency. Everette (1/29/19) 25:17-23. It was common for collection agencies to obtain default judgments between 2002 and 2007. Everette (1/29/19) 26:19-21. Everette was called upon to appear in court in relation to debt collection efforts, but she never recalled appearing in court and seeing a patient appear with an attorney. Everette (1/29/19) 27:1-8.

b. The amount collected

Plaintiff's regular practice of denying charity care based on factors unrelated to need is particularly egregious in light of its pricing strategy. Plaintiff used a charge master, reflecting the starting or "rack rate" for service, which tended to be much higher than what was actually collected on average from patients. Tonkinson (1/8/19) 105:1-9. For instance, in 2004 the ratio of estimated reimbursements to established rates was $21,025,218 to $56,491,851, or 37.3%. TR-68, p. 17. The ratio of expenses of charity to charges foregone was $2,042,186 to $4,800,711, or 42.5% TR-68, p. 17. For 2005, the ratio of net patient service revenue to gross patient service revenue was 52.8%. Tonkinson (1/9/19) 49:3-5. There were flat increases in the chargemaster from year to year, and in some years there was a market-based review. Owens (1/11/19) 79:12-80:22. In 2006, there was a 9.8% increase in the across-the-board adjustment in the charge master. Owens (1/11/19) 82:16-22. By 2011, the cost to charge ratio on Plaintiff's Medicare Cost reports had decreased to 0.256472, meaning that at the hospital level, Plaintiff's costs represented about 25.6% of its nominal (charge master) charges. Hesch (1/15/19) 77:14-78:5; TR-417, p. 24.

Most payors did not pay the charge master rate. Insurers with a contractual relationship with Plaintiff often paid a negotiated rate less than the charge master. Leonard (1/7/19) 11-18; Tonkinson (1/8/19) 101:23-102:1. Other insurers were paid based on negotiated per diem or

diagnostic related groups. Tonkinson (1/9/19) 244:18-245:3. Medicaid and Medicare also paid rates less than the rate reflected in the charge master. 1/7/19, Transcript (Leonard), p. 15-24. The charge master rate was only paid by:

1. Insurers who did not have a pre-existing relationship with Plaintiff, and did not negotiate a lower rate. Leonard (1/7/19) 42:4-14; and
2. Individuals without insurance. Leonard (1/7/19) 42:4-14.

The difference between the charge master and the rate actually paid to Plaintiff by most of its payors was significant. The ratio of net patient service revenue to gross is a way of comparing the money Plaintiff expected to collect to the money it charged. Tonkinson (1/9/19) 24:10-13. If every payer paid the charge master rate, this would have been 100 Leonard (1/7/19) 41:10-13. In 2004, this percentage was 55.06%. TR-2197, p. 14. The ratio of charity charges to charity costs is depicted graphically in the Department's exhibit TR-1110.

The following table can be constructed from the information in TR-2640, p. 13, Attachment A, which examines the breakdown of initial charges amongst various payors.

	A		B		C		D	
	Amount billed directly to patient		**Amount billed to gov. payors**		**Amount billed to private payors under contract**		**Amount billed to private payors not under contract**	
	Amt.	%	Amount	%	Amount	%	Amount	%
FY04	$6,315,677	1.5%	$240,277,638	58.3%	$136,169,913	33.0%	$29,349,060	7.1%
FY05	$13,349,706	2.6%	$275,118,040	54.6%	$169,261,124	33.6%	$46,352,038	9.2%
FY06	$18,227,033	3.2%	$321,065,425	56.0%	$183,396,223	32.0%	$50,553,689	8.8%
FY07	$26,015,838	3.8%	$382,704,923	55.2%	$222,267,765	32.1%	$62,010,632	8.9%
FY08	$30,884,097	3.9%	$447,201,453	56.2%	$246,861,240	30.1%	$71,424,326	9.0%
FY09	$33,803,805	3.9%	$519,561,330	60.3%	$268,360,344	31.2%	$73,463,988	8.5%
FY10	$55,389,633	5.0%	$635,394,237	57.6%	$323,622,132	29.3%	$89,143,877	8.1%
FY11	$72,666,380	5.8%	$725,582,522	58.2%	$354,411,991	28.4%	$94,267,190	7.6%

The charge master is only ever actually paid by private pay patients (Column A) and third party payors without a contract (Column D). Even those third-party payors may negotiate a lower rate on an ad hoc basis. This means that, in fiscal year 2004, 1.5% of Plaintiff's billed charges went to uninsured private payors at the charge master rate in order to increase Plaintiff's bargaining

power with payors of the remaining 98.5% of its billed charges, of which (at most) 7.1% actually paid the same rate.

This pricing strategy is impossible to reconcile with Plaintiff's charitable mission, given that: (1) the 1.5% includes Plaintiff's charitable class; (2) the charge master rate is often double the cost; and (3) most of the denied applications for charity care from that class were denied on grounds unrelated to need. When an account was sent to collections, this would be done at the full charge. Leonard (1/7/19) 43:22-44:3l; Everette (1/29/19) 21:9-13. This would include persons denied charity care because they did not return the income verification. Everette (1/29/19) 21:9-13. Accordingly, because Plaintiff regularly denied charity care based upon applicants' paperwork alone, it disproportionately charged the uninsured—and presumably the poor—more than it charged the typical payer.[10]

D. Changes in Plaintiff's charity care policy and practices over time

Much of the testimony at trial related to efforts Plaintiff made between 2004 and 2011, to improve its charity care program. Plaintiff's effort focused on three areas. First, it made efforts to make its charity care program better known. Tonkinson (1/7/19) 3-62 (describing efforts like putting the charity care application on web site, advertising in multiple languages, putting ads on busses); Owens (1/11/19) 31:17-32:4. Second, Plaintiff made the formal charity care policy more generous. For instance, it increased the income thresholds for charity care. Leonard (1/3/19) 67:20-68:6; TR-117, p. 3; Leonard (1/4/19) 115:11-116:9; Tonkinson (1/7/19) 93:15-94:2; TR-216, p. 3. There were other changes over time, as well, to make the policy more generous. Tonkinson (1/7/19) 82:14-83:16; TR-106, p. 2 (describing a new asset deduction in 2005, and a clarification that retirement accounts were no longer considered in determining eligibility); TR-106, p. 2; Leonard (1/4/19) 102:18-23; Tonkinson (1/8/19) 9:2-8.

The record is ambiguous as to when these changes went into effect. According to Tonkinson, starting in February 2005, the charity care policy recognized catastrophic medical expenses. TR-93, p. 3; Tonkinson (1/7/19) 71:19-72:22. In October 2005, the policy also

[10] This practice was so egregious, nation-wide, that eventually Federal law required hospitals exempt from Federal income taxation were required to limit their charges to the uninsured to their customary rates. See 26 USCA 501(r). This change did not take effect until after the period at issue here. In addition, in 2008, Illinois passed the Hospital Uninsured Patient Discount Act, which set annual caps on the amount that could be collected from an uninsured person; and also limited charges to a fixed percentage markup over cost. 210 ILCS 89/1, et seq.

established a cap on personal liability, with individuals with income up to 400% of FPL have their personal financial responsibility capped at 40% of their gross income. Tonkinson (1/7/19) 95:1-4; TR-2423; TR-93, p. 3; Leonard (1/4/19) 96:18-97:17. However, Everette testified that, in practice, only income and household size were considered, and she never considered household expenses or the assets of the patient. Everette (1/29/19) 15:1-13. Everette testified she never considered the amount of the bill at issue. Everette (1/29/19) 16:9-13. Similarly, Boyd testified the size of the medical bill did not affect eligibility for charity care. Boyd (1/11/19) 85:5-7.

Moreover, these changes had limited impact because applications were typically denied based on incomplete information, not because income exceeded guidelines. Everette (1/29/19) 14:7-12; 17:1-8. In fact, when the written policy retained a low income threshold due to an apparent typographical error, this was apparently not even noticed until three years later. TR-2423; Tonkinson (1/7/19), 235:14-236:10. Owens testified that of the 53,223 charity care applications denied between 2004 and 2012, only 182 were denied because the income exceeded limits. Owens (1/11/19) 166:24-167:5 (characterizing this number as "very small"). Owens also acknowledged that some people may have declined to return the charity care application after seeing their income exceeded limits. Owens (1/11/19) 167:20-23.

Eventually, Plaintiff's charity care policy also added a process for appealing denials. Tonkinson (1/7/19) 84:13-85:5; TR-106; Owens (1/11/19) 48:20-49:18; Boyd (1/11/19) 39:7-15. However, Tonkinson testified that he did not recall any specific determination coming to him in which he reversed a decision of Ms. Boyd or Ms. Owens or Ms. Everette. Tonkinson (1/9/19) 170:1-3. Owens testified that of the 53,223 charity care applications denied between 2004 and 2012, there were six instances of a reversal of a previous denial. Owens (1/11/19) 168:4-10. Everette testified that in the vast majority of cases, she would have had the final word, all that would have been considered would have been to confirm the income is verified, and the household size. Everette (1/29/19) 12:14-20. The only reason someone above her would have reviewed an application, would have been at a patient's request, and this was uncommon. Everette (1/29/19) 13:1-4. Everette could not recall any instance in her entire tenure at Plaintiff in which a supervisor changed her determination to grant or deny charity care. Everette (1/29/19) 13:5-11.

Plaintiff attempted to address barriers to care by automatically qualifying patients for charity care. As argued above, to the extent this practice was applied retrospectively, much of its impact was simply repackaging bad debt in a manner that is not charitable. To the extent these

practices were applied prospectively, they addressed this barrier to care. However, there were significant delays in implementing them. Margaret Everette left Plaintiff in 2008. Everette (1/29/19) 8:18-19. As of that point, the normal charity care process was still used for persons on food stamps or township general assistance. Everette (1/29/19) 18:1-10. One of Plaintiff's most powerful tools in pre-qualifying people in need was the Self Pay Compass. Plaintiff entered an agreement with the Self-Pay Compass in 2007. Tonkinson (1/8/19) 31:22-33:15; TR-158. According to Plaintiff's strategic plan, this was to be implemented as of December 1, 2007. TR-4084, p. 31. Yet that program was not yet implemented as of December 9, 2009. TR-208; Tonkinson (1/8/19) 33:16- 34:5.

To the extent these changes over time improved Plaintiff's charity care program, they undermine Plaintiff's claim that it met the comparable year requirement for the early years. Each significant change, over time, makes the 2012 exemption determination less comparable to the earlier years. According to Professor Hall, the policy improvements, and any corresponding increases in charity care, suggest that charity care delivery was less effective than it would otherwise have been had these improvements been made earlier. See 1/28/19 a.m.) 63:15-18. The increase in charity care as a percentage of bad debt over time shows Plaintiff was doing a better job of identifying those in need of charity care over time, but it also suggests it could have done a better job of doing this in 2004. TR-2004, p. 25; Hall (1/28/19 a.m.) 65:22-66:5.

E. The CCA relationship as a barrier to care

As noted in Part One, Section II, prior to the 2010 merger, Plaintiff and CCA were intertwined at every level. This relationship placed at least two barriers in the path of those seeking charity care.

1. Difference in payer relationships

Leonard testified increasing the number of payers "widens the door to the institution", "broadens the base", and increases the number of people who would come there. Leonard (1/4/19) 245:23-246:3.

a. Blue Cross and HAMP

Blue Cross was a relatively significant insurer in Plaintiff's primary and secondary service area. Tonkinson (1/9/19) 246:17-19. In fact, between 2004 and 2006, Blue Cross represented many more insured people than did HAMP, even though it did not represent a greater percentage of people at CFH. Emmanuel (1/24/19) 214:12-15. Between 2004 and 2006, Blue Cross did not

bring much volume to Plaintiff, but it was believed to represent substantial potential volume. Emmanuel (1/24/19) 241:16-21.

Prior to the merger, CCA adopted a payer strategy of favoring HAMP over other insurers because of its ownership interest in HAMP. CCA specifically adopted a payer strategy of not demanding a premium of HAMP based on its market share in order to promote the value of HAMP stock owned by it. Wellman (1/24/19) 42:1-12; Billimack (1/31/19) 50:20-51:20. This was reflected in internal communications of CCA, which stated, expressly, that CCA's position on contracting with Blue Cross-Blue Shield aimed at protecting HAMP. TR-4084, p. 8. As of October 3, 2008, CCA had accumulated significant capital in HAMP due to its profitability. See TR-2701, p. 6.

As a result of CCA's payer strategy, Blue Cross-Blue Shield was not out of network for Plaintiff, but was out of network for CCA for a significant amount of the period between 2004 and 2010. Staske (1/14/19) 179:21-180:8; Billimack (1/31/19) 36:21-37:2. Billimack noted that if CFH had a contract with a specific payer and CCA did not, "you're limiting the number of people who could eventually receive services in the market". Billimack (1/31/19) 41:9-12.

Between 2004 and 2006, this was a topic of conversation during Plaintiff's strategic planning. Emmanuel (1/24/19) 173:15-174:4; Snyder (1/23/19) 98:18-99:22 (describing this payor mismatch as an "operational inefficiency" and an ongoing cause for concern). In its strategic plans, Plaintiff specifically noted that it was over-reliant on CCA and HAMP, and this was causing access issues due to a limited distribution channel. Leonard (1/4/19) 229:21-230:1-8; TR-4210 (2005 Strategic Plan), p. 5. Reliance on CCA was seen as a strategic weakness. TR-4210 (2005 Strategic Plan), p. 6; TR-4084, p. 15 (describing a "payor contracting mismatch between [Plaintiff] and CCA" as a weakness). One action in Plaintiff's 2007 strategic plan is pursing contracting to reduce dependence on HAMP. TR-4082, p. 10. In its April 2008 plan for the period through 2012, CCA payor participation was identified as a key issue relating to hospital-physician relationships. TR-4084, p. 3. This plan noted CCA's payer strategy was a barrier to Plaintiff's growth. TR-4084, p. 4.

Patients would come to CFH and receive services from CCA doctors, who would then process these claims as out of network, leaving the patient with a higher balance than if they had seen a doctor who was contracted with Blue Cross-Blue Shield. Tonkinson (1/9/19) 179:20-180:8. Because CCA was not accepting Blue Cross-Blue Shield patients, those patients who were insured

by Blue Cross were going to other physicians in the community, and referred to Provena Covenant. Tonkinson (1/9/19) 182:1-11. This created a burden for patients who fell into this category. Tonkinson (1/9/19) 181:4-9. Plaintiff ultimately used Carle Foundation Physician Services (CFPS) to address this payor disconnect. At one point, for instance, it billed the professional component of ancillary services through CFPS for those patients not insured by HAMP, because Plaintiff wished to avoid patients being billed as out of network patients by CCA. Tonkinson (1/8/19) 57:1-17.

Plaintiff's strategic plan for 2007 through 2012 assumed CCA was not going to contract with Blue Cross -Blue Shield because they wanted to drive business to that health plan to grow HAMP. Tonkinson (1/9/19) 183:18-184:9. Plaintiff was concerned that patients in the community who had Blue Cross-Blue Shield and were not emergency patients would choose other providers because of this. Tonkinson (1/9/19) 184:17-185:7. Tonkinson testified that, at some (unstated) point, CCA ended up contracting with Blue Cross for all of their specialists, which addressed this concern. Tonkinson (1/9/19) 187:9-24.

At no point prior to 2008 did Plaintiff request CCA contract with Blue Cross-Blue Shield. Wellman (1/24/19) 40:17-22. This issue was not addressed until Plaintiff's 2008 closing agreement with the IRS. TR-178; Tonkinson (1/9/19) 206:2-7. At this point, Plaintiff required CCA to exercise its best efforts to contract with the same insurers that Plaintiff used. Tonkinson (1/9/19) 179:20-180:8; Hesch (1/15/19) 131:2-23. Hesch testified there was "some compliance" by CCA, but "not a hundred percent". Hesch (1/15/19) 132:1-8; p. 179:22-180:3. Billimack was not aware of any other request by a representative of Plaintiff to a representative of CCA to change its contracting strategy with respect to Blue Cross Blue Shield. Billimack (1/31/19) 53:2-9.

b. Medicaid patients

Wellman testified that, around 2002, CCA adopted a practice of freezing current levels of Medicaid recipients. Wellman (1/24/19) 31:15-32:1. Plaintiff's 2008 strategic plan mentioned that "neither [Christie Clinic] nor CCA Physicians are accepting new Medicaid patients", and "insurance contracting may impact health department's plan to improve access to health care for all.". TR-4084, p. 8. As of the 2005 strategic plan, CCA was "looking at not accepting Medicare patients". Emmanuel (1/24/19) 186:20-24. This was listed as a threat to Plaintiff in its strategic plans. TR-4210, p. 6; TR-4082, p. 10.

As detailed in Part Two, Section I, providing Medicare and Medicaid is not itself charity. See Riverside, 342 Ill. App.3d 609-10; Alivio, 299 Ill. App.3d at 651-62. However, these services are still important to the mission of a charitable hospital. Between 2004 and 2011, the portion of Plaintiff's patients covered by Medicare and Medicaid, combined ranged between 31.6% and 47.4%. See TR-2004, p. 14 (Table 5). CCA made up such a significant part of Plaintiff's medical staff that, if CCA did not accept Medicare patients, it would reduce the number of Medicare patients that would come to CFH, causing access issues for the hospital for Medicare patients. Emmanuel (1/24/19) 187:3-10. Similarly, a lot of people go on and off Medicaid, and if Plaintiff were not receiving a stream of Medicaid recipients, it would reach fewer people than it would otherwise. Leonard (1/5/19) 6:22-24; 7:11-15. CCA's refusal to see new Medicaid patients was significant to Plaintiff because it affected the access of patients to CFH if they needed hospital-based services. Billimack (1/31/19) 54:3-7. For instance, township general assistance recipients could go wherever they wanted to receive services, but they were limited to facilities that would accept the medical card because the payment of services was made at the Public Aid rate. Elliott (1/23/19) 155:21-156:6. If CCA was not receiving Medicaid patients, and the services were not covered by CFPS, it is not clear why anyone receiving Public Aid would come to CFH as opposed to somewhere else.

According to Emmanuel, she was not aware of Plaintiff ever requesting CCA to change its Medicare strategy, and it was just taking CCA's decision as a given and responding to them. Emmanuel (1/24/19) 187:11-21. Billimack was not aware of any representative of Plaintiff contacting any representative of CCA and requesting they change their policy with respect to accepting new Medicaid patients. Billimack (1/31/19) 54:8-13. Wellman did not recall anyone from CFH requesting CCA alter or abandon its practice of freezing the volume of Medicaid patients it saw. Wellman (1/24/19) 32:12-16. It was not until 2007 or 2008, after the Attorney General intervened, that CCA agreed that it would accept its proportionate share of Medicaid patients in the local market. Wellman (1/24/19) 32:18-33:5.

2. CCA's collection practices

At no point prior to the merger, did Plaintiff request CCA adopt a charity care policy. Snyder (1/23/19) 76:3-11, 88:18-23; Wellman (1/24/19) 17:13-16. CCA had different collection policies than Plaintiff, and in the words of Tonkinson, "were much more aggressive". Tonkinson (1/7/19) 104:3-12.

CCA had a no-service list for those who did not make payments or participate in discussing their ability to pay. Wellman (1/24/19) 19:2-7; Tonkinson (1/7/19) 104:3-12; Jackson (1/16/19) 61:10-62:22; Hesch (1/15/19) 236:13-21. These patients would still be seen in the hospital if admitted through the emergency room, or were otherwise admitted to the hospital through other means. Wellman (1/24/19) 19:12-14; Jackson (1/16/19) 63:9-15. However, CCA would still attempt to collect from such patients. Wellman (1/24/19) 19:15-19; Jackson (1/16/19) 81:2-16; 147:19-24. The general policy was that if such patients were not admitted, they would not be seen by CCA doctors for nonemergent care. Wellman (1/24/19) 20:2-6.

3. CCA was not independent for purposes of these barriers

a. Access to CCA is access to the hospital

As a practical matter, CCA usually held the keys to the hospital door. Tonkinson testified that, prior to the merger, Plaintiff "saw only a small proportion of the patients that [CCA] saw". Tonkinson (1/7/19) 106:10-12 The primary source of non-emergency admissions to CFH was through CCA doctors. Billimack (1/31/19) 49:18-22; Hall (1/28/19 a.m.) 69:2-11. The only paths to admission to the hospital that Dr. Wellman could recall were through the emergency room, admission by a CCA doctor, and admission by a non-CCA doctor. Wellman (1/24/19) 21:8-20. The vast majority of admissions to CFH between 2004 and 2010 were through CCA doctors. Snyder (1/23/19) 21:21-22:2, 74:10-14. CCA had control over whether to make referrals to the hospital in the first place. Snyder (1/23/19) 75:14-18.

If a CCA physician did not take a patient, that created a barrier to that patient's access to the hospital. Hall (1/28/19 a.m.) 69:11-13. Accordingly, if CCA did not have a charity care policy, if CCA did not see Medicare or Medicaid patients, or if CCA restricted the payors with which it would contract, this limited the pool of people in need that would be seen by Plaintiff. Hall (1/28/19 a.m.) 69:11-13 (as to CCA's lack of charity care policy); Hall (1/28/19 a.m.) 70:7-18(as to CCA freezing participation in Medicaid). This was a key barrier to charity care between 2004 and 2010, and Plaintiff does not appear to have done anything to address it until the (imperfect and largely unenforceable) terms of the 2008 IRS Closing Agreement.

b. CFPS was not the answer

Plaintiff created CFPS, which was subject to the charity care policy and had its own payor contracts aligned with Plaintiff. This did not address this access issue. The bulk of the CFPS physicians were "hospital-based doctors". Snyder (1/23/19) 70:15-16. Wellman only recalled CFPS being used within CFH for hospitalists and emergency room physicians. Wellman (1/24/19)

87:2-15. Hospitalists would only interact with patients after they had already been admitted, and emergency room doctors would only see patients in the emergency department. Snyder (1/23/19) 72:4-5, 19-22. Excluding ER admissions, most admissions to the hospital were not through CFPS. Snyder (1/23/19) 73:3-14 (about 20% of visits to the ER resulted in admission, but this was not the dominant way patients were admitted to the hospital).

c. Plaintiff was required to do more

Plaintiff itself recognized the need to do more to address barriers to care, specifically recognizing a need to develop a program to provide physician specialty care to the indigent uninsured in in its 2007 strategic plan for 2012. TR-4084, p. 31. Yet Plaintiff never assigned this strategic initiative to any decision-maker, and never set any strategic goal deadlines for it. TR-4084, p. 31.

Plaintiff cannot simply hide behind the fact CCA was a nominally independent organization. Professor Hall concluded that, given the atypically close relationship, and "institutional identity" between these organizations, Plaintiff could have used its influence to bring payor policies into alignment. Hall (1/28/19 p.m.) 246:1-6. Here again, the significant economic and strategic ties between CCA and Plaintiff described in Part One, Section II are relevant. This special relationship, with its virtual integration and institutional coordination, gave Plaintiff the opportunity to influence CCA. Hall (1/28/19 a.m.) 71:14-72:3. Plaintiff had control over admitting privileges at the hospital. Snyder (1/23/19) 88:1-17; Leonard (1/3/19) 113:21-24; Leonard (1/7/19) 115:1-20. Plaintiff could have required CCA to treat its charity patients as a condition of medical staff bylaws. Hall (1/28/19 a.m.) 71:5-72:21. Similarly, Plaintiff could have similarly compensated CCA for charity care, as it did with CFPS. Hall (1/28/19 a.m.) 74:4-12.

Plaintiff had economic power to insist on this. Plaintiff and CCA had a uniquely integrated technical base. It may have made sense for Plaintiff and CCA to share lucrative ancillary services, but Plaintiff agreed that these services would be assigned to CCA. The flip side of this is the emergency room: CCA could be intimately associated with a full-service hospital that included services such as a non-profitable emergency room, paid for by Plaintiff. Snyder testified that: "You know, you cannot operate an emergency room physician group or a hospitalist group and make – it's a losing – you just lose money." Snyder (1/23/19) 150:21-24. Over and over again in its strategic plans, Plaintiff expressly chose to promote the growth of CCA. Plaintiff gave CCA a hospital it could use as a forum to grow the value of HAMP. Plaintiff used deferred fee agreements

to confer tax advantages on CCA. TR-2497; 1/9/19, Tonkinson (1/9/19) 21:2-16. Plaintiff gave CCA-employed medical directors a management role in the day to day operations of the hospital.

And yet here, when it came to addressing these key barriers to charity care, Plaintiff's claimed central mission, Plaintiff wrings its hands, points to CCA's independent status, and claims it did all it could do. Either Plaintiff chose not to prioritize these barriers, or it lacked the bargaining power to force CCA to take them down. And if the two entities were so integrated that Plaintiff truly had no choice but to do whatever CCA wanted, then why are we treating them as separate entities for purposes of determining exclusive charitable use?

d. The public "looked to Carle as one"

Plaintiff made these barriers to care worse with a marketing strategy that added a layer of patient confusion to each of them. Plaintiff's strategic planning documents noted that "Public perception of [Plaintiff] and [CCA] as one organization requires full participation of both parties to achieve excellence." TR-4084, p. 3. Patients "looked at Carle as one". Staske (1/14/19) 181:2-5. As noted in Part One, Section II, the two entities had common marketing agreements. The two entities had virtually identical logos, with similar coloration and the same cross symbol with horizontal striping. Boyd (1/11/19) 76:8-19. According to Boyd, patients had a hard time understanding the difference between CCA and CFH. Boyd (1/11/19) 15-19. Patient accounting would receive calls from patients about CCA because "they did share the same name". Boyd (1/11/19) 23:5-9. This occurred on a daily basis and, on some days, an hourly basis. Owens (1/11/19) 114:1-12; 1/11/19, Boyd (1/11/19) 63:11-20. This confusion was so widespread that Plaintiff was given access to CCA's collection notes so it could assist these patients. Owens (1/11/19) 113:14-19. Patients could access Plaintiff and CCA through a single website, with the address www.carle.com. Emmanuel (1/24/19) 216:14-24. Billimack noted a common internet splash page was used because patients complained they were trying to find the hospital and went to the clinic, and vice versa. Billimack (1/31/19) 27:21-28:7 Because of the common image of the two organizations, the payor disconnect between them was a regular source of confusion for Plaintiff's patients, something encountered on a daily basis. Staske (1/14/19) 180:20-181:1. This occurred because patients "looked at Carle as one". Staske (1/14/19) 181:2-5.

This confusion was itself a barrier to charity care. Hall (1/28/19 a.m.) 69:18-23. From the patient's perspective, on any given day, he may enter into the Carle emergency room and see a Carle doctor for medical services. Once there, he may be referred to a Carle doctor in the hospital

for follow up services. All services were provided by treatment providers acting under a similar Carle logo, in an atmosphere carefully designed to convey a seamless and integrated web of services.

In reality, that patient was entering into the Carle Foundation Hospital emergency room, in space that hospital leased from Carle Foundation. He would be seen by a Carle Foundation Physician Services doctor-- a Carle Clinic Association employee leased to Carle Foundation. This service would be covered by the Carle Foundation charity policy, which purported to provide medical services to all without regard to ability to pay. The patient may well be referred to a Carle Clinic physician working from the hospital for follow up services. To reach the Carle Clinic doctor's office, he would cross a crazy-quilt of invisible lines on the hospital floor plan, separating space allocated to Carle Clinic from space allocated to Carle Foundation. Once at his doctor's office, he would be provided services for which he would be billed by Carle Clinic, which would not be covered by any charity care policy. The patient could eventually be subject to aggressive collection efforts to collect for Carle Clinic, and denied service from Carle Clinic in the future if he did not pay. The technical component of any lab work would be billed by Carle Foundation, and subject to its charity care policy. If the patient was insured by Health Alliance (Carle Clinic's wholly owned for-profit subsidiary), the patient may be billed for the professional component of lab work by Carle Clinic, which would not be subject to the charity care policy. If the patient was instead insured by Blue Cross-Blue Shield, the patient may then instead be billed by the Carle Foundation for the professional component of the lab work, and subject to the charity care policy. If the patient had a problem with his bill, all he had to do was call patient accounting for Carle Foundation or Carle Clinic (whichever one covered his services). He could share embarrassing details of his personal finances with whomever answered the phone, and hope that it was not the one trying to aggressively collect from him. If it happened to be the right office, and the service happened to be covered, he may get charity care.

And Plaintiff wonders why no one filled out charity care applications. From the patient's perspective, the applicability of Plaintiff's charity care policy appears random. Plaintiff cannot carefully cultivate its common brand with CCA, and then expect patients to forget about CCA's aggressive collection practices when they receive their CFH bill and are asked to fill out a charity care application.

4. Quantifying barriers to care

Professor Hall quantified the barriers to care at CFH. He compared the percentage of Plaintiff's non-Medicare services to the uninsured with the number of non-elderly and uninsured indigent persons in the community. For purposes of this estimate, Professor Hall treated those receiving non-Medicare services as a rough proxy for the non-elderly.

	Area uninsured	**Nonelderly uninsured <4 times poverty**	**Nonelderly uninsured <2 times poverty**	**% of Non-Medicare services Plaintiff provided the uninsured**
2004				4.7%
2005	21.1%	18.4%	15.7%	4.7%
2006	20.3%		14.2%	
2007	18.3%		12.0%	
2008	11.2%	9.7%	6.6%	5.4%
2009	11.9%	10.6%	7.5%	7.0%
2010	15.0%	13.6%	9.9%	8.8%
2011	13.0%	11.9%	9.0&	

TR-2004, p. 26 (Table 12)

Plaintiff's failure to provide services proportionate to the need in the community suggests there are barriers to access to care. See Hall, (1/28/19 a.m.), p.78:4-21. From the information in this table, Professor Hall concluded that the non-elderly uninsured in the period at issue was "a good bit higher" than the level of services provided to the comparable pool of patients of Plaintiff. Hall (1/28/19 a.m.) 83:9-19. This metric likely overestimated the services Plaintiff provided to the indigent, since it treated all uninsured patients of Plaintiff the same, poor or not. Hall (1/28/19 a.m.) 84:17-85:9.

VII. Private benefit

The Korzen Factors ask whether the taxpayer provides "gain or profit in a private sense to any person connected with it". See Korzen, 39 Ill.2d at 157. In Sisters of the Third Order, 231 Ill. 317, the Supreme Court granted a charitable exemption to a hospital, but only after noting:

> "It is, of course, possible that a hospital might be established and conducted for the professional and financial benefit of certain physicians, and that it might make a pretense of receiving charity patients for the purpose of bringing itself within the statute exempting the property of institutions of public charity from taxation, but the evidence in this case clearly shows that no such state of affairs exists here." Sisters of the Third Order, 231 Ill. at 323.

That possibility was realized in People ex rel. Cty. Collector v. Hopedale Med. Found., 46 Ill.2d 450 (1970), in which the Supreme Court denied an exemption when the sole issue presented was an improper private benefit to a private individual managing a hospital claiming exemption.

Plaintiff cites the Provena plurality for the proposition that "[t]he real concern 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, 236 Ill.2d at 392 (Emphasis in original). But this does not require the beneficiaries at issue to hold any specific office or title. In Hopedale, the Court evaluated several factors in assessing a physician's control over a hospital, including the fact the physician previously owned the hospital; received substantial salary for the performance of managerial services and medical functions, and had a continuing claim against the assets of the hospital. Hopedale, 46 Ill.2d at 463-64. The degree of business transactions, and regular cash flow to the owner was relevant to this determination. Hopedale, 46 Ill.2d at 459-60. The Court noted that 20-25% of the patients admitted to the hospital, and 20-35% of the patients admitted to a nursing home on the same campus there were patients of this physician and his associates. Hopedale, 46 Ill.2d at459.

The record is clear here that CCA doctors were engaged in managing Plaintiff, even prior to the merger. As noted in Part One, Section II, CCA physicians sat on Plaintiff's governing board; CCA physicians were hired as medical directors by Plaintiff to "co-manage" the day to day operations of Plaintiff's departments; CCA physicians were listed as insiders in Plaintiff's strategic plans; CCA physicians exchanged strategic information with Plaintiff during Plaintiff's strategic planning process; CCA and Plaintiff were engaged in integrated strategic planning; CCA and Plaintiff were each responsible for much of the others' business; Plaintiff and CCA engaged in joint physician recruitment; and Plaintiff and CCA engaged in joint ventures, such as HSIL and the HAMP HMO, that only made sense because of their co-mingled destinies. The commercial ties between Plaintiff and CCA at least as strong as the ties between the controlling physician in Hopedale and the hospital at issue there.

At trial, Plaintiff cited its 2008 closing agreement with the IRS to demonstrate that there was no improper private inurement. Tonkinson (1/8/19) 92:10-23. This closing agreement documents several questionable practices over the period at issue here. For instance, in 2000, CFH realized that it overpaid its allocated share for certain information technology to be used by both

CFH and CCA, and it did not insist on immediate repayment, but permitted CCA to repay, through a loan, the overpaid amounts over time with interest. TR-2497 ¶ 10. This loan was issued in January 2000, in the amount of $2,037,717, to be paid in 60 monthly payments, with a final payment due in January 2005, within the period at issue in this case. Tonkinson (1/9/19) 38:17-39:4; TR-37, p. 15. The loan was repaid prior to the 2008 Closing Agreement. TR-2497 ¶ 10.

However, private inurement for purposes of income taxes is not the same as private benefit here. In Hopedale, where the only issue presented was improper private benefit, the Supreme Court expressly held the taxpayer's continued Federal income tax exemption was not even material to the issues before the court. See Hopedale, 46 Ill.2d at 464. Moreover, even if the issues were otherwise the same, Plaintiff cannot somehow enter a non-binding agreement with the IRS, taking several corrective actions moving forward to appease it, and thereby retroactively change the way its property had been used in prior years. Again, the issue presented in an exemption claim is how the property itself is "actually and factually" used (Korzen, 39 Ill.2d at 157), not how the income generated from the property is later accounted for.

One form of impermissible private benefit occurs when negotiations between a private actor and a charitable institution are not at arm's length, resulting in the private actor getting over-compensated. Colombo, *Exploring Policy Gaps*, at 520. This concept is comparable to private inurement, in which profits of the enterprise are siphoned off to an insider. Hall (1/25/19) 206:20-207:4. However, this is not the end of the analysis.

For instance, merely establishing that there was a quid pro quo for the physician's services is not enough to address private benefit concerns where a doctor with managing authority continued to comingle his private affairs with that of the foundation that owned the hospital. Hopedale Medical Found. v. Tazewell County Collector, 59 Ill. App.3d 816, 820-21 (1978). In Hopedale, private benefit was found when a doctor still received significant income from a charitable hospital, and received discounted rental space, while he made both routine and policy decisions for the Hospital.

It is enough to cause concerns if a charity engages in practices that aid interested private parties and cannot be justified by its charitable purpose. Colombo, *Exploring Policy Gaps,* at 520-21, 525. In the words of Professor Hall, private benefit should not be a "primary purpose or a non-incidental purpose" of a charity". Hall (1/25/19) 206:8-11. When the hospital employs for-profit outside independent contractors to provide core services to its charitable base, the hospital should

justify why the arrangement is appropriate to further its charitable mission, a justification more than an appeal to administrative or economic convenience. Colombo, *Exploring Policy Gaps*, at 523.

Here again, the relationships described in Part One, Section II are significant. Plaintiff and CCA comingled their affairs at almost every level, from commercial relationships to service contracts, joint marketing, to shared risk through HSIL and the HAMP HMO. From this arrangement, CCA got a hospital to practice in. Through its medical directors and its participation in Plaintiff's governing boards, CCA had a role in management of the day to day operations of the hospital. Emergency room services are necessary for licensure of such a hospital, and when they became commercially unprofitable, Plaintiff started providing them through CFPS. Lucrative ancillary revenue streams for lab and radiology were retained by CCA. In return, Plaintiff was partnered with a physician practice that did not have a charity care policy; and that had aggressive collection practices. Plaintiff aided CCA with joint marketing and common branding, but diluted its charitable message with CCA's aggressive collection practices.

CCA was express in its policy of favoring HAMP over other insurers and in freezing participation with certain government payors. And Plaintiff was express in its strategic plans in describing how these practices limited Plaintiff's access to its charitable class. Plaintiff not only failed to even request that CCA contract with other payors (until the 2008 audit), it entered risk-sharing agreements through an HMO that made it share the commercial risk of CCA's HAMP plans. CCA physicians reaped benefits from these relationships. Wellman testified the HAMP price grew so fast that by the early 2000s, it was so high that incoming CCA doctors could not afford to buy in. A decision was made to instead set a share price divorced from the equity value of the stock, with simple interest every year. Wellman (1/24/19) 46:1-17. CCA noted in strategic planning documents that it had accumulated capital in HAMP due to its profitability. TR-2071, p. 5; Wellman (1/24/19) 55:9-17. The discrepancy between the share price and the market price because an unfunded liability of CCA. Wellman (1/24/19) 77:17-78:21.

Another critical issue arose in the context of the merger. Professor Hall noted that Plaintiff used the discounted cash flow method of valuation in arriving at a purchase price for CCA. This is a method whereby one attempts to "achieve a present value of the anticipated future stream of *** earnings". Hall (1/25/19) 233:14-23. It would be improper for physicians to be paid a percentage of income they generated. Hall (1/25/19) 236:10-237:21. Professor Hall testified that

the discounted cash flow method of valuation essentially accomplished the same thing, paying physicians a portion of their expected future earnings, reduced to present value. Hall (1/25/19) 236:10-237:21. It would have been more appropriate to either use a different method of valuation, or to request the physicians donate the revenue stream associated with future earnings at CCA, much as the assets used to found Plaintiff were donated. Hall (1/25/19) 237:12-239:13.

VIII. Offsetting the burdens on government

Under the Korzen standard, the Court is to consider the extent to which the taxpayer's activities reduce the burdens of government. Korzen, 39 Ill.2d at 156-57. A charitable exemption is justified, in part, by the fact that charitable activities supply services which would otherwise have to be provided by the public, thereby reducing the tax burden. People ex rel. County Treasurer v. Muldoon, 306 Ill. 234, 237-38 (1922). Each tax dollar lost to exemption is one less dollar affected governmental bodies have to meet their obligations directly. Provena, 236 Ill.2d at 395. It is only fitting that the exempt entity provide some compensatory benefit in exchange. Provena, 236 Ill.2d at 395.

A. Comparison with taxes paid

As Plaintiff notes, prior to Section 15-86, Illinois law never required a direct, dollar-for-dollar correlation between the value of the exemption and the value of goods or services provided by the charity. Provena, 236 Ill.2d at 395. Plaintiff contends it has met this Korzen Factor because it complied with Section 15-86's statutory offset. However, Illinois law has never held that such a match, alone, would qualify an entity for exemption, either. Offsetting burdens on government may be a necessary condition of exemption, but it is not a sufficient one. Cf., Provena, 236 Ill.2d at 397 (though offset standard was not met, plurality would deny exemption even without considering this factor). The Supreme Court reinforced this point in Oswald, where it held that Section 15-86's statutory offset did not relieve the taxpayer of demonstrating exclusive charitable use. Oswald, 2018 IL 12203 ¶39. This is with good reason. Burdens on government do not match up perfectly with charitable services. Urbana cannot pay its firefighters with Plaintiff's charity care.

Even if comparing the property tax burden to charitable services is useful in some cases, it is not here. First, examining the information aggregated across Plaintiff's entire system (as Section 15-86 does) does not tell us anything about government burdens offset by services

provided on any given parcel. Second, the sheer scope of Plaintiff's operations makes this comparison particularly pointless here:

	2004	2005	2006	2007	2008	2009	2010	2011
Est. prop. taxes	**$3,087,635** TR-446.1, p.1	**$3,627,373** TR-447, p.1	**$3,167,987** TR-448.1, p.1	**$3,188,630** TR-449, p.1	**$3,108,572** TR-450, p.1	**$3,658,017** TR-451, p.1	**$4,777,214** TR-452, p.1	**$4,846,265** TR-453, p.1
Total expenses	**$325,921,659** TR-68, p.7	**$368,071,002** TR-2198, p. 6	**$379,264,346** TR-130, p.7	**$453,565,000** TR-151, p.6	**$458,827,000** TR-166, p. 6	**$461,129,000** TR-188, p. 6	**$767,545,000** TR-222, p. 6	**$1,571,538,000** TR-252
%	**0.95%**	**0.99%**	**0.84%**	**0.70%**	**0.68%**	**0.79%**	**0.62%**	**0.31%**

It tells us next to nothing about the primary charitable use of any particular parcel that its properties, as a whole, provide services with a total value exceeding a tax bill that is less than 1% of its total expenses.[11]

B. The appropriate basis for comparison is for profit entities

One basis for assessing whether Plaintiff relieves a government burden is the extent to which its operations resemble those of a typical government hospital that, in theory, would provide the services if Plaintiff did not. For profit hospitals provide another benchmark, since they are another alternative to supporting a charitable hospital. See Meridian Village, 2014 Ill. App (5th) 130078 ¶8 (retirement home not exempt, in part, because its operations did not "lessen the burden on government any more than does a for-profit retirement facility"); D. Hyman, *The Conundrum of Charitability* at 360.

> "This test requires at a minimum that the value of free care provided by exempt hospitals, above a representative proportion of free care rendered by similar for-profits, match the loss of tax revenues to the government." M. Hall and J. Colombo, *The Charitable Status of Nonprofit Hospitals: Toward a Donative Theory of Tax Exemption*, 66 Washington Law Review 307, 346 (1991).

Although a charitable hospital need not replicate a government hospital, it should lok more like one than like a for-profit hospital. At a minimum, we should expect an exempt hospital to offer more in charity care than a for-profit hospital. Colombo, *Exploring Policy Gaps*, at 514-15. If

[11] The fact this threshold is so low is yet one more reason why the statutory definition of charitable services in Section 15-86(e) should not be given deference in the constitutional analysis. What the legislature has to say about economic activity comprising less than 1% of an organization's total expenses tells us little about what the constitution demands of an exempt parcel as a whole.

both provide the same quantity of charity care, the nonprofit is not shouldering an extra burden to offset the lost tax revenue. Hyman, *Conundrum of Charitability,* at 361.

Comparisons to government and for-profit hospitals are offered not to establish any precise numerical benchmark, but to better gauge the extent to which various services Plaintiff claims credit for are distinctly charitable.

1. Many of Plaintiff's allegedly charitable services are consistent with for-profit activities

a. Uncompensated care

For-profit hospitals provide large amounts of uncompensated care annually. Colombo, *Exploring Policy Gaps,* at 514. The legislature recognized this: when it created Section 15-86, it also enacted a new income tax credit for for-profit hospitals for the lesser of their property taxes paid and the cost of free or discounted services provided pursuant to their charitable financial assistance policy, measured at cost. See 35 ILCS 5/223(a). Providing these services without charging may simply represent a business decision not to pursue debt collection. D. Hyman, *Conundrum of Charitability,* at 360.

In 2008, the Hospital Uninsured Patient Discount Act set a maximum collectable amount in a 12-month period of 25% of family income, for all charges over $300 for persons under 600% of the Federal poverty level. See 210 ILCS 89/10(a)(1), (c)(1). While Plaintiff's charity care policy was (generally) more generous than HUPDA, that statute increased the "floor", the amount of charity care which all hospitals—for-profit and not-for-profit-- would be expected to provide free of charge. Plaintiff has not demonstrated how many of the persons receiving charity care under its policies after 2008 would have received comparable benefits from a private hospital under HUPDA.

Plaintiff automatically qualified persons receiving township general assistance for its community care program. To the extent Plaintiff simply repackaged uncollectable bad debt as charity care, it is not providing any benefit at all over and above what a for-profit entity would have provided. Relabeling old debt as charity care is functionally indistinguishable from a for-profit- hospital writing off bad debt. While this may have provided some benefit to the patient – long after their credit history had been affected – repackaging debt in this manner did not relieve any additional burdens of government. To the extent Plaintiff prospectively provided medical assistance to township assistance recipients that would otherwise have been paid by the township, it did relieve a burden on local government. However, Plaintiff provided no information at trial

quantifying how much of the charity care it claims was provided in this manner. In fact, given that Plaintiff admits that it cannot relate its charity care figures to medical care provided in any given year, we do not know how much of this charity care was provided prospectively, at all.

According to IRS records, government hospitals provided on average 6.6% of operating expenses in charity care in 2011, while Plaintiff averaged 2.5% in the period from 2004 through 2011. Hall (1/28/19 a.m.) 88:5-21. Government hospitals averaged ten percent in total uncompensated care in 2011, while Plaintiff provided less than 4% in uncompensated care between 2004 and 2011. Hall (1/28/19 a.m.) 88:22-89:7.

b. Other programs claimed as community benefit

Plaintiff claimed credit for certain community outreach programs as charitable activities. However, Professor Hall noted that for-profit hospitals have similar programs as a way of creating goodwill and attracting new business. Hall (1/28/19 a.m.) 53:16-24. Hall testified that for-profit hospitals also make charitable donations, just as banks and insurance companies do, to promote goodwill. Hall (1/28/19 a.m.) 58:10-19.

Plaintiff claimed its emergency department as a community benefit. However, for-profit hospitals typically have emergency departments. This is a public expectation, and a major point of intake for patients. Hall (1/28/19 a.m.) 55:2-22. Even if the hospital loses money on the emergency care, those patients seen in the emergency room typically receive services in the hospital that generate more revenue for the hospital. Hall (1/28/19 a.m.) 56:4-10. For-profit hospitals regularly incur unreimbursed costs for emergency care and care for mothers in active labor whom they are not legally allowed to turn away. See 210 ILCS 85/11.1; 210 ILCS 80/1. Plaintiff has noted that, while for-profit entities sought collection for these services, Plaintiff did not. It would be more accurate to say that, for some uncertain amount of this debt, Plaintiff eventually chose to recharacterize these services as charitable after several years of collection activity.

Dr. Leonard thought neonatal services might not be a profitable service, including neonatal intensive care. Leonard (1/7/19) 25:15-22. Professor Hall noted that neonatal intensive care is provided by for-profit hospitals even though it is not necessarily a money-making service in and of itself. Hall (1/28/19 a.m.) 57:17-22. However, they are part of labor and delivery services, generally. Hall (1/28/19 a.m.) 57:20-22. Generally, expectant parents seek a full-service delivery hospital when having children. Hall (1/28/19 a.m.) 57:23-58:6. Even if a hospital loses money

on these services, in isolation, these services provide an emotional connection to a hospital that creates business for the institution for decades to come. Hall (1/28/19 a.m.) 54:6-12.

Professor Hall noted that that government hospitals are more likely to have burn units and emergency psychiatric services, as these are typically unprofitable services that do not typically lead to more lucrative services. There was no indication at trial Plaintiff offered these services. Hall (1/28/19 a.m.) 91:14-93:21. For-profit hospitals also provide health services to low-income and underserved individuals (35 ILCS 200/15-86(e)(2)); and they support state health care programs for low-income individuals (35 ILCS 200/15-86(e)(4)). They also serve dual-eligible Medicare/Medicaid patients. 35 ILCS 200/15-86(e)(5). As noted in Part Two, Section I, Plaintiff's research activities appear to be motivated by the same desire to gain market share one would expect from a for-profit hospital.

2. The Court incorrectly barred testimony relating to comparisons between non-profit and for-profit entities.

At trial, this Court sustained Plaintiff's objection to Professor Hall's direct numeric comparisons between Plaintiff and for-profit hospitals, concluding that general comparisons were appropriate but specific numeric comparisons were not. The Court concluded this comparison was the equivalent of "comparing apples and oranges". The County Defendants respectfully disagree and wish to preserve this issue for appeal, based on the offer of proof made at trial, and the points made above. To borrow the Court's metaphor, one of the very issues presented was the degree to which Plaintiff acted more like a charitable "apple" or a for-profit "orange". This Court speculated that there were differences in organizational structure among for-profits, not-for-profits, and government hospitals that made this comparison inapt. There certainly was no record before the Court of why such differences are irrelevant to the Korzen analysis. If Plaintiff wanted to explore any such differences in cross-examination, it certainly would have been free to do so. Instead, this Court shut the inquiry down with a categorical bar on this testimony.

IX. The Reasonable necessity of the Caring Place

Plaintiff seeks an auxiliary exemption for the Caring Place, which provides day care services for children in the community, including children of Plaintiff. Leonard (1/3/19) 145:11-16. Property may qualify for charitable exemption, even if it is not itself used exclusively for charitable purposes, if it is used primarily for purposes reasonably necessary for accomplishing the goals of the charitable organization. MacMurray College, 38 Ill.2d at 278. The issue presented

is what is reasonably necessary for the performance of charitable functions, not what is convenient for the taxpayer. See Cantigny Trust v. Dept. of Revenue, 171 Ill. App.3d 1082, 1087 (1988). Plaintiff has failed to establish this standard is met here.

The leading case in this area is Memorial Child Care v. Dept. of Revenue, 238 Ill. App.3d 985 (1992), in which the Fourth District held that a non-profit hospital was granted a charitable exemption for a day care center. The Fourth District noted that the day care center was developed and built specifically to accommodate the scheduling needs of the hospital after a task force conducted an investigation and determined there was not adequate child care for hospital employees in the community. This determination was confirmed by a community study by the League of Women Voters. The biggest barrier to outside child care was the hospital's need for extended hours of operation, 5:30 am to midnight, seven days per week.

Here, Plaintiff has established, at most, that nearby day care is a convenience, not a necessity. Dr. Leonard testified that a large portion of its employee base had children, and that the close location of the day care offered parents an opportunity to visit the center on noon hours or the child's birthday. Leonard (1/3/19) 142:13-143:1, 144:16-21. Plaintiff also testified that the operation of the day care center by Plaintiff made it more responsive to employee complaints. Leonard (1/3/19) 143:7-16; 144:16-21. Dr. Leonard gave his subjective opinion that the day care addressed the nursing shortage by appealing to nurses who are often younger parents in two-career families. Leonard (1/3/19) 144:1-9. However, he presented no data in support of this conclusion. Unlike the day care center in Memorial Child Care, Plaintiff has presented no evidence that the hours of the day care accommodate the specialized needs of the hospital. Nor has Plaintiff provided any task force findings or independent reports to support its claim to exemption. This is a far cry from the reasonable necessity established in Memorial Child Care.

Part Three: Plaintiff fails the statutory standards for exemption

I. Section 15-86 does not apply to Plaintiff's current claims

Plaintiff's attempt to apply Section 15-86 to the current suit is in conflict with the plain language of that statute. This sweeping retroactive application of Section 15-86 serves no legislative purpose and is absurd.[12]

[12] On the last day of trial, the Court suggested that this issue may be waived because it was not properly raised prior to trial. This suggestion is addressed in Appendix E.

A. Section 15-86 does not apply to claims brought under Section 23-25(e)

1. Text of the Property Tax Code

Plaintiff has filed its claims to exemption in the Circuit Court, in a common law tax injunction brought pursuant to Section 23-25(e) of the Property Tax Code (35 ILCS 200/23-25(e)). This provision effectively "revives the traditional suit in equity for injunction as one of the primary means of establishing a claim for exemption, provided the Department *** (or a court on review) has acted favorably on a comparable claim for any other year." See Carle Found. v. Illinois Dept. of Revenue, 396 Ill. App.3d 329, 340 (2009)("Carle I"), quoting M. Davis & E. Gracie, Taxable & Exempt Property, in Real Estate Taxation Sec. 1.108, at 1-112 (Ill. Inst. for Cont. Legal Educ. 2008).

The plain text of Section 15-86 requires Plaintiff's current claim to be brought in the first instance in an administrative forum. The best indication of legislative intent is the plain and ordinary meaning of the statutory language. People ex rel. Madigan v. Kinzer, 232 Ill.2d 179, 184-85(2009). Section 15-86(c) provides that an exemption is to be given only to a "hospital applicant" that satisfies certain statutory conditions with respect to the "subject property". See 35 ILCS 200/15-86(c). Section 15-86(c)(6) defines a "hospital applicant" as:

> "a hospital owner or affiliate that files an application for a property tax exemption pursuant to Section 15-5 and this Section". See 35 ILCS 200/15-86(b)(6)

Section 15-86(b)(8) defines "subject property" as:

> "property for which a hospital applicant files for an exemption pursuant to Section 15-5 and this Section". See 35 ILCS 200/15-86(b)(8)

Section 15-5 defines the administrative exemption application process:

> "Any person wishing to claim an exemption for the first time ** shall file an application with the county board of review or appeals, following the procedures of Section 16-70 or 16-130." See 35 ILCS 200/15-5.

Section 16-70 and Section 16-130, in turn, define the administrative process before the board of review. In construing a statute, no term should be considered surplusage, and each word, clause, or sentence must, if possible, be given some reasonable meaning. See Hirschfield v. Barrett, 40 Ill.2d 224, 230 (1968). Sections 15-86(b)(6) and 15-86(b)(8) serve no textual function other than to limit Section 15-86 claims to the administrative forum.

In addition, Section 15-86(h) clearly defines what it means for an exemption to be sought "pursuant to Section 15-5 and this Section". When a term is defined within a statute, that term must be construed by applying the statutory definition provided by the legislature. See People v. Fiveash, 2015 IL 117669, Par. 13 (2015). Section 15-86(h) provides:

> "Each hospital applicant applying for a property tax exemption pursuant to Section 15-5 and this Section shall use an application form provided by the Department. The application form shall specify the records required in support of the application and those records shall be submitted to the Department with the application form. Each application or affidavit shall contain a verification by the Chief Executive Officer of the hospital applicant under oath or affirmation stating that each statement in the application or affidavit and each document submitted with the application or affidavit are true and correct. The records submitted with the application pursuant to this Section shall include an exhibit prepared by the relevant hospital entity showing (A) the value of the relevant hospital entity's services and activities, if any, under paragraphs (1) through (7) of subsection (e) of this Section stated separately for each paragraph, and (B) the value relating to the relevant hospital entity's estimated property tax liability under subsections (g)(1)(A), (B), and (C), subsections (g)(2)(A), (B), and (C), and subsection (g)(3) of this Section stated separately for each item. Such exhibit will be made available to the public by the chief county assessment officer. ***". See 35 ILCS 200/15-86(h) (Emphasis added).

The provisions emphasized above cannot be applied here. The current claims are submitted to the Circuit Court, not the Department. The claims are not presented on a form prescribed by the Department under Section 15-86(h), but rather in a civil pleading containing very little of the required information.

When the legislature has amended a statute after it has been interpreted in the courts, the Court is to presume the legislature was aware of the judicial construction and acted with that knowledge. See In re D.F., 332 Ill. App. 3d 112, 119 (2002). Here, Section 15-86 was enacted on the heels of the Fourth District's interpretation of Section 23-25(e) in a prior appeal in this very case. See Carle I, 396 Ill. App.3d 329. The Carle I decision emphasized the difference between a cause of action under Section 23-25(e) and an administrative appeal, requiring a taxpayer to elect its remedies between these two routes. Carle I, 396 Ill. App.3d at 342.

2. Carle II's approach to Section 23-25(e), Section 15-86(b)(6) and (b)(8)

In a non-binding decision, the Fourth District's decision opinion in Carle Foundation v. Cuningham Township, et al. , 2016 Ill. App.(4th) 140795 (2016) ("Carle II") allowed Plaintiff's

current claims by re-interpreting Section 23-25 in a manner inconsistent with its text, structure, purpose, and history.

a. Overview of Section 23-25(e) given in Carle I

Section 23-25(a) codifies a requirement of exhaustion of administrative remedies, barring a taxpayer from seeking exemption through tax objection or tax injunction. See 35 ILCS 200/23-25(a). Section 23-25(e) creates an exception to this rule:

> "The limitation in this Section shall not apply to court proceedings to establish an exemption for any specific assessment year, provided that the plaintiff or its predecessor in interest in the property has established an exemption for any subsequent or prior assessment year on grounds comparable to those alleged in the court proceedings. ***" 35 ILCS 200/23-25(e)

In Carle I, the Fourth District concluded that Section 23-25(e) "statutorily overrules" the requirement of exhaustion of administrative remedies and "revives the traditional suit in equity for injunction as one of the primary means of establishing a claim for exemption, provided the Department *** (or a court on review) has acted favorably on a comparable claim for any other year." See Carle I, 396 Ill. App.3d at 340, quoting M. Davis & E. Gracie, Taxable & Exempt Property, in Real Estate Taxation Sec. 1.108, at 1-112 (Ill. Inst. for Cont. Legal Educ. 2008).

b. Reinterpretation of Section 23-25(e) given in Carle II

Carle II gave a new gloss on Section 23-25(e). According to Carle II, the Court would examine the difference between the Department's decision in the year at hand and its decision in the comparable tax year, and ask for a non-arbitrary reason for its decision if presented with substantially the same facts. Carle II, 2016 IL App(4th) 140795, Par. 92. Under this approach, the taxpayer would allege and prove that, as to the subject property, a certain set of facts existed during the assessment year in question and that substantially the same facts caused the property to be exempt for a different year. The Circuit Court would not be making a de novo determination as much as comparing two sets of facts to see if the Department is being inconsistent or arbitrary. See Carle II, 2016 IL App(4th) 140795. The exemption would continue unless: (1) the two sets of fact are materially different; or (2) the Department convinces the circuit court the exemption for the comparable year was actually unlawful. Carle II, 2016 IL App(4th) 140795, Par. 95.

This construction allowed Carle II to hold a Section 15-86 claim could be brought under Section 23-25(e):

> "The legislature must have intended section 15-86 to apply at least indirectly. If section 15-86 was the authority for exempting the property from taxation for a subsequent or prior assessment year, section 15-86 would indirectly apply to the proceeding under section 23-25(e), through a comparison of facts: if under *those* facts the property was entitled to an exemption pursuant to section 15-86, it follows that under these comparable facts the property likewise is entitled to an exemption pursuant to section 15-86. Ultimately, the authority would be the same: section 15-86." Carle II, 2016 IL. App. (4th) 140795, Par. 96 (Emphasis in original).

In other words, according to the Fourth District, a claim brought in the circuit court under Section 23-25(e) is (indirectly) brought "pursuant to Section 15-5 and this section", as required by Section 15-86(b)(6) and (b)(8), because the Section 15-86 claim for another year used as a basis for comparison in the suit is brought "pursuant to Section 15-5 and this section".

c. Carle II's interpretation of Section 23-25(e)'s comparable year requirement is deeply flawed

The Fourth District's ruling on the applicability of Section 15-86 also has no effect as a judgment because it was vacated. Nor is it binding as precedent. See Mohanty v. St. John Heart Clinic, SL, 225 Ill. 2d 52, 66 (2005).

Carle II treated Section 23-25(e)'s requirement of exemption on comparable grounds in a different tax year not just as a condition on being able to file suit, but as part of the substantive standard for exemption. Carle II would construe 15-86(b)(6), (b)(8) as referring to an administrative exemption filed in a different year, to be used as a benchmark. But the plain language of Section 15-86(b)(6) and (b)(8) requires the specific claim at issue to be brought before the Department. By incorporating these definitions of "hospital applicant" and "subject property", Section 15-86(c) clearly limits the exemption to only those claims brought in this precise manner. See 35 ILCS 200/15-86(c). Moreover, Section 15-86(h) defines the phrase "pursuant to Section 15-5 and this section" in language requiring a showing of compliance with the statutory formula to the Department on an administrative form for the very year at issue. See 35 ILCS 200/15-86(h). Section 15-86 requires that the applicant file an exemption application listing its estimated tax liability "for the year in which the exemption is sought". See also 35 ILCS 200/15-86(d), (g)(1)(A) (requiring an estimate of tax liability "for the year in which exemption is sought"); Section 15-86(d) (requiring services listed for the "hospital year") and Section 15-

86(b)(9)(defining a hospital year in terms of the "year for which the exemption is sought"). See 35 ILCS 200/15-86(b)(9).

One cannot plausibly conclude the legislature, in referring to claims brought "pursuant to Section 15-5 and this Section" in (b)(6) and (b)(8), was referring to an obscure pre-existing process under Section 23-25(e), instead of a claim brought "pursuant to Section 15-5 and this Section", as defined in Section 15-86 itself. In fact, the only form of claim brought "pursuant to Section 15-5 and this Section" that Section 15-86(h) could be referring to is the claim as defined by Section 15-86(b)(6) and (b)(8).

Carle II also conflicts with the plain text of Section 23-25(e). This section provides only that once the comparable year requirement is met "the limitation in this Section [the requirement of exhaustion of administrative remedies] shall not apply". See 35 ILCS 200/23-25(e). By the clear terms of this clause, the comparable year is simply a condition on the exception to the requirement of exhaustion of administrative remedies. There is nothing in this text indicating the comparable year serves any ongoing function in deciding the claim.

Carle II suggested its construction allowed the Court to consider the decision in the comparable year in determining whether the Department's decision in the current year is arbitrary. However, this rationale is inconsistent with the legislative history of Section 23-25(e). This subsection was enacted to benefit churches in Cook County that had failed to file a timely administrative exemption application because they did not know at the time that they could be entitled to an exemption. See 90th General Assembly, Senate Transcript, 4/1/98, Comments of Senator Jones on Senate Bill 1223, pp. 21-22. Under these circumstances, there would be no decision of the Department in the current year to compare with the exemption granted by the Department in the comparable year. In fact, under Carle I, as soon as the taxpayer files suit in the Circuit Court, it will normally have elected its remedies and be forever barred from filing an administrative exemption application, and vice versa. See Carle I, 396 Ill. App.3d at 342-43. So there will never be a circumstance, other than the suit now before the Court, in which the Department has made determinations in both the year at hand and the comparable year, which can

be compared to one another in a Section 23-25(e) suit.[13] Carle I and Carle II are in irreconcilable conflict on this point, and only Carle I is binding authority on this trial court.

3. The distinction between mandatory and directory language has no application here.

Judge Leonhard suggested Section 15-86(b)(6) and (b)(8)'s requirement of an administrative exemption application was merely procedural and therefore non-binding. In his opinion, Judge Leonhard referred to the County Defendants "conflat[ing] matters of substance and procedure". See 8/28/14 Ruling, p. 45. In a ruling in another local exemption case, Judge Ford reasoned that "nowhere in the statute does it appear that the language is intended to be mandatory and to restrict applications to the administrative process". 2015-L-75 1/17/19 Ruling, P. 6 (Attached hereto as Appendix A). Judge Ford then concluded Section 15-86(b)(6) and (b)(8) are merely "descriptive clauses". 2015-L-75 1/17/19 Ruling, P. 6.

This reasoning ignores several rules of construction. A court is to construe a statute as written, and may not, under the guise of construction, supply omissions, remedy defects, add new provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of the language employed by the statute. See In re Application of County Collector, 356 Ill. App.3d 668, 669 (2005). The Court simply is not at liberty to relabel clauses "merely descriptive" and then summarily disregard them.[14] Grants of tax exemption are to be given a strict interpretation against the taxpayer and in favor of the taxing power. Midwest Airlines, Inc. v. Dept. of Revenue, 234 Ill. App.3d 866, 708 (1992).

Judge Ford stated the language of Section 15-86 does not restrict applications to the administrative process. 2015-L-75 1/17/19 Ruling, P. 6. As discussed above, this is clearly not correct. If the language requiring each "hospital applicant" to file an application "under Section

[13] Plaintiff, specifically, was exempted from electing remedies in the early phases of the current suit because the law was unclear at the time Carle I first construed Section 23-25(e). Carle I, 396 Ill. App.3d at 343. The quirky posture of the case at hand cannot be a guide to interpreting Section 23-25(e), generally.

[14] Judge Ford borrowed language from a limited exception to this rule. Statutory provisions defining property tax exemptions without expressly requiring compliance with the constitutional standard of exclusive exempt use have been deemed merely "descriptive" or "illustrative". See, e.g., Chicago Bar Ass'n, 163 Ill.2d at 298-99. This saving construction is used to prevent a clause expanding an exemption from conflicting with the State constitution. Chicago Bar, 163 Ill.2d at 298; Oswald, 2018 IL 122203, Par. 37. This exception cannot be applied to Section 15-86(b)(6) or (b)(8), clauses which do not purport to expand an exemption.

15-5 and this Section" is not a substantive limit, and only describes the administrative process, then it is superfluous because each administrative exemption applicant is already required to file an application under "Section 15-5 and this Section". See 35 ILCS 200/15-5.

Judge Ford and Judge Leonhard's analysis echoes a well-established body of law defining when a statutory provision is mandatory as opposed to permissive or directory. A statute is mandatory as opposed to permissive when it refers to an obligatory duty which a governmental entity is required to perform. See People v. Delvillar, 235 Ill.2d 507, 514 (2009). A permissive duty is one which the governmental entity may exercise or not as it chooses. Delvillar, 235 Ill.2d at 514. In this context, a directory statute is one for which no specific consequence is triggered by the failure to comply with the statute. See Delvillar, 235 Ill.2d at 515. There is a presumption that a procedural command to a government official indicates an intent that the statute is directory. See Delvillar, 235 Ill.2d at 517. As stated above, Section 15-86 unequivocally states the consequence for failure to comply: a taxpayer falls outside the definition of those entitled to the exemption, and so does not get the exemption.

By their plain terms, each of these rules is limited to statutes governing the conduct of a government official. See also People v. Ousley, 235 Ill.2d 299, 313 (2009); Lakewood Nursing and Rehabilitation Center, LLC v. Dept. of Public Health, 2018 IL App(3d) 170177, par. 18 (2018); People v. $4850, 2011 IL. App(4th) 100528, Par. 30 (2011). Omissions or failures by public officials should not be allowed to prejudice the rights of the public or individuals who have no direct or immediate control over the process at issue. *Sutherland on Statutes,* Sec. 57:15. For instance, it is perfectly appropriate to recognize the directory nature of Section 15-86(c), which directs when a government official is to issue an exemption once the proper documentation is submitted. See Oswald, 2018 IL 122203, Par. 35, interpreting Section 15-86(c).

By contrast, the issue presented here is the direction the legislature gave to a private actor, the taxpayer, about the forum to be used and documentation to be submitted to start this process in the first place. There is an essential difference between statutory directions to public officers and to private persons. *Sutherland on Statutes,* Sec. 57:15. "Where an individual's rights depend upon compliance with the provisions of a statute, those provisions are generally mandatory, and compliance therewith is a condition precedent to the perfection of such rights." Id. If a private party's rights turn on its own compliance with statutory directions, it has no one to blame but itself for noncompliance. Id. Where the legislature has devised a specific statutory remedy for seeking

relief on a tax claim, the taxpayer must follow the relevant statutory procedures as a condition for obtaining relief. See, e.g., Jojan Corp. v. Kusper, 173 Ill. App. 3d 622, 626 (1987); County Collector v. Goldman, 23 Ill. App.3d 923, 925 (1974). Plaintiff's current claim is akin to a taxpayer telling the IRS that it will invent its own income reporting form this year, instead of submitting a W-2 form.

Even when discussing duties of government actors, a presumption that procedural commands are directory is overcome when the right the provision is designed to protect would generally be injured under a directory reading. See Delvillar, 235 Ill.2d at 517. This is true even if the statute does not contain negative specific language stating a prohibiting action or stating another consequence if the condition at issue not met. See Delvillar, 235 Ill.2d at 517. As stated in Sections 4 through 6, below, the structure of Section 15-86 is designed to promote several important public purposes that would be compromised by applying this standard here.

4. Limiting Section 15-86 exemptions to the administrative forum prevents unreasonable and sweeping retroactivity of Section 15-86

The most critical purpose the legislature served in limiting Section 15-86 exemption claims to the administrative forum, was to give the retroactivity provisions of Section 90 of the Cigarette Machine Operators' Occupation Tax Act ("Cigarette Tax Act"; 35 ILCS 128/90) coherent meaning, and to avoid exactly the type of sweeping and absurd retroactive liability Plaintiff is seeking to establish here. This is discussed in detail in Subsection B, below.

5. Limiting Section 15-86 Claims to the administrative forum allows deference to administrative expertise

One of the purposes of Section 15-86 is to address "considerable uncertainty surrounding the test for charitable property tax exemption". See 35 ILCS 200/15-86(a)(1). One way to do so is to require these claims to be adjudicated before an Administrative Law Judge (ALJ). An ALJ has training and experience in the nuances of property tax law, as it is applied in a variety of different contexts. An ALJ serves under the purview of the Director of the Department, who has a mandate to ensure uniform interpretation of the law across the State. See 35 ILCS 200/8-5. Prior to the enactment of Section 23-25(e), all taxpayers seeking exemption were required to exhaust their administrative remedies by filing administrative exemption claims. See Illinois Bell Telephone Co. v. Allphin, 60 Ill.2d 350 (1975). This requirement is designed to allow administrative bodies to apply the special expertise they possess. Allphin, 60 Ill.2d 350.

6. Limiting Section 15-86 exemptions to the prescribed forum promotes public accountability for exemptions

Section 15-86(h) requires that the exemption application be filed with the Supervisor of Assessments' Office. Further, the legislature specifically directed that "[s]uch exhibit will be made available to the public by the chief county assessment officer". See 35 ILCS 200/15-86(h). The information so submitted is to include a detailed account of the value of the hospital entity's statutory services and estimated property tax liability. See 35 ILCS 200/15-86(h). This information matches the information required on an affidavit to be submitted to the supervisor of assessments on an annual basis. See 35 ILCS 200/15-86(e)(3). If claims are limited to the administrative forum, an interested taxpayer may go to the Supervisor of Assessments in any given year and compare the initial application to the annual affidavits to see how Plaintiff's performance has changed over time.

It undermines this purpose to allow claims to be filed in the Circuit Court as opposed to the administrative forum. Under Plaintiff's approach, an interested taxpayer would be forced to comb through the filings in the Circuit Court and attempt to reconcile them with filings in other years before the Supervisor of Assessments. The taxpayer would first have to even know to look in the Circuit Court. Once there, the taxpayer would face protective orders, obfuscating discovery responses, and preemptive settlements that would keep much of the information required by Section 15-86 from ever coming into public view.[15]

7. Legislative findings and the role of Section 15-86(i)

Judge Leonhard reasoned applying Section 15-86 to Plaintiff's pre-existing suit under Section 23-25(e) is consistent with the legislative findings of Section 86, which endorsed a comprehensive approach to hospital charitable property tax exemptions. However, the legislative findings do not refer to a comprehensive approach to exemptions, but rather a "comprehensive combination of related legislation that addresses hospital property tax exemption, significantly increases access to free health care for indigent persons, and strengthens the Medical Assistance program". 35 ILCS 200/15-86(a)(4) (Emphasis added). This finding emphasizes the complicated

[15] In apparent response to this argument, Plaintiff has offered demonstrative exhibits providing at least some of the information required on a P-Tax 300-H form. See, e.g, TR-446.1. These forms are defective for the reasons stated in Part Three, Section III.B, below. More to the point, the intent of the legislature in 2012 cannot be retroactively revised in light of Plaintiff's litigation strategy in 2019.

legislative bargain of which the controversial Section 15-86 was merely a part. See 97th Gen. Assem. House Proceedings, 5/25/12, at 52-54 (statements of Representative Curie) (Public Act 97-688 was critical to the effectiveness of Senate Bill 2840 and was "another major piece of our major Medicaid puzzle"); 97th Gen. Assem. Senate Proceedings, 5/24/12, at 56 (statements of Senator Raul) (relating Senate Bill 2840b to Senate Bill 3397h). In fact, Plaintiff's own bond documents refer to part of this bargain as the "Illinois Medicaid Act establishing comprehensive Medicaid reform in Illinois" signed into law on January 25, 2011. TR-4007, p. 36 (Emphasis added).

The legislature expressly rejected a uniform approach when it allowed residual claims in Section 15-86(i):

> "Nothing in this Section shall be construed to limit the ability of otherwise eligible hospitals, hospital owners, hospital affiliates, or hospital systems to obtain or maintain property tax exemptions pursuant to a provision of the Property Tax Code other than this Section." 35 ILCS 200/15-86(i).

Far from attempting to "occupy the field" with a comprehensive approach to property tax exemptions in Section 15-86, the legislature expressly allowed hospitals to continue to bring claims under Section 15-65.[16]

B. Section 15-86 does not apply retroactively to Plaintiff's claims

A substantive amendment will only apply retroactively if the legislature has clearly indicated this intent. Caveney v. Bower, 207 Ill.2d 82, 94-95 (2003); 5 ILCS 70/4. Section 90 of the Cigarette Tax Act addresses the retroactivity of Section 15-86. It provides, in pertinent part:

> "The changes made by this amendatory Act of the 97th General Assembly to the Property Tax Code *** shall apply to: (1) all decisions by the Department on or

[16]In the Presence suit, Judge Ford drew different inferences from Section 15-86(i). According to him, Section 15-86(i) provides a hospital may claim a Section 15-86 exemption without complying with the administrative application requirements of Section 15-86(b)(6) and (b)(8). However, the plain text of Section 15-86(i) provides a hospital may seek exemption under a provision other than "this Section", such as a claim under Section 15-65. It provides no support for allowing a hospital to bring a claim under "this Section", Section 15-86, without complying with its express requirements. Under normal rules of statutory construction, expression of an exception for claims brought under other sections implies there are no exceptions to the stated rules for exemptions brought under Section 15-86 itself. See In re Estate of Lewy, 2018 IL App(1st) 172552, Par. 16. Judge Ford asked rhetorically, if Section 15-86(i) is not intended to reach a suit under Section 23-25(e), then why include it? 2015-L-75, 1/17/19 Ruling, P. 6. Section 15-86(i) answers this directly: to make clear hospitals can still file exemption claims under pre-existing substantive standards for exemption, such as under Section 15-65. Plaintiff itself demonstrates this use, with the Section 15-65 claims it initially raised and then voluntarily withdrew before trial.

> after the effective date of this amendatory Act of the 97th General Assembly regarding entitlement or continued entitlement by hospitals, hospital owners, hospital affiliates, or hospital systems to charitable property tax exemptions; (2) all applications for property tax exemption filed by hospitals, hospital owners, hospital affiliates, or hospital systems on or after the effective date of this amendatory Act of the 97th General Assembly; (3) all applications for property tax exemption filed by hospitals, hospital owners, hospital affiliates, or hospital systems that have either not been decided by the Department before the effective date of this amendatory Act of the 97th General Assembly, or for which any such Department decisions are not final and non-appealable as of that date. ***" 35 ILCS 128/90

None of the prior rulings that Section 15-86 applies retroactively has effectively reconciled its holding with this clear language. Nor have any of these rulings even speculated as to why the legislature would apply this new substantive standard of exemption retroactively seven years.

1. Carle II's approach to retroactivity

The non-binding decision in Carle II flipped the normal rules of retroactivity on their head. According to Carle II, "Section 90 does not say that the changes made by Public Act 97-688 apply only to the items listed in Section 90". Carle II, 2016 IL App(4th) 140795, Par. 112 (Emphasis in original). But if there were some other source of retroactivity, Section 90 would not have been needed in the first place. No term of a statute should be rendered meaningless or superfluous. People v. Stoecker, 2014 IL 115756, Par. 25 (2014). The default rule is that substantive changes are not retroactive, and Section 90 has only changed that default rule in the listed circumstances. If a claim does not fall within one of the listed categories in Section 90, Section 15-86 cannot be applied retroactively to it.

2. The specific text of Section 90 of the Cigarette Tax Act

Judge Leonhard deemed the word "application" in Section 90(2) broad enough to include a Section 23-25(e) suit. Ultimately, the issue presented is the same as whether a Section 15-86 claim can be brought in a Section 23-25(e) suit at all: There is only one application for property tax exemption to which Section 90 could be referring, an administrative exemption application filed under Section 15-86(h).

Limiting Section 15-86 applications to the administrative forum promotes the legislature's purpose in limiting its retroactive application. The Board of Review can only accept administrative exemption applications for the year in which it is in session. Cf., 35 ILCS 200/16-150 (requiring Board of Review to certify annually that it has completed its work for the assessment year). If

Section 15-86 is limited to administrative exemption applications, Section 90 of the Cigarette Tax Act provides an orderly process for addressing pending claims:

1. Section 90(1) would address all later administrative decisions by the Department regarding exemption (such as under 35 ILCS 200/15-25);
2. Section 90(2) would address all administrative exemption applications for future years; and
3. Section 90(3) would address all administrative applications pending before Boards of Review, the Department, or on direct administrative review.

This list of categories of claims only makes sense if it were designed to cut off claims not falling within them.

3. Plaintiff's attempt to extend Section 90(3) of the Cigarette Tax Act to the current suit

Plaintiff initially argued it is entitled to claim Section 15-86 retroactively because its administrative applications had not been resolved with a Department decision that was non-final and non-appealable as of the effective date of Section 15-86. See 35 ILCS 128/90(3). This argument is the least plausible of the retroactivity theories presented. First, as argued above, a Section 15-86 exemption cannot be brought in the Circuit Court at all, so this argument also fails. Second, this argument could never support retroactive application of Section 15-86 for tax years 2009, 2010, and 2011, because Plaintiff never filed an administrative exemption application for these years. Stouffe (1/14/19) 59:20-24. As to 2010 and 2011, Plaintiff did not have a claim relating to these years pending in the Circuit Court as of the effective date of Public Act 97-688, either. See Third Amended Complaint, filed November 21, 2011.

Finally, on March 16, 2012, Plaintiff unequivocally withdrew all of its administrative exemption claims before the Department prior to the effective date of Public Act 97-688. See TR-3116. This amounted to a clear election of remedies under Carle I. See Carle I., 396 Ill. App.3d. at 342. Carle I relaxed the doctrine of election of remedies prior to its ruling because the law was unclear. Carle I, 396 Ill. App. 3d at 343. However, the doctrine should still be applied strictly, moving forward, once the law is clarified. See Bd. of Comm'rs. of Wood Dale Pub. Library Dist. v. DuPage Cnty., 103 Ill.2d 422 (1984). The last of the Department's administrative decisions denying the administrative exemption applications was issued on March 29, 2012. See TR-3017, 3018, 3117, 3119, 3121, 3123, 3125, 3126, 3127, 3128, 3130, 3132, 3133, 3134, 3135,

3136, 3137, 3138, 3139, 3140. The last of these denials became final 60 days after that. See 35 ILCS 200/8-35(b). This would be before the effective date of P.A. 97-688. Whatever happened with the controversy as a whole after that point, the "Department decision", as the term is used in Section 90(3) of the Cigarette Tax Act was resolved in a final and non-appealable order. Cf., Condell Hosp. v. Illinois Health Facilities Planning Bd., 124 Ill.2d 341 (1988) (administrative decision denying certificate of need is final, notwithstanding then-pending parallel proceeding challenging the same certificate of need).

4. Legislative intent and the absurd results of retroactivity

Applying Section 15-86 retroactively imposes absurd and sweeping retroactive liability. In any given tax year, the authorized levy is divided by the equalized assessed valuation (EAV) to determine the applicable tax rate for a taxing district. 35 ILCS 200/18-45. When new exemptions result in the removal of parcels from the EAV (35 ILCS 200/9-95; 35 ILCS 200/16-70), the tax rate charged to all other taxpayers in an exempt entity's taxing districts increases, subject to statutory limits on the tax rate (e.g., 55 ILCS 5/5-1024). If a taxpayer can raise an exemption claim under a new theory long after the equalized assessed valuation for a given year has been certified to the Department, there is no way for taxing districts to recoup the lost taxes: There is no statutory authority for the assessor to go back to prior years and collect additional taxes. Bd. of Educ. of Park Forest-Chicago Heights School Dist. No. 163, Cook County, 382 Ill. App.3d 604, 612 (2008). Statutes should be construed so as to avoid absurd or unjust results. See Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan Dist., 238 Ill.2d 262, 283 (2010).

While the legislature may well have chosen to impose losses on taxing districts for exemption applications pending when the new statute went into effect, it did not intend to do so for tax injunction complaints, such as this one, reaching back up to eight years. The legislature intended the more generous exemption standard to compensate hospitals for a new health care tax assessment. 97th Gen. Assem. House Proceedings, May 25, 2012, at 68 (statements of Representative Curie). There is no reason why the legislature would allow the new exemption standard to apply retroactively several years before the new assessment went into effect.[17]

[17] In rejecting this argument, the Fourth District concluded that "[if] such open-ended retroactivity is unwise or impractical as public policy, the remedy is with the legislature, not with us". Carle II, 2016 IL App(4th) 140795, Par. 113. This response would be appropriate if the County Defendants were asking this Court to depart from the plain language the legislature chose. Instead, this concern about retroactivity is one more

II. The comparable year requirement under Section 23-25(e)

Before a taxpayer is allowed to bring a claim under Section 23-25(e), it must establish that it received the exemption through the Department's administrative process on comparable grounds in a different tax year. 35 ILCS 200/23-25(e). Plaintiff has now made it clear that the sole tax year it is using as a comparable for this purpose is tax year 2012. Tonkinson (1/9/19) 101:13-18 (Comments of Counsel Doehring).

A. The burden of proof at common law

As noted above, the instant action is the equivalent of a common law tax injunction. Carle I, 396 Ill. App.3d at 340. At common law, the Plaintiff must meet its burden of proof each and every year. Because collateral estoppel does not apply in property tax cases, a taxpayer may be called upon to demonstrate its entitlement to exemption each and every year, even if there has been no change in circumstances. Jackson Park Yacht Club v. Illinois Dept. of Local Affairs , 93 Ill. App.3d 542, 546 (1981); Application of DuPage County Collector, 157 Ill. App.3d 355, 359 (1987). Jackson Park's rule has sometimes been stated in terms of collateral estoppel and res judicata (Tomlin, 89 Ill. App.3d at 1012) and sometimes in other categorical terms (Jackson Park, 93 Ill. App.3d at 546).

Plaintiff has argued that unless there is a showing of a change in use, it is entitled to the benefit of the 2012 exemption, applied backward in time. Plaintiff contends it is not arguing collateral estoppel, and so the rule from Jackson Park is not relevant. Ultimately, it is the substance of the argument that matters, not the label: One cannot defeat this rule by arguing all of the inferences included within the doctrine of collateral estoppel and then simply disclaiming the label "collateral estoppel". Stouffe (1/14/19) 13:8-9 (Counsel Pflaum disclaiming collateral estoppel, and then immediately arguing "What happened in 2012 is directly relevant because there's no material difference.") Under the express language of the Jackson Park decision, it is the Plaintiff's burden to establish exemption each year even if there has been no change in circumstances.

B. Competing views of the effect of the comparable year requirement

Plaintiff seeks to change the common law burden of proof, relying upon the comparable year requirement in Section 23-25(e). Carle I and Carle II present incompatible views of the role

---

reason why the plain language in Section 15-86 should be given effect, limiting the new exemption to administrative applications before the Department.

of the comparable year under Section 23-25(e). Under Carle I, the "comparable year" requirement is a condition on lifting the requirement of exhaustion of administrative remedies. Carle I, 396 Ill. App.3d at 340. Carle I did not create a new cause of action, but instead was reviving a cause of action which otherwise existed. Carle I, 396 Ill. App.3d at 339-40. Accordingly, under Carle I, the annual burden of proof rests where it always did: with the taxpayer.

Carle II envisioned a different statutory scheme. Carle II held that if the two set of facts are materially different, the exemption would be automatically denied. See Carle II, 2016 IL App(4th) 140795, Par. 95. However, after the taxpayer establishes the comparable year's exemption, it remains "an object of comparison for trial". See Carle II, 2016 IL App(4th) 140795, Par. 92. Carle II further concluded that, because there is no res judicata as to exempt status from year to year, if the Department convinces the circuit court at trial that the exemption for the other assessment year was actually unlawful, the exemption would still be denied. Carle II, 2016 IL App(4th) 140795, Par. 95. Otherwise, the exemption would be granted. Carle II, 2016 IL App(4th) 140795, Par. 95. In effect, once the comparable year requirement is met, Carle II: (1) switched the burden of proof to the Department; and (2) placed the focus on the comparable year, rather than the year for which exemption is actually sought. Contrary to Carle I, Carle II effectively created a new substantive cause of action, with different elements than a common law tax injunction.

The Carle II approach should be rejected for several reasons. As noted above, the Carle I approach is more consistent with the text, structure, purposes, and history of Section 23-25(e).

1. First and foremost, Carle II cannot be reconciled with Carle I, and Carle I is binding on this trial court, while Carle II is not. Mohanty, 225 Ill. 2d at 66.
2. The plain text of Section 23-25(e) supports Carle I: it does not purport to create a cause of action, but merely lifts "the limitation in this Section" (Section 23-25(a)'s requirement of exhaustion of administrative remedies) to proceedings to establish an exemption, subject to conditions. See 35 ILCS 200/23-25(e).
3. As noted in Part Three, Section I, Carle II would require a comparison between the Department's decision in the year in question and the Department's decision in a comparable year when, outside of the odd context of this particular suit, there will never be a Department decision for the year in question to consider.

4. In support of its burden shifting approach, Carle II cited the rule that collateral estoppel does not apply in property tax cases. But collateral estoppel is a complete bar, not a burden-shifting device. If this defense does not apply, then the burden of proof remains where it always does in a tax injunction suit, with the taxpayer. See Rogers Park, 8 Ill.2d at 290.
5. The Carle II opinion favored its interpretation of Section 23-25(e) because it would keep the circuit court from becoming a redundant agency and allow it to rely upon the Department's expertise, reflected in its rulings on the comparable year's exemption claim. See Carle II, 2016 IL App(4th) 140795, Par. 92. Yet, the practicality and wisdom of a tax scheme are to be determined by the legislature, not the court. See People ex rel. Brenza v. Gebbie, 5 Ill.2d 565, 574 (1955). Within the context of Section 15-86, the legislature could – and did -- further the same policies by simply barring these claims from being brought in the circuit court entirely.
6. Statutes in derogation of the common law are limited to their express language, in order to effect the least—rather than the most—change in the common law. Adams v. Northern Illinois Gas Company, 211 Ill.2d 32, 69-70 (2004). Carle I simply recognized the legislature's limited repeal of the statutory requirement of administrative exhaustion, leaving the common law burden of proof intact. Carle II created a new cause of action out of whole cloth, with different elements and burden of proof than a common law tax injunction.
7. As a policy matter, it makes no sense to shift the burden to the Department to repeat its analysis on a comparable year, rather than place the focus on the new information provided for the year for which taxes are actually at issue. None of the information in the statutory form Section 15-86(h) relates to the comparable year.

For all of the above reasons, the burden of proof should remain on Plaintiff to establish each and every element of its exemption, regardless of whether it meets the comparable year requirement.

One of the biggest problems with Plaintiff's burden shifting approach to Section 23-25(e) is that it would allow Plaintiff to obtain an exemption in any year without first demonstrating compliance with the constitutional standard of exclusive charitable use for that year. Statutes should be construed so as to operate consistently with the State constitution. Chicago Bar, 163 Ill.2d at 298. This is a problem Carle II never had to grapple with, because it concluded Section

15-86 was facially unconstitutional. The Supreme Court upheld the constitutionality of Section 15-86 by placing the burden of proof on the taxpayer to demonstrate compliance with the constitutional standard of exclusive charitable use in the year in question. Oswald, 2018 IL 122203, Par. 37.

C. What the comparable year requirement means

Regardless of whether Carle I or Carle II's approach is adopted, if the taxpayer cannot establish an exemption was granted by the Department on comparable grounds in a different year, then the exemption claim must be denied. See 35 ILCS 200/23-25(e).[18]

1. What "comparable" means

The term "comparable" is not self-defining. Cf., Brewer v. Protexall, Inc., 50 F.3d 453, 458 (7th Cir. 1995) (contract term referring to "comparable coverage" capable of more than one reasonable interpretation).[19] The appellate court's decision in Carle II stated a strict standard. If that opinion's flawed analytical framework is to be used, the Court must use all of it:

> "The trial would compare two sets of facts: the facts existing during the assessment year in question and the facts on which the Department or the circuit court relied when finding the parcel to be exempt for a subsequent or prior year. That would not be the same thing as taking over the Department's job. There is a significant difference between, on the one hand, trying to do the Department's job by processing an application for an exemption and, on the other hand, looking at the facts in an application that previously was granted and asking the Department, "Why did you deny an exemption this time, considering that the facts proven by the plaintiff appear to be substantially the same as the facts set forth in this application for a subsequent or prior, which was granted? Or, in your view, are the facts different?" Instead of becoming a redundant agency, the court would be on the lookout for arbitrariness in the form of an inconsistent treatment of substantially the same facts." Carle II, 2016 IL App(4th) 140795, Par. 92 (Emphasis added)

[18] Plaintiff claims that no one argued there was a difference in its operations between 2004 and 2011. However, this difference was stressed by the County Defendants in opening argument, and in several dozen foundation objections throughout the trial. The Court commented on County Defendants' objections on this very point. And the Court specifically directed the parties to provide information on each year of the exemption claim, a direction Plaintiff simply ignored.

[19] In the legislative debates to the bill that added Section 23-25(e) to the Property Tax Code, its House sponsor described it as a requirement of establishing "a similar exemption for the same property for another year". 90th Ill. Gen. Asssem., House Proceedings, May 7, 1998, at 108 (statement of Rep. Davis; emphasis added). But this comment just substitutes one vague word ("similar") for another ("comparable"). How similar is "similar"?

This standard is met when "the two sets of fact are materially different". See Carle II, 2016 IL App(4th) 140795, Par. 95 (Emphasis added). Accordingly, the Fourth District's Carle II decision would allow a taxpayer relief under Section 23-25(e) only if the comparable year's exemption was on substantially the same facts, and the difference in treatment is so immaterial that a difference in exempt status would be arbitrary.

2. The facts to be considered under the Carle II approach

Plaintiff's approach is apparently to ask the Court to put itself in the position of a Department official that had and considered all of the information the Court now has about its 2012 operations; assume that the Department would reach the same conclusion now that it actually did in 2012; and then ask why the Department would reach a different conclusion for the years between 2004 and 2011. But Section 23-25(e) requires that the taxpayer established the exemption before the Department on comparable grounds in another year, not that it could have established the exemption on those grounds with the facts then in existence. See 35 ILCS 200/23-25(e).

Even Carle II's flawed reasoning does not support Plaintiff's approach. Under Carle II, the question asked to the Department is "Why did you deny an exemption this time, considering the facts proven by the plaintiff appear to be substantially the same as the facts set forth in this application for a subsequent or prior, which was granted?" Carle II, 2016 IL App(4th) 140795, Par. 92 (Emphasis added). The taxpayer seeking exemption is to prove that "substantially the same facts caused that property to be exempt for a subsequent or prior assessment year". Carle II, 2016 IL App(4th) 140795, Par. 94 (Emphasis added). If Carle II's comparison is just designed to prevent arbitrary decision-making, then the issue is not whether these facts existed as of 2012, when the Department made its decision, but whether these facts were known to the Department at that time, and were considered by the Department in granting the exemption.

D. Applying the comparable year standard here

1. Stouffe's testimony regarding 2012 taxes

As to the Department's decision-making in 2012, Plaintiff has not established much of anything. Under Carle II, the grounds at issue here "necessarily would be factual grounds". See Carle II, 2016 IL App(4th) 140795, Par 93. In its brief, Plaintiff offered few, if any, comparisons between the facts actually used to establish compliance with the Constitutional standard in 2012 and the facts used to establish compliance here. The only Department official who testified about

processing Plaintiff's exemption claims in 2012 was Stouffe. However, Stouffe was not even involved in the determination of most of Plaintiff's exemption claims for the 2012 assessment year. Stouffe (1/14/19) 40:17-41:3. Of the parcels at issue here, Stouffe only recalled examining the Power Plant application in 2012, and she could not recall if there were any changes between 2012 and prior years. Stouffe (1/14/19) 52:18-21.

Whatever inferences the Court can draw from the mere fact a Section 15-86 exemption was granted in 2012 cannot possibly meet Plaintiff's burden of proving the comparable year requirement. The Court cannot blind itself to the changing legal standards in play. Prior to the passage of Section 15-86, the constitutional standards flowing from the splintered Provena decision were unclear to the Department. Stouffe (1/14/19) 60:10-14. The legal standards under Section 15-86 were unclear when it was first enacted in 2012. As recently as 2016, there were conflicting appellate opinions as to whether, as a statutory matter, Section 15-86 was to be applied mechanically or whether a constitutional overlay was to be employed. Compare Carle II, 2016 IL App(4th) 140795, vacated 2017 IL 120-427 (mechanical approach) with Oswald v. Hamer, 2016 IL App(1st) 152691 (2016), aff'd, 2018 IL 122 (2018)(overlay approach). Even now, Plaintiff's brief disputes this Court's pretrial ruling that all of the Korzen factors define the constitutional standard. See Opening Brief at p. 15.

The "comparable grounds" approach of Carle II is designed to prevent arbitrariness, not to prevent decision-makers from revising their approach as legal standards are clarified. If the Court is to ask what the Department would have done in 2004 had it predicted Section 15-86 would be passed, it should also ask what the Department would have done in 2012, had it known the Supreme Court would later reject a mechanical interpretation of Section 15-86 in Oswald. A 2019, post-Oswald determination now before the Court is not "on comparable grounds" with a 2012, pre-Oswald determination by the Department.

At trial, Plaintiff attempted to establish the Department conducted a broad inquiry into its activities in 2012, by establishing that it submitted its annual nonprofit hospital community benefits reports with its P TAX 300-H forms. Stouffe (1/14/19), 28:7-12. These reports were the source of information beyond the statutory formula, and they incorporated Plaintiff's internally-created Community Benefits Reports. See TR-406, p. 274-290. This effort was quickly deflated on cross-examination of Stouffe when it became clear that these reports were not considered for

any purpose other than determining the amount of charity care provided. Stouffe (1/14/19) 61:6-23.

At trial, Stouffe made reference to examining the constitutional standard. However, the fact the Department purported to conduct some inquiry it labeled as constitutional does not mean much, given that the parties, even today, do not agree on what the constitutional standard means. If the Department considered any facts beyond the Section 15-86 formula in 2012, Plaintiff did not establish what those facts were.

The determination by the Department in 2012 bears no resemblance to the constitutional argument Defendant is now making. In arguing Plaintiff meets the Constitutional standard in its opening brief, Plaintiff now notes community benefits that were described in summary testimony in the first days of trial through Dr. Leonard, such as providing a Level One Trauma Center; providing a Perinatal Center; its designation as a Primary Stroke Center; and its education and research activities. The Community Benefits Report describing some of these activities was never considered by the Department for any purpose other than establishing the amount of charity care provided. Therefore, it appears the Department assigned no weight, whatsoever, to them.

Plaintiff has presented exhibits showing isolated data points in which it performed just as poorly as a charity in 2012 as it did in prior years. TR-535; TR-536; TR-537. Yet Plaintiff has not presented any evidence that these particular metrics were the ones actually considered by the Department in ruling on its 2012 exemption claims. For instance, there is no testimony from Stouffe that the Department considered Plaintiff's net income from operations in granting any of Plaintiff's exemptions in 2012 (Opening Brief, p. 30); or Plaintiff's level of executive compensation (Opening Brief, p. 36); or community benefit expense as a percentage of Plaintiff's operating expenses (Opening Brief, p. 50-51); or community benefit as a percentage of total income (Opening Brief, p. 51); or Plaintiff's lack of strategic goals relating to charity care (Opening Brief, p. 56); or Plaintiff's practices of recognizing charity care after the fact (Opening Brief, p. 54). Much of the information necessary to evaluate these arguments (such as strategic plans) was never before the Department in any form.

Even if the burden somehow switched to the defendants to demonstrate the 2012 exemption was unlawful, it has done so. The same exhibits Plaintiff relies upon to demonstrate no change in use demonstrate that it did not establish compliance with the Korzen Factors or the exclusive charitable use standard in 2012. See TR-535; TR-536; TR-537. While the Community Benefits

Reports are not enough to demonstrate compliance with the constitutional standard, the Department disclaimed reliance on even them. The application information actually considered by the Department established mechanical compliance with Section 15-86, and nothing more. In light of the Supreme Court's later decision in Oswald requiring a more searching constitutional inquiry, the 2012 exemption determination was unlawful.

2. The Department's actual consideration of tax years 2004 through 2011

Carle II suggests one is to consider the actual decision-making by the Department on the tax years at issue here, and its decision in 2012. However, at the time the exemptions at issue were first questioned, Section 15-86 did not exist yet.[20] Moreover, Plaintiff cannot make a year by year comparison between the Department's treatment of its (Section 15-65) exemption claims in 2012 and the Department's treatment of its claims in 2009, 2010, or 2011 for the simple reason that it never filed an administrative exemption application for these three years. Koch (1/18/19) 171:16-21; Jenkins (1/14/19) 99:12-15. The point of Carle II's comparable year approach is to prevent arbitrary decision-making by the Department. Carle II, 2016 IL App(4th) 140795, Par. 95. The Department cannot arbitrarily deny exemption applications that were never filed.

3. Changes in facts between 2004 and 2010

Even if the Department had before it all of the facts the Court now has before it, and it could foresee the current state of the law, there are material differences from year to year. These are summarized in Appendix B, the year by year summaries.

a. Charity care

Plaintiff's charity care practices underwent major revisions between 2004 and 2010. Most of the evidence presented at trial by Plaintiff about its charity care practices consisted of evidence of improvements it made during the years in question. As late as September 11, 2011, less than four months before the beginning of the comparable year. TR-2426. Plaintiff's charity care policy was amended to (1) automatically qualify persons who received services from Frances Nelson; Jackson (1/16/19) 71:3-20); (2) formally incorporate a list of homeless shelters into the charity care policy (TR-2426; Jackson (1/16/19) 72:4-10; and (3) add a notice to its charity care policy to remind patients to submit a new application before their prior eligibility ended, to avoid gaps in

[20] This problem would inhere in any retroactive application of Section 15-86 under Section 23-25(e). This is just one more reason why Carle II's approach to Section 15-86 simply is not tenable.

coverage Jackson (1/16/19) 72:11-23). Charity care at cost grew from $2,529,358 in 2005 to $11,522,312 in 2010. TR-2027H, p. 4. Plaintiff's 2007 Community Benefits Reports noted the charity care "increased significantly from $4,790,874 in fiscal year 2006 to 6,874,446 in fiscal year 2007". TR-1003, p. 5. Plaintiff's 2008 Community Benefits Report noted, "In fiscal year 2008, the charity care increased a remarkable 26 percent from $6,874,446 in fiscal year 2007 to $8,659,332." TR-1004, p. 5.

The claims for 2004 and 2005 are legally incomparable to those in 2012, not just factually incomparable. In 2004 and 2005, Plaintiff's charity care numbers are so low it is forced to also rely upon unreimbursed costs for certain services granted to low income and underserved individuals (35 ILCS 200/15-86(e)(2)); and the Medicare and Medicaid shortfall (35 ILCS 200/15-86(e)(4)). See TR-446.1; TR-447. For tax years 2006 through 2011, Plaintiff relies exclusively on charity care at cost (35 ILCS 200/15-86(e)(1); TR-448.1). In 2012, Plaintiff relied on yet a different statutory basis for its claim, asserting new credits for dual-eligible Medicare/Medicaid Patients (35 ILCS 200/15-86(e)(5)); and relief provided to the government for certain low-income individuals (35 ILCS 200/15-86(e)(6)). TR-406, p. 7.

b. Research and other community benefits

According to Gretchen Robbins, between 2004 and 2013, community benefits expanded, as did the funds "spent on community benefits". Robbins (1/10/19) 13:8-14. There was also a fundamental shift in Plaintiff's research efforts. Plaintiff's bond documents from 2008 emphasize a "new strategic focus on medical research". TR-1138, p. 11 (Emphasis added). As of 2006, Plaintiff's Community Benefits Reports noted that it had "emphasis has been on creating the infrastructure for a robust translational research program." TR-1004, p. 14 (Emphasis added). Medical research and medical education were formally added to Plaintiff's mission statement in 2006. TR-2027f, p. 19. The amount listed for "research" in Plaintiff's community benefits plan for 2005 reads $523,071. See TR-1001, p.10. The corresponding amount for 2011 is over 17 times that amount, $9,285,568. See TR-1008, p.2.

c. Other changes

Comparing the P-Tax 300-H forms submitted as demonstrative exhibits by Plaintiff demonstrates changes in the geographic scope of Plaintiff's operations from year to year. For instance, the 2004 P-Tax 300-H form lists the estimated property tax for Carle Arbours. TR-446.1, p. 10. This is missing as of 2009. TR-448, p. 3-7. Moreover, there was a two-story addition to

the North Tower from seven to nine stories during the period at issue here. Leonard (1/3/19) 136:21-137:11.

4. Plaintiff's 2010 acquisition of CCA

The 2010 merger between Plaintiff and CCA creates a significant additional barrier to Plaintiff's argument that it met Section 23-25(e)'s comparable year requirement. According to Plaintiff's community benefit reports, "2010 was a historic year for health care and for the Carle Foundation". TR-2027H, p.2.

1. If Plaintiff's 2011 claims have merit, then partial exemptions for each of the parcels became full exemptions. The detailed square footage allotments of the North Clinic and North Tower became irrelevant overnight. TR-73, p. 3; TR-2616, p. 2; TR-2617, p. 14. This elimination of leased space, in turn, eliminated the reduction in the claimed exemption to the Power Plaint. Plaintiff's claimed partial exemption for the Caring Place partial exemption grew as children of former CCA employees became children of Plaintiff's employees.
2. Financially, "[t]he whole scope of the operation changed dramatically after the merger". Hall (1/25/19) 197:17-20. HAMP became a fully-owned subsidiary of Plaintiff. After the April 1, 2010 merger of CCA and Plaintiff, HAMP became a wholly owned subsidiary of Plaintiff. Leonard (1/3/19) 116:7-13; Leonard (1/4/19) 55:9-11. After the merger, in 2011, Plaintiff received almost twice as much revenue in premiums from HAMP as it received in patient service revenue. Leonard (1/7/19) 106:19-107:24; TR-2204; TR-2004, p. 10 (Table 2). Professor Hall considered this a "significant shift" in funding sources for Plaintiff. Hall (1/28/19 a.m.) 61:3-7. The disconnect between payer sources that existed prior to the merger (discussed above in Part Two, Section VI) disappeared.
3. Plaintiff's acquisition of CCA was a "constitutional change in the whole corporate structure" of Plaintiff. Hall (1/25/19) 185:6-10. Doctors previously employed by CCA became part of the formal management structure of Plaintiff. If the "arm's length" arrangements prior to the acquisition meant anything at all, their elimination here is significant. Doctors formerly employed by CCA were given a defined leadership role in the new entity, through Carle Physicians Group. Leonard (1/7/19) 108:20-24; 109:20-110:7; Leonard (1/3/19) 115:8-18. The CEO of CPG answered directly to the

CEO of Plaintiff Leonard (1/7/19) 111:17-22; TR-2415, p. 3), and the two organizations shared a COO (Snyder (1/23/19) 66:18-21; 68:2-9). After the merger, a newly-developed entity, a physician's council, was founded to give "advice regarding management and oversight of the enterprise". Leonard (1/7/19) 112:9-16. This council had final decision-making on various hospital decisions that might affect medical care delivery. Wellman (1/24/19) 72:21-73:5. This council also reviewed physician compensation and was responsible for physician recruiting. Wellman (1/24/19) 73:6-10. After the merger, the COO of Plaintiff now acts in a "dyad" management structure with the former CEO of CCA, who is now the CEO of the CPG group and the Chief Medical Officer of Plaintiff. Leonard (1/7/19) 113:7-13; Wellman (1/24/19) 74:1-2.

4. Outpatients and those seen by non-CFPS specialists had previously been subject to CCA's "aggressive" collection practices, under threat of being "no serviced" in the future. Tonkinson testified that, prior to the merger, Plaintiff "saw only a small proportion of the patients that [CCA] saw". Tonkinson (1/7/19) 106:10-12. After the merger, these patients became eligible for Plaintiff's charity care policy, resulting in more than doubling the amount of charity care Plaintiff provided, measured at cost, from 2.8% in 2010 to 5.6% in 2011. Leonard (1/4/19) 32:22 – 33:19; TR-2027J; TR-2203, p. 32; TR-2204, p. 25; Tonkinson (1/7/19) 35:22-37:10. The nature of the charitable physician services expanded from hospitalists, emergency room physicians, and a few other services provided by CFPS to reach all qualifying doctors visits and outpatient procedures. 1/4/19 Transcript (Leonard), p. 162:22-163:3. While hospital admissions remained relatively constant between 2009 and 2011 (13,424 and 13,160, respectively), the number of persons treated on an outpatient basis more than tripled between these two years (from 99,250 to 375,617). TR-1022 (2009 IDPH Hospital Profile); TR- 1024 (2011 IDPH Hospital Profile).

Any one of these changes would render all of Plaintiff's exemption claims prior to 2010 incomparable to the claim for exemption in 2012.

D. Stouffe's testimony about Department general practices

The Court has suggested it may give weight to Stouffe's testimony about how the Department treated <u>other</u> hospitals. This testimony is not entitled to <u>any</u> weight as part of the comparable year analysis, because this has nothing to do with Plaintiff's operations, specifically.

See 35 ILCS 200/23-25(e). Generally, administrative agencies are not absolutely bound by their prior rulings. See American Federation of State, County and Municipal Employees, Council 31, Illinois Labor Relations Bd. , 2018 IL App(1st) 172476, Par. 25 (2018). When other rulings by an administrative agency are considered, the actual evidence presented in the prior ruling is critical. City of Monmouth v. Pollution Control Bd., 57 Ill.2d 482,492 (1974).

Here, the Court only has a few vague, very general comments from Stouffe divorced from factual context. By contrast, Stouffe reviewed Plaintiff's operations, specifically, under the old standard for the period from 2004 and 2005 and concluded it was not entitled to an exemption. Stouffe (1/14/19) 59:8-15; TR-438, TR-438, p. 2, ¶ 2.

Stouffe testified in very vague terms that the Department has granted non-homestead charitable exemptions to hospitals that have a positive income. Stouffe (1/14/19) 37:7-12. As noted above, a charity can have some positive income and still meet the constitutional standard. That is different from Plaintiff's pattern of making profits hand over fist over an extended period of time.

Plaintiff also now ascribes great significance to a comment by Stouffe that it would not be significant under the standard prior to Section 15-86 whether the hospital's charity care were 5% instead of 2.5% of expenses, and in either event an exemption may be appropriate. Stouffe (1/14/19) 67:15-24. However, Stouffe declined to state this as a categorical rule. Stouffe (1/14/19) 68:2-4. In fact, as Hall testified, percentage of operating income is a better metric of charitable use than percentage of expenses (Hall (1/25/19) 139:16-21); and two hospitals with similar percentages of charity care as a percentage of total expenses could have very different percentages of charity care in relation to total income (Tonkinson (1/9/19) 170:22-171:17)

If one is to consider Stouffe's general comments, the Court should also give weight to her extensive testimony suggesting the exemptions before the 2010 acquisition are not comparable to the exemptions in 2012. Stouffe testified it would be significant whether a nonprofit hospital had a lease which allowed a for-profit clinic access to its grounds for purposes of providing medical care. Stouffe (1/14/19) 65:2-22. This would relate not just to charitable ownership, but also to charitable use. Stouffe (1/14/19) 65:23-66:2. It would also be significant to her in evaluating charitable use that the for-profit clinic was providing medical services without being subject to the hospital's charity care policy. Stouffe (1/14/19) 66:11-21. She testified it would be significant

whether the space of such a for-profit clinic were physically interspersed with that of the non-profit hospital. Stouffe (1/14/19) 66:22-67:3.

As to the applications of other hospitals Stouffe testified about prior to 2011, this Court has no specific information about when these applications were heard. The Court does not know, from this testimony, whether these applications were heard before or after several binding precedents which closely scrutinized the charitable exemptions of hospitals, specifically. See Provena, 236 Ill.2d 368 (2010); Alivio, 299 Ill. App.3d 647; Riverside, 342 Ill. App.3d 603. In each of these cases, the Department made initial recommendation of denial and the Court of review affirmed it. The Court does not even know whether any of the recommendations in other cases referred to by Stouffe were put to administrative review.

III. Plaintiff cannot demonstrate compliance with Section 15-86

The heart of Section 15-86's statutory standard is the offset of statutory services against the estimated property tax bill. If a "hospital applicant" satisfies the conditions for an exemption with respect to "subject property", it is to be issued a charitable exemption "for that property". See 35 ILCS 200/15-86(c). Even if Plaintiff could bring this cause of action in the circuit court, Plaintiff has failed to demonstrate the services it claims fall within the statutory criteria; and it has failed to adequately demonstrate the amount of these services.

A. Plaintiff failed to consistently allocate costs of charity care to any given year

Plaintiff's statutory claim to exemption rests largely on value ascribed to services provided under its financial assistance policy. See 35 ILCS 200/15-86(e)(1). None of Plaintiff's demonstrative exhibits establish it met the statutory exemption threshold if these services are not included. See TR-446.1, TR-447, TR-448.1, TR-449, TR-450, TR-451, TR-452, TR-453. In fact, this credit is the sole statutory basis for exemption claimed for tax years 2006 through 2011. TR-448.1, TR-449, TR-450, TR-451, TR-452, TR-453.

As described above, Plaintiff had a well-documented practice of reviewing debt that had already been deemed an accrued expense, for accounting purposes, and later determining whether it should retroactively be deemed charitable under its financial assistance policy. Plaintiff consistently admitted it could not determine how much of the medical debt it claimed as charity in any given year had previously been characterized as an accrued expense for accounting purposes. This retroactive recharacterization occurred sometimes years after the fact. This practice undermined Plaintiff's statutory claim to exemption in several ways.

First, the services at issue are not "free or discounted services provided pursuant to the relevant hospital entity's financial assistance policy", as required by Section 15-86. See 35 ILCS 200/15-86(e)(1). The patients receiving medical services were perceived by Plaintiff to be paying customers at the time the services were rendered through the time the debt was deemed an accrued expense. The point at which the financial assistance policy affected the treatment of the debt was long after the services were "provided".

Second, when this medical debt is recharacterized as charity in the current year, the activity in the current year is not the "provision of free or discounted services" under Section 15-86(e)(1). It is forgiveness of accrued medical debt, which is not a service listed in Section 15-86 at all. Even if Section 15-86(e)(1) could be stretched to reach this debt forgiveness the "cost" should reflect the cost at the time of the activity at issue, the cost at the time the debt is recharacterized as charity. Tonkinson testified that, at this point, Plaintiff did not expect to collect this debt. Tonkinson (1/1/19) 13:4-12. Repackaging this debt as charity cost Plaintiff little more than the staff time used to identify eligible patients.

If Plaintiff is to receive statutory credit for the full cost of care, it should be credited to the year in which the care was given, not the year in which Plaintiff later decided it was charity. Each year's tax exemption is a separate claim. Tomlin, 89 Ill. App.3d at 1011-12. Again, Tonkinson testified about the "matching principle", an accounting principle that requires expenses to be aligned with activities in a consistent manner, so as to give an accurate financial snapshot of an organization at any given time. Tonkinson (1/9/19) 142:19-23. Section 15-86 has its own form of the matching principle. The statutory formula contemplates that services would be listed in one of two formats:

> "(1) the value of the services or activities listed in subsection (e) for the hospital year[;] or
>
> (2) the average value of those services or activities for the 3 fiscal years ending with the hospital year." 35 ILCS 200/15-86(d)

Yet Plaintiff is not offsetting the current estimated tax liability against either the value of current services it provided, or the average value of charitable services it provided in the last three years. Instead, Plaintiff is offsetting the current tax liability against the value of services it decided was charitable in the current year, reflecting "free or discounted services provided pursuant to [its]

financial assistance policy" at several different uncertain dates that could go as far back as five or ten years.

B. Plaintiff's demonstrative exhibits are inadequate as a matter of form

Plaintiff apparently believes it can comply with Section 15-86 by submitting Section 15-86(h) applications (P-TAX 300-H forms) in the Circuit Court. This is wrong for the reasons set forth in Part Three, Section I. But this is not the only way these forms are defective. For instance Section 15-86 promotes public accountability is by requiring that the exemption application be signed by its CEO under oath and under threat of prosecution for false statements under the False Claims Act. See 35 ILCS 200/15-86(h). Dr. Leonard had never seen any of these exhibits prior to trial. Leonard (1/4/19) 169:16-20; Leonard (1/7/19) 9:24-12:16.

C. Plaintiff failed to lay an adequate foundation for its unreimbursed costs of certain community benefits for 2004 and 2005

Plaintiff's statutory claim for exemption for 2004 and 2005 rests, in part, on health services to low-income and underserved individuals. See 35 ILCS 200/15-86(e)(2). The amount of certain unreimbursed costs of care were included in Plaintiff's annual internal Community Benefit reports. TR-2027B; TR-2027C; TR-1001. At trial, a summary of unreimbursed costs attributable to low-income and underserved individuals was presented, to tie these CBISA reports to the statutory standard. TR-500. However, Plaintiff's sole witness in support of these figures candidly admitted she did not know how the community benefit costs were calculated. Robbins (1/10/19) 84:24-85:3; 151:16-153:10 (for 2004) with the exception of grants, United Way donations, and a single community safety program); 153:11-15 (would be "probably similar" for other community benefits reports for 2005 through 2011); 175:1-10 ("I would have no idea how [the costs were] calculated"); 103:23-24 ("I'm the word person, not the money person"). When asked if she ensured numbers were double counted in preparing these estimates, Robbins testified only "we did our very best". Robbins (1/10/19) 175:22-24. Robbins did not even know if Plaintiff received reimbursement for some of the costs listed on its trial summary of these costs. Robbins (1/10/19) 170:8-9. Gene Koch, Plaintiff's other primary witness for these figures, also testified that records relating to the cost of these activities were not his "bailiwick". Koch (1/17/19) 18:3-5.

In fact, Plaintiff had a "money person", a Manager of Budget and Reimbursement, who helped put the information together for the 2012 P-TAX 300 H. Koch (1/17/19) 17:13-18:4, 93:6-10, 108:6-16, 109:22-110; Koch (1/18/19) 138:21-23. When asked about the source of the number listed in the report, Koch testified "That's Theresa O'Banion's responsibility, and she

provided me the number I used. She is the expert." Koch (1/17/19) 106:19-21; see also Koch (1/18/19) 164:2.

Ms. O'Banion was not presented at trial. The trier of fact may draw an adverse inference from a party's failure to produce a witness when: (1) the witness was under the control of the party and could have been produced by the exercise of reasonable diligence; (2) the witness was not equally available to an adverse party; (3) a reasonably prudent person under the same or similar circumstances would have produce the witness if he believed the testimony would be favorable to him; and (4) no reasonable excuse for the failure has been shown. Weatherell v. Matson, 52 Ill. App. 3d 314, 318 (1977). Each of these elements are met here with respect to Ms. O'Banion.

Part Four: Plaintiff Fails to Establish an Adequate Basis for Partial Exemptions

Plaintiff has failed to justify its claims for partial exemptions. For counts corresponding to years prior to the 2010 merger between Plaintiff and CCA, Plaintiff seeks partial exemptions for the areas in the North Clinic and the North Tower which were not leased to CCA. This claim to exemption fails because the entire hospital was licensed or operated by CCA, and so not entitled to an exemption under the statutory standards of Section 15-86(c). More broadly, the division of space provided in the lease is merely a payment arrangement and does not reflect a division in the actual use of the parcel. Plaintiff also seeks a partial exemption based on the percentage of non-leased space served by the Power Plant relative to total space served. For the entire period at issue, Plaintiff seeks a partial exemption for the Caring Place based upon the percentage of children there who received a discount of children of Plaintiff's employees. These claims for partial exemption fail both the statutory and the constitutional standard for partial exemption.

I. Legal standards

Again, 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 exemption is claimed. Oswald, 2018 IL 122203 ¶18. In the case of partial exemptions, this means the taxpayer has the burden of proving by clear and convincing evidence the portion of the property that is exempt. See Evangelical Hospitals Corp. v. Dept. of Revenue, 223 Ill. App.3d 225, 231 (1991). If a taxpayer cannot establish the basis for its separate exemptions, and fails to allocate separate space to the exempt purposes, the entire property

becomes non-exempt. See Evangelical, 223 Ill. App.3d at 232; see also Sanitary Dist. v. Hanberg, 226 Ill. 480, 485 (1907); Carr, 307 Ill. 24; Graham , 386 Ill. at 187-88; Streeterville, 186 Ill.2d at 539.

A. Constitutional and common law standards for partial exemption

A taxpayer may not generally extend an exemption to property used for non-exempt purposes by grouping it together with property used for exempt purposes. See Graham, 386 Ill. 180. However, a partial exemption is still allowed in two limited circumstances. First, property may be wholly exempt if any nonexempt use can be described as "merely incidental". Streeterville, 186 Ill.2d at 536. Second, even where non-exempt use is more than incidental, the property may qualify for a partial exemption where an "identifiable portion" of the property is used for exempt purposes. Streeterville, 186 Ill.2d at 536. This limitation flows from the constitutional requirement of exclusive charitable use. See Graham, 386 Ill. at 186.

For non-incidental non-exempt use, this standard requires a division based upon space. In Evangelical Hospitals Corp. v. Dept. of Revenue, 223 Ill. App.3d 225 (1991), the Second District declined to recognize a partial exemption for a pharmacy based on sales for exempt purposes because the taxpayer "failed to allocate space to *** separate [exempt and non-exempt] purposes". This decision unequivocally required an allocation based upon space. See also Graham, 386 Ill. 180 (a partial exemption was allowed because "there was a separation of the use of a separable portion of the property and there may be separate assessments and taxes by separate uses"); Sanitary Dist. of Chicago, 226 Ill. 470.

In Streeterville, 186 Ill.2d 534, the Illinois Supreme Court recognized a partial exemption for a hospital parking lot calculated based upon percentage of customers who were employees of the charitable hospital. Yet in doing so, it did not overrule Evangelical Hospitals, but specifically distinguished it on grounds emphasizing the need for a space-based allocation:

> "Assuming, for the sake of argument, that Evangelical Hospitals was correctly decided, we find its facts to be inapposite. In Evangelical Hospitals the pharmacy presented evidence regarding the percentage of its *sales* which constituted an exempt use. Such evidence says nothing about the amount of *space* which was used for exempt purposes, and thus could not demonstrate that an 'identifiable portion' of the property was used for such purposes. In contrast, the instant case concerns a claimed exemption for a *parking garage* based upon evidence concerning the use of space in the facility. By its very nature, the product which Streeterville deals in is *space.* Accordingly, evidence that 74% of Streeterville's customers were hospital

> personnel establishes that an 'identifiable portion' of the facility was used for exempt purposes." Streeterville, 186 Ill. 2d at 538 (Emphasis in original).

In other words, because the business of a parking garage is the allocation of physical space (i.e., individual parking spaces), any estimate of exempt use based upon customers is, ipso facto, going to be an estimate of exempt use of space for the same period.

B. Statutory standards for partial exemption

Section 15-86 creates additional statutory criteria for partial exemptions. It provides, in pertinent part:

> **"**Notwithstanding any other provisions of this Act, any parcel or portion thereof, that is owned by a for-profit entity whether part of the hospital system or not, or that is leased, licensed or operated by a for-profit entity regardless of whether healthcare services are provided on that parcel shall not qualify for exemption. If a parcel has both exempt and non-exempt uses, an exemption may be granted for the qualifying portion of that parcel. In the case of parking lots and common areas serving both exempt and non-exempt uses those parcels or portions thereof may qualify for an exemption in proportion to the amount of qualifying use." 35 ILCS 200/15-86(c)

Statutes granting exemption are to be strictly construed in favor of taxation. Provena, 236 Ill.2d at 388. Section 15-86 is ambiguous as to how to determine the "qualifying portion" for a partial exemption. Presumably, the partial exemption for property which is, in part, "leased, license, or otherwise operated by a for-profit entity", is defined in the first instance by the lease, license, or operating practice. However, use-based partial exemptions (exemption "in proportion to the amount of qualifying use") are only expressly authorized by Section 15-86 for parking lots and common areas. An expression of certain exceptions in a statute is construed as an exclusion of all others. People ex rel. Difanis v. Barr, 83 Ill.2d 191, 199-200 (1980). Moreover, again, statutes in derogation of the common law are limited to their express language, in order to effect the least change in the common law. Adams, 211 Ill.2d at 69-70. Again, Section 15-86 contains an express reference to Section 15-65, which incorporates the constitutional definition of exclusive charitable use. See Oswald , 2018 IL 12203, Par. 34. To the extent Streeterville states the common-law rule applied to partial exemptions under Section 15-65.

C. Summary

Under Section 15-86, if there is a claim of partial exemption, the Court is first to subtract out that physical portion of the hospital "leased, licensed, or operated by a for-profit entity", under

the terms of the operating arrangement. If there are non-incidental mixed uses in the remainder, and there is no clear division based upon space, a partial exemption based on use would be allowed by Section 15-86 if the use is a parking lot or common area (if at all).[21] For other partial exemption claims, the exemption claim fails, both as a statutory matter (under Section 15-86(c)) and as a constitutional matter (under Evangelical Hospitals).

II. Auxiliary exemptions

Plaintiff claims partial exemptions for the Day Care Center and the Power Plant. A parcel may be eligible for an exemption if it is reasonably necessary to charitable activities elsewhere. Memorial Child Care v. Dept. of Revenue, 238 Ill. App.3d 985, 993 (1992). However, to qualify for the exemption, the parcel must still be primarily used for this purpose. MacMurray College, 38 Ill.2d at 278. Nothing about this standard changes the rule from Evangelical Hospitals that a partial exemption must be allocated based on a division of space. Otherwise, Plaintiff could open an office supply store next to its campus, sell an undifferentiated half of its stock to hospital staff, and claim a 50% partial exemption for the property.

A. Caring Place

The Caring Place provided services to children of Plaintiff's employees, but also children of CCA and HAMP employees. Tonkinson (1/9/19) 230:15-31:7. Plaintiff has admitted it cannot determine the number of children served at the Caring Place that were children of Plaintiff's employees. TR-2640, p. 4 ¶ 10. At trial, Plaintiff has instead sought an exemption based upon the percentage of revenue received subject to Plaintiff's employee discount. Hesch (1/15/19) 72:15-75:3; TR-303; TR-304. Plaintiff cannot claim the non-exempt use of the Caring Place was merely incidental: Using Plaintiff's employee discount approach, the Caring Place's use to serve children of Plaintiff ranged from only 38.31% to 52.29% in the period from 2004 to 2009, and even after the acquisition reached only 66.22%. See TR-304. No identifiable portion of the Caring Place was designated for serving children of Plaintiff's employees, specifically. Tonkinson (1/9/19) 231:14-23; G. Hall (1/11/19) 9:1-7, 25:8-13; Lambert (1/10/19) 240:1-8).

[21]To the extent Evangelical Hospitals states a constitutional rule that partial exemptions mused be based on allocations of space, Section 15-86 may operate unconstitutionally by allowing use-based partial exemptions for common areas and parking lots. However, as discussed below, that issue is not presented here.

Plaintiff fails to state a proper basis for partial exemption for the Caring Place. As a constitutional matter, this is a use-based partial exemption, expressly barred by the ruling in Evangelical Hospital.

As a statutory matter, this use-based partial exemption is not authorized under Section 15-86(c). Obviously, the Caring Place is not a parking lot, for which such partial exemptions are authorized by statute. The phrase "common area" in Section 15-86(c) is more vague. It cannot encompass all uses that serve both exempt and non-exempt purposes. If it did, then Section 15-86(c)'s reference to "common areas serving both exempt and non-exempt uses" would be superfluous. The Court must avoid rendering any part of a statute meaningless or superfluous. See Oswald, 2018 IL 122203 ¶10. An area is not a "common area" by simple virtue of the fact it is used in part for multiple parties' benefit, even if these parties have physical access to it. See Olivier-Hoffman Corp. v. Property Tax Appeal Bd., 369 Ill. App.3d 659, 662-63 (2006). More generally, a "common area" is defined as:

> "The total area within a property that is not designed for rental or sale, which is available for common use by all tenants and owners." *Glossary for Property Appraisal and Assessment, International Association of Assessing Officers* (1997), p. 26 (Emphasis added)

Black's Law Dictionary defines a "common area" as:

> "The realty that all tenants may use though the landlord retains control over and responsibility for it." See Black's Law Dictionary, p. 332 (Tenth Edition 2014)

The phrase "common area" appears to refer to area in which a tenant has a non-exclusive right of access under a lease. This definition would include areas such as hallways, breakrooms, lobbies, and stairwells to which CCA and Plaintiff's employees each had physical access under the lease. But it would not include areas in which CCA was never granted a real property interest, such as the Caring Place.

B. Power Plant

Plaintiff seeks a partial exemption for the Power Plant for the period from 2004 through 2010 proportionate to the square footage of Plaintiff's property under the lease served by the plant relative to total square footage served by the plant. Tonkinson (1/9/19) 229:2-16; Lambert (1/10/19) 238:1-239:13. Plaintiff cannot claim the non-exempt use of the Power Plant was merely incidental: Using Plaintiff's square footage approach, the Power Plant's use to support exempt property ranged from only 63.99% to 69.39% prior to the acquisition. TR-312. No specific

physical portion of the Power Plant was designated for use for CCA purposes only. Tonkinson (1/9/19) 230:1; Lambert (1/10/19) 202:19-22. There is no evidence Plaintiff ever granted CCA a real property interest in the Power Plant, so as to make it a common area. As with the Caring Place, this claim to partial exemption fails both the statutory and the constitutional standard for partial exemption.

Moreover, Plaintiff failed to demonstrate the allocation of payments fairly reflected use of the Power Plant by CCA. When describing changes in the power allocation between Plaintiff and CCA, Lynn Riley cautioned "The trick is to justify it in a way that is sellable to someone outside". TR-98; Tonkinson (1/8/19) 47:11-17. Lambert testified that utilities started being metered around 2005 (Lambert (1/10/19) 186:13-18), or at some point in the "mid 2000's" (Lambert (1/10/19) 201:21-24). Lambert (1/10/19) 202:6-8. Prior to 2004, the utility payment split was based upon the consumption of each individual building, calculated based on square footage of space allocated to each entity under the lease. Lambert (1/10/19) 200:4-13. This resulted in discrepancies because some departments (such as operating rooms), used more power per square foot than others. Lambert (1/10/18) 200:21-201:6.By 2004, the North Clinic was metered. Lambert (1/10/19) 202:6-8. Lambert testified that there was a trend in utilization in favor of charging CCA more, once metered. Lambert (1/10/18) 257:5-14. Therefore, even if a use-based partial exemption for the Power Plant were otherwise appropriate, by allocating this use based upon square footage rather than metered use, Plaintiff is systematically <u>understating</u> use by CCA, and <u>overstating</u> the scope of the exemption. Finally, as stated below, the square foot book used to calculate the Power Plant exemption did not even reflect the actual non-exempt use space in the hospital by CCA.

III. Main Hospital Campus

Plaintiff also fails to state a valid claim for partial exemption for the North Tower and the North Clinic for the period between 2004 and 2010. Plaintiff has failed to adequately document the actual division of use of this space between Plaintiff and CCA in this period. Moreover, under Section 15-86(c), this space was "leased, licensed or operated" by CCA.

A. There was no clear division of space

The lease between Plaintiff and CCA provided:

> "For purposes of this agreement, [CCA] and its staff are to have access to all of [Plaintiff's] hospital and accessory buildings, property and facilities, including full rights of ingress and egress to the [CCA], its staff, employees, patrons, visitors and persons furnishing services to [CCA]." TR-4, p. 2 (Par. ¶3)

This language was in effect until the 2010 acquisition. Tonkinson (1/9/19) 225:4-8. This clear language provided CCA unfettered access to the entire hospital. Lambert was not aware of anything in the lease that would limit access to the hospital. Lambert (1/10/19) 232:8-9. Wellman testified that he was not aware of any area of CFH related to health care that CCA staff did not have access to. Wellman (1/24/19) 23:3-6.

Plaintiff's primary evidence of the scope of the partial exemption is the square foot book used to allocate space between Plaintiff and CCA under the lease. Lambert (1/10/19) 188:1-195:10; p. 204:20-206:11; 203:10-16. However, this split was clearly a financial arrangement more than an operating arrangement and did not define an identifiable physical portion of the hospital used for exempt purposes in this period. Lambert testified that the space allocation defined "who was responsible for the financial burden of the rent or the space, the budget of the space". Lambert (1/10/19) 187:1-4. When disputes arose, it was over doctors being concerned about being charged for space. Lambert (1/10/19) 218:13-24, 219:9 ("I think everything revolved around cost"). Lambert was not aware of any disputes about CCA staff wanting to do anything in space occupied by Plaintiff (Lambert (1/10/19) 220:16-22) or who physically controlled space in the hospital (Lambert (1/10/19) 223:1-6). Hesch (who was then CEO of CCA) was not aware of any lease disputes between Plaintiff and CCA relating to operations, as opposed to rent. Hesch (1/15/19) 169:1-17.

As noted in Part One, Section II, the space allocated to CCA and Plaintiff were functionally intertwined. Parts of the square foot book look like an ink blot. There are obvious functional reasons for this. Hospital operating rooms and pre-op centers were placed next to CCA pre-anesthesia and oral surgery departments. TR-73, p. 3; TR-2616, p. 2; TR-2617, p. 14. CFH hearing therapy departments were placed close to CCA Audiology departments. TR-73, p. 6; TR-2616, p. 5; Lambert (1/10/19) 242:11-22. CCA cardiology, vascular lab, echocardiography, and EKG departments were placed close to CFH space for one day surgery, cardiac catheterization. TR-73, p. 15; TR-2616, p. 14; TR-2617, p. 3. Lambert testified there were instances in which a single room would be divided between the two entities. Lambert (1/10/19) 191:23-192:3.

The intertwined allocations of space on the floor of the hospital reflect the intertwined operations of CCA and Plaintiff. For instance, the planning and market research services Plaintiff purchased from CCA specifically included "facility planning". TR-2804, p. 1; TR-2801, p.1. As described above, Plaintiff had Medical Director contracts with CCA that gave CCA doctors

authority to oversee and plan activity in space allocated to Plaintiff in its lease agreement with CCA. Leonard (1/7/19) 76:21-77:2. Conversely, CCA contracted with CFH to use CFH's vice president of facilities as its own. See TR-2803. The duties of this official specifically included "planning, organizing and directing the facilities operations" of CCA-controlled space. See TR-2803, p. 8.

There were clearly some limits on the flow of people through the hospital. For instance, Snyder testified that, of course, there were sterile operating rooms with limited access. Snyder (1/23/19) 80:15-21. CCA would not have access to areas of physical plant, the pharmacy, and business offices closed after business hours. Snyder (1/23/19) 81:10-82:3. At one point, Lambert mentioned that CCA and Plaintiff had separate keys for their space, and that a CCA physician had to fill out a form stating why they needed a key to access CF space. Lambert (1/10/19) 255:12-22.

However, these limits on access had nothing to do with the lines in the square foot book now used to document a partial exemption. Snyder (1/23/19) 81:1-9. None of the several executives and agents who worked with the lease knew of any circumstance where the square foot book was used for any purpose other than rent allocation and utilities. Hesch (1/15/19) 170:1-9; Lambert (1/10/19) 221:10-21; 1/24/19, Wellman (1/24/19) 25:19-22; Snyder (1/23/19) 84:4-12. Snyder expected CCA staff to move freely throughout the hospital as needed to perform their duties. Snyder (1/23/19) 83:5-8. According to Snyder, "[a]ccess wasn't determined [based on] whether it's a clinic person or a foundation person." Snyder (1/23/19) 82:14-10. There were no differences in physical access of doctors based on whether they were hired through CFPS (Snyder (1/23/19) 84:23-5; Hesch (1/15/19) 172:21-173:2) or whether, as medical directors, they were employees versus independent contractors (Snyder (1/23/19) 87:11-15; Hesch (1/15/19) 173:14-24). Neither Lambert nor any other witness for Plaintiff provide a clear indication of where key-restricted areas were. Snyder confirmed that one does not need a key card or key to walk throughout the hospital. Snyder (1/23/19) 82:21-22. Koch testified that in his 34 and a half years working with Plaintiff, he never heard of any problems with CCA doctors having difficulty entering areas of the hospital to provide patient care. Koch (1/18/19) 141:20-24.

This ambiguous record is not enough to establish the boundaries of a partial exemption. In People ex rel. County Collector v. Hopedale Med. Found., 46 Ill.2d 450 (1970), the Supreme Court concluded that there was significant use of a non-profit hospital to benefit private physicians in a

manner inconsistent with a charitable exemption. Even though there were indisputably charitable activities conducted on the medical campus, all of it comprised "interrelated parts of a single medical complex". In the absence of any basis upon which to sever the complex into taxable and tax-exempt components, the entire complex became taxable. Hopedale , 46 Ill.22d at 464. The same result applies here.

B. Statutory exclusions

The first sentence of Section 15-86(c) contains three categorical exclusions, for property: i) leased; ii) licensed; or iii) operated by a for-profit entity. The North Clinic and the North Tower each have portions that were leased to CCA between 2004 and 2010. By the plain terms of the lease, it extended CCA's access to the entire hospital. Even if this language did not trigger the "lease" exclusion in Section 15-86, it would have clearly granted CCA an express license to the entire hospital. A license in real property has been distinguished from a lease as follows:

> "[A] license generally provides the licensee with less rights in real estate than a lease. If the contract gives exclusive possession of the premises against all the world, including the owner, it is a lease, but if it merely confers a privilege to occupy the premises under the owner, it is a license." Millennium Park Joint Venture, LLC v. Houlihan, 241 Ill.2d 281, 309 (2010), quoting 53 CJS Licenses Sec. 133, at 608 (2005).

A license is essentially permission to do an act or a series of acts upon the land of another without possessing any estate or interest in such land. Millennium Park, 241 Ill.2d at 309. The principal difference between a lease and a license is that a lease confers the right to exclusively possess and control property, whereas a license merely confers a right to use property for a specific purpose, subject to the licensor's control. Millennium Park, 241 Ill.2d at 309. The crucial distinguishing characteristic of a lease, as opposed to a license, is the owner's surrender of possession and control of the property to the tenant for the agreed upon term. Millennium Park, 241 Ill.2d at 310. By expressly extending the exclusion to property licensed to a for-profit entity, the legislature clearly intended to exclude not just property exclusively controlled by a for profit entity (such as the property for which CCA was financially responsible under the lease) but also property to which the for-profit entity had non-exclusive permission to access to perform certain services (such as the remainder of the hospital).

Finally, Section 15-86(c) excludes property "operated by a for-profit entity". See 35 ILCS 200/15-86(c). While the terms "lease" and a "license" are terms of art describing formal legal

arrangements between the parties, the term "operated" is not. Again, there is a presumption that each word in a statute is to be given meaning. Gutman, 2011 Ill. 110338, Par. 38. For the term "operated" to have independent meaning, the exclusion must reach not just formal legal arrangements between non-profit and for-profit entities, but also informal operating agreements. Even if the arrangement between Plaintiff and CCA could not be construed as a license, it would fall within this definition.

C. CRIMCO space

At some point between 2004 and 2010, CRIMCO, a for-profit entity owned by Plaintiff, used some portion of first floor of the North Tower for its business offices. Fallon (1/15/19) 293:20-294:13. Plaintiff has made no effort, whatsoever, to identify that portion of the North Tower used for this purpose, or when, and to subtract it from its claims for partial exemption.

Part Five : Remedy

For the above stated reasons, the judgment order in this case should be simple: Plaintiff should be denied all relief and judgment should be entered in favor of the Defendants. Should this Court instead hold Plaintiff is entitled to relief on the merits of its claims, the County Defendants dispute several issues relating to the remedy claimed by Plaintiff.

I. The mechanism for relief on the Exemption Counts

If Plaintiff prevails on the Exemption Counts, there is no clear statutory mechanism for providing Plaintiff a refund. The draft order therefore seeks to have the Treasurer pay moneys that are not in the Treasurer's possession: The Treasurer was required by law to disburse the taxes, once collected, to the taxing districts. See 35 ILCS 200/20-130. Yet Plaintiff would be entitled to a refund if it prevails on the Exemption Counts. Cf., Bass v. South Cook County Mosquito Abatement Dist., 236 Ill. App.3d 466, 468 (1992) ("[A] taxpayer who seeks equitable intervention prior to following statutory procedures risks the loss of his right to refund in cases where equitable relief is found unwarranted") (Emphasis added). This is implied by Section 23-25(e), which recognizes a proceeding to establish an exemption based upon the Department's treatment of the taxpayer's property in a comparable subsequent year. See 35 ILCS 200/23-25(e). A cause of action for tax exemption based on the Department's treatment of exemptions in subsequent years would be worthless without a right to refund, because the taxes at issue would already have been paid at that point.

A. Tax objection remedies

One of the few express refund mechanisms in the Property Tax Code is a provision relating to tax objections. See 35 ILCS 200/23-20. The current claim is the equivalent of a common law tax injunction. See Carle I, 396 Ill. App.3d at 339. This is distinct from a tax objection. See Carle I, 396 Ill. App.3d at 339. The distinction between the two is reflected in the text of Section 23-25(a), which refers to tax objections and court proceedings (such as this one) to establish an exemption as distinct categories of claims. Carle I, 396 Ill. App.3d at 339.

Sections 23-15 and 23-20 provide for refunds on successful tax objections. Section 23-15 relates to tax objections, and makes no reference to tax injunctions. Section 23-15(c) provides, in pertinent part:

> "If the court orders a refund of any taxes paid, it shall order the payment of interest as provided in Section 23-20.***". See 35 ILCS 200/23-15(c)

Section 23-20 states:

> "No protest shall prevent or be a cause of delay in the distribution of tax collections to the taxing districts of any taxes collected which were not paid under protest. If the final order of the Property Tax Appeal Board or 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 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 *** to the date of refund shall also be paid to the taxpayer at the [statutory rate]". 35 ILCS 200/23-20 (Emphasis added).

Plaintiff relies on this text, noting the general reference in the first emphasized language to a refund resulting from a "final order *** of a court".

This text relates only to tax objections.[22] Obviously, the latter two sentences of Section 23-20 are to be read in conjunction with each other: the interest provision in the third sentence has no meaning unless it relates to the administrative or court order referred to in the second sentence. This is a routine application of the canon that when construing a certain provision of a statute, the

[22] In the Presence Suit, the taxpayer's counsel argued that suits brought under Section 23-25(e) should be subject to Section 23-20's interest provisions, because both sections are found close to each other, in Article 23 of the Property Tax Code. However, the legislature specifically provided that language contained in titles, articles, captions, section and subsection headings is not to be used in construing the meaning of the substantive provisions of the Property Tax Code. See 35 ILCS 200/32-15(c).

court should consider the statute as a whole to determine the intent of the legislature. Ruda v. Industrial Board of Illinois, 283 Ill. 550, 554 (1918). By the same canon, in interpreting the second sentence of Section 23-20 (referring to an "order of a court result[ing] in a refund"), one must examine the first sentence, which refers to payments made under protest. Payments under protest are part of the tax objection process, not the process for seeking a tax injunction. See 35 ILCS 200/23-5. It is significant that, under the second sentence of Section 23-20, interest payments are to be made from the "protest fund". See 35 ILCS 200/23-20. The Protest Fund is established when taxes are paid under protest by persons filing tax objections. The funds are then withheld from distribution, and are required to be invested by the county collector. See 35 ILCS 200/20-35. In this integrated scheme, a tax objector files an objection, pays taxes under protest, and then files a prompt tax objection complaint. The payment under protest is then used to fund the eventual refund.

As noted below, the legislative history and purposes of the final sentence of Section 23-20, regarding prejudgment interest, further demonstrate that Section 23-20 is limited to tax objections.

B. Certificates of error

In the Complaint, Plaintiff sought relief in the form of an order directing the Treasurer to issue certificates of error. There is no private cause of action for a certificate of error. See Chicago Sheraton Corp. v. Zaban, 71 Ill.2d 85 (1978) (interpreting comparable certificates of error under Section 14-15 and 14-20). Section 23-25(a) refers to Section 14-25, a provision authorizing certificates of error. See 35 ILCS 200/23-25(a); 35 ILCS 200/14-25. However, this reference is to a certificate voluntarily given, used to reopen a prior final tax judgment through a tax objection. Plaintiff is not currently seeking a certificate of error in its draft judgment orders, and certificates of error are not mentioned in Plaintiff's post-trial brief. Should Plaintiff be allowed to go beyond the scope of its opening brief by addressing certificates of error in reply or oral argument, the County Defendants would request leave to file additional written argument.

C. Tax injunction remedies

Plaintiff would be entitled to relief against the Treasurer, if at all, in the form of an equitable lien on incoming tax revenues. An equitable lien is a remedy for a debt that cannot be legally enforced but which should be recognized under considerations of right and fairness. Paliatka v. Bush, 2018 IL App(1st) 172435 ¶28 (2018). The essential elements of an equitable lien are: (1) a debt, duty, or obligation defendant owes to the plaintiff; and (2) the existence of a *res* that, in some way, is particularly related to the debt or obligation. Id. An equitable lien is not itself a debt or a

right of property, but an equitable remedy for a debt. Dasher v. Bruno, 5 Ill. App.2d 500, 506 (1955). It is not limited to cases of wrongdoing by the defendant. See D. Dobbs, Law of Remedies (2d Ed. 1993), Vol. I, p. 602-3. Like any exercise of equitable powers, imposing an equitable lien "is a matter of sound judicial discretion controlled by established principles of equity and exercised upon a consideration of all the facts and circumstances of a particular case". Lewsader v. Wal-Mart Stores, 296 Ill. App.3d 169, 175 (1998). "[I]t is the very nature of an equitable remedy to be flexible…". Lewsader, 296 Ill. App.3d at 182.

D. Proposed approach if Plaintiff is granted immediate relief on the Exemption Counts

This case presents an extreme and unusual circumstance. Plaintiff did not file suit until three years after the first tax year at issue. Five years later, Plaintiff then claimed a right to relief under a form of tax exemption that did not exist until 8 years after the first year at issue. Plaintiff invoked a form of remedy under Section 23-25(e) that was not clearly established until the Fourth District's decision in this very case, in Carle I. Even now, the parameters of that remedy are unclear, with the binding decision in Carle I in conflict with the vacated decision in Carle II . The relationship between Section 15-86 and the constitutional standard for exemption was unclear prior to the Oswald decision, and even now, the parties are in disagreement as to what the constitution requires. Should Plaintiff be awarded the relief it seeks, the County Defendants fully anticipate filing a motion to stay the judgment, pending appeal.

Should that motion be denied, the County Defendants request that the Court consider the maxims of equity in imposing relief. Equity aids the vigilant, not those who sleep on their rights. .Horney v. Springfield, 12 Ill.2d 427,434 (1957). This doctrine "operates throughout the entire remedial portion of equity jurisprudence in controlling and restraining courts in administering relief". Horney, 12 Ill.2d at 434. Plaintiff's delay in filing suit, coupled with the sweeping retroactive application of Section 15-86 demand that this court exercise discretion in framing its relief.

The immediate relief Plaintiff now requested imposes a significant unwarranted burden on local taxpayers and taxing districts. Taxing districts operate in annual cycles. The taxing districts levy annually, with most adopting their budgets and certifying their levies to the County Clerk in December, who then calculates the tax rates. These budgets require an appropriation to justify all monies levied, and are the product of a lengthy budget process involving all stakeholders,

including the taxpayers. All of the taxes Plaintiff has paid have been distributed to the taxing districts and allocated as carefully outlined in the budgets of these districts, as required by law.

The County Treasurer sends out tax bills, due in two installments. For 2019, the first installment is due June 20, and the second is due September 1. The Treasurer makes distributions to the taxing bodies promptly as receipts of tax bills come in. With this process, taxing districts must plan their budgets and expenditures with great care. There are expensive statutory mechanisms, such as tax anticipation warrants and promissory notes, which, in extreme cases, may be used by these districts if cash flow is not as expected. If the Court is to grant Plaintiff all of the relief it seeks without further argument from the parties, the Treasurer requests that the Court not do so in a manner that disrupts the entire current annual budget of each affected taxing district. Instead the Court should impose an equitable lien on incoming tax payments received the Treasurer for the next four years directing her to redirect tax distributions to each of the districts to Plaintiff until the judgment is paid in full, with a maximum amount redirected to Plaintiff each year of 1/4 of each district's pro rata share of the judgment. Any districts which have escrowed payments corresponding with this liability would be free to pay their pro rata share earlier within the four-year period.

E. Request to reserve judgment order should Plaintiff prevail on the Exemption Counts

The refund issues presented here are more complex than in most tax injunction cases, in large part, because of Plaintiff's attempt to apply Section 15-86 retroactively in a sweeping and absurd manner. Frankly, it is impossible to determine at this point all of the issues that would be presented by a refund order here. For instance, the amount of funds the Treasurer may be holding on behalf of taxing districts will vary across the tax cycle. If the Court enters an order effective August 15, 2019, it may have a dramatically different impact than if the Court enters an order effective September 15, 2019, two weeks after the September 1, 2019, due date for taxes. Certainly, the mechanics of a refund should not drive the time the Court takes to deliberate over this matter. Nor should the impact of the judgment on the day to day operations of taxing districts be impacted simply because of when the Court happens to reach a decision.

The impact of a refund on individual taxing districts will obviously also vary according to the size of the refund and the size of each taxing district's total levy. It goes without saying that the larger the taxing district, and smaller the judgment, the better able a district will be to absorb the impact of a refund without upsetting its current operations. If the Court is to grant Plaintiff

any relief, the Treasurer strongly encourages the Court to consider determining the amount of recovery and then allowing the Treasurer an opportunity to consult with the affected taxing districts before finalizing the form of the judgment. Reserving judgment would allow the several affected districts have these conversations with a known specific amount at issue.

If Plaintiff is granted some of the relief it seeks, there is a significant likelihood another hearing would be required prior to entry of judgment, anyway. If Plaintiff is entitled to judgment on some, but not all, of the tax years in question, and is entitled to prejudgment interest, the Court may well seek recalculation of the interest to reflect the lower principal. In the unlikely event the Court grants Plaintiff relief on both the Exemption Counts and the Contract Count, including attorneys fees, issues relating to the timing and mechanics of payment on the Exemption Counts can be addressed when the Court finalizes attorneys fees. These issues could also be addressed with any request to stay the judgment pending appeal.

II. Prejudgment interest

Plaintiff has made a claim to prejudgment interest in this case, from the date of payment to the date of refund. See, e.g., Complaint, Count III, Ad Damnum Clause, Par. c. Prejudgment interest is not recoverable absent a statute or agreement providing for it. See City of Springfield v. Allphin, 82 Ill.2d 571, 576 (1980).

A. Equitable claims to prejudgment interest

While Plaintiff is not currently raising an equitable claim to prejudgment interest, these equitable standards provide a useful backdrop to Plaintiff's current argument. Under general equitable principles, no prejudgment interest would be due. Equity regards as done that which ought to be done. See Smithberg v. Ill. Mun. Ret. Fund, 192 Ill.2d 291, 297 (2000). Equitable remedies may be provided when necessary to prevent an actor from benefiting from his own wrongdoing. Schlosser v. Petherbridge, Lindgren & Zickert, Chartered, 97 Ill. App.3d 297, 299 (1981). Here, tax officials could not have recognized Plaintiff's Section 15-86 exemption claims in the years at issue because the statute did not exist yet. Local assessment officials had an affirmative obligation to assess all taxable property (35 ILCS 200/9-70); and they could have been charged with misdemeanors had they recognized a non-existent exemption at the time the tax bills went out (35 ILCS 200/25-15).

More generally, equitable interest is only available in a tax refund case in unusual circumstances not present here. In Lakefront Realty Corp. v. Lorenz, 19 Ill.2d 415 (1960), a

taxpayer sued for a property tax refund in equity, claiming his remedies at law were inadequate because he was not (at that time) entitled to interest on a refund granted through the statutory tax objection process. The Illinois Supreme Court rejected this claim, concluding that a taxpayer was not entitled to interest on a refund in equity, either, because:

a. No statute provided for prejudgment interest; and

b. Once the Treasurer distributes tax money to its recipients, he or she no longer has any source of funds from which to generate interest to pay taxpayers who have won refund actions years later.

Because no interest was due in either law or equity, the Court concluded the lack of interest through the legal route "was no measure of its adequacy or inadequacy". Lakefront, 19 Ill.2d at 423.

There is a limited exception to this rule. Equitable interest may be available on a claim for a tax refund when taxes are paid under protest, and the Treasurer has a legal obligation to segregate the funds paid and account for interest. Shell Oil Co. v. Dept. of Revenue, 95 Ill.2d 541, 548 (1983). However, this exception does not apply here. Plaintiff claims to have paid the taxes "under protest" by writing a letter to the Treasurer. See Koch(1/18/19) 168:4-13. Yet Koch could not remember the specific years for which a letter of protest was submitted, though he acknowledged it was not each and every year. Koch (1/18/19) 168:4-169:2. More fundamentally, starting in 1994, the practice of paying under protest by simply writing letters to the treasurer was abolished. See P.A. 89-126, amending 35 ILCS 200/23-5[23]. Instead, taxes are deemed paid under protest when taxes are paid and a timely tax objection is filed under Section 23-10. See P.A. 89-126. In short, the only way to pay under protest now is by filing a tax objection. Plaintiff did not do so. Koch (1/18/19) 169:3-9.

Without a legally-adequate payment under protest, the Treasurer had a legal obligation to disburse the taxes paid by Plaintiff (35 ILCS 200/20-130) along with any interest on the accumulated funds (35 ILCS 200/20-135). As to the taxes paid to the County, specifically, all earnings made on County funds were properly credited to the County's general corporate fund for County use, not held in a separate interest-bearing account for the benefit of Plaintiff's claims. See 55 ILCS 5/3-1005. Even under Shell Oil, if the Treasurer has no legal obligation to set aside

[23] There is a limited exception to this rule, not applicable here, for tax objections relating to estimated tax bills, which are still made to the Treasurer. See Section 21-55.

a separate fund which generates interest, the taxpayer is not entitled to interest "as a matter of course". Shell Oil, 95 Ill.2d at 547. Absent a statute or court order directing the Treasurer to create such a fund, a taxpayer is not entitled to interest on a refund under any equitable theory. Waukegan Community Unit School Dist. 60 v. City of Waukegan, 95 Ill.2d 244 (1983).

B. Prejudgment interest under Section 23-20

Plaintiff's sole argument for prejudgment interest stems from Section 23-20, which provides that when a court order results in a refund:

> "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 ***". See 35 ILCS 200/23-20

Plaintiff argues that, because the order it seeks would result in a refund, it is entitled to interest under this statute.

As noted above, Section 23-20 applies to tax objections, not tax injunction actions such as this one. Here again, it is significant that, under the second sentence of Section 23-20, interest payments are to be made from the "protest fund". See 35 ILCS 200/23-20. Again, in Section 23-20's integrated scheme, a taxpayer filing an objection pays under protest, and these funds are withheld from distribution and are required to be invested by the county collector. See 35 ILCS 200/20-35. The funds held in the protest fund generate interest which can then be used to fund a refund, with interest, under Section 23-20. This reading jibes with the equitable rules articulated in Shell Oil: interest is available on a tax refund if a legally-dedicated, interest-bearing fund is established for that purpose. Plaintiff's reading, which extends interest under Section 23-20 to tax injunctions, is not consistent with this scheme and conflicts with the default rule under Lakefront Property: Because the treasurer is required to distribute taxes as paid, there is no interest-bearing fund to generate a refund, and a taxpayer is not entitled to interest.

If the text of the Property Tax Code were unclear, it would be appropriate to examine its legislative history. People v. Bradford, 2016 IL 118674 ¶ 15 (2016); People v. Burlington, 2018 IL App(4th) 160542 ¶ 16 (2018). The legislative debates to Public Act 82-598, the amendment creating the predecessor to Section 23-15 first providing for prejudgment interest, indicate it was intended to address costs imposed on taxpayers with valid claims due to delay attributable to the tax objection process, specifically. See Comments of Senator Bowers on Senate Bill 957, May 27,

1981 of the 82nd General Assembly. This purpose has nothing to do with delays in filing a tax injunction suit, which are typically within the control of the taxpayer.

The current form of Section 23-15(c) was enacted in Public Act 89-126. The Civic Federation's Task Force Report on Reform of the Cook County Tax Appeals Process ("Task Force Report") was specifically incorporated into the legislative history of this enactment. See Comments of Senator O'Malley, 89th General Assembly, Report of Proceedings on May 23, 1995, p. 111. That report is attached hereto as Appendix C. According to the Task Force Report, the interest provision in the current form of Section 23-15(c) was intended to be identical to pre-existing law. See Task Force Report, p. 19. That pre-existing law explicitly limited interest to tax objection proceedings. See 35 ILCS 200/23-15 (Smith Hurd 1994).

C. Evangelical Hospitals

Plaintiff relies upon Evangelical Hosp. Ass'n v. Novak, 125 Ill. App.3d 439 (1984), in support of its current claim to prejudgment interest. In that case, the appellate court granted interest under the predecessor to Section 23-20 to a taxpayer who filed a tax injunction suit.[24] However, Evangelical Hospitals arose under the older rule, where a taxpayer could pay under protest without filing a tax objection. The taxpayer in Evangelical Hospitals did, in fact, pay under protest. These facts are critical to the prejudgment interest claim. Section 23-20 specifically refers to funds paid under protest. See 35 ILCS 200/23-20. The Treasurer is specifically authorized to withhold the payments made under protest from its distribution to taxing districts. See Section 20-260. Once created, this legally-restricted fund would then generate interest for a refund. In this way, requiring the interest on this fund to be paid to a taxpayer on payments made under protest would be consistent with both Section 23-20 and the equitable rule in Shell Oil. Because there was no effective payment under protest here, this holding does not apply.

D. Canon of construction regarding absurd results

It makes sense that prejudgment interest would be available for tax objection claims, but not for tax injunction claims such as these. Given the strict timeline for tax objection complaints, it is perfectly reasonable for the legislature to have decided to provide prejudgment interest on

[24] In the Presence litigation, counsel for the County Defendants brought this case to the Court's attention as an officer of the Court. The trial court concluded the case was inapplicable for reasons comparable to those stated here. While not binding here, the trial court's reasoning was correct.

refunds. A defensive tax objection must be filed annually, as part of the annual tax judgment proceedings. See 35 ILCS 200/21-175. An offensive tax objection must be filed within 75 days after the penalty date of the final installment of taxes for the year in question. See 35 ILCS 200/23-10

There is no such strict time limit on tax injunction claims such as this one. As noted above, the sweeping retroactive application of Section 15-86 to Plaintiff's current claims is beyond absurd. Under this construction, taxing districts have no control over when a lingering massive exemption claim such as Plaintiff's will pop up and wreak havoc on their finances. That absurdity is compounded when the claim is awarded prejudgment interest retroactive to the date of payment of taxes. Again, statutes should be construed so as to avoid absurd or unjust results. See Hubble., 238 Ill.2d at 283.

E. Plaintiff's claim to 5% interest for 2004

Even if interest were available under Section 23-20, Plaintiff has overstated its claim for the 2004 tax year. Prior to Public Act 94-558, Section 23-20 provided that a taxpayer is entitled to prejudgment interest at a flat rate of 5%. See PA. 94-558 (Eff. Jan. 1, 2006). Plaintiff claims it is entitled to 5% interest for the refund for tax year 2004, because the Public Act providing the alternate CPI rate was the result of legislation that did not take effect until after that year. In support of this argument, Plaintiff cites General Motors Corp. (GMC) v. Pappas, 242 Ill.2d 163, 187-88 (2011).

However, that decision actually undercuts Plaintiff's position. In the GMC case, the Supreme Court determined the effect of Public Act 94-558 on a pending tax objection. While the new statute went into effect on January 1, 2006, the judgment in that case was not entered until June 9, 2006. See GMC, 242 Ill.2d at 168. The taxpayer sought the higher 5% rate for the entire period prior to payment. See GMC, 242 Ill.2d at 168. The Supreme Court held the taxpayer was only entitled to the higher 5% interest rate from the date of payment through the effective date of Public Act 94-558, and the new (CPI) interest rate after that date. See GMC, 242 Ill.2d at 187-88. Accordingly, under Plaintiff's approach to Section 23-20, it would only entitled to 5% interest from the dates of payment (June 1, 2005 and September 1, 2005) to December 31, 2005. For the remainder of the period at issue (December 31, 2005, to August 1, 2019), Plaintiff is entitled to

interest at the percentage change in CPI from 2003 to 2004, or 1.9%[25]. A revision of the interest calculation with this correction is included in Appendix D. If the Court reaches a result that requires it to calculate Section 23-20 interest on all of these claims, the County Defendants request the interest figure used be $1,960,160.43, rather than the $2,150,431.41 figure claimed in Appendix C of the Opening Brief.

III. Contract Count

For purposes of the attached draft orders, the County Defendants assume that relief will be denied on the Contract Count because Plaintiff has not responded effectively to any of the arguments made by the Township Defendant's counsel at the close of Plaintiff's case. However, because the County Defendants are not parties to that count, they state no further argument on it in this brief.

IV. Costs

If Plaintiff wants to be awarded costs, it needs to do more than include a pro forma direction to this effect in a draft judgment order. Plaintiff's cause of action in the Exemption Counts is nominally structured as a petition for declaratory judgment. Under the Declaratory Judgment Act, the rules of practice in other civil actions are to be followed if applicable, and if not applicable, "the costs may be taxed as to the court seems just". See 735 ILCS 5/2-701(e). Plaintiff points to no specific authority for the request for costs, and presumably relies upon this discretionary power. Typically, costs are awarded if there is a showing litigation in bad faith by the non-moving party. Hopedale, 59 Ill. App.3d at 825, 375 N.E.2d at 1383.

This litigation has been lengthy, but Plaintiff has pointed to no argument raised by any defendant in bad faith. In fact, Plaintiff has litigated a cause of action that had never been raised in Illinois before. See Carle I, 396 Ill. App.3d 329. The litigation was lengthened by Plaintiff's insistence on a defective declaratory judgment cause of action, and appeal of a non-final order. See Carle II, 2017 IL 120427. The litigation was lengthened yet again by Plaintiff extensive litigation of a process-based claim that was both legally and factually defective. See Fourth Amended Complaint, Count I.

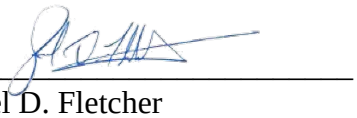
[25] 1.9% for the change from 2003 to 2004 is from the same website cited by Plaintiff's counsel, *Consumer Price Index U.S. City Average, All Urban Consumers,* U.S. Bureau of Labor Statistics, https://www.bls.gov/regions/midwest/data/consumerpriceindexhistorical_us_table.pdf (last visited **March 25, 2019**).

CONCLUSION

WHEREFORE, for all the reasons stated above, County Defendants pray this Court enter judgment in favor of the Defendants and deny Plaintiff all of the relief it now seeks.

May 13, 2019

Respectfully Submitted,
JULIA R. RIETZ
CHAMPAIGN COUNTY STATE'S ATTORNEY



By: Joel D. Fletcher

Attorneys for Champaign County Defendants

Joel D. Fletcher
Donna M. Davis
Assistant State's Attorney
101 East Main Street
Urbana, Illinois 61801
217-384-3733
jfletcher@co.champaign.il.us
ddavis@co.champaign.il.us

CERTIFICATE OF SERVICE

I, Donna M. Davis, an attorney, hereby certify that, on May 13, 2019, I caused a true and correct copy of the foregoing *County Defendants' Post-Trial Brief* to be electronically filed and served by e-mail upon counsel of record as follows:

William James Brinkman - wjbrinkm@tmh-law.com

Amy Graham Doehring – amy.doehring@akerman.com

Steven Forbes Pflaum - spflaum@ngelaw.com

Frederic Michael Grosser - frederic.grosser@gmail.com

David Buysse - dbuysse@atg.state.il.us

By: Donna M. Davis
Donna M. Davis
Assistant State's Attorney

DONNA M. DAVIS
Assistant State's Attorney
101 East Main Street
Urbana, Illinois 61801
217-384-3733
ddavis@co.champaign.il.us

Appendices Attached

Appendix A	2015-L-75 January 17, 2019 Ruling
Appendix B	Year-By-Year Summary
Appendix C	Task Force Report
Appendix D	Revised Interest Calculation
Appendix E	15-86 “Waiver” Response

APPENDIX A

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

CHAMPAIGN COUNTY, ILLINOIS

PRESENCE HOSPITAL PRV, an Illinois not-for-profit corporation, d/b/a Presence Covenant Medical Center, Plaintiff,	)	
v.	)	Case No. 2015 – L – 75
THE CHAMPAIGN COUNTY BOARD OF REVIEW; PAUL SAILOR, ELIZABETH BURGENER-PATTON, and ROBERT ZEBE, in Their Official Capacity As Members of the Champaign County Board of Review; PAULA BATES, in Her Official Capacity as Champaign County Supervisor of Assessments; and JOHN FARNEY, in His Official Capacity as Champaign County Treasurer, Defendants.	)	

ORDER ON MOTION TO DISMISS AMENDED COMPLAINT

On March 19, 2018, the Defendants, herein, filed a Motion to Dismiss Amended Complaint. Plaintiff filed a Memorandum of Law in opposition to that Motion on May 29, 2018. Defendants then filed their Reply Memorandum on June 25, 2018. The Court has reviewed all of this documentation.

The issues presented here encompass all three branches of our government. Article 9, § 6 of the Constitution of the State of Illinois states:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetary and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.

Pursuant to the constitution, the legislative branch can determine exemptions from taxation, within limits. The General Assembly has done so. Parts of the taxation and exemption statutes require actions by the executive branch of government such as the Department of Revenue, and county elected officials. Finally depending on the actions of the legislative branch and the executive branch, matters can end up with the Courts to make determinations as to Article 9, § 6, the actions of the legislature and the executive. Here we are dealing with the Illinois Constitution; the current and past legislation; the acts performed by the executive branch; and prior rulings by the Illinois Supreme Court and Appellate Court.

FACTS

Plaintiff filed an amended complaint on February 20, 2018, seeking to obtain charitable property tax exemptions as a non-profit hospital. The Illinois Department of Revenue (DOR) had previously determined that Plaintiff was entitled to exemptions for properties used in connection with the Hospital. DOR granted Plaintiff various exemptions for the tax years between 2004 and 2013. The Hospital campus contains 68 parcels of land, 10 of which are located in Champaign and the remaining 58 in Urbana. Plaintiff had previously been consistently granted property tax exemptions pursuant to 15-65 of the Property Tax code (35 ILCS 200/15-65). However, Plaintiff changed their corporate structure in 2002 and was subsequently denied property tax exemptions. In *Provena Covenant Medical Center v. Dep't of Revenue*, the Illinois Supreme Court ruled that the Plaintiff failed to satisfy the charitable standards delineated by Section 15-65. *Provena Covenant Medical Center v. Dep't. of Revenue* 236 Ill.2d 368, 393 (2010). Plaintiff had failed to demonstrate that the Hospital was an "institution of public charity" as required by Section 15-65. After *Provena* was decided in 2010, the Illinois General Assembly passed Public Act 97-688, adding Section 15-86 to the Property Tax Code (35

ILCS 200/15-86). Section 15-86 added not-for-profit hospitals and hospital affiliates to the list of "institutions of public charity." Plaintiff's exemption applications for 2004, 2006, 2010 were still pending when Section 15-86 was passed. The DOR granted Plaintiff's exemption applications for 2004, 2006, 2010, and 2012, agreeing that they satisfied Section 15-86. However, some of the parcels in 2004 and 2006 were leased for non-exempt purposes and were not granted exemptions. Plaintiff filed Section 14-25 certificate of error applications with the Champaign County Supervisor of Assessments for each of the non-exempt properties in 2004 and 2006, and for the years 2003, 2005, 2007-2009, 2011 and 2012 (35 ILCS 200/14-25). Plaintiff's request for certificates of error from Champaign County were denied. Plaintiff was only granted property tax exemptions under Section 15-86 for all 68 parcels for the years 2010 and 2012.

As noted, on March 19, 2018, Defendants filed their Motion to Dismiss Plaintiff's Amended Complaint.

STANDARD OF REVIEW

Defendants seek to dismiss the amended complaint pursuant to 725 ILCS 5/2-619.1 of the Code of Civil Procedure. Section 2-619.1 allows for the joint filing of 2-615 and 2-619 motions. A motion to dismiss pursuant to 735 ILCS 5/2-615 is appropriate when "the well-pleaded facts of the complaint, taken as true and construed in a light most favorable to the plaintiff, are [in]sufficient to state a cause of action upon which relief may be granted." *Loman v. Freeman*, 229 Ill.2d 104, 109 (2008). Therefore, Plaintiff's complaint should be dismissed under Section 2-615 if it "clearly appears that no set of facts could be proven which would entitle the plaintiff to recover." *Milos v. Hall*, 325 Ill.App.3d 180, 182 (5th Dist. 2001).

Similarly, a motion to dismiss pursuant to 735 ILCS 5/2-619 is appropriate when "the claim asserted against [the] defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367. An affirmative matter is a "defense that negates the cause of action completely." *Id.* When considering whether a cause of action is barred by an affirmative defense, the court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.* at 367-68. Furthermore, "a Section 2-619 motion admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts." *Porter v. Decatur Mem. Hosp.*, 227 Ill.2d. 343, 352 (2008).

ANALYSIS

Defendants' Motion to Dismiss is made up of six separate motions to dismiss.

1. First Motion to Dismiss Pursuant to 2-615 Alleging that pursuant to15-86, Exemption Claims may only be Brought Through Administrative Exemption Applications

Defendants' First Motion to Dismiss is pursuant to 735 ILCS 5/2-615, claiming that the complaint is substantially insufficient in law because Plaintiff is required to bring their exemption claims through an administrative exemption application. The Court in *Carle Found. v. Cunningham Tp, et al.*, 396 Ill. App.3d 329, 330, 917, N.E.2d 1136, 1138 (2009) ("Carle 1") answered certified questions from the trial court regarding whether section 23-25(e) of the Property Tax Code allows a "judicial determination of tax-exempt status for property that has previously been deemed exempt on comparable grounds."

In *Carle* 1, the Plaintiff filed a complaint with the circuit court invoking section 23-25(e) in order to "request the restoration of exemptions for four parcels" that had

previously been exempt from taxation under section 15-65. Section 23-25(e) states, "[t]he limitations in this Section 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." 35 ILCS 200/23-25(e). The section further states that court proceedings may occur while subsequent or prior years are being reviewed under Section 8-35, 8-40. *Id.* Section 23-25(e) thus removed the limitations of judicial determination of tax-exempt status when a property has been granted a property tax exemption in a different year on "comparable grounds." *Id.* After reviewing the above language, the Fourth District determined that 23-25(e) establishes a "cause of action, not otherwise specifically provided for by the Property 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." *Carle*, 396 Ill. App.3d at 339.

The Fourth District's decision in *Carle 1* was released prior to the General Assembly passing section 15-86. From the timing it is presumed that the General Assembly intended section 23-25(e) to be limited by section 15-86 because it explicitly states "[n]othing in this Section shall be construed to limit the ability of otherwise eligible hospitals...to *obtain* or maintain property tax exemptions pursuant to a provision of the Property Tax Code *other* than this Section." 200/15-86(i) (emphasis added). See *Burrell v. Southern Truss* 176 Ill. 2d 171, 176 (1997). The Fourth District determined that the General Assembly intended for 23-25 to establish a "cause of action...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." *Carle*, 396 Ill. App.3d at 339-

340. From their reasoning it appears that section 23-25 is another way to "obtain or maintain property tax exemptions", that falls under 15-86(i).

A reading of 15-86 establishes that the General Assembly did not intend to limit a hospital from seeking a judicial determination to establish a property tax exemption. The Supreme Court has stated that statutes "are viewed as a whole, construing words and phrases in context to other relevant statutory provisions and not in isolation" and "each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *Oswald v. Hamer*, 2018 IL 122203, ¶10. Therefore, interpreting section 15-86 to limit a hospital's ability to obtain a judicial determination if they fulfill the requirements of 23-25(e) would appear to go against the reasonable meaning of 15-86(i).

Defendants claim that the language of the statute requires hospital applicants to file applications under "Section 15-5 and this Section." Def. Reply at 6. However, nowhere in the statute does it appear that the language is intended to be mandatory and to restrict applications to the administrative review process. Sections 15-86(b)(6) and 15-86(b)(8), upon which Defendants rest their hats, are descriptive clauses. See 35 ILCS 15-86(b) "the following terms shall have the meanings set forth below". Those clauses define what a "hospital applicant" and "Subject property" are. They do not limit the exemption to the administrative process, otherwise, why include 15-86(i). The legislature explicitly states that the statute does not limit eligible hospitals from obtaining or maintaining property tax exemptions through other sections of the Property Tax Codes.

In order for the Plaintiff to be able to bring a private cause of action under Section 23-25, the property must have been granted an exemption for subsequent, or prior, years

"on grounds comparable to those alleged in the court proceedings." (35 ILCS 200/23-25(e)). The DOR did grant charitable property tax exemptions to the Plaintiff under Section 15-86. Since the Plaintiff has been granted an exemption on comparable grounds in the past it should be allowed to seek a judicial determination of its property tax-exempt status.

Following the Fourth District's ruling in *Carle* 1, and 35 ILCS 200/15-86(i), it appears that Plaintiff's complaint is sufficient in law because it states a recognizable cause of action.

2. Second Motion to Dismiss under 2-615 (c) 9, that Section 15-86 is Not Retroactively Applicable to the Exemption Counts

A statute is retroactive if the legislature "expressly prescribed" the temporal reach or if the statute establishes procedural changes. *Perry v. Dept. of Financial and Professional Regulation*, 2018 IL 122349, ¶40.

The question here is whether the Plaintiff's certificates of error or pending section 23-25(e) claims constitute an "application for property tax exemption" under section 90. Section 90 of the act expressly defines the "temporal reach" of the new legislation. *See generally*, *General Motors Corp. v. Pappas*, 242 Ill.2d 163, 186 (2011). If the statute controls the question of reach, there is no need to resort to other rules of construction or decision. *Id. See also*, *Landgraf v. USI Film Products*, 511 U.S. 244, 114 S.Ct. 1483 (1994).

The question of the reach of the statute is a matter of law and revolves around the construction of section 90. Illinois courts have been instructed to "construe the language

of a statute according to its true and legal import, and not to attempt to reform legislation, and to correct the supposed mistakes of the legislature." *Dutcher v. Crowell*, 5 Gillman 445, 10 Ill. 445 (1849); 1849 WL 4212 (Ill.) at 3. "The primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. All other rules of statutory construction are subordinate to this cardinal principle." *Alvarez v. Pappas*, 229 Ill.2d 217, 228 (2008). The court must take into consideration the entirety of the statute when attempting to construe the intent of the legislature. *People v. Flaugher*, 396 Ill.App.3d 673, 691-692 (2009). If the language of the statute is plain and unambiguous, then it "must be read without exception, limitation, or other conditions that conflict with the express legislative intent." *Id* at 692. However, courts "are not bound by the literal language of a statute if that language produces absurd or unjust results not contemplated by the legislature." *Id.* As mentioned above, section 15-86(h)'s definition of "application" appears to be for exclusive use in the administrative process and should not restrict the use of court proceedings to determine property tax exemption in this case. Because plaintiffs are eligible to seek section 15-86 exemptions under section 23-25(e) and through certificates of error, section 90 determines the temporal reach of this matter. Section 23-25(e) and certificates of error offer an alternative way to establish an exemption and therefore should fall within section 90's "all applications for property tax exemption" requirement.

Defendants contend that interpreting the phrase "application for property tax exemption" in Section 90 to reach Plaintiff's current claims would render section 15-86(b)(6) and 15-86(b)(8) meaningless and would effectively not bar any claim to property tax exemption at any time. However, due to the presumption that the legislature was

aware of the current laws when passing section 90 and 15-86, it is fair to assume that the legislature intended for 15-86 to apply to 23-25 claims because the language of section 90 did not limit it to administrative proceedings. Section 15-86(b)(6) and 15-86(b)(8) would not be meaningless because they provide guidance for the *administrative* application and process. The legislature is presumed to be aware that there are other avenues available to procure a property tax exemption. By not explicitly limiting section 90 to administrative applications and using the phrase, "all applications" it would make sense that exemption claims would fall under this inclusive umbrella. Furthermore, the courts are not supposed to read into statutes limitations and limiting "all applications" to applications only pursuant to the administrative process would be imposing a limitation not expressly provided for in section 90 or 15-86.

3) Third Motion to Dismiss pursuant to Section 2-615, Failure to State Facts in Support of Claim and for Misjoinder of Distinct Claims

Defendants' Third Motion to Dismiss alleges that "each geographically distinct parcel presents a distinct exemption claim." Plaintiff's grouped their exemption claims by year instead of by parcel, resulting in 16 claims instead of 68 individual claims. Defendants argue that Plaintiff failed to plead adequate facts to demonstrate that each parcel met the charitable tax exemptions because all of the parcels were organized by year. Plaintiff's tax exemption claims and Certificate of Error Claims break down their tax liability and exemptions by year and not by parcel. Defendants claim that this violates 735 ILCS 5/2-603(b) because Plaintiff is required to plead "each cause of action upon which a separate recovery may be had in a separate count." Defendants argue that Plaintiff cannot show they met the constitutional exclusive charitable use requirement for

each parcel because all of the parcels are organized by year and are mixed-use. Defendants rely on *Skinner*'s holding that when property is a "mixed-use" parcel, it must be separately assessed to determine if it will receive a partial exemption. *Illinois Institute of Technology v. Skinner*, 49 Ill.2d 59, 65-66, 273 N.E.2d 371, 375-76 (1971).

In *Skinner*, the plaintiff sought to enjoin the county treasurer and others from collecting taxes on a 107-acre parcel upon which it intended to open up a satellite campus. *Id.* at 60. The plaintiff argued that this met the constitutional exemption of "used exclusively for school purposes." The Supreme Court determined that that property must be in actual use to be exempt. *Id.* at 64. The Court stated that when analyzing a parcel for tax exemption, a Court must determine the primary use of the property and not its incidental uses. *Id.* at 65-66. The Court stated that when a property "as a whole, or in unidentifiable portions, is used both for exempting purposes and a nonexempting purpose" the property is only exempt if the primary use is the exempt use and the nonexempt use is incidental. *Id.* at 66. However, *Skinner* only deals with seeking exemption for one parcel and not multiple parcels and recognizes that "unidentifiable portions" may be examined for tax exemption purposes. The *Skinner* mixed-use requirements appear to only relate to analyzing whether a property is exempt or not.

Plaintff argues that a section 2-615 motion to dismiss is proper when there are defects on the face of the complaint. *Neppl v. Murphy*, 316 Ill. App.3d 581, 584 (2000). "Illinois is a fact-pleading State. This means that although pleadings are to be liberally construed and formal or technical allegations are not necessary, a complaint must, nevertheless, contains facts to state a cause of action. (Ill. Rev. Stat. 1975, ch. 110, par.31). A complaint is deficient when it fails to allege the facts necessary for the plaintiff

to recover. (*Fanning v. LeMay* (1967), 38 Ill. 2d 209, 212.) "But it is a rule of pleading long established, that a pleader is not required to set out his evidence. To the contrary, only the ultimate facts to be proved should be alleged and not the evidentiary facts tending to prove such ultimate facts." *Board of Education v. Kankakee Federation of Teachers Local No. 886* (1970), 46 Ill. 2d 439, 446-47."

People Ex Rel Fahner v. Carraige Way West, Inc. 88 Ill. 2d 300, 308 (1981).

Fahner goes on to state: "the complaint must be factually sufficient; it must plead facts which bring the claim within the legally recognized cause of action alleged. If it does not, the complaint must be dismissed. See, e.g., *Van Dekerhov v. City of Herrin* (1972), 51 Ill. 2d 374, 376-77." *Id.*

When analyzing a tax exemption case, "each claim of exemption for a particular tax year constitutes a separate cause of action" and each "separate legal grounds for exemption" must be pled in separate counts. *Cf. Skinner v. Graham*, 170 Ill. App.3d 417, 437-438 (4th Dist. 1988); *Hopedale Med. Found v. Tazewell County Collector*, 59 Ill. App. 3d 816, 819 (Ill. App.3d Dist. 1978). While a parcel may only be exempt if the charitable use is exclusive, Plaintiff's complaint taken on its face does not put plaintiff in the position where plaintiff "cannot recover under any set of facts." *Sheffler*, 399 Ill. App.3d at 59.

Based on *Skinner* and *Hopedale*, it would appear that Plaintiff sufficiently pled each one of their exemption claims. Furthermore, Plaintiff has shown that there are facts for which they would be able to recover a tax exemption. By illustrating, in each claim, that their "qualifying charitable activities" was greater than their property tax exemption,

they have shown that there is a possibility that there are parcels that would be exempt from taxation. Making Plaintiff break down each parcel and showing how much that exemption would be, or whether that parcel would even be exempt, would require the Plaintiff to plead all of its evidentiary facts. Plaintiff has alleged the ultimate facts in support of their claims for tax exemption.

Furthermore, Plaintiff is allowed to aggregate parcels in order to estimate the property tax liability for tax exempt properties. 35 ILCS 200/15-86(g)(1). Defendants are correct in stating that this is for the purpose of determining compliance with the statutory formula for *exclusive* charitable use. The Court will address the rest of the alleged pleadings issues including constitutional issues raised by Defendants in #4 below.

4) Fourth Motion to Dismiss Pursuant to 2-615 for Failure to Plead Facts Pursuant to *Korzen*

Defendants Fourth Motion to Dismiss alleges that because Plaintiff failed to plead facts showing that the parcels met the constitutional charitable requirements standard, the complaint should be dismissed. Defendants argue that the factual allegations supporting every fact which would need to be proved at trial in order to Plaintiff to be entitled for judgment must be contained in the complaint. *Ray Dancer Inc. v. DMC Corp.*, 230 Ill. App.3d 40, 48 (1992). The Supreme Court in *Oswald v. Hamer* held that parties seeking tax exemption under Sec. 15-86 are still required to satisfy the constitutional charitable requirements. 2018 IL 122203, ¶42 (stating that hospitals seeking exemption must show that they satisfy the statutory requirements under subsection 15-86(e) *and* the exclusive charitable purposes requirement under Section 6 of Article IX of the Illinois

Constitution.) Therefore, the Plaintiff must plead facts that demonstrate that they met both the statutory and constitutional requirements.

As explained above in reference to Defendant's Third Motion, Plaintiff has sufficiently pled the statutory requirements under 15-86(e) but the question remains whether Plaintiff has plead the facts required to show the "exclusive charitable use" constitutional requirement. The Supreme Court in *Oswald* reiterated the definition of "exclusively used" citing *Methodist Old People Home v. Korzen*. 2018 IL 122203 at ¶16. In *Korzen*, the Supreme Court defined "exclusive use" as the "primary purpose for which the property is used and not any secondary or incidental purpose." 39 Ill.2d 149, 157 (2004). The Court also noted that "It has been stated that a charity is a gift to be applied…for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for the general welfare – or in some way reducing the burdens of government." *Id.* at 156-57.

It appeared from the General Assembly's enactment of the legislation they repudiated Korzen. In Oswald the Supreme Court, as noted, only referred to Korzen with regard to exclusive use, and not to the factors stated in Korzen. As such, Korzen is still in play. While the complaint states that Plaintiff's properties were used "exclusively for charitable purposes [by] providing care to all who needed and applied for it, regardless of their ability to pay…and no private gain was conferred on any individuals connected with the hospital" there's no mention that the primary use of the property was "for the benefit of an indefinite number of persons…or in some way reducing the burdens of the government." (Compl. ¶46.). Section 15-86 recognized that there was not a quantitative measurement defined for what constitutes exclusive charitable use for a hospital (35

ILCS 200/15-86(a)(4)-(5)). Subsection 15-86(e) states what the legislature believed to be services provided by a hospital which would count towards relieving the "burden of government with regard to health care services." (35 ILCS 200/15-86(e)). It would appear that the Plaintiff sufficiently pled facts to satisfy both the statutory and constitutional requirement when it laid out the quantitative ways it reduced the burden on the government. However, there is still a question about whether the Plaintiff pled sufficient facts to show that the exclusive use of the property was for charitable purposes. The Plaintiff demonstrated that the amount of reduction of the burdens on government were drastically more than the property taxes they were required to pay, but that doesn't necessarily show that the *primary* purpose of the property was for charitable use. The Court in *Oswald* recognized that fulfilling section 15-86(e) and fulfilling the exclusive charitable use requirement were distinct tests that the hospital had to demonstrate for an exception. 2018 IL 122203 at ¶42. The Plaintiff's only support for meeting the "exclusive use" requirement is that the amount of charitable activities was greater than the amount the hospital paid in property taxes. With the Supreme Court recognizing that Section 15-86 and Section 6 of Article IX are distinct requirements, it would appear that Plaintiff did not plead sufficient facts for Section 6 of Article IX because it did not show that it met the "exclusive use" constitutional requirement. Without more, to comply with the constitution, one must assume that a cautious Plaintiff would in the complaint allege some facts that would show exclusive use which could include at a minimum the Korzen factors.

5) Fifth Motion to Dismiss Pursuant to 2-615 Seeks Certificates of Error for Failure to State a Claim Because There is No Private Cause of Action for a Certificate of Error

Defendants move to dismiss the Certificate of Error counts because there is no private cause of action for a Certificate of Error. Defendants rely on case law that was decided before the enactment of 14-25. Prior to sec. 14-25, *Chicago Sheraton Corp. v. Zaban* held that the phrase "Certificate of Error" did not give rise to a private cause of action because it was a purely an administrative process. 71 Ill.2d 85, 90-91 (1978). The Supreme Court stated that the Certificate of Error process under section 14-20 was "an expeditious and summary process without participation by the taxpayer for correcting assessor's errors." *Id.* at 91. Defendants claim that because Section 14-25 incorporates section 14-20 by reference, it therefore did not intend to allow for a private cause of action because the legislature is "presumed to have acted with knowledge of the prevailing case law" when it enacts new statutes. *Burrell v. Southern Truss*, 176 Ill.2d 171, 176 (1997).

Plaintiff argues that section 14-25 is textually different than 14-20 and 14-15 because it is expressly included in section 23-25(a), the process for seeking a judicial determination of tax-exempt status. Plaintiff relies on *Carle Foundation v. Illinois Dept. of Revenue* (*Carle I*) holding that the phrase "'court proceeding to establish an exemption' allows judicial determination of tax-exempt status for property that has previously been deemed exempt on comparable grounds." 396 Ill. App.3d 329, 339 (2009). *Carle I* analyzed the language of section 23-25 and determined that the limitation in section 23-25(a) which constrained the proceedings to the Administrative Review Law is removed when 23-25(e) is satisfied. *Id.* at 336.

Determining whether a Certificate of Error creates a private cause of action relies on the language and construction of the statute. As illustrated by the Defendant, *Zaban* limited the application of 14-20 and 14-15 to administrative proceedings. If the General Assembly is presumed to have knowledge of prevailing case law when it enacts statutes, it would lead one to believe that by including 14-25 in section 23-25, the legislature intended to differentiate it from 14-20 and 14-15. The relevant portion of 35 ILCS 200/14-25 allows for the issuance of a certificate of error if an exemption had been approved previously by the Department or by a final court decision made pursuant to administrative review law and the property would have been exempted at an earlier time. From the language of sec. 14-25(a), it appears that a certificate of error will be granted if the property had been exempt in previous years. This language tracks almost identically with sec. 23-25(e). Section 23-25(e) allows for a court proceeding if the "property has established an exemption for any subsequent or prior assessment year on grounds comparable to those alleged in the court proceedings." *Carle I* held that 23-25(a) contained the restrictions and section 23-25(e) created the exceptions. *Id.* at 336. Unlike 14-20 and 14-15, which allows for the local assessment official to correct their mistakes, 14-25 creates a new way to *obtain* an exemption for a previous year (certificate of error) by demonstrating that the property had been exempt in a previous year. Therefore, 23-25(e) created a private cause of action for Certificates of Error granted pursuant to 14-25 by demonstrating that the property would have been exempted previously.

6) Sixth Motion to Strike Claims for Prejudgment Interest Pursuant to 2-615/2-604

Defendants move to strike the claims for prejudgment interest because there is no statute or agreement providing for it. In *City of Springfield v. Allphin*, the Supreme Court

stated that prejudgment interest is not available unless a statute or agreement provides for it. 82 Ill.2d 571, 576 (1980). While there is no agreement plead in this case, Plaintiff argues that they are entitled to prejudgment interest under 35 ILCS 200/20-178; 200/23-20: and to the extent interest has been earned on its tax payments for the subject properties and subject years.

a) Plaintiff's argument under sec. 20-178

Plaintiff points to 35 ILCS 200/20-178 as an avenue to recover prejudgment interest. The statute states that the "county collector makes any refunds due to certificates of error issued under Sec. 14-15 through 14-25 that have been either certified or adjudicated, the county collector shall pay the taxpayer interest on the amount of the refund at the rate of 0.5% per month." 35 ILCS 200/20-178. Therefore, the statute requires certificates of error to be issued in order to recover prejudgment interest. However, the statute further states that prejudgment interest "shall be paid from 60 days after the certificate of error is issued by the chief county assessment officer to the date the refund is made." 35 ILCS 200/20-178. Plaintiff argues that under the theory of equity, they should be entitled to prejudgment interest under Sec. 20-178 beginning 60 days from when the certificates of error *should* have been issued. *Smithberg v. Ill. Mun. Ret. Fund*, 192 Ill.2d 291, 297 (2000) However, under the plain language of the statute, the Plaintiff does not have a claim to interest until 60 days *after* the date of issuance of the Certificates of Error. Plaintiff does not, at this time, have a claim to prejudgment interest under 73 ILCS 200/20-178.

b) Plaintiff's argument under sec. 23-20

Plaintiff next argues that it should be eligible for prejudgment interest under 35 ILCS 200/23-20. Sec. 23-20 states that

> "If the final order of ... 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, regardless of whether the payment was made before the effective date of this [Act], or from the date payment is due, whichever is later, to the date of refund shall also be paid to the taxpayer...." 35 ILCS 200/23-20.

The plain language of the statute states is that it applies when there is a "protested payment." Under sec. 23-20, Plaintiff's Exemption Counts must have been protested payments in order to be entitled to interest. The question becomes whether the Exemption Claims can be considered tax objections or if they are tax injunctions. 35 ILCS 200/23-5 states the requirements for a tax objection. The objection complaint "shall be filed in the circuit court...in which the subject property is located." However, payments under protest for tax objections cannot be lodged due to the belief that the property is exempt from taxation (35 ILSC 200/23-5). The language of sec. 23-5 infers that tax objections related to tax exemptions fall under a separate mechanism than a normal tax objection. From a plain reading Sec. 23-20, it appears that interest may be granted when the tax paid was placed in a Protest Fund. This requires the Treasurer to withhold taxes paid under protest from being distributed to the taxing districts (35 ILCS 200/20-50(a)). The funds then are held separately until the tax objection is decided and any refunds are to be paid "from the Protest Fund." (35 ILCS 200/23-20). There is no

showing that a Protest Fund was created in this matter, nor has the Plaintiff filed a Tax Objection Complaint. Plaintiff is not entitled to prejudgment interest on its Exemption Claims.

However, in *Evangelical Hosp. Ass'n v. Novak*, the Court granted Plaintiffs prejudgment interest on a tax injunction. 125 Ill. App.3d 439 (1984). The plaintiff in *Evangelical Hosp. Ass'n* submitted their taxes *with* a letter of protest. 125 Ill. App.3d at 441. Here, it does not appear that Plaintiff filed a letter of protest when it paid its property taxes. Instead, the Amended Complaint states that Plaintiff filed multiple *applications* for exemption each year, and does not allege Plaintiff filed a letter of protest when it filed its taxes. No Protest Fund was created while Plaintiff was seeking clarity on its tax exemption status. The Second District's opinion in *Evangelical Hosp. Ass'n* is distinguishable from this case.

c) Plaintiff's argument under Shell Oil Co. v. Dep't of Revenue

Plaintiff further argues that they should be entitled to prejudgment interest due to the Supreme Court's holding in *Shell Oil Co. v. Dep't of Revenue*, which stated 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." 95 Ill.2d 541, 547 (1983). First, Defendants argue that even if this was true, they would only owe interest for tax exemptions denied after 2012. Sec. 15-86, the tax exemption that Plaintiff is claiming, did not go into effect until 2012. Therefore, Defendants were relying on State statutes that were in place from 2003-2012 when they denied Plaintiff's exemption applications. Defendants did not do anything improper when they assessed the properties to not be exempt. Plaintiff's invocation of *Smithberg* is ill-placed for the years 2003-2012 because the Defendants did

"that which ought to be done" and therefore was acting within the thresholds of equity. 192 Ill.2d 291, 297 (2000).

Defendants also argue that Plaintiff's reliance on *Shell Oil Co.* is misplaced because it did not meet the equitable exception that was granted in *Shell Oil.* In *Shell Oil*, the Supreme Court focused on specific facts and found that the plaintiff was not "requesting interest on the protest fund as a matter of course." 95 Ill.2d at 547. In *Shell Oil*, the taxes at issue were paid under protest and the Court enjoined the Treasurer from depositing the protest funds into the State Treasury. *Id.* at 544-45. Again, in *Shell*, the taxes were paid under protest and the plaintiff's filed a tax objection to recover the taxes paid under protest. *Id.* at 544. The Supreme Court distinguished *Shell* from *Lakefront Realty v. Lorenz*, 95 Ill.2d 415(1960) by stating that no money was available to pay interest on the fund in *Lakefront Realty*. *Id.* at 547. The plaintiff in *Shell* was seeking the "income earned from money it was determined it had no legal duty to pay as taxes." *Id.* Another key difference is the Court ordered a protest fund. The Treasurer in *Shell Oil* was required to be the trustee of the fund and was not entitled to any of the interest that was earned. *Id.* at 547-48. Again, *Shell Oil* was related to the interest earned on a *protest fund.*

The Defendants also argue that *Waukegan Community Unit School Dist. 60 v. City of Waukegan*, clearly sets forth the limits of *Shell Oil Co.* 95 Ill.2d 244, 447 N.E.2d 345 (1983). The Court in *Waukegan* states that interest can be recoverable but only after they have been remitted to the protest fund. 95 Ill.2d at 261. Furthermore, the Court stated that the plaintiffs are not entitled to an interest award when a protest fund was

never established because plaintiffs are only entitled to an interest award when interest has been "generated by a special protest fund." *Id.*

RULING

From the above, Defendants' First, Second and Fifth Motion are denied. Defendant's Sixth Motion is allowed with prejudice as to all but Defendants' argument under 35 ILCS 200-20-178. As the Court has noted Plaintiff has not put itself, at this time, in position to request prejudgment interest. If Plaintiff can, at some time, then this issue can be revisited.

Defendants' Third and Fourth Motions are allowed, without prejudice. Plaintiff must not only allege facts pursuant to the legislation, Plaintiff has to allege facts putting itself within the constitutional requirements as stated by the Supreme Court in Oswald as to Plaintiff's exclusively charitable requirement.

Plaintiff is allowed 60 days to file any Second Amended Complaint. Defendants are allowed 60 days thereafter to file any responsive pleadings.

Dated: Jan 17 2019

ENTER: _____

JEFFREY B. FORD
Circuit Judge

Appendix B: Year-by-Year Summary

The Court requested that the parties present analysis in a year-by-year and parcel-by-parcel format within the body of the analysis or at the end. Transcript (1/31/19) 145:15-146:1. The following is not intended to be an exhaustive summary. The body of the brief captures many of the changes in Plaintiff's practices over time. Additionally, overviews of each of the years has been provided by the County Defendants through Professor Mark Hall (TR-2004) and the Department of Revenue (TR-1093.1, TR-1093.2, TR-1093.3, TR-1094.1, TR-1094.2, TR-1094.3, TR-1097.1, TR-1098.1, TR-1099, TR-1110).

2004:

Measures of profitability:

Operating margin:	5.0%	Excess margin:	9.6%	TR-2004, p. 17
Increase in unrestricted net assets:		$63,423,875		TR-68, p. 7

Charity care at cost:

Hospital charity to Hospital expenses:	0.8%	TR-2004, p. 11
Total charity care to total expenses:	0.6%	TR-2004, p. 11
Total charity care to operating income:	7.6%	TR-2004, p. 11
Total charity care to total income:	6.2%	TR-2004, p. 11

Amount of charity care or community benefit attributable to any specific parcel: Unknown
Amount of claimed charity care corresponding with medical services in 2004: Unknown

Charity application statistics: From TR-509
% completed approved: 90.3% % total approved: 45.8%
% of total denied as incomplete: 49.28%

% of net patient service revenue/gross (charge master markup): 55.06% TR-123, p. 34

Some significant changes:

Plaintiff begins significant changes to charity care policy in response to local and national scrutiny. Tonkinson (1/7/19) 8:19-9:13, 10:03-17:01. On October 30, 2003, the Wall Street Journal published an article focusing on hospital collection practices, discussing Plaintiff, specifically. TR-1156. In 2004, the Champaign County Board of Review recommends denial of exempt status. Jenkins (1/14/19), 100:3-11. Plaintiff stopped using body attachments in collection actions. TR-52, p. 3; Leonard (1/4/19) 78:21-79:20 The lowest income threshold for 100% free care was raised to 150% of the federal poverty level. Leonard (1/3/19) 67:20-68:6.

Charity care brochures were translated into Spanish and Chinese. Tonkinson (1/8/19), p. 11:8-12:1, 10:3-24; TR-335, TR-337, TR-338; TR-341. (Between 2003 and 2004) information about the charity care program was added to the patient's bill. Tonkinson (1/8/19), p. 6:1-7. (Shortly after 2003), charity care ads were placed on buses. Tonkinson (1/8/19), p. 14:11-23. ("Early on"), radio ads were run about the charity care program. Tonkinson (1/8/19), p. 15-4-15. A simplified charity care application was developed. Tonkinson (1/8/19), p. 8:1-8, 8:21-24, TR-336

2005:

Measures of profitability:

Operating margin:	1.5%	Excess margin:	10.9%	TR-2004, p. 17
Increase in unrestricted net assets:		$27,395,235		TR-1001, p. 29

Charity care at cost:

Hospital charity to Hospital expenses:	1.0%	TR-2004, p. 11
Total charity care to total expenses:	0.7%	TR-2004, p. 11
Total charity care to operating income:	44.3%	TR-2004, p. 11
Total charity care to total income:	6.1%	TR-2004, p. 11

Amount of charity care or community benefit attributable to any specific parcel: Unknown
Amount of claimed charity care corresponding with medical services in 2005: Unknown

Charity application statistics: From TR-509
% completed approved: 93.4% % total approved: 37.8%
% of total denied as incomplete: 59.59%

% of net patient service revenue/gross (charge left after charge master markup): 52.8% TR-123, p. 34

Research /Total expense: 0.14% TR-1001, p. 10, 28

Donations: TR-2004, p. 16
% of operating revenue: 0.6% % of operating income: 41.7% % of total income: 5.8%

Some significant changes: The threshold for 100% discount was increased to 200% of the federal poverty level. See TR-117, p. 3; Leonard (1/4/19), p. 115:11-116. Patients are given 14 days to complete their charity care application before the billing process began. Tonkinson (1/7/19), p. 64:14-65:19. This was increased to 21 days later that year. Tonkinson (1/7/19), p. 87:2-18. The charity care policy was placed on the website. TR-106, p. 3. Information about the charity care program was placed on the outside of envelopes. Tonkinson (1/8/19), p. 5:1-24. Education on the charity care program was added to employee education. Tonkinson (1/8/19), p. 13:14-13:23; Owens (1/11/19), p. 31:17-32:4. The policy (purportedly) recognized catastrophic medical expenses. TR-93, p. 3; 95:1-4; TR-2423; TR-93; Leonard (1/4/19), p. 96:18-97:17 (establishing cap on personal liability); Tonkinson (1/7/19), p. 95:1-16, TR-2423. Plaintiff started deducting spend down from patient assets before calculating eligibility. Tonkinson (1/7/19), p. 82:14-83:2; TR-106, p. 2. Plaintiff began allowing patients in collections to be eligible for charity care. Tonkinson (1/7/19), p. 59:1-24. Plaintiff added appeals process to charity care determinations. Tonkinson (1/7/19), p. 84:7-21; TR-106. Plaintiff's claimed overall community benefit grew 29% and its claimed charity care grew 24% since 2004. See 2027f, p. 13, 14.

2006:

Measures of profitability:

Operating margin:	7.3%	Excess margin:	27.4%	TR-2004, p. 17
Increase in unrestricted net assets:		$82,499,479		TR-137, p. p 34

Charity care at cost:

Hospital charity to Hospital expenses:	1.0%	TR-2004, p. 11
Total charity care to total expenses:	1.3%	TR-2004, p. 11
Total charity care to operating income:	16.5%	TR-2004, p. 11
Total charity care to total income:	4.4%	TR-2004, p. 11

Amount of charity care or community benefit attributable to any specific parcel: Unknown
Amount of claimed charity care corresponding with medical services in 2006: Unknown

Charity application statistics: From TR-509
% completed approved: 92.5% % total approved: 36.5%
% of total denied as incomplete: 60.52%

% of net patient service revenue/gross (charge left after charge master markup): 50.38%
TR-130, p. 14

Research /Total expense: 0.098% TR-137, p. 23, 34

Donations: TR-2004, p. 16
% of operating revenue: 0.6% % of operating income: 8.6% % of total income: 2.3%

Some significant changes: A focus on medical research and medical education was formally added to Plaintiff's mission statement. TR-2027f, p. 19. Charity care nearly doubled from fiscal year 2005 to fiscal year 2006. See TR-137, p. 5. Plaintiff's claimed overall community benefit grew 69% and its claimed charity care grew 94% since 2005. See 2027f, p. 13, 14.

Plaintiff entered the Fourth Amendment to its Exclusive Services Agreement in October, 2006, adding CFPS as a party to its services agreement with CCA. See TR-4411, p. 28. This addressed the payor disconnect between Plaintiff and CCA, but only for a limited class of physician services.

2007:

Measures of profitability:

Operating margin:	6.9%	Excess margin:	22.8%	TR-2004, p. 17
Increase in unrestricted net assets:		$144,721,000		TR-1003, p. 29

Charity care at cost:

Hospital charity to Hospital expenses:	2.3%	TR-2004, p. 11
Total charity care to total expenses:	1.7%	TR-2004, p. 11
Total charity care to operating income:	22.6%	TR-2004, p. 11
Total charity care to total income:	6.9%	TR-2004, p. 11

Amount of charity care or community benefit attributable to any specific parcel: Unknown
Amount of claimed charity care corresponding with medical services in 2007: Unknown

Charity application statistics: From TR-509
% completed approved: 92.2% % total approved: 35.6%
% of total denied as incomplete: 60.99%

% of net patient service revenue/gross (charge left after charge master markup): 48.8% TR-179, p. 39

Research /Total expense: 0.19% TR-1003, p. 20, 29

Donations: TR-2004, p. 16
% of operating revenue: 0.7% % of operating income: 9.4% % of total income: 2.9%

Some significant changes: Plaintiff's claimed overall community benefit grew 31% and its claimed charity care grew 56% since 2006. See 2027f, p. 13, 14. After qualifying, patients could have charity care applied retroactively to a period about three months prior to application. Tonkinson (1/7/19), p. 96:16-97:13. The period for submitting a charity care application was increased from 21 days to 60 days. Tonkinson (1/7/19), p. 97:17-24. The pattern of collection suits increased in the period leading up to 2007 because there were more unemployed and uninsured patients. Everette (1/29/19), p. 23:17-24:5.

Plaintiff adopted a strategic plan with an initiative to "launch a community care initiative". TR-4082, p. 8. In December, 2007, Plaintiff entered the Self Pay Compass contract. TR-158. Plaintiff entered a closing agreement with the IRS which Plaintiff agreed, amongst other things to: (1) limit physician participation on its governing board to 20% who are licensed physicians or dentists or shareholders of CCA; (2) bar the director of CCA from serving on Plaintiff's governing board; and (3) cap all physicians and dentists at 30% of Plaintiff's voting trustees (TR-2112, p. 6, 13 Par. 15); (4) encourage physician recruitment outside CCA (TR-2112, p. 10, Par. 8); (5) actuarially determine premiums to HSIL, increasing the frequency of reconciliation of premiums (TR-2112, P. 17, Par. 22); (6) stop looking to CCA as primary tenants of CCA, and divest itself of certain properties leased to CCA (TR-2112, p. 14-16, Pars. 17-18); (7) not loan money to CCA or its physician (TR-2112, p. 11, Par. 10; p. 13-14, Par. 16); (8) require CCA to "use its best efforts" to become a participating provider in all plans in which CFH was a participating provider (TR-2112, p. 11, Par. 11); and (9) treat all medical directors and other CCA physicians providing administrative services as employees. TR-2112, p. 12-13, Par. 14.

2008:

Measures of profitability:

Operating margin:	7.3%	Excess margin:	8.8%	TR-2004, p. 17
Increase in unrestricted net assets:		($34,304,000)		TR-179, p. 32

Charity care at cost:

Hospital charity to Hospital expenses:	2.6%	TR-2004, p. 11
Total charity care to total expenses:	2.2%	TR-2004, p. 11
Total charity care to operating income:	27.4%	TR-2004, p. 11
Total charity care to total income:	22.8%	TR-2004, p. 11

Amount of charity care or community benefit attributable to any specific parcel: Unknown
Amount of claimed charity care corresponding with medical services in 2008: Unknown

Charity application statistics: From TR-509
% completed approved: 71.4% % total approved: 31.7%
% of total denied as incomplete: 55.64%

% of net patient service revenue/gross (charge left after charge master markup): 45.2% TR-179, p. 39

Research /Total expense: 0.55% TR-179, p. 22, 31

Donations: TR-2004, p. 16
% of operating revenue: 0.3% % of operating income: 10.1% % of total income: 8.4%

Some significant changes: Since 2007, Plaintiff's claimed overall community benefit grew 40% and its claimed charity care grew 30%. See 2027f, p. 13, 14. The period for filing a charity care application is increased from 21 days from the date of discharge or service to 60 days. Compare TR-106, p. 3 and TR-165, p. 3. A general reference in the charity policy to "hardship charity" for those experiencing catastrophic medical expenses is replaced with specific caps on collections in synch with HUPDA requirements applicable to both for-profit and non-profit hospitals. Compare TR-106, p. 4 with TR-165, p. 4. According to Everette, the income verification process did not change in the period before she left in 2008. Everette (1/29/19), p. 7:17-8:1.

2009:

Measures of profitability:

Operating margin:	10.5%	Excess margin: -17.5%	TR-2004, p. 17
Increase in unrestricted net assets:		-$65,563,000	TR-1005, p. 37

Charity care at cost:

Hospital charity to Hospital expenses:	2.3%	TR-2004, p. 11
Total charity care to total expenses:	2.0%	TR-2004, p. 11
Total charity care to operating income:	16.7%	TR-2004, p. 11
Total charity care to total income:	N/A	TR-2004, p. 11

Amount of charity care or community benefit attributable to any specific parcel: Unknown
Amount of claimed charity care corresponding with medical services in 2009: Unknown

Charity application statistics: From TR-509
% completed approved: 53.4% % total approved: 31.8%
% of total denied as incomplete: 40.56%

% of net patient service revenue/gross (charge left after charge master markup): 43.0% TR-1006, p. 37

Research /Total expense: 0.75% TR-1005, p. 27, 36

Donations: TR-2004, p. 16
% of operating revenue: 0.3% % of operating income: 2.4% % of total income: N/A

Some significant changes: Plaintiff began drafting a charity care policy that would go into effect at the time of merger. Tonkinson (1/7/19), p. 107:18-108:5. According to Plaintiff's press releases, its claimed community benefit in March 2009 was an increase of 40% over the figure for 2007; and its charity care total was a 30% increase over the prior year's figure and four times that provided in 2004. TR-183.

2010:

Measures of profitability:

Operating margin:	7.5%	Excess margin: 16.3%	TR-2004, p. 17
Increase in unrestricted net assets:		$120,881,000	TR-1006, p. 29

Charity care at cost:

Hospital charity to Hospital expenses:	2.5%	TR-2004, p. 11
Total charity care to total expenses:	1.5%	TR-2004, p. 11
Total charity care to operating income:	23.0%	TR-2004, p. 11
Total charity care to total income:	8.5%	TR-2004, p. 11

Amount of charity care or community benefit attributable to any specific parcel: Unknown
Amount of claimed charity care corresponding with medical services in 2010: Unknown

Charity application statistics: From TR-509
% completed approved: 81.7% % total approved: 63.9%
% of total denied as incomplete: 21.73%

% of net patient service revenue/gross (charge left after charge master markup): 38.3% TR-1006, p. 37

Research /Total expense: 0.51% TR-1006, p. 2, 28

Donations: TR-2004, p. 16
% of operating revenue: 0.1% % of operating income: 1.9% % of total income: 0.9%

Some significant changes: A new policy was adopted requiring patients to reside in the primary or secondary service area. Tonkinson (1/7/19), p. 111:8-112:13. The appeals process was expanded to include an advisory committee of community members. Tonkinson (1/7/19), p. 115:20-116:24. This policy lists practices, such as not using body attachments, that are specifically unauthorized due to Tonkinson's concern that future changes in interpretation will negatively affect patients. Tonkinson (1/7/19), p. 117:1-20.

The approval rate for charity care requests doubled, from 31.8% to 63.9%; and the percentage of applications denied as incomplete falls by half, from 40.56% to 21.73%. See TR-509 (See table in brief, calculating percentages)

Plaintiff acquired CCA, with effects including: (1) $4.8 million in medical debt previously owed CCA is treated as charity by Plaintiff; (2) CCA's former CEO becomes the CEO of Carle Physician's Group, a newly-formed internal physician practice; (3) the former doctors of CCA have a more formal role in the operations of the hospital through the Physician's Council; (4) Plaintiff's charity care policy is extended to services of former doctors of CCA, and the satellite clinics previously operated by CCA; (5) payor discrepancies between CCA and Plaintiff disappear; (6) HAMP, a for-profit entity, becomes a wholly owned subsidiary of Plaintiff, responsible for 65.2% ($525,853,000/$806,664,000) of Plaintiff's revenues in 2010 (TR-2004, p. 10); (7) dozens of intercompany agreements, purportedly negotiated at arms length, became irrelevant; (8) partial exemptions on the North Tower, North Clinic, and Power Plant become nearly full exemptions; (9) the stock of Plaintiff's for-profit subsidiary, HAMP, is subject to lien for payment to pay purchase price to former doctors of CCA.

Plaintiff imposed geographic limits on the residence of non-emergency patients receiving charity care.

2011:

Measures of profitability:

Operating margin:	2.3%	Excess margin: 683%	TR-2004, p. 17
Increase in unrestricted net assets:		-$835,000	TR-252, p. 7

Charity care at cost:

Hospital charity to Hospital expenses:	5.0%	TR-2004, p. 11
Total charity care to total expenses:	1.6%	TR-2004, p. 11
Total charity care to operating income:	67.6%	TR-2004, p. 11
Total charity care to total income:	22.9%	TR-2004, p. 11

Amount of charity care or community benefit attributable to any specific parcel: Unknown
Amount of claimed charity care corresponding with medical services in 2011: Unknown

Charity application statistics: From TR-509
% completed approved: 88.7% % total approved: 79.6%
% of total denied as incomplete: 10.26%

% of net patient service revenue/gross (charge left after charge master markup): 28.9% TR-252, p. 12,

Research /Total expense: 0.59% TR-1008, p. 2; TR-2204, p. 6

Donations: TR-2004, p. 16
% of operating revenue: 0.1% % of operating income: 6.4% % of total income: 2.2%

Some significant changes: Plaintiff's charity care policy was amended to (1) automatically qualify persons who received services from Frances Nelson; Jackson (1/16/19) 71:3-20); (2) formally incorporate a list of homeless shelters into the charity care policy (TR-2426; Jackson (1/16/19) 72:4-10; and (3) add a notice to its charity care policy to remind patients to submit a new application before their prior eligibility ended, to avoid gaps in coverage Jackson (1/16/19) 72:11-23). TR-2426.

Reported charity care, at cost, doubled from 2.8% in 2010 to 5.6% in 2011. See Leonard (1/4/19), p. 32:22 – 33:19; TR-2027J; TR-2203, p. 32; TR-2204, p. 25; Tonkinson (1/7/19), p. 35:22-37:10.

Attachment

APPENDIX C

REPORT OF THE TASK FORCE ON REFORM OF THE COOK COUNTY PROPERTY TAX APPEALS PROCESS

AS REVISED AND ADOPTED BY THE REAL ESTATE TAX COMMITTEE OF THE CHICAGO BAR ASSOCIATION

PROPOSED AMENDMENTS TO THE PROPERTY TAX CODE AND COMMENTARY

Report of the Civic Federation Task Force
Dated February 22, 1995, As Revised and Adopted by the
Chicago Bar Association Real Estate Committee
March 2, 1995

243 S. Wabash, Suite 850 Chicago, Illinois 60604 • Telephone (312) 341-9603 Fax (312) 341-9609

TABLE OF CONTENTS

I. INTRODUCTION AND EXECUTIVE SUMMARY

The Civic Federation Task Force on Reform of the Cook County Property Tax Appeals Process was formed in response to concerns raised during the passage of Public Act 88-642, which took effect September 9, 1994. This act, commonly known by its bill number as "Senate Bill 1336," resulted from a consensus among taxpayers, the organized bar, taxpayer watchdog organizations, taxing officials, and state legislators that the procedure for judicial review of real estate taxes in Cook County was imperiled by recent court decisions.

Over many years, the process for judicial review of real property taxes, and particularly tax assessments, has been the subject of considerable debate. Most of the debate has centered around the doctrine of "constructive fraud," which forms the current basis for review of assessments through tax objections in the circuit court. While tax objections are available throughout Illinois, they are little used outside Cook County because review of assessments through the state Property Tax Appeal Board is available and is preferred by most taxpayers. In Cook County, however, objections in court based on constructive fraud have been the taxpayer's only option.

Historically, the main criticism directed at the law of constructive fraud was its unpredictability. In the 19th century the Illinois courts, which had been initially reluctant to review assessments in the absence of actual fraud or dishonesty on the part of assessing officials, developed the concept of constructive fraud to extend relief to a slightly larger class of cases. Theoretically, although no actual dishonesty was alleged or proven, the courts declared that the taxpayer might recover upon proof of an extreme overassessment, a valuation "so grossly out of the way" that it could not reasonably be supposed to have been "honestly" made. See *Pacific Hotel Co. v. Lieb*, 83 Ill. 602, 609-10 (1876). However, no clear definition of a "grossly excessive" assessment ever emerged, and court decisions in this century produced dramatically disparate results. (See cases cited in Ganz, Alan S., "Review of Real Estate Assessments - Cook County (Chicago) versus Remainder of Illinois," 11 John Marshall Journal of Practice and Procedure, 17, 19 (1978.)

Recently, the constructive fraud debate has intensified because of the Illinois Supreme Court's interpretation of the doctrine in *In Re Application of County Treasurer, etc. v. Ford Motor Company*, 131 Ill.2d 541, 546 N.E.2d 506 (1989), a decision which has been strictly followed by subsequent courts. See *In Re Application of County Collector, etc. v. Atlas Corporation*, 261 Ill.App.3d 494, 633 N.E.2d 778 (1993), *lv. to app. den.* 155 Ill.2d 564 (1994); and *In Re Application of County Collector, etc. v. J.C. Penney Company, Inc.*, Circuit Court of Cook County, County Division, Misc. No. 86-34 (tax year 1985), Objection No. 721 (Memorandum Decision of June 15, 1994, Judge Michael J. Murphy; appeal pending.) These decisions refocused the issue in tax objection cases challenging assessments, from emphasizing discrepancies in value to emphasizing circumstances purporting to show misconduct or "dishonesty" by assessing officials. The result has been to divert the attention of courts and litigants away from the question of the accuracy and legality of the assessment and tax.

In the view of its legislative sponsors, Senate Bill 1336 was intended to overrule that portion of *Ford* dealing with the question of the assessor's exercise of honest judgment. However, it was not intended to work a comprehensive change in the shape and scope of the tax objection procedure. From its inception the bill was intended to be a stopgap, providing some relief until a panel representing all interested parties could be convened to draft a more comprehensive and lasting statutory reform. See *88th General Assembly House Transcription Debate, SB 1336, June 9, 1994*, at 1-3 (remarks of Representatives Currie, Kubik and Levin). Such a panel was convened as the Civic Federation Task Force.

The stopgap nature of SB 1336 was given new emphasis by a recent decision of the Cook County Circuit Court declaring the provision unconstitutional. *In Re Application of County Collector, etc. v. J.C. Penney Company, Inc.*, Misc. Nos. 86-34, 87-16, 88-15 (various objections for tax years 1985-1987) ("*J.C. Penney II*") (Memorandum Opinion of December 6, 1994, Judge Michael J. Murphy). This decision appears to rest primarily on the circuit court's view that SB 1336 abandoned the traditional rule of constructive fraud, yet failed to replace it with a clearly defined alternative rule.

The Task Force believes that the alternative legislation proposed in this report supplies the clearly defined rules which the court found lacking in SB 1336. Further, it is hoped that the prompt enactment of this alternative legislation will best address the underlying problems in the tax appeals process which led to SB 1336 and will obviate the lengthy and uncertain appellate review of SB 1336 which has now begun.

The Task Force based its work on five principles or goals. To be effective, the tax appeals process must: (1) be clearly defined; (2) afford a complete remedy to aggrieved taxpayers; (3) focus on the accuracy and legality of the challenged tax or assessment, not on collateral issues; (4) balance the public's interest in relief from improper taxes with its interest in stable property tax revenues for the support of local government and (5) not seek structural changes in the current functioning of the Cook County Assessor's office or the Cook County Board of Appeals.

The Task Force concluded that these goals would best be accomplished by reforming the applicable court proceedings (i.e., the judicial tax objection process), rather than the other alternative, namely, extending the Property Tax Appeal Board's jurisdiction to Cook County.

The proposed legislation streamlines tax objection procedure, clarifies the hearing process, and makes significant changes in the standard of review applied in challenges to assessment valuations. The key features of the proposal are:

General Provisions

- Standard of Review. In assessment appeals, the doctrine of constructive fraud is expressly abolished. Where the taxpayer meets the burden of proof and overcomes the presumption that the assessment is correct, the court is directed to grant relief from an assessment that is incorrect or illegal. The standard makes clear that in cases which allege overvaluation of the taxpayer's property, it will be unnecessary to prove that the assessment resulted from any misconduct or improper practices by assessing officials.

- Presumptions and Burden of Proof. As under existing law, the assessments, rates and taxes challenged in an objection are presumed correct. The taxpayer will have the

burden of proof by "clear and convincing evidence" -- the highest burden applicable in civil cases -- in order to rebut this presumption and obtain a tax refund.

- Scope of the Tax Objection Remedy. The reformed tax objection procedure will preserve the broad scope of the remedy under existing law. Thus, not only incorrect assessments, but also statutory misclassifications, constitutional violations, illegal levies or tax rates, and any other legal or factual claims not exclusively provided for in other parts of the Property Tax Code, will fall within the ambit of a tax objection complaint.

- Conduct of Hearings. As under existing law, tax objections will be tried to the court without a jury, and the court will hear the matter *de novo* rather than as an appeal from the action of the assessing officials. Appeals from final judgments may be taken to the appellate court as in other civil cases.

- Prerequisites to Objection. There is no change in the existing law that taxes must be paid in full as a pre-condition to filing a tax objection in court. Similarly, the requirement that the taxpayer exhaust its administrative remedy by way of appeal to the county board of appeals or review prior to proceeding in court will continue to apply; but this requirement is now specifically spelled out in the statute.

Procedural Reforms

- Payment Under Protest. The current requirement that a separate letter of protest be filed with the county collector at the time of payment is eliminated.

- Time of Payment and Filing. Both payment of the tax and filing of the tax objection complaint are keyed to the due date of the second (i.e. final) installment tax bill. To meet the condition for filing an objection, payment in full must occur no later than 60 days from the first penalty date for this installment, and the objection must be filed within 75 days from that penalty date.

- Separation from Collector's Application. Tax objections will be initiated by the taxpayer as a straightforward civil complaint, naming the county collector as defendant. This ends the anomalous current practice in which objections technically must be interposed

in response to the collector's application for judgment and order of sale against delinquent properties.

Burden of Proof and Standard of Review in Assessment Cases

In resolving the questions of the standard of review and burden of proof in assessment challenges, the Task Force was required to balance the need to provide effective taxpayer relief against the need to avoid opening up the process so widely that the courts could potentially be called on to reassess any or all property in the county. The consensus on the Task Force was to provide for a standard of review permitting recovery upon proof of an incorrect or illegal assessment, but to require the taxpayer to meet a burden of proof by "clear and convincing" evidence (the highest burden applied in civil litigation, but clearly not the criminal burden, "beyond a reasonable doubt") in order to establish that such an incorrect or illegal assessment has occurred. This choice of balance was preferred over the alternative of choosing the lower burden of proof and then attempting the seemingly impossible task of defining an enhanced standard of review, in which the "degree of incorrectness" would be in issue.

This balance is illustrated by a case in which the outcome turns solely on the competing opinions of equally compelling witnesses. It is expected that in such a case, the assessment would be sustained since such evidence would not constitute clear and convincing proof that the assessment is incorrect. On the other hand, where the evidence does clearly and convincingly demonstrate the existence of an incorrect assessment it is expected that the court would grant relief.

Scope of Proposed Reform; No Change in PTAB Procedure

In order to solve the problems arising in the aftermath of the *Ford* case, the proposed legislation is designed to take effect immediately and to apply to all pending cases.

Additionally, although the proposed draft is of statewide application, it must be emphasized that appeals to the state Property Tax Appeal Board (PTAB), which are currently the vehicle for most cases of assessment review outside Cook County, are not changed in any way by the draft legislation. The Task Force concluded that a proposal for

statewide application was preferable to attempting to limit the reform to Cook County, for several reasons.

The tax objection provisions of the Property Tax Code which would be amended have always applied throughout Illinois. While non-Cook County taxpayers have had and will continue to have, as an alternative, an administrative appeal remedy through the PTAB, the judicial tax objection process has always been available to these taxpayers. The Task Force sees no valid reason to deprive non-Cook County taxpayers of this alternative or to deprive them of the benefit of a reform in it. Indeed, either deprivation presents potential constitutional problems.

II. PROPOSED PROPERTY TAX CODE AMENDMENTS AND COMMENTARY

Following is a section-by-section analysis of the Task Force's proposed legislative changes to the Property Tax Code. Deletions from the existing text of the Code are indicated by overstrikes, and new language is highlighted by shading. Each quotation from the Code is followed by a brief commentary explaining the changes. The changes in several other sections are omitted from this analysis since the proposed amendments are primarily technical in nature. These are detailed at the end of this report, at which place the full text of all the proposed amendments is reproduced, without commentary, as an appendix.

§ 21-175 Proceedings By Court

Defenses to the entry of judgment against properties included in the delinquent list shall be entertained by the court only when: (a) the defense includes a writing specifying the particular grounds for the objection; and (b) except as otherwise provided in Section [illegible] 14-25, 23-5, and 23-25, the ~~writing is accompanied by an official original or duplicate receipt of the tax collector showing that the taxes to which objection is made have been fully paid under protest. All tax collectors shall furnish the necessary duplicate receipts without charge. The court shall hear and determine the matter as provided in Section 22-15~~ taxes to which objection is made

are paid under protest pursuant to Section 23-5 and a tax objection complaint is filed pursuant to Section 23-10.

* * *

This section and Section 23-10 of the Code currently embody the basic provisions for tax objections, requiring that the objections be filed only as responses ("defenses") within the annual county collector's application for judgment and order of sale of delinquent properties. Thus, although in modern times objections by definition relate to taxes which are fully paid, by historical accident the objection process is relegated to judicial proceedings whose primary purpose is collection of unpaid taxes. This produces an anomalous situation in which the objecting taxpayer, for practical purposes the plaintiff in the lawsuit and the party with the burden of proof, is technically a defendant against the "application" or complaint commenced by the county collector. See *In Re Application of County Collector (etc.) v. Randolph-Wells Building Partnership*, 78 Ill. App. 3d 769, 397 N.E.2d 232 (1st Dist.1979).

The Task Force found no reason for this procedural anomaly to continue. Therefore, changes in Section 23-10, cross-referenced in this section, would permit tax objections to be commenced as a straightforward complaint filed by the taxpayer. In theory the tax objection complaint process should be divorced for most purposes from the collector's application and judgment proceedings. However, although filed as a complaint separately from the collector's application, the new form of tax objection may nonetheless still be construed as an objection to the annual tax judgment to the extent any part of the Code may logically require this result (e.g. exemption claims). Therefore the terminology of tax "objection" has been retained in order to weave the new procedure into the existing fabric of the Code.

The Code currently provides for two other types of tax objection which are left essentially unchanged, although some minor modifications in statutory language have been proposed. First, Section 14-15 permits adjudication of certificates of error by an "assessor's objection" to the collector's application. A number of such certificates correct assessment valuation errors for each tax year in Cook County through such objections by the assessor, and the courts have recognized the efficacy and convenience of this procedure. See, e.g.,

Chicago Sheraton Corporation v. Zaban, 71 Ill. 2d 85, 373 N.E. 2d 1318 (1978). Under Section 14-25 and related sections, certificates of error are also employed to establish exemptions.

Second, this Section 21-175, together with Sections 23-5 and 23-25, provide a limited but important role for exemption objections filed by taxpayers: permitting the taxpayer to block a tax sale of its property while an application for exemption is being adjudicated on the merits by the Department of Revenue or the courts. Since the law does not require payment of the taxes while an exemption claim is decided, the amendments to this section will continue to permit exemption objections directly within the collector's application proceeding without this pre-condition. Alternatively, the exemption claimant may accomplish the same result (forestalling a tax sale) indirectly by filing a separate tax objection complaint under Sections 23-5 and 23-10.

§ 23-5 Payment Under Protest

If any person desires to object ~~under Section 21-175~~ to all or any part of a property tax for any year, for any reason other than that the property is exempt from taxation ~~and that a proceeding to determine the tax exempt status of such property is pending under Section 16-70 or Section 16-130 or is being conducted under Section 8-35 or Section 8-40~~, he or she shall pay all of the tax due ~~prior to the collector's filing of his or her annual application for judgment and order of sale of delinquent properties within sixty days from the last penalty date of the final installment of taxes for that year. Each payment shall be accompanied by a written statement substantially in the following form: Whenever taxes are paid in compliance with this Section and a tax objection complaint is filed in compliance with Section 23-10, one hundred percent of such taxes shall be deemed paid under protest without the filing of a separate letter of protest with the county collector.~~

The Requirement of Protest

Payment of taxes in full is retained as a requirement of the tax objection process. However, the necessity of presenting a separate letter of protest to the county collector at the time of payment has been eliminated. The new language makes clear that the combination of the full payment of the tax within the statutory qualifying time limit and the timely filing of a tax objection complaint constitutes the act of "protest" that distinguishes such payment from a "voluntary payment" and its consequences under existing case law.

Under current law (Section 23-10), the "protest" (effected by timely payment and the contemporaneous filing of a "letter of protest") is automatically waived if the taxpayer fails to perfect it by filing a timely tax objection in court. Each year several thousand taxpayers file protest letters on pre-printed forms along with their payments, unaware that these protests are nullified by their failure to pursue objections in court. To this segment of the public, the separate protest letter is at best meaningless and at worst deceptive. For county collectors, receiving separate protest letters is simply a useless burden upon already busy staff.

They do not even aid the collector in complying with the provisions of Section 20-35 of the Code, which establishes a "Protest Fund" in which the collector must deposit certain amounts of taxes withheld from distribution to taxing bodies under Section 23-20. Although the "total amount of taxes paid under protest" is one of three alternative measures for the amount of deposits to the Protest Fund, letters of protest cannot help the collector determine this total since, under Section 23-10, the letters are null and void if not followed up by the filing of objections in court. Therefore, the filing of the tax objection is currently, and will remain, the crucial act permitting the taxpayer to challenge and claim a refund of "protested" taxes, and also permitting the collector to ascertain the "total amount of taxes paid under protest." This is why the amendments provide that the qualifying tax payment plus the objection complaint itself will constitute the taxpayer's protest.

Time of Payment

Current law provides for the taxpayer to pay taxes subject to objection "prior to the collector's filing of his or her annual application for judgment and order of sale." This is a cause of confusion, and occasionally leads taxpayers to lose their right to object as a result of missing the last date for payment, because the time of the collector's application fluctuates from one year to another. The only ways for taxpayers or their counsel to become aware of the date for a given year are to discover it in the boiler plate legal notices published in local newspapers, or to call the collector's office repeatedly until the date has been set. The Task Force concluded that establishing a definite time period of sixty days, measured from the first penalty date (i.e., the due date) for the final installment tax bill for the year in question, would key the payment deadline to the event which is most likely to be known to the taxpayer. This period allows ample time for payment, yet also allows the cutoff date for tax objection complaints to fall prior to the annual tax judgment as under current law. As under current law, taxes must be paid in full (including any penalty which may have accrued if the bill is paid late) in order to acquire the right to file a tax objection complaint.

§ 23-10 Tax Objections and Copies

~~Once a protest has been filed with the with the county collector, in all counties,~~ The person paying ~~under protest the taxes due as provided in Section 23-5 shall appear in he next application for judgment and order of sale and may~~ file an tax objection complaint ~~pursuant to Section 23-5 within seventy (70) days from the first penalty date of the final installment of taxes for the year in question. Upon failure to do so, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of taxes. Provided, however, that no objection to an assessment for any year shall be heard by the court where an administrative remedy was available by complaint to the board of appeals or review under Section 16-55 or Section 16-115, unless such remedy was exhausted prior to the filing of the tax objection complaint.~~

When any tax ~~protest is filed with the county collector and an~~ objection complaint is filed with the court in a county with less than 3,000,000 inhabitants, the

~~following procedures shall be followed: The plaintiff person paying under protest~~ shall file 3 copies of the ~~objection~~ complaint with the clerk of the circuit court. Any ~~tax~~ objection complaint or amendment thereto shall contain on the first page a listing of the taxing districts against which the objection is directed. Within 10 days after the ~~objection~~ complaint is filed, the clerk of the circuit court shall deliver one copy to the State's Attorney and one copy to the county clerk, taking their receipts therefor. The county clerk shall, within 30 days from the last day for the filing of objections, notify the duly elected or appointed custodian of funds for each taxing district that may be affected by the objection, stating that an objection has been filed.

• • •

The proposed amendments to this section govern the time and prerequisites for filing tax objection complaints. Timing is again keyed to the first penalty date (i.e., the due date) of the final installment tax bill, just as in the case of the qualifying payment. However, the complaint filing may be made within seventy-five, rather than sixty, days of that due date, thus creating a fifteen-day grace period between the last qualifying payment date and the last day to file complaints.

The provision of the current law that, upon failure to appear in the collector's application and object, the taxpayer's protest "shall be waived, and judgment and order of sale entered for any unpaid balance of taxes" is deleted as inappropriate and superfluous. The elimination of the separate protest letter under the proposed amendments makes its explicit "waiver" unnecessary; and since the objection complaint itself constitutes the "protest," the right to protest or object is obviously waived when no complaint is filed. Moreover, the clause referring to "judgment and order of sale for any unpaid balance" is generally inoperative under current law (except for exemption objections), since taxes subject to an objection complaint must, by definition, be fully paid. In any event, this clause was considered to be redundant by the Task Force in view of the provision for entry of judgment which is contained in Section 21-175.

The requirement that a taxpayer exhaust available administrative remedies by appeal to the local board of appeals or review prior to filing an objection in court is a judicially

created rule under current law. In the judgment of the Task Force the rule performs an important function and should be retained. It allows the administrative review agencies to reduce the burden of objections on the courts by granting relief which may obviate further appeals. The amendatory language also makes explicit the current assumption that exhaustion is not required at the assessor level, but only at the board level. This language also alerts the non-professional to the exhaustion rule, of which he or she may otherwise be unaware at the critical time in the assessment cycle.

By codifying the rule in this section, it is intended to adopt rather than to alter existing judicial interpretations. E.g., *People ex rel. Nordlund v. Lans*, 31 Ill.2d 477, 202 N.E.2d 543 (1964) (taxpayer cannot object to excessive valuation in Collector's proceeding without first pursuing his administrative remedies at the Board); *People ex rel. Korzen v. Fulton Market Cold Storage Company*, 62 Ill.2d 443, 343 N.E.2d 450 (1976) (same, where taxpayer's issue is classification/assessment level); *In Re Application of the County Collector, etc. v. Heerey*, 173 Ill.App.3d 821, 527 N.E.2d 1045 (1st Dist. 1988) (the objecting taxpayer need not exhaust the administrative remedy personally, provided the subject property was brought before the board of appeals by another interested party); *In Re Application of Pike County Collector, etc. v. Carpenter*, 133 Ill.App.3d 142, 478 N.E.2d 626 (3d Dist. 1985) (filing written complaint with board of review suffices for exhaustion without appearance for oral hearing on complaint). The exhaustion requirement is limited to tax objections challenging assessments, since prior administrative review is unavailable in cases challenging taxing body budgets and levies (tax rate objections).

The requirement under current law that tax objections outside Cook County provide for notice to interested taxing bodies is unchanged in these amendments. The terminology used in this section is altered simply to conform to the new procedure for filing the tax objection as a complaint separate from the collector's application for judgment and order of sale, and to the new provisions abolishing the protest letter requirement.

§ 23-15 Tax Objection Procedure and Hearing

(a) A tax objection complaint under Section 23-10 shall be filed in the circuit court of the county in which the subject property is located. The complaint shall name the county collector as defendant and shall specify any objections which the plaintiff may have to the taxes in question. No appearance or answer by the county collector to the tax objection complaint, nor any further pleadings, need be filed. Amendments to the complaint may be made to the same extent which, by law, could be made in any personal action pending in the court.

(b) (1) The court, sitting without a jury, shall hear and determine all objections specified to the taxes, assessments or levies in question. This Section shall be construed to provide a complete remedy for any claims with respect to such taxes, assessments or levies, excepting only matters for which an exclusive remedy is provided elsewhere in this Code.

(2) The taxes, assessments and levies which are the subject of the objection shall be presumed correct and legal, but the presumption shall be rebuttable. The plaintiff shall have the burden of proving any contested matter of fact by clear and convincing evidence.

(3) Objections to assessments shall be heard *de novo* by the court. The court shall grant relief in such cases where the objector meets the burden of proof under this Section and shows an assessment to be incorrect or illegal. Where an objection is made claiming incorrect valuation, the court shall consider such objection without regard to the correctness of any practice, procedure, or method of valuation followed by the assessor or board of appeals or review in making or reviewing the assessment and without regard to the intent or motivation of any assessing official. The doctrine known as constructive fraud is hereby abolished.

(c) If the court shall order a refund of any part of the taxes paid, it shall also order the payment of interest as provided in Section 23-20. Appeals may be taken from final judgments as in other civil cases.

This section is completely rewritten, with all present language deleted. The new language contains provisions for the form of tax objection complaints, the conduct of

hearings, presumptions and the burden of proof, the standard of review to apply in cases challenging assessments, and appellate review of final judgments.

Subsection (a)

Form of Complaint and Initial Procedure; Venue

Because tax objections are to be filed as complaints separate from the collector's application, their form and certain basic procedural matters are set forth in some detail. As discussed below, it is intended that certain features of the current procedure which are working well, such as avoiding the need for extensive pleadings in routine cases, will be continued under the new procedure.

Venue is confined to the county where the subject property is located, to the same effect as the existing law. Similarly, the county collector remains the party opposing the taxpayer's request for a tax refund. As under current law, no particular form of complaint is required; the plaintiff taxpayer must simply and clearly "specify" his or her objections to the taxes in question. The collector is not required to file an appearance or answer to the tax objection complaint, nor is a reply or any further pleading required. Summons is unnecessary and the state's attorney, as counsel for the collector, will receive copies of the objection complaints directly from the clerk of the circuit court as is the case under current law. The provision for amendments is identical to the existing law under language contained in Section 21-180, which applies to the prior form of objections within the collector's application. See *People ex rel. Harris v. Chicago and North Western Railway Co.*, 8 Ill.2d 246, 133 N.E.2d 22 (1956).

While this procedure is simple in order to accommodate efficiently the many routine objections which are filed each year, it is designed to be flexible enough to accommodate more complex matters as well. Thus, while pleadings subsequent to the objection complaint will not normally be filed, it is expected that the courts and litigants will employ the common devices of civil practice, such as motions to dismiss or for summary judgment, as may be appropriate to the issues in particular cases. This continues the practice followed under existing law. See *People ex rel. Southfield Apartment Co. v. Jarecki*, 408 Ill. 266, 96 N.E.2d 569 (1951) (procedure under civil practice law applies to matters under Revenue Act

(now the Property Tax Code) except where the Act specifically provides contrary procedural rules); 735 ILCS 5/1-108(b) (1994) (Article II of the Code of Civil Procedure governs except where separate statutes provide their own contrary procedures).

Control of Discovery

In proposing a revised standard of review, another important goal of the Task Force, in addition to the goals discussed below in subsection (b), is to provide a foundation for judicial control of the time-consuming, unproductive discovery contests which have plagued tax objection litigation under the current constructive fraud standard.

As in any civil litigation, the scope of discovery in tax objection matters must be determined according to the nature of the legal and factual issues which are actually in dispute. See Illinois Supreme Court Rule 201(b)(1) (relevant discovery "relates to the claim or defense" of a party). Under the constructive fraud doctrine as interpreted in the *Ford* case, even in the most typical overvaluation claims, taxpayers have of necessity been forced to focus on alleged errors in the assessment process; and a flurry of discovery has inevitably followed. Under the draft standard of review in subsection (b)(3), constructive fraud is abolished and the statutory language makes it clear that such overvaluation claims (which constitute the vast majority, although not all, of the court's tax objection caseload) will focus on the accuracy of the assessed value instead of on the assessment process which established that value. In the typical overvaluation case under the new standard, where the "practice, procedure or method of valuation" and the "intent or motivation of . . . assessing official[s]" are expressly made irrelevant to recovery, the need for discovery will be limited by curtailing inquiry into these irrelevant factors.

The judicial tools for control of discovery already exist under Illinois Supreme Court Rule 201(c)(2), providing for court supervision of "all or any part of any discovery procedure"; Supreme Court Rule 218, providing the court with express authority to conduct a pre-trial conference, and to enter an order following the conference which "specifies the issues for trial," simplifies the issues, determines admissions or stipulations, limits the number of expert witnesses, and so forth; and, Supreme Court Rule 220(b), which similarly provides express authority to structure discovery as to experts. The court may use these

rules, either *sua sponte* or on motion of a party, to set guidelines for appropriate discovery in tax objection cases. Such guidelines will be set at an early point in the life of the case, based on the actual contested issues (as opposed to general allegations in the complaint, which are often far broader than the issues that are contested), so that discovery may proceed promptly and efficiently.

Subsection (b)

Scope and Conduct of Hearings;
Presumptions and Burden of Proof; Standard of Review

Subsection (b)(1) codifies several features of existing tax objection law for purposes of the proposed procedure, including the requirement that cases be tried to the bench rather than a jury. As under current law, the court will hear tax objections *de novo* rather than as appeals from the decision of the board of appeals or review. Such direct appeal (under the Administrative Review Law) is barred under *White v. Board of Appeals*, 45 Ill.2d 378, 259 N.E.2d 51 (1970).

This subsection also emphasizes that tax objections are intended to provide a complete remedy, excepting only matters for which an exclusive remedy is provided elsewhere (as in Section 8-40 governing judicial review under the Administrative Review Law of certain final decisions of the Department of Revenue). The broad scope of the tax objection remedy is an essential feature of the reform scheme. In its review of the Cook County tax objection process some fifteen years ago, the U.S. Supreme Court held that the taxpayer must be afforded "a full hearing and judicial determination at which she may raise any and all constitutional objections to the tax" in order for the process to pass muster under federal law. *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 514, 516, n. 19 (1981). Of course, as under existing law, the reformed tax objection process will not permit counterclaims by the collector or a judgment by the court increasing the taxpayer's assessment or tax.

Tax objection procedure encompasses, in addition to valuation objections, the so-called rate objections (challenging the legality of certain portions of the tax levies that

ultimately determine the tax rate), as well as other legal challenges. No change is intended that would affect the standards applied in rate litigation or other legal challenges.

Subsection (b)(2) provides for a presumption of the correctness of challenged taxes, assessments and levies, which the taxpayer may rebut with proof (as to any contested factual matter) by clear and convincing evidence. The application of these provisions to assessment appeals, under the standard of review of contested assessments set forth in subsection (b)(3), required the Task Force to strike a balance between the public's interest in relief from improper taxes and its interest in stable property tax revenues. (It should be emphasized that the balance of these public interests simply informed the choice of the appropriate legal standard to be written in the Property Tax Code; such general policy concerns are *not* intended to be weighed in the balance by courts when the standard is applied to individual cases.) Much of the Task Force's work was devoted to this single issue.

The use of "constructive fraud" in earlier tax litigation was an attempt to provide for such a balance, on the one hand permitting at least some relief in serious cases (without having to prove actual fraud), and, on the other hand, avoiding the situation where every taxpayer is able to ask the court to revalue its property. With the apparent closing off of the first of these desiderata in the *Ford* case and its sequels, the Task Force proposal now attempts to make the former trade-off explicit, and more fairly balanced than it was under the hodge-podge of rulings which resulted from the constructive fraud doctrine. This is sought to be accomplished by providing for an appropriate burden of proof, separately from the question of the appropriate standard of review.

As to the burden of proof, the choice came down to "a preponderance of the evidence" (the ordinary plaintiff's burden in civil litigation), or "clear and convincing evidence" (the highest burden in civil litigation, but clearly not the criminal burden, "beyond a reasonable doubt"). As to the standard of review, for valuation issues, the choice was whether to make it "incorrect," or whether it should be some form of words attempting to indicate a requirement to show a higher degree of inaccuracy (such as "grossly excessive" or "substantially erroneous").

The consensus of the Task Force was to require the higher burden of proof coupled with the less restrictive standard of review. Thus, for a taxpayer to overcome the

presumption of validity of the assessment, he or she would have to prove an incorrect assessment by clear and convincing evidence. The proposed new language also expressly eliminates the doctrine of "constructive fraud" from the court's consideration. (Of course, this is not intended to affect the general law of fraud, actual or constructive, outside of the context of real property tax matters.) Further, the new language negatives the judicial requirement, enunciated in the *Ford* case, that in order to prevail the taxpayer must prove that the assessing officials or their staff made some specific and demonstrable error in arriving at the assessment.

The Task Force consensus reflects its judgment that the attempt to define, let alone to prove, an elevated degree of assessment inaccuracy is inherently speculative and cannot be reconciled with the need for a clear standard of review. Moreover, the public interest in avoiding a flood of questionable judicial reassessments is not appropriately addressed by denying recovery for some inaccuracies, and allowing recovery for others whose parameters can only be vaguely defined. Rather, it is appropriately addressed by an elevated level of proof required to show that an incorrect assessment has occurred.

The Task Force therefore concluded that the public interest is best served by an initial presumption of correctness of the challenged assessment, and then a burden on the taxpayer to prove by clear and convincing evidence that the assessment is incorrect. For example, should a trial outcome turn solely on valuation evidence, if the competing valuation conclusions are determined by the court to be equally compelling, it is expected that the assessment would be sustained since the evidence would not constitute clear and convincing proof that the assessed value is incorrect. On the other hand, relief would be granted where there is a clear and convincing showing of incorrectness.

It must be remembered that actual damage is an essential element of the taxpayer's cause of action under any standard of review. Thus, although a taxpayer might prove that a "mistake" in his assessed valuation has occurred in the abstract sense, if the "mistaken" valuation and resulting tax is not shown to exceed the proper valuation and its resulting tax, then the assessment is not incorrect within the meaning of the law, and no recovery may be had. E.g. *In Re Application of Rosewell (etc.) v. Bulk Terminals Company*, 73 Ill.App.3d 225, 238 (1st Dist. 1979) (leasehold assessment by a legally incorrect computation is not subject

to challenge where an assessment by the legally correct computation would be higher). The proposed legislation is not intended to depart from this "no harm, no foul" rule. To the contrary, the revised standard strengthens the rule by explicitly providing for valuation objections "without regard to the correctness of any practice, procedure or method of valuation" or the "intent or motivation of . . . assessing official[s]." (Subsection (b)(3).)

Subsection (c)

Final Judgments and Appellate Review

The provisions of this subsection, requiring interest to be paid upon any taxes which the court may order the collector to refund to the plaintiff taxpayer, and providing for appeals from final judgments as in other civil actions, are essentially identical to the existing law.

§ 23-25 Tax Exempt Property; Restriction on Tax Objections

No taxpayer may ~~pay under protest as provided in Section 23-5 or~~ file an objection as provided in Section 21-175 ~~or Section 23-10~~ on the grounds that the property is exempt from taxation, or otherwise seek a judicial determination as to tax exempt status, except as provided in Section 8-40 and except as otherwise provided in this Section and Section 14-25 and Section 21-175. Nothing in this Section shall affect the right of a governmental agency to seek a judicial determination as to the exempt status of property for those years during which eminent domain proceedings were pending before a court, once a certificate of exemption for the property is obtained by the governmental agency under Section 8-35 or Section 8-40. This Section shall not apply to exemptions granted under Sections 15-165 through 15-180.

~~This limitation in this Section shall not apply to court proceedings relating to an exemption for a prior assessment year. However, an order entered in any such proceeding shall not preclude the necessity of applying for an exemption for 1980 or later assessment years in the manner provided by Sections 16-70 or 16-150.~~

The proposed changes to this section are technical in nature. Minor variations in language and statutory cross-references are made to accommodate the abolition of the separate protest letter, and to recognize that either the traditional objection or the new objection complaint procedure may be used to withdraw a property from the tax sale pending the determination of an exemption claim. (See commentary to Section 21-175 above.) The second paragraph restores language formerly included in the statute, which was unintentionally deleted during the recent Property Tax Code recodification project despite the legislature's purpose to avoid any substantive changes in the meaning or application of the law.

§ 23-30 Conference on Tax Objection

~~Upon~~ Following the filing of an objection under Section ~~21-175~~ 23-10, the court ~~must, unless the matter has been sooner disposed of, within 90 days after the filing~~ may hold a conference ~~with~~ between the objector and the State's Attorney. ~~If no agreement is reached at the conference, the court must, upon the demand of either the taxpayer or the State's attorney, set the matter for hearing within 90 days of the demand.~~ Compromise agreements on tax objections reached by conference shall be filed with the court, and the ~~State's Attorney~~ parties shall prepare an order covering the settlement and ~~file~~ present the order ~~with the clerk of~~ to the court ~~within 15 days following the conference~~ for entry.

This section of the Code recognizes the authority of the courts to conduct pre-trial conferences with a view to resolving tax objections by compromise, and provides for orders to effectuate any resulting settlements. Caselaw has made it clear that there is inherent as well as statutory authority for settlement of tax matters. See *In Re Application of County Collector (etc.), J&J Partnership v. Laborers' International Union Local No. 703*, 155 Ill.2d 520, 617 N.E.2d 1192 (1993); *People ex rel. Thompson v. Anderson*, 119 Ill.App.3d 932, 457 N.E.2d 489 (3d Dist. 1983). Compromise is to be encouraged in any litigation and, under the proposed legislation, it is anticipated that settlements will still be the rule rather than the exception.

The time limits in the current provision, although framed in ostensibly peremptory terms, have been construed as directory rather than mandatory by the Illinois Attorney General. 1975 Opin. Atty. Gen. No. S-1011. Moreover, the time limits have not been observed in any court proceeding in Cook County within the memory of any lawyer now practicing, as near as the Task Force can determine. The proposal therefore deletes these limits as unrealistic. Of course, the courts retain their inherent authority to schedule pre-trial conferences, to encourage settlements, and to establish rules and procedures to accomplish these ends. (For an example of the exercise of this authority, see Rules of the Circuit Court of Cook County, Rule 10.6, "Small Claims Proceedings for Real Estate Tax Objections.")

Provision for Effective Date and Application to Pending Cases (Uncodified)

§ ___. This amendatory Act of 1995 shall take effect immediately upon becoming law and shall apply to all tax objection matters still pending for any tax year, provided that the procedures and time limitations for payment of taxes and filing tax objection complaints under amended Property Tax Code Sections 23-5 and 23-10 shall apply only to tax year 1995 and subsequent tax years.

Given the subject matter of the proposed amendments to the Property Tax Code, it is likely that courts would construe them to have retroactive effect upon pending tax objections filed under the current procedure in any event. For the authority to make the provisions retroactive, see *Schenz v. Castle*, 84 Ill.2d 196, 417 N.E.2d 1336, 1340 (1981); *People ex rel. Eitel v. Lindheimer*, 371 Ill.367, 371 (1939); *Isenstein v. Rosewell*, 106 Ill.2d 301, 310 (1985); (no vested right in continuation of tax statute, therefore amendments are retroactive). However, in order to address the concerns which led to the proposed reform, the Task Force believes that it is essential to avoid any unclarity as to the effectiveness and application of the amendments. Accordingly, this section, which need not be codified, is proposed to make unmistakable the legislative intent that these amendments take effect immediately and that they govern the disposition of all tax objection matters not previously

disposed of by final judgment (i.e., matters which remain pending either at the circuit court level or on appeal).

The proposed amendments have been drafted with a view to immediate enactment. Accordingly, the filing requirements are proposed to be first applied to tax year 1994 (as to which payment will be due and objections will be filed the latter part of calendar year 1995) and then to later tax years. Payments under protest and tax objection filings for tax year 1993 and prior years have been completed under the current procedure. Of course, as stated above, the hearing of objections for all tax years prior to 1994 would be governed in all other respects by the new amendments.

APPENDIX

CIVIC FEDERATION TASK FORCE ON REFORM OF THE COOK COUNTY TAX APPEALS PROCESS

PROPOSED AMENDMENTS TO PROPERTY TAX CODE

Part I: Principal Provisions

§ 21-175. Proceedings by court. Defenses to the entry of judgment against properties included in the delinquent list shall be entertained by the court only when: (a) the defense includes a writing specifying the particular grounds for the objection; and (b) except as otherwise provided in Section ~~14-15~~ 14-25, 23-5, and 23-25, the ~~writing is accompanied by an official original or duplicate receipt of the tax collector showing that the taxes to which objection is made have been fully paid under protest. All tax collectors shall furnish the necessary duplicate receipts without charge. The court shall hear and determine the matter as provided in Section 23-15~~ taxes to which objection is made are paid under protest pursuant to Section 23-5 and a tax objection complaint is filed pursuant to Section 23-10.

If any party objecting is entitled to a refund of all or any part of a tax paid ~~under protest~~, the court shall enter judgment accordingly, and also shall enter judgment for the taxes, special assessments, interest and penalties as appear to be due. The judgment shall be considered as a several judgment against each property or part thereof, for each kind of tax or special assessment included therein. The court shall direct the clerk to prepare and enter an order for the sale of the property against which judgment is entered. However, if a defense is made that the property, or any part thereof, is exempt from taxation and it is demonstrated that a proceeding to determine the exempt status of the property is pending under Section 16-70 or 16-130 or is being conducted under Section 8-35 or 8-40, the court shall not enter a judgment relating to that property until the proceedings being conducted

under Section 8-35 or Section 8-40 have been terminated.

§ 23-5. Payment under protest. If any person desires to object ~~under Section 21-175~~ to all or any part of a property tax for any year, for any reason other than that the property is exempt from taxation ~~and that a proceeding to determine the tax exempt status of such property is pending under Section 16-70 or Section 16-130 or is being conducted under Section 8-35 or Section 8-40~~, he or she shall pay all of the tax due ~~prior to the collector's filing of his or her annual application for judgment and order of sale of delinquent properties~~ within sixty days from the first penalty date of the final installment of taxes for that year. ~~Each payment shall be accompanied by a written statement substantially in the following form:~~ Whenever taxes are paid in compliance with this Section and a tax objection complaint is filed in compliance with Section 23-10 one hundred percent of such taxes shall be deemed paid under protest without the filing of a separate letter of protest with the county collector.

[*Delete all other text in existing section including statutory protest form.*]

§ 23-10. Tax objections and copies. ~~Once a protest has been filed with the with the county collector, in all counties t~~ The person paying ~~under protest the taxes due as provided in Section 23-5 shall appear in he next application for judgment and order of sale and~~ may file an tax objection ~~complaint pursuant to Section 23-15 within seventy-five days from the first penalty date of the final installment of taxes for the year in question. Upon failure to do so, the protest shall be waived, and judgment and order of sale entered for any unpaid~~

balance of taxes. Provided, however, that no objection to an assessment for any year shall be allowed by the court where an administrative remedy was available by complaint to the board of appeals or the review under Section 16-55 or Section 16-115, unless such remedy was exhausted prior to the filing of the tax objection complaint.

When any tax protest is filed with the county collector and an objection complaint is filed with the court in a county with less than 3,000,000 inhabitants, the following procedures shall be followed: The plaintiff person paying under protest shall file 3 copies of the objection complaint with the clerk of the circuit court. Any tax objection complaint or amendment thereto shall contain on the first page a listing of the taxing districts against which the objection is directed. Within 10 days after the objection complaint is filed, the clerk of the circuit court shall deliver one copy to the State's Attorney and one copy to the county clerk, taking their receipts therefor. The county clerk shall, within 30 days from the last day for the filing of objections, notify the duly elected or appointed custodian of funds for each taxing district that may be affected by the objection, stating that an objection has been filed. * * *

[*Continue with existing text regarding notice to affected taxing districts.*]

§ 23-15. Tax objection procedure and hearing.

[*Delete all language presently in this section and replace with the following.*]

(a) A tax objection complaint under Section 23-10 shall be filed in the circuit court of the county in which the subject property is located. The complaint shall name the county collector as defendant and shall specify any objections which the plaintiff may have to the

taxes in question. No appearance or answer by the county collector to the tax objection complaint, nor any further pleadings, need be filed. Amendments to the complaint may be made to the same extent which, by law, could be made in any personal action pending in the court.

(b) (1) The court, sitting without a jury, shall hear and determine all objections specified in the taxes, assessments or levies in question. This Section shall be construed to provide a complete remedy for any claims with respect to such taxes, assessments or levies, excepting only matters for which an exclusive remedy is provided elsewhere in this Code.

(2) The taxes, assessments and levies which are the subject of the objection shall be presumed correct and legal, but the presumption shall be rebuttable. The plaintiff shall have the burden of proving any contested matter of fact by clear and convincing evidence.

(3) Objections to assessments shall be heard *de novo* by the court. The court shall grant relief in such cases where the objector meets the burden of proof under this Section and shows an assessment to be incorrect or illegal. Where an objection is made claiming incorrect valuation, the court shall consider such objection without regard to the correctness of any practice, procedure, or method of valuation followed by the assessor or board of appeals or review in making or reviewing the assessment, and without regard to the intent or motivation of any assessing official. The doctrine known as constructive fraud is hereby abolished.

(c) If the court shall order a refund of any part of the taxes paid, it shall also order the payment of interest as provided in Section 23-20. Appeals may be taken from final judgments as in other civil cases.

§ 23-25. Tax exempt property; restriction on tax objections. No taxpayer may ~~pay under protest as provided in Section 23-5 or~~ file an objection as provided in Section 21-175 or Section 23-10 on the grounds that the property is exempt from taxation, or otherwise seek a judicial determination as to tax exempt status, except as provided in Section 8-40 and except as otherwise provided in this Section and Section 14-25 and Section 21-175. Nothing in this Section shall affect the right of a governmental agency to seek a judicial determination as to the exempt status of property for those years during which eminent domain proceedings were pending before a court, once a certificate of exemption for the property is obtained by the governmental agency under Section 8-35 or Section 8-40. This Section shall not apply to exemptions granted under Sections 15-165 through 15-180.

~~The limitation in this Section shall not apply to court proceedings relating to an exemption for 1985 and preceding assessment years. However, an order entered in any such proceeding shall not preclude the necessity of applying for an exemption for 1986 or later assessment years in the manner provided by Sections 16-70 or 16-130.~~

§ 23-30. Conference on tax objection. ~~Upon~~ Following the filing of an objection under Section ~~21-175~~ 23-10, the court ~~must, unless the matter has been sooner disposed of, within 90 days after the filing~~ may hold a conference ~~with~~ between the objector and the State's Attorney. ~~If no agreement is reached at the conference, the court must, upon the demand of either the taxpayer or the State's attorney, set the matter for hearing within 90 days of the demand.~~ Compromise agreements on tax objections reached by conference shall be filed with the court, and the ~~State's Attorney~~ parties shall prepare an order covering the

settlement and ~~file~~ submit the order ~~with the clerk of~~ to the court ~~within 15 days following the conference~~ for entry.

[Provision for Effective Date and Application to Pending Cases (Uncodified)]

~~§ ____. This amendatory Act of 1995 shall take effect immediately upon becoming law and shall apply to all tax objection matters still pending for any tax year, provided that the procedures and time limitations for payment of taxes and filing tax objection complaints under amended Property Tax Code Sections 23-5 and 23-10 shall apply only to tax year 1994 and subsequent tax years.~~

Part II: Additional Provisions

§ 14-15. Certificate of error; counties of 3,000,000 or more.

(a) In counties with 3,000,000 or more inhabitants, if, at any time before judgment is rendered in any proceeding to collect or to enjoin the collection of taxes based upon any assessment of any property belonging to any taxpayer, the county assessor discovers an error or mistake in the assessment, the assessor shall execute a certificate setting forth the nature and cause of the error. The Certificate when endorsed by the county assessor, or when endorsed by the county assessor and board of appeals for the tax year for which the certificate is issued, may be received in evidence in any court of competent jurisdiction. When so introduced in evidence such certificate shall become a part of the court records, and shall not be removed from the files except upon the order of the court.

A certificate executed under this Section may be issued to the person erroneously assessed or ~~a list of the tax parcels for which certificates have been issued~~ may be

presented by the assessor to the court as an objection in the application for judgment and order of sale for the year in relation to which the certificate is made. The state's attorney of the county in which the property is situated shall mail a copy of any final judgment entered by the court regarding the certificate to the taxpayer of record for the year in question.

Any unpaid taxes after the entry of the final judgment by the court on certificates issued under this Section may be included in a special tax sale, provided that an advertisement is published and a notice is mailed to the person in whose name the taxes were last assessed, in a form and manner substantially similar to the advertisement and notice required under Sections 21-110 and 21-135. The advertisement and sale shall be subject to all provisions of law regulating the annual advertisement and sale of delinquent property, to the extent that those provisions may be made applicable.

A certificate of error executed under this Section allowing homestead exemptions under Sections 15-170 and 15-175 of this Code no previously allowed shall be given effect by the county treasurer, who shall mark the tax books and, upon receipt of the following certificate from the county assessor or supervisor of assessments, shall issue refunds to the taxpayer accordingly:

"CERTIFICATION

I . . . . county assessor or supervisor of assessments, hereby certify that the Certificates of Error set out on the attached list have been duly issued to allow homestead exemptions pursuant to Sections 15-170 and 15-175 of the Property Tax Code which should have been previously allowed; and that a certified copy of the attached list and this certification have been served upon the county State's Attorney."

The county treasurer has the power to mark the tax books to reflect the issuance of homestead certificates of error from and including the due date of the tax bill for the year for which the homestead exemption should have been allowed until ~~2~~ three years after the first day of January of the year after the year for which the homestead exemption should have been allowed. The county treasurer has the power to issue refunds to the taxpayer as set forth above from and including the first day of January of the year after the year for which the homestead exemption should have been allowed until all refunds authorized by this Section have been completed.

The county treasurer has no power to issue refunds to the taxpayer as set forth above unless the Certification set out in this Section has been served upon the county State's Attorney.

(b) Nothing in subsection (a) of this Section shall be construed to prohibit the execution, endorsement, issuance and adjudication of a certificate of error where the annual judgment and order of sale for the tax year in question is reopened for further proceedings upon consent of the county collector and county assessor, represented by the State's Attorney, and where a new annual judgment is subsequently entered pursuant to the certificate. This subsection (b) shall be construed as declarative of the existing law and not as a new enactment.

(c) No certificate of error, other than a certificate to establish an exemption pursuant to Section 9-275, shall be executed for any tax year more than three years after the date on which the annual judgment and order of sale for that tax year was first entered.

§21-110. Published notice of annual application for judgment and sale; delinquent taxes. At any time after all taxes have become delinquent ~~or are paid under protest~~ in any year, the Collector shall publish an advertisement, giving notice of the intended application for judgment and sale of the delinquent properties ~~and for judgment fixing the correct amount of any tax paid under protest.~~ Except as provided below, the advertisement shall be in a newspaper published in the township or road district in which the properties are located. If there is no newspaper published in the township or road district, then the notice shall be published in some newspaper in the same county as the township or road district, to be selected by the county collector. When the property is in a city with more than 1,000,000 inhabitants, the advertisement may be in any newspaper published in the same county. When the property is in an incorporated town which has superseded a civil township, the advertisement shall be in a newspaper published in the incorporated town or if there is not such newspaper, then in a newspaper published in the county.

The provisions of this Section relating to the time when the Collector shall advertise intended application for judgment for sale are subject to modification by the governing authority of a county in accordance with the provision of subsection (c) of Section 21-40

§ 21-115. Times of publication of notice. The advertisement shall be published once at least 10 days before the day on which judgment is to be applied for, and shall contain a list of the delinquent properties upon which the taxes of any part thereof remain due and unpaid, the names of owners, if known, the total amount due, and the year or years for which they are due. In counties of less than 3,000,000 inhabitants, advertisement shall

include notice of the registration requirement for persons biding at the sale. ~~Properties upon which taxes have been paid in full under protest shall not be included in the list.~~ The collector shall give notice that he or she will apply to the circuit court on a specified day for judgment against the properties for the taxes, and costs and for an order to sell the properties for the satisfaction of the amount due~~, and for a judgment fixing the correct amount of any tax paid under protest~~.

The Collector shall also give notice that on the . . . . Monday next succeeding the date of application all the properties for the sale of which an order is made, will be exposed to public sale at a location within the county designated by the county collector, for the amount of taxes, and cost due. The advertisement published according to the provisions of this section shall be deemed to be sufficient notice of the intended application for judgment and of the sale of properties under the order of the court~~, or for judgment fixing the correct amount of any tax paid under protest~~. Notwithstanding the provision of this Section and Section 21-110, in the 10 years following the completion of a general reassessment of property in any county with 3,000,000 or more inhabitants, made under any order of the Department, the publication shall be made not sooner than 10 days nor more than 90 days after the date when all unpaid taxes or property have become delinquent.

§ 21-150. Time of applying for judgment. Except as otherwise provided in this Section or by ordinance or resolution enacted under subsection (c) of Section 21-40, all applications for judgment and order of sale for taxes and special assessments on delinquent properties ~~and for judgment fixing the correct amount of any tax paid under protest~~ shall be made

during the month of October. In those counties which have adopted an ordinance under Section 21-40, the application for judgment and order of sale for delinquent taxes ~~or for judgment fixing the correct amount of any tax paid under protest~~ shall be made in December. In the 10 years next following the completion of a general reassessment of property in any county with 3,000,000 or more inhabitants, made under an order of the Department, applications for judgment and order of sale ~~and for judgment fixing the correct amount of any tax paid under protest~~ shall be made as soon as may be and on the day specified in the advertisement required by Section 21-110 and 21-115. If for any cause the court is not held on the day specified, the cause shall stand continued, and it shall be unnecessary to re-advertise the list or notice.

Within 30 days after the day specified for the application for judgment the court shall hear and determine the matter. If judgment is rendered, the sale shall begin on the Monday specified in the notice as provided in Section 21-115. If the collector is prevented from advertising and obtaining judgment during the month of October, the collector may obtain judgment at any time thereafter; but if the failure arises by the county collector's not complying with any of the requirements of this Code, he or she shall be held on his or her official bond for the full amount of all taxes and special assessments charged against him or her. Any failure on the part of the county collector shall not be allowed as a valid objection to the collection of any tax or assessment, or to entry of a judgment against any delinquent properties included in the application of the county collector~~, or to the entry of a judgment fixing the correct amount of any tax paid under protests~~.

§ 21-160. Annual tax judgment, sale, redemption, and forfeiture record. The collector shall transcribe into a record prepared for that purpose, and known as the annual tax judgment, sale, redemption and forfeiture record, the list of delinquent properties ~~and of properties upon which taxes have been paid under protest~~. The record shall be made out in numerical order, and contain all the information necessary to be recorded, at least 5 days before the day on which application for judgment is to be made.

The record shall set forth the name of the owner, if known; the description of the property; the year or years for which the tax; or in counties with 3,000,000 or more inhabitants, the tax or special assessments, are due ~~or for which the taxes have been paid under protest; the amount of taxes paid under protest~~; the valuation on which the tax is extended; the amount of the consolidated and other taxes or in counties with 3,000,000 or more inhabitants, the consolidated and other taxes and special assessments; the costs; and the total amount of the charges against the property.

The record shall also be ruled in columns, to show in counties with 3,000,000 or more inhabitants the withdrawal of any special assessments from collection and in all counties to show the amount paid before entry of judgment; the amount of judgment and a column for remarks; the amount paid before sale and after entry of judgment; the amount of the sale; the amount of interest or penalty; amount of cost; amount forfeited to the State; date of sale; acres or part sold; name of purchaser; amount of sale and penalty; taxes of succeeding years; interest and when paid, interest and cost; total amount of redemption; date of redemption; when deed executed; by whom redeemed; an a column for remarks or receipt of redemption money.

The record shall be kept in the office of the county clerk.

§ 21-170. Report of payments and corrections. On the day on which application for judgment on delinquent property is applied for, the collector, assisted by the county clerk, shall post all payments compare and correct the list, and shall make and subscribe an affidavit, which shall be substantially in the following form:

State of Illinois)
) ss.
County of _____)

I . . ., collector of the county of . . ., do solemnly swear (or affirm, as the case may be), that the foregoing is a true and correct list of the delinquent property within the county of . . ., upon which I have been unable to collect the taxes (and special assessment, interest, and printer's fees, if any), charged thereon, as required by law, for the year or years therein set forth; ~~and of all of the properties upon which the taxes have been paid under protest;~~ and that the taxes now remain due and unpaid, to the best of my knowledge and belief.

Dated . . . . . .

The affidavit shall be entered at the end of the list, and signed by the collector.

§ 23-35. Tax objection based on budget or appropriation ordinance. Notwithstanding the provisions of Section ~~21-175~~ 2510, no objection to any property tax levied by any municipality shall be sustained by any court because of the forms of any budget or

appropriation ordinance, or the degree of itemization or classification of items therein, or the reasonableness of any amount budgeted or appropriated thereby, if: * * *

[*Continue with existing text of section.*]

Appendix D: Revised Interest Calculation

If Plaintiff calculates the principal correctly, the interest for 2004 taxes to be paid on August 1, 2019, under Section 23-20 would be calculated as follows:

2004 Taxes	**A** Taxes paid	**B** Period prior to Dec. 31, 2005	**C** Rate	**D** A x B x C	**E** Dec. 31, 2005, through August 1, 2019	**F** Rate	**G** A x E x F	**H** D +G
June 2005 Payment	$283,277.39	7/12 years	5 %	$16,524.51	13 7/12 years	1.9%	$73,109.17	$89,633.68
September 2005 Payment	$283,277.39	1/3 years	5%	$9,442.58	13 7/12 years	1.9%	$73,109.17	$82,551.75
Total								**$172,185.43**

With this adjustment, if: (a) Plaintiff otherwise establishes its claims; and (b) Section 23-20 applies, the total interest from 2004 to 2011 would be calculated as follows:

	A	**B**	**C**	**D**	**Yearly Totals**
Year	**Payment**	**Period**	**Interest Rate**	**A x B x C**	
2005	**$629,633.79**				**$275,307.38**
June 2006	$314,816.90	13 1/6 years	3.3%	$136,787.94	
September 2006	$314,816.90	13 1/3 years	3.3%	$138,519.44	
2006	**$682,545.88**				**$284,280.36**
June 2007	$341,272.94	12 1/6 years	3.4%	$141,173.24	
September 2007	$341,272.94	12 1/3 years	3.4%	$143,107.12	
2007	**$931,609.42**				**$262,015.15**
June 2008	$465,804.71	11 1/6 years	2.5%	$130,037.15	
September 2008	$465,804.71	11 1/3 years	2.5%	$131,978.00	
2008	**$1,083,933.87**				**$455,523.21**
June 2009	$541,966.94	10 1/6 years	4.1%	$225,909.89	
September 2009	$541,966.94	10 1/3 years	4.1%	$229,613.33	
2009	**$1,121,846.81**				**$10,377.09**
June 2010	$560,923.41	9 1/6 years	0.1%	$5,141.80	
September 2010	$560,923.41	9 1/3 years	0.1%	$5,235.29	
2010	**$1,465,042.02**				**$326,338.11**
June 2011	$732,521.01	8 1/6 years	2.7%	$161,520.88	
September 2011	$732,521.01	8 1/3 years	2.7%	$164,817.23	
2011	**$1,601,229.42**				**$174,133.70**
June 2012	$800,614.71	7 1/6 years	1.5%	$86,066.08	
September 2012	$800,614.71	7 1/3	1.5%	$88,067.62	
Total interest for 2005 to 2011 tax years					**$1,787,975**
+ Interest for 2004 tax year					**$172,185.43**
Total interest for 2004 to 2011 tax years					**$1,960,160.43**

Appendix E

Response To Waiver Of Issues Relating To Applicability Of Section 15-86

On the last day of trial, this Court suggested that issues relating to the applicability of Section 15-86 to this case should have been addressed in a pre-trial motion. 1/31/19, p. 56:4-7. In a nonjury case, no proposition of law, motion for finding is required as a basis for review. See Ill. Supreme Court Rule 366(b)(3)(i). An issue is only forfeited in a bench proceeding if the party fails to raise the issue altogether prior to judgment. See Eisener v. Brown, 2013 IL App(2d) 120209, Par. 53 (2013). A single pre-trial motion is adequate to preserve an issue for appeal in a bench proceeding. See Stoller v. Paul Revere Life Ins. Co., 163 Ill. App.3d 438, 440 (1987).

The County Defendants have made these arguments at every opportunity reasonably available to them, including the following:

1. May 7, 2013, Motion for Summary Determination of a Major Issue, and Memorandum in Support;
2. August 12, 2013, Amended Memorandum Relating to Cross Motions for Summary Determination of a Major Issue;
3. August 30, 2013, Surreply Brief;
4. October 15, 2013, Motion to Reconsider;
5. March 3, 2014, Motion to Dismiss and Memorandum in Support;
6. March 14, 2014, Response to Motion for Summary Judgment on Count II;
7. May 2, 2014, Motion for Summary Determination of Major Issues, and Memorandum in Support;
8. June 17, 2014, Answer to Fourth Amended Complaint, Par. 35;
9. June 26, 2014, Motion to Reconsider;
10. Carle Found. v. Cunningham Tp, et al , 2016 IL. App. (4th) 140795 (2016);
11. August 15, 2017, Motion to Reconsider Denial of Motion for Summary Determination of a Major Issue, and Memorandum in Support;
12. Jan. 3, 2019, Transcript of Opening Statement, p. 9:12-14.

The Court may have been referring to the rule of "pleading over", which is inapplicable to this argument. Here, Judge Leonhard denied a motion to dismiss relating to the applicability of Section 15-86, and the County Defendants then filed an Answer. In general, if a defendant files an answer after the trial court denies a motion to dismiss, the defendant forfeits certain defects in the plaintiff's complaint. In re Estate of Yanni, 2015 IL App(2d) 150108, Par. 20 (2015). However, this rule is limited to purely technical defects and defects in failing to allege (or alleging imperfectly) any substantial facts essential to the cause of action. Yanni , 2015 IL App(2d) 150108, Par. 20. If, as a matter of law, a complaint fails to state a cause of action, it may be objected to at any time by any means. See Yanni, 2015 IL App(2d) 150108, Par. 20.

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

THE CARLE FOUNDATION,	)	
Plaintiff	)	
v.	)	**No. 2008-L-202**
ILLINOIS DEPARTMENT OF REVENUE, et al.,	)	
Defendants.	)	

[Proposed] ORDER

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

1. Summary judgment was previously entered against Plaintiff and in favor of Defendants, the Illinois Department of Revenue (Department), the Champaign County Board of Review and its members, the Champaign County Supervisor of Assessments, the Champaign County Treasurer, and Champaign County (collectively, the "County Defendants") and the Cunningham Township Assessor, on Count I of the Fourth Amended Complaint on September 9, 2018.
2. Count II of the Fourth Amended Complaint was previously dismissed by Plaintiff pursuant to the decision of the Illinois Supreme Court in this cause, Carle Found. v. Cunningham Twp, 2017 IL 120427 (2017) on September 28, 2018.
3. With respect to Counts III through XXXIV, judgment is hereby entered against Plaintiff and in favor of the Department and the County Defendants.
4. With respect to Count XXXXV of the Fourth Amended Complaint, judgment is entered against Plaintiff and in favor of Cunningham Township and the City of Urbana.
5. Each party is to pay its own costs.

SO ORDERED this _____ day of _____, 2019

_____
Randall B. Rosenbaum,
Circuit Judge