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

THE CARLE FOUNDATION,
an Illinois not-for-profit corporation,

Plaintiff,

v.

ILLINOIS DEPARTMENT OF REVENUE; BRIAN HAMER, in His Official Capacity as Director of the Illinois Department of Revenue; THE CHAMPAIGN COUNTY BOARD OF REVIEW; ELIZABETH BURGENER-PATTON, PAUL SAILOR, 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; CUNNINGHAM TOWNSHIP; DAN STEBBINS, in His Official Capacity as Cunningham Township Assessor; JOHN FARNEY, in His Official Capacity as Champaign County Treasurer; and THE CITY OF URBANA,

Defendants,

and

CHAMPAIGN COUNTY,

Intervenor-Defendant.

Case No. 08 L 0202

Hon. Randall B. Rosenbaum

POST-TRIAL REPLY BRIEF BY THE CARLE FOUNDATION

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I. INTRODUCTION

Ask any experienced courtroom lawyer what it means when an opposing party files a 135-page post-trial brief—1.5-spaced, no less, plus appendices containing an additional ten pages of single-spaced argument for good measure—and after groaning or rolling their eyes, they are sure to say the same thing: your opponent knows it has a losing case. No one with a winning position would find it necessary or advisable to file a brief anywhere near that length.

The defendants have collectively thrown a lot of mud at the wall. Many of their arguments rehash issues that they have repeatedly briefed and lost. Some "rebut" contentions that the Foundation is not making. Others voice arguments that were anticipated, and refuted, in the Foundation's Opening Post-Trial Brief.

This Reply Brief will not respond to everything in the defendants' briefs. We will focus on the most important issues. If we have overlooked anything that interests or concerns the Court, we would be grateful for the opportunity to address those topics at an oral argument.

Here, then, is the itinerary for the pages that follow:

- Section II addresses the Foundation's entitlement to exemptions in accordance with the approach to deciding Section 23-25(e) claims articulated by the Appellate Court in *Carle Foundation v. Cunningham Township*, 2016 IL App (4th) 140795 ("*Carle II*").
- Section III demonstrates that the Foundation would also prevail under a *de novo* determination of its entitlement to exemptions. Section III(A) addresses the statutory exemption criteria contained in Section 15-86, and Section III(B) applies the *Korzen* factors, to the extent they bear on the use of the Four Parcels, to show that the Foundation has satisfied the constitutional requirement.

- Section IV refutes various red herring arguments conjured by the defendants.
- Section V discusses the requested relief, including the principal amount of the refund associated with the Foundation's partial exemptions and its entitlement to prejudgment interest in connection with that refund.
- Section VI demonstrates that the Township Defendants have breached the 2002 Settlement Agreement, and are liable for damages that include the attorneys' fees incurred by the Foundation in litigation against the State Defendants and County Defendants to restore its exemptions.

II. THE FOUNDATION HAS ESTABLISHED ITS ENTITLEMENT TO EXEMPTIONS UNDER SECTION 23-25(e) OF THE PROPERTY TAX CODE

A. The Foundation Prevails Under *Carle II*'s Interpretation of Section 23-25(e)

In its Opening Brief, the Foundation demonstrated that it is entitled to exemptions under the approach to Section 23-25(e) claims articulated by the Appellate Court in *Carle II*, as well as under the *de novo* approach championed by the defendants. The defendants recognize the importance of this threshold legal issue, but the shrillness of their criticism of *Carle II* underscores the ease with which the Foundation prevails under the Appellate Court's analysis.

Carle II calls upon the circuit court to "compare two sets of facts," namely, the facts for the assessment year at issue and those that were determined to warrant an exemption for another assessment year. The Appellate Court explained that "logic would likewise require an exemption" for the assessment year at issue unless (a) "the Department convinces the circuit court that the exemption for the subsequent or prior assessment year actually was unlawful," or (b) "the two sets of facts are materially different…." *Carle II*, 2016 IL App (4th) 140795, ¶¶ 94-95.

Here, the DOR has not attempted to convince this Court that it acted unlawfully when it determined the Foundation was entitled to exemptions for assessment year 2012. The State Defendants' brief skirts that subject entirely. The only information regarding the DOR's view comes from the testimony of the senior official responsible for exemption decisions, Loren Stouffe, who reaffirmed that in her judgment the DOR correctly determined the Foundation satisfied the statutory and constitutional exemption requirements for 2012. (Stouffe 1/14/19, 53:23 – 54:3.)

Absent any effort by the DOR to challenge its own determination that the Foundation was entitled to exemptions for 2012, *Carle II* indicates that the Foundation is entitled to exemptions for 2004 through 2011 unless the facts for those years are materially different from those for 2012. The existence of *some* differences between the two sets of facts is insufficient to justify a different result. "Materially different" presupposes that the facts warranted an exemption for 2012—otherwise the DOR's decision for that year would have been unlawful—and requires proof that the facts were sufficiently different for some or all of the years from 2004 through 2011 to warrant denying exemptions.

The State Defendants concede that neither they nor any of the other defendants have previously argued that there were material differences between 2012 and the years from 2004 through 2011. (SD at 7 ("the close of trial allows Defendants to 'argue' material difference for the first time").)[1] Without explaining why the defendants failed to address such a crucial issue before trial or even during Opening Statements, the State Defendants belatedly and expediently assert, in conclusory fashion, that there were "numerous and weighty" material differences

[1] Citations to the post-trial briefs of the State Defendants, County Defendants, Township Defendants, and Carle Foundation use the abbreviations "SD," "CD," "TD," and "CF," respectively.

between 2012 and the years at issue. (*Id.*) While the State Defendants promise those material differences are "discussed below" in their brief (*id.*), the only mention occurs in the heading on page 23 of their brief stating that "Plaintiff's actions from 2004 through 2012 defeat claims of both exclusive charitable use and 'no material difference.'" (*Id.* at 23.) As shown below, none of the four topics addressed under that heading reveal material differences between 2012 and any of the years at issue, or are even claimed by the State Defendants to do so.

1. The State Defendants have not identified any material differences between 2012 and any of the years at issue

a. Eligibility for charity care under the Foundation's charity care policy

The State Defendants' brief traces the evolution of the Foundation's charity care criteria from 1998 to April 2010. (SD at 23-27.) The narrative does not assert that there is a material difference between the criteria in effect during 2012 and those which were in effect at any time during the years at issue.

Instead, the State Defendants criticize the March 2010 revision to the Foundation's charity care policy for limiting eligibility for non-emergency care to persons who reside in the 39 counties comprising the Foundation's primary and secondary service areas. (*See* TR 216, at 2, ¶ A & Attachment 1 thereto.) However, there is no evidence that a single person was denied charity care on that basis. (Leonard 1/4/19, 157:13 – 158:9; Hesch 1/15/19, 92:5-11.) In any event, that provision was in effect during 2012, and hence could not constitute a material difference justifying denial of an exemption for any of the years at issue.

The State Defendants assert that "changes in Plaintiff's charity care policy during the years in dispute undermines any claim by Plaintiff that it dispenses charity to all who need and apply to it." (SD at 27.) The Foundation should be commended, not condemned, for continually

striving to improve its charity care policy and procedures. In fact, there was never any legally mandated definition of "need" with which the Foundation failed to comply. The basic eligibility criteria under the Foundation's charity care policy—100% discount for persons with income below 200% of the federal poverty level (FPL), with partial discounts for persons with income up to 300% of the FPL—have been in effect since October 2005. (*See* TR 117 at 3, ¶ A(4).)

In short, the State Defendants do not argue, much less prove, that any modifications to the Foundation's charity care policy between 2004 and 2012 constitute material differences for purposes of property tax exemption. No such material differences exist.

b. Cost-to-charge and charge-to-cost ratios

The State Defendants point to fluctuations in the Foundation's cost-to-charge ratio and charge-to-cost ratio over the years, but once again fail to prove or even argue that this constitutes a material difference, in terms of entitlement to property tax exemptions, between 2012 and any of the years at issue in this litigation. (SD at 27-28.)

As the term suggests, a cost-to-charge ratio is the ratio between a hospital's total costs and its total charges. (Tonkinson 1/8/19, 104:10-21.) A charge-to-cost ratio is the reverse, *i.e.*, the ratio between a hospital's total charges and its total costs. (Tonkinson 1/9/19, 131:1-4.) The cost-to-charge ratio is used to estimate the costs incurred by the hospital to provide charity care by multiplying it by the total charges associated with the provision of charity care. This practice reflects the widespread belief that, in evaluating and comparing hospitals' provision of charity care, it is more important to know the amount of costs incurred in providing that care, rather than the amount of charges foregone for doing so. *See, e.g.*, 35 ILCS 200/15-86(e)(1) (Section 15-86 requires that charity care be measured at cost); 210 ILCS 76/20(a)(3) (AG-CBP-I community

benefit reports provide amount of charity care measured at cost, after application of cost-to-charge ratio).

The State Defendants assert that "[t]he change in cost to charge ratios and charge to cost ratios demonstrate that [sic] the growing imbalance between revenue and charity provided." (SD at 28.) This is both incorrect and irrelevant. Cost-to-charge and charge-to-cost ratios are based on total costs and charges. They say nothing about a relationship between the amount of revenue earned and free or discounted care provided, much less some kind of "imbalance." Not surprisingly, the State Defendants are unable to point to a single case that considered those ratios to be relevant to entitlement to property tax exemptions. Indeed, the very notion of a "growing imbalance" over the years is inconsistent with the premise, which the State Defendants do not dispute, that the DOR properly determined that the Foundation was entitled to exemptions for 2012. The trend alleged by the State Defendants, if it existed and were relevant, would suggest an even stronger basis for entitlement to exemptions in the years preceding 2012.

c. Number of recipients of free or discounted care

The third topic included by the State Defendants under the heading asserting "no material difference" is the number of charity care patients. (SD at 28-30.) Despite that heading, nowhere in the text do the State Defendants argue that there is any material difference, for purposes of entitlement to property tax exemption, between 2012 and any of the years from 2004 through 2011, with respect to the number of patients who received charity care.

The State Defendants' brief includes a table regarding the number of charity care recipients containing information that was obtained from the Foundation's community benefit reports for 2003 through 2012. (SD at 29.) Another table includes information obtained from the Hospital's reports to the Illinois Department of Public Health (IDPH) for 2007 through 2013.

(*Id.* at 30.) The State Defendants argue that the two tables reveal "discrepancies and uncertainties about the number of charity patients served by Plaintiff [that] underscore[] the minimal nature of those numbers." (*Id.*)

The alleged discrepancies and uncertainties are attributable to the State Defendants mixing apples and oranges. The table containing information from the Foundation's community benefit reports includes the number of individuals who received charity care. Persons who received care on more than one occasion were only counted once. (*See* Robbins 1/10/19, 174:15-24.) The IDPH data, on the other hand, contains information regarding the number of inpatient admissions and outpatient visits. (Owens 1/11/19, 95:5-15.) There, the same recipient of charity care would be counted each time he or she had an admission or visit.

There are other problems with the State Defendants' compilation of the information from the community benefit reports. Despite indicating that all of the data except for 2011 and 2012 showed the number of Hospital charity care patients, the data for 2006, 2007, and 2008 actually shows the number of charity care patients from the entire Foundation system. (*See* TR 2027D at 8; TR 2027E at 7; TR 2027F at 2, 14.) In addition, while the table indicates that the figure for 2011 includes charity provided by physician groups, that figure is actually limited to the Hospital. (*See* TR 2027J at 1.)

The State Defendants' clumsy, eleventh-hour attempt to inject uncertainty into the precise number of patients who received charity care does not suggest there are material differences, for purposes of property tax exemption, between the number of patients who received charity care in 2012 and the years at issue. Even the State Defendants do not contend otherwise.

d. Comparison of charity care to hospital financial metrics

The last topic under the heading in the State Defendants' brief alluding to "material differences" compares the costs incurred by the Foundation in providing charity care with various financial metrics. (SD at 30-33.) This time, the State Defendants not only eschew contending that there are material differences between 2012 and any of the years at issue, they fail to provide any information at all about 2012. (*Id.* at 32-33.) The financial metrics cited by the State Defendants are therefore incapable of establishing that the "sets of facts [for 2012 and any of the years at issue] are materially different…." *Carle II*, 2016 IL App (4th) 140795, ¶ 95.

Thus, far from containing the promised discussion of "numerous and weighty" material differences between 2012 and the years at issue (SD at 7), the State Defendants' brief completely ignored that subject. Because the State Defendants did not even attempt to convince this Court that the exemptions for 2012 were unlawful or that there is a material difference between the facts pertaining to 2012 and any of the years at issue, "logic would likewise require an exemption for the assessment year[s] in question." *Carle II*, ¶ 95.

2. The Township Defendants do not dispute that the Foundation would be entitled to exemptions for 2004 through 2011 under the approach to deciding Section 23-25(e) claims described in *Carle II*

The Township Defendants fail to apply, or even mention, the approach to deciding Section 23-25(e) claims endorsed in *Carle II*. The Township Defendants neither argue that the exemptions issued by the DOR for 2012 were unlawful, nor that there is a material difference between the facts pertaining to 2012 and any of the years at issue. (*See* TD at 24-25.)

Instead, without discussing *Carle II* or citing any other authority, the Township Defendants assert that Section 23-25(e) "is merely the ticket through the door of the court room." (*Id.* at 24.) The Appellate Court disagrees. *Carle II* expressly rejected interpreting Section 23-

25(e) to mean that the DOR's "favorable decision serves merely as an admission ticket into the circuit court and that once the taxpayer is admitted, the ticket is forgotten and the court applies section 15-86 in a *de novo* determination of whether the parcel deserves an exemption for the assessment year in question." *Carle II*, ¶ 91.

The Township Defendants' failure—or more precisely, inability—to rebut the Foundation's proof that it prevails under *Carle II* means that virtually all of the Township Defendants' discussion of the Foundation's exemption claims is irrelevant. Even more to the point, the Township Defendants' struthious approach to the governing legal standard gives truth to the statement, in the Conclusion to our opening post-trial brief, that "[t]his is not a close case." (CF at 65.)

3. The County Defendants are unable to rebut the Foundation's entitlement to exemptions under *Carle II*'s approach to deciding Section 23-25(e) claims

Consistent with their trench warfare tactic of contesting every inch of legal ground, the County Defendants attempt to argue both that the 2012 exemption was unlawful and that there are material differences between 2012 and the years at issue in this case. As shown below, the County Defendants fail in both respects.

a. The County Defendants are unable to demonstrate that the 2012 exemptions were unlawful

Despite the Champaign County Board of Review having recommended that the DOR approve the Foundation's exemption applications for 2012 (Jenkins 1/14/19, 82:11 – 83:1), the County Defendants contend that the 2012 exemptions were unlawful. The most notable aspect of this argument, aside from the fact that the County Defendants devoted only one paragraph to it (CD at 106-07), is that they never explain or even acknowledge their change of heart. We know it was not attributable to *Oswald*'s affirmation that exemptions under Section 15-86 also have to

comply with the Constitution. The County Defendants, like the State Defendants and the Foundation, have consistently contended since passage of P.A. 97-688 that exemptions issued under Section 15-86 must satisfy both statutory and constitutional requirements. (*See, e.g.*, CD Resp. to MSJ on Count II (3-14-2014) at 4 (arguing that the Foundation is not entitled to exemptions under Section 15-86 "because the exemption claims do not comply with the constitutional criteria set forth in" *Korzen*).

The County Defendants baldly assert that the Foundation did not establish compliance with the *Korzen* factors for 2012 (CD at 106), without actually analyzing any of those factors with respect to that year. Instead, they point to three exhibits that the Foundation offered to show that, even if the financial metrics on which the County Defendants rely were relevant, there are no material differences between 2012 and the years at issue. (TR 535-537.) According to the County Defendants, those exhibits "demonstrate that [the Foundation] did not establish compliance with the Korzen Factors…." (CD at 106.) In reality, those exhibits do not bear on any *Korzen* factors aside from one exhibit which shows that (like every other hospital in our state) the Foundation does not mainly derive its funds from charity. (TR 535.)[2]

Without providing any record cites, the County Defendants also claim that the information "actually considered by the Department" merely established mechanical compliance with the statutory criteria in Section 15-86. (CD at 107.) This is incorrect. Ms. Stouffe testified that she and the DOR also required compliance with the Constitution and received sufficient information to make that determination. (Stouffe 1/14/19, 25:3 – 28:22.) And contrary to the County Defendants' claim that the Supreme Court's later decision in *Oswald* requires "a more

[2] The County Defendants' brief is replete with inaccurate and misleading citations to the record. We have endeavored to catalog and correct those errors in Appendix F to this brief.

searching constitutional inquiry," the DOR has always taken the position that exemptions under Section 15-86 requires satisfaction of the *Korzen* factors. (*See, e.g.*, SD Appellees' Br. (6-16-2016) in *Oswald v. Beard*, 1st Dist. No. 1-15-2691, p. 21 ("Section 15-86 Is Facially Constitutional Because It Does Not Supplant the Required Application of the Korzen Criteria to a Hospital's Exemption Application").

More fundamentally, *Carle II* does not limit analysis of the lawfulness of the 2012 exemptions to the information that was considered by the DOR. Having already alluded to three trial exhibits that were not before the DOR when it issued the 2012 exemptions, if the County Defendants wished to point to any other information to try to "convince[] the circuit court that the exemption for the subsequent or prior assessment year actually was unlawful," *Carle II*, ¶ 95, they have been free to do so. Their failure to do so speaks volumes. So does the fact that, with everything she knows now, Ms. Stouffe continues to believe that the Foundation satisfied all statutory and constitutional requirements for exemption for 2012. (Stouffe 1/14/19, 53:23 – 54:3.) Even with the benefit of hindsight and all of the evidence that was introduced at trial, the County Defendants—alone among the defendants in challenging the lawfulness of the DOR's decision regarding 2012—are unable to demonstrate that Ms. Stouffe and the DOR were mistaken.

b. The County Defendants cannot demonstrate material differences between 2012 and any of the years at issue

The County Defendants argue that "there are material differences from year to year" in the facts bearing on entitlement to exemption. (CD at 107.) Their argument is fundamentally misguided because they fail to recognize that the material differences inquiry presupposes the lawfulness of the exemptions issued in 2012, and focuses on whether differences in the facts pertaining to 2012 and any of the years from 2004 to 2011 are significant enough to warrant

denying exemptions for any of the years at issue. *Carle II* states that logic requires exemptions for the years in question "[u]nless the two sets of facts are materially different *or* unless the Department convinces the circuit court that the exemption for the subsequent or prior assessment year actually was unlawful…." *Carle II*, ¶ 95 (emphasis added). The two scenarios justifying denial of exemptions are stated in the disjunctive. Consideration of whether there are material differences between the two sets of facts only occurs if the prior exemption determination was lawful.

The County Defendants list four subjects that they claim involve material differences. Tellingly, three of those subjects were not claimed by the State Defendants to involve material differences. The following discussion demonstrates that the County Defendants are unable to demonstrate any differences sufficient to show that, while the Foundation was entitled to exemptions for 2012, it was not entitled to exemptions for some or all of the years from 2004 through 2011.

i. The Foundation's charity care policy

The only allegedly material difference cited by both the County Defendants and the State Defendants concerns charity care, although they do not agree on what changes in the Foundation's charity care policy were supposedly material. The County Defendants stress the September 2011 revision to the Foundation's charity care program that facilitated (1) renewals of persons previously approved for charity care, and (2) approval of homeless persons and those who had received services from the Frances Nelson federally qualified health center. (CD at 107-08; TR 2426.) These were salutary changes, to be sure, and were emblematic of the Foundation's ongoing efforts over the years to refine and improve its charity care program. But they can hardly be said to have been responsible for tipping the balance in terms of eligibility for

exemptions, given there is no evidence that these changes significantly increased the number of recipients or the amount of charity care provided, as opposed to making it even easier for those who were otherwise eligible to qualify for that care.

The County Defendants also point to the steady increases in the amount of free or discounted care that the Foundation provided over the years. (CD at 108.) This is also a good thing, but it does not mean that the amount of care provided at any time was ever inadequate to qualify for exemption. Even *Korzen* does not require a specific quantum of charitable expenditures, but rather that benefactions be provided to an indefinite number of people constituting all who need and apply for such assistance. *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149, 156-57 (1968).

Starting from the premise that the amount of charity care provided in 2012 was adequate to warrant exemptions, as *Carle II* teaches we must for purposes of considering whether there are material differences, there is no principled basis for concluding that the amount of charity care first became adequate sometime between 2005 and 2012. The County Defendants vaguely claim material differences, but fail to identify a specific year when the amount of charity care supposedly first became sufficient for exemption.

Finally, the County Defendants assert that 2004 and 2005 are legally incomparable to the other years because the Foundation relies on aspects of its Foundation's charitable activities in addition to charity care. (CD at 108. *Compare* TR 446.1 and TR 447 *with* TR 448.1, TR 449, TR 450, TR 451, TR 452, and TR 453.) The exhibits referenced by the County Defendants summarize the evidence demonstrating the Foundation's satisfaction of Section 15-86's statutory requirement that the value of the property owner's qualifying charitable activities equal or exceed the amount of property tax that would be paid if the owner's properties were not exempt.

35 ILCS 200/15-86(c). However, for purposes of satisfaction of the Constitution's exemption requirements, "Illinois law has never required that there be a direct, dollar-for-dollar correlation between the value of the tax exemption and the value of the goods or services provided by the charity…." *Provena Covenant Medical Center v. Dep't of Revenue*, 236 Ill.2d 368, 395 (2010) ("*Provena*"). The distinction drawn by the County Defendants is therefore immaterial for constitutional purposes.

ii. Medical research and medical education

The County Defendants argue that there are material differences relating to the Foundation's medical research and medical education activities over the years. (CD at 108.) This argument is notable mainly for the County Defendants' recognition that those activities constitute important charitable purposes of the Foundation in addition to the provision of health care to all who need and apply for it, regardless of ability to pay. (CD at 108.)

The only difference alleged by the County Defendants with respect to medical education concerned its formal addition to the Foundation's mission statement in 2006. (*Id.*) However, Dr. Leonard explained that this change merely formalized what had long been the case, and that medical education had been an important aspect of the Foundation's charitable activities for many years. (Leonard 1/3/19, 78:18-22.)

The same was true for medical research. (*Id.*) While the County Defendants emphasize the expansion of the Foundation's research activities that occurred in 2006, they do not claim that 2006 or any other year is the demarcation line before which the Foundation's charitable activities—in this case, involving medical research—were insufficient to warrant exemptions. Accordingly, the differences asserted by the County Defendants are immaterial.

iii. The sale of a nursing home and construction of an addition to the North Tower

The County Defendants claim that changes involving two Foundation properties constitute material differences. First, the County Defendants allude to the sale of the Carle Arbours nursing home in 2009. (CD at 108.) It cannot seriously be suggested that the Four Parcels were first used exclusively for charitable purposes, within the meaning of the Constitution, when and because Carle Arbours was sold.

The same goes for the two-story addition to the North Tower. That addition did not change the purposes for which that building was used; it simply added additional space that the Foundation used to provide medical care and medical education and to conduct medical research. (Leonard 1/3/19, 136:21 – 139:5.) It was a non-event in terms of eligibility for exemption.

iv. The acquisition of the Carle Clinic Association

Finally, the County Defendants claim that the Foundation's acquisition of the Clinic gave rise to material differences that "render all of Plaintiff's exemption claims *prior to 2010* incomparable to the claim for exemption in 2012." (CD at 110 (emphasis added).) At the outset, it should be noted that the County Defendants recognize the merger does not affect the Foundation's entitlement to exemptions for 2010 and 2011. The following analysis demonstrates that none of the four differences that it claims were associated with the merger were material for any of the other years at issue, either.

Effect on partial exemptions. The merger meant that space that had previously been leased to the Clinic was now being used by the Foundation, which increased the exemption percentage for each property. (*See* TR 205 (annual exemption percentages for main hospital and North Tower); TR 312 (annual exemption percentages for Power Plant); TR 304 (annual exemption percentages for Caring Place).) The County Defendants claim that the increased

exemption percentages constitute material differences. (CD at 109.) However, the merger did not change the Foundation's charitable use of the portions of those properties that it had been using all along, *i.e.*, the portions of those properties reflected in the exemption percentages for the pre-merger years. Nothing about the merger suggests that the Foundation had not been using any portions of the Four Parcels for charitable purposes before the merger.

Impact of HAMP. The County Defendants argue that the acquisition of HAMP via the merger significantly changed the scope of the Foundation's operations and its revenue sources. (CD at 109.) This argument confuses a change in some characteristics of the Foundation with a change in its use of the subject properties for charitable purposes. Only the latter is relevant to constitutional exemption requirements. *See Oswald v. Hamer*, 2018 IL 122203, ¶ 39.

The acquisition of HAMP did not affect the nature of the Foundation's use of the Four Parcels for its charitable purposes. Both before and after HAMP became part of the Foundation, the Four Parcels were used to provide care to all regardless of ability to pay, to perform medical education, and to conduct medical research. The HAMP acquisition is therefore immaterial to the Foundation's entitlement to exemptions for the Four Parcels for any of the years at issue.

Changes in corporate structure. The County Defendants point to a number of organizational changes post-merger that formalized the role of the former Clinic physicians in the management and organizational structure of the Foundation. (CD at 109-10.) The only *Korzen* factor to which these changes have any potential bearing is the private benefit prohibition. That factor concerns "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 omitted). Because there is no evidence

that the changes cited by the County Defendants had any impact on this consideration, one way or the other, the changes are immaterial under *Carle II*.

Effect of extending the Foundation's charity care policy to services provided by the former Clinic physicians. The Foundation's acquisition of the Clinic resulted in the expansion of the Foundation's charity care program to the professional services, including primary care, provided by the former Clinic physicians. This meant that the space formerly leased by the Foundation to the Clinic was now eligible for exemption. However, nothing about this salutary change suggests that the space formerly used by the Foundation had not previously been used for charitable purposes; the change merely affected the appropriate percentage exemptions for the Four Parcels. Accordingly, this change is immaterial for purposes of the *Carle II* analysis.

B. The Merits of *Carle II*'s Interpretation of Section 23-25(e)

The preceding discussion demonstrates that the defendants are unable to demonstrate any basis for distinguishing between 2012 and the years at issue in this proceeding, as required by the approach to deciding Section 23-25(e) claims endorsed in *Carle II*. This constitutes a separate and independent basis for determining that the Foundation is entitled to exemptions for the Four Parcels for 2004 through 2011. A second basis for reaching that same result—namely, that the Foundation would be entitled to exemptions for 2004 through 2011 even if this Court were called upon to make a *de novo* determination—is addressed in Section III, below.

The State Defendants and the County Defendants, but not the Township Defendants, urge this Court to reject *Carle II*. Of course, no one claims that *Carle II* is binding as a matter of law, that decision having been vacated on jurisdictional grounds. The question is whether, as a practical matter, there is any reason to believe the Appellate Court will change its mind the next time around.

The answer is "no." The decision in *Carle II* was unanimous, and all of the considerations identified by the Court are as valid today as they were when the case was decided.

The opinion in *Carle II* started from the premise that, unlike judges who do not regularly address property exemption issues, the DOR "is the expert, with lots of experience." *Carle II*, 2016 IL App (4th) 140795, ¶ 93. Focusing on the extent of any differences between the year at issue and the year for which the DOR granted an exemption gives appropriate deference to the DOR's expertise, while confining the court to the familiar judicial role (as in administrative review actions) of "be[ing] on the lookout for arbitrariness…." *Id.* ¶ 92. On the other hand, *de novo* consideration of entitlement to exemption would transform the court into a redundant "super agency" that would be "trying to do the Department's job by processing an application for exemption…." *Id.* ¶¶ 91, 92.

The defendants claim that the approach to deciding Section 23-25(e) claims endorsed in *Carle II* is inconsistent with the decision in *Carle I*. The Appellate Court obviously does not share that perspective. The same Justice authored both decisions, another Justice likewise participated in both cases, and both decisions were unanimous.

In holding that Section 23-25(e) authorized courts to issue exemptions in certain lawsuits that bypassed the usual administrative application process, *Carle I* did not address *how* such lawsuits should be decided. *Carle Foundation v. Ill. Dep't of Revenue*, 396 Ill.App.3d 329, 339-40 (4th Dist. 2009) (*Carle I*). In particular, *Carle I* did not address the impact of the statutory condition 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). *Carle II* picked up where *Carle I* left off by delineating how Section 23-25(e) lawsuits are to be decided in light of that statutory condition.

The defendants pin their argument that *Carle II* is inconsistent with *Carle I* on the sentence in the latter opinion that quotes a treatise characterizing Section 23-25(e) as "[e]ffectively … reviv[ing] the traditional suit in equity for injunction…." *Carle I,* 396 Ill.App.3d at 340, quoting M. Davis & E. Gracie, "Taxable & Exempt Property," *Real Estate Taxation,* § 1.108, at 1-112 (Ill. Inst. for Cont. Legal Educ. 2008). However, neither *Carle I* nor the authors of the cited treatise suggested that Section 23-25(e) revived the traditional tax injunction lawsuit in its entirety. *Carle I* quoted the treatise as stating that Section 23-25(e) effectively "revives the traditional suit in equity for injunction as one of the primary means of establishing a claim for exemption, *provided that the Department * * * (or a court on review) has acted favorably on a comparable claim for any other year.*" *Id.* (emphasis added).

The traditional tax injunction action was not predicated on a favorable exemption determination by the DOR for another tax year, meaning that a comparison of differences between the tax year at issue and another year was not even possible in those lawsuits. *See Owens-Illinois Glass Co. v. McKibbin*, 385 Ill. 245, 256 (1943) (under traditional tax injunction action, "where a tax … is levied upon property exempt from taxation, equity will take jurisdiction and enjoin the collection of the tax").

Section 23-25(e), on the other hand, not only requires proof that a tax has been levied on exempt property, but also that the property owner "has established an exemption for any prior or subsequent assessment year on grounds comparable to those alleged in the court proceedings." Recognizing that the requisite comparable grounds "necessarily would be factual grounds," *Carle II* concluded that a comparison of the facts supporting exemption for the different years should be the focus of the court proceeding. *Carle II*, ¶ 93. Such an interpretation, the Court

reasoned, was consistent with legislative intent, "as evidenced by the language of [the] statute." *Id.* ¶ 90.

Contrary to the County Defendants' insistence that this interpretation improperly relieves the plaintiff of the burden of proving entitlement to exemption (CD at 100), *Carle II* requires the plaintiff to "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 that property to be exempt for a subsequent or prior assessment year." *Carle II*, ¶ 94 (emphasis added). This requirement also refutes the State Defendants' claim that *Carle II* conflicts with the principle that a taxpayer may be required to demonstrate entitlement to exemption each year even if there has been no change in circumstances. (SD at 7.) The plaintiff still has the burden of proof, and even without any change in circumstances exemption will be denied if the decision granting an exemption for the prior or subsequent year is shown to have been unlawful. *Carle II*, ¶ 95.

There is likewise no merit to the County Defendants' criticism of *Carle II* for requiring a comparison between the DOR's "decision" in the year in question and its decision in a prior or comparable year. (CD at 101.) The County Defendants are misreading *Carle II* by assuming that it envisions a prior administrative decision by the DOR with respect to the year at issue. Rather, *Carle II* envisions that the DOR will have denied, in the litigation, that the plaintiff is entitled to an exemption for the year at issue. If that is not the case, absent a challenge to the requested exemption by an intervenor, the lawsuit would likely be resolved by a stipulated judgment. But where, as here, the DOR denies in the Section 23-25(e) lawsuit that the plaintiff is entitled to an exemption, the circuit court is called upon to "compare two sets of facts, to see if the Department is being inconsistent or arbitrary." *Carle II*, ¶ 94.

The County Defendants also misread *Carle II* as supposedly misapplying the doctrine of collateral estoppel. (CD at 100.) Collateral estoppel "prevent[s] the relitigation of issues that have already been resolved in earlier actions." *Du Page Forklift Serv. v. Material Handling Servs.*, 195 Ill.2d 71, 77 (2001). Rather than preventing the relitigation of any prior exemption decisions, *Carle II* notes that the DOR would be free to challenge its previous decision that the property owner was entitled to an exemption for a prior or subsequent year. *Carle II*, ¶ 95, citing *Brown's Furniture, Inc. v. Wagner*, 171 Ill.2d 410 (1996) and *Austin Liquor Mart, Inc. v. Dep't of Revenue*, 51 Ill.2d 1 (1972). The two cases that *Carle II* cites for this conclusion concern equitable estoppel, not collateral estoppel as the County Defendants suggest. *See Brown's Furniture*, 171 Ill.2d at 431 (addressing when "the doctrine of equitable estoppel may be invoked" against a governmental entity); *Austin Liquor Mart*, 51 Ill.2d at 6 (same).

At the end of the day, while in one sense the defendants are perhaps to be admired for having the audacity to urge a circuit judge to reject the considered views of the Appellate Court, the more prudent course of action is for this Court to apply the interpretation of Section 23-25(e) contained in *Carle II*. As we have seen, that approach leads, in short order, to the conclusion that the Foundation is entitled to exemptions for 2004 through 2011. The Court may then wish, in the interest of providing an alternate ground for its decision, to render its *de novo* determination of the Foundation's entitlement to exemptions for 2004 through 2011. To that end, the following discussion shows that the defendants have been unable to overcome the demonstration, in the Foundation's Opening Brief, that *de novo* review leads to the same result.

III. A *DE NOVO* DETERMINATION LIKEWISE LEADS TO THE CONCLUSION THAT THE FOUNDATION IS ENTITLED TO EXEMPTIONS ON THE FOUR PARCELS FOR TAX YEARS 2004-2011

A. The Foundation Has Satisfied the Statutory Exemption Criteria Contained in Section 15-86 of the Property Tax Code

The evidence at trial demonstrated that the Foundation satisfied the statutory exemption criteria contained in Section 15-86(c) by proving that the value of its qualifying charitable activities exceeded the amount of tax it would have paid on all of its exempt properties if those properties were not exempt. (TR 409.) The Township Defendants do not take issue with the Foundation's satisfaction of the statutory exemption criteria. Moreover, none of the other defendants dispute the Foundation's calculation of each year's estimated property tax that serves as the "bogey" that the value of the qualifying charitable activities must equal or exceed.

With respect to the Foundation's qualifying charitable activities, the State Defendants challenge the calculation of charity care on the basis that it includes costs the Foundation had written off as bad debt before it was able to determine that the services in question had been provided to patients who were eligible for charity care. (SD at 12-13.) According to the State Defendants, this entails the forgiveness of accrued medical debt, rather than "'free or discounted services provided pursuant to the relevant hospital entity's financial assistance policy,' as required by Section 15-86." (*Id.* at 13.)

The terms of the Foundation's financial assistance policy—which the State Defendants neither quoted nor cited—refute the State Defendants' argument. Throughout the entire period at issue, the Foundation's charity care policy expressly allowed patients to seek and obtain charity care for a particular service even after their past-due account was referred to a collection agency, and up until the time a judgment has been obtained in court. (*See, e.g.*, TR 40 at 2 (July 2003 charity care policy provides that "[p]atients that have been referred to a collection agency may

request a Community Care application if a judgment has not been obtained yet in court"); TR 216 at 3 (March 2010 policy contains same provision).)

The State Defendants both ignore the terms of the Foundation's charity care policy and misapprehend the nature of this aspect of the Foundation's charitable purposes. The relevant charitable purpose entails the provision of care at all times to anyone who needs and applies for it and without regard to their ability to pay. (Leonard 1/3/19, 50:18 – 51:3.) This purpose is furthered by treating anyone and everyone, often without knowing at the time of service whether or how a patient will be able to pay for their care. (*Id.*, 43:16-23, 44:6-9.) Should it later be determined that the patient was eligible for free or discounted services pursuant to the Foundation's charity care policy, the patient will receive the financial assistance to which they are entitled under that policy. (Tonkinson 1/9/19, 200:16-18.)

Echoing the State Defendants' argument, the County Defendants assert that patients who were later determined to be eligible for charity care "were perceived by Plaintiff to be paying customers at the time the services were rendered…." (CD at 113.) This is incorrect. The Foundation did not know, and did not care, if those patients would be able to pay for the care they received. More to the point, Section 15-86(e)(1) simply requires that the "[f]ree or discounted services [be] provided pursuant to the relevant hospital entity's financial assistance policy." 35 ILCS 200/15-86(e)(1). As we have seen, the Foundation's policy expressly extends charity care to situations in which eligibility is not determined until after the care is provided.

The County Defendants essentially seek to rewrite Section 15-86(e)(1) by adding a condition not found in the language of that statute. With bracketed language showing that added condition, here is the County Defendants' rewrite of Section 15-86(e)(1): "free or discounted services provided [to persons who are known, when the care is provided, to be eligible] pursuant

to the relevant hospital entity's financial assistance policy." The County Defendants' interpretation of Section 15-86(e)(1) violates the basic principle of statutory interpretation that prohibits "reading into [a statute] exceptions, limitations, or conditions not expressed by the legislature." *People ex rel. Devine v. 30,700.00 U.S. Currency*, 199 Ill.2d 142, 150-51 (2002).

The County Defendants also raise an accounting objection, asserting that when a patient is determined to be eligible for charity care in a year after that in which the services are provided, the unreimbursed costs associated with that care "should be credited to the year in which the care was given, not the year in which Plaintiff later decided it was charity." (CD at 113.) This is one of many arguments that the County Defendants have simply made up without any precedent or evidentiary support. There is no reason to believe that Section 15-86 requires costs associated with charity care to be recognized other than in accordance with generally accepted accounting principles, and the County Defendants have provided no expert testimony suggesting that the Foundation's treatment of charity care failed to comport with those principles.[3]

Finally, citing cases that reject or question a provider's assertion that its participation in the Medicaid program entails a charitable activity under the Constitution, the County Defendants criticize the Foundation for supposedly relying on the Medicaid shortfall, *i.e.*, the difference between the amount of costs incurred by the Foundation in caring for Medicaid patients and the amount reimbursed by the State. (CD at 25-26.) The Foundation has only referenced the amount

[3] If the County Defendants' timing argument were correct, hospitals would have to regularly issue restated financial statements to update their reporting of charity care expenses. In addition to being burdensome and impractical, that requirement would be pointless because there is no reason to believe the amount of additional charity care expenses to be recognized in restated financials for Year One, in accordance with a charity care determination made during Year Two, would be materially different than the amount of additional charity care expenses that would later be recognized in restated financials for Year Two, in accordance with a charity care determination made in Year Three, and so on *ad infinitum*.

of the Medicaid shortfall for one year, 2004, and that was for the sole purpose of demonstrating its satisfaction of the *statutory* exemption requirement of Section 15-86, as the statute expressly authorizes. *See* 35 ILCS 200/15-86(e)(4) (allowing consideration of "the amount of subsidy provided … in treating Medicaid recipients"). Like other hospitals, the Hospital has been required to report the amount of the Medicaid subsidy in both its AG-CBP-I Attorney General Community Benefit Reports (*see*, *e.g.,* TR 211 at 2, 27 (reporting $7,023,085 in "subsidized health services") and its federal Form 990, Schedule H tax returns (*see*, *e.g.*, TR 1051 at 29 (reporting amount of "Unreimbursed Medicaid")). But the County Defendants are wrong to suggest that the Foundation is relying in this litigation on the Medicaid shortfall to demonstrate that it satisfies the constitutional charitable use requirement.

The ease with which the Foundation satisfies the quantitative statutory exemption criteria for each of the years at issue indicates that the State Defendants' and County Defendants' criticism of the Foundation's calculation of the amount of qualifying charitable activities is as immaterial as it is unfounded. It is undisputed that the Foundation employed a conservative methodology that (1) only relies on the charitable activities of the Hospital, when the costs associated with system-wide charitable activities could have been included (*see* 35 ILCS 200/15-86(b)(7)); (2) limits evidence of the qualifying charitable activities for 2006 through 2011 to charity care, rather than including the other charitable activities allowed under Section 15-86(e); (3) relies on the estimated property tax associated with the Foundation's exempt parcels, rather than the actual property tax on those parcels when (as was usually the case) the actual tax was lower (*see* TR 505); and (4) does not consider partial exemptions that would have reduced the calculation of estimated tax (Koch 1/17/19, 26:18 – 28:13). Even with all of these conservatisms that understated the extent to which the Foundation satisfied the statutory exemption criteria, its

qualifying charitable activities exceeded the estimated tax liability by anywhere from roughly $500,000 to $10.9 million per year. (*See* TR 409.) There is neither any evidence, nor any reason to believe, that the adjustments sought by the State Defendants and the County Defendants to the charity care calculation—as unprecedented and unjustified as they are—would affect the outcome for any of the years in question.

B. The Foundation Has Satisfied the Exemption Requirement Contained in Article IX, Section 6 of the Illinois Constitution

1. Guiding legal principles and case law

The Foundation's opening post-trial brief demonstrated that the evidence at trial established, by application of the *Korzen* factors to the extent they bear on the use of the Four Parcels, that the Foundation has satisfied the Constitution's exemption requirements for each of the years from 2004 through 2011. The State Defendants rightly note that the *Korzen* factors "are not formulaic, but constitute merely 'the frame of reference' from which the court … [determines whether the plaintiff's use of its property] is in fact exclusively for charitable purposes." (SD at 20, quoting *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149, 157 (1968).) Because not-for-profit hospitals share key attributes with respect to how they use their property for charitable purposes that are rarely exhibited by other not-for-profit organizations, the most pertinent guidance regarding application of *Korzen*'s frame of reference to the Foundation comes from more than a century of precedent upholding exemptions for not-for-profit hospitals.

Unlike most charitable uses to which the *Korzen* factors have been applied, not-for-profit hospitals serve their charitable purposes around the clock—literally 24 hours a day, 365 days a year—by standing ready, willing, and able at all times to provide care to anyone who needs it, regardless of their ability to pay. And unlike other charitable uses that are subject to limits on

available funds (as with, for example, grant-making organizations) or on available space (as with, for example, homeless shelters), hospitals will take whatever steps are necessary to ensure that everyone in need receives care. Dr. Leonard said it best when describing how the Foundation achieves this aspect of its charitable purposes: "Our doors are always open and we are there for everyone." (Leonard 1/3/19, 50:18 – 51:3.)

Not-for-profit hospitals also differ from many other charitable uses of property in other important respects. First and foremost, hospitals are not like soup kitchens or other charities whose entire charitable purpose consists of providing free goods or services to low-income persons. *See Congregational Sunday School & Publishing Soc. v. Board of Review*, 290 Ill. 108, 113 (1919) ("Charity, in the legal sense, is not confined to mere almsgiving or the relief of poverty and distress, but has a wider signification, which embraces the improvement and promotion of the happiness of man … [and] extends to the rich as well as to the poor").

Because hospitals' charitable purpose is not confined to mere almsgiving, the number of people who benefit from hospitals' charitable activities is far greater than the number of low-income patients who receive charity care. In addition, the fact that only a fraction of patients receive charity care necessarily means that a relatively small percentage of not-for-profit hospitals' costs relate to the provision of free or discounted services—and conversely, that such hospitals receive payment with respect to a large majority of patients. Starting from the seminal not-for-profit hospital case in 1907, these considerations have never precluded hospitals from obtaining property tax exemptions; they are simply the nature of the beast. *See, e.g.*, *Sisters of Third Order of St. Francis v. Bd. of Review*, 231 Ill. 317, 322 (1907) (awarding exemption to hospital with 5% charity patients); *People ex rel. Cannon v. So. Ill. Hosp. Corp.*, 404 Ill. 66, 72 (1949) (reaffirming *Sisters*' holding that a "great disparity between the number of charity

patients and those who pay for the care and attention they receive" does not undermine entitlement to exemption).

The defendants do not dispute that *Sisters* and its progeny remain good law. The State Defendants expressly acknowledge this, noting that "[m]ore than 100 years of judicial interpretation concern the constitution's 'used exclusively' language, going all the way back to *Sisters of the Third Order of St. Francis v. Bd. of Review*, 231 Ill. 317 (1907)." (SD at 11.) The other defendants try to sidestep *Sisters* on the basis that the hospital was run by nuns who took a vow of poverty (TD at 22; CD at 36), but that bears on the nature of the organization rather than whether it was using its property for charitable purposes. The defendants' other attempts to distinguish *Sisters* resort to unfounded speculation. The Township Defendants suggest, without any basis in the Court's opinion, that some patients who paid for services might have paid less than the cost of providing those services (TD at 21-22), and the County Defendants assert, also without any basis in the opinion, that donations played a key role in keeping the hospital afloat. (CD at 36.)

In *Sisters*, the Supreme Court did not rely on any such considerations in holding that the hospital was using the property exclusively for charitable purposes even though only five percent of the patients were charity patients. Rejecting the Board of Review's argument that exemption should be denied "by reason of the great disparity between the number of charity patients and those who pay for the care and attention they receive at this institution," the Court held:

> "This objection seems to us without merit, so long as charity was dispensed to all those who needed it and who applied therefor, and so long as no private gain or profit came to any person connected with the institution, and so long as it does not appear that any obstacle, of any character, was by the corporation placed in the way of those who might need charity of the kind dispensed by this institution, calculated to prevent such persons making application to or obtaining admission to the hospital. The institution could not

> extend its benefactions to those who did not need them or to those who did not seek admission." 231 Ill. at 273-74.

The defendants still have not come to grips with this bedrock principle of hospital property tax exemption law. Their obsession with quantitative comparisons between costs incurred in providing charity care and a slew of financial metrics ignores the fact that a hospital can receive exemptions despite a "great disparity between the number of charity patients and those who pay for the care and attention they receive." *Id.* Any such disparity would inevitably be reflected in the cost- and income-related comparisons on which the defendants so heavily rely. The defendants' emphasis on costs and income associated with patients who paid for their care is also inconsistent with courts' repeated admonition that a hospital's satisfaction of constitutional exemption requirements is unaffected by "the fact that the recipients of some of its benefits who are able to pay are required to do so, where no profit is made but the amounts received are applied in furthering its charitable purpose." *People ex rel. Cannon*, *supra*, 404 Ill. at 69. *See also Provena,* 236 Ill.2d at 400 (plurality opinion) ("there is no question that an institution is not ineligible for a charitable exemption simply because those patients who are able to pay are required to do so").

Unable to find support for its position in hospital exemption cases, the defendants rely heavily on a recent case involving a very different kind of institution. *Midwest Palliative Hospice & Care Ctr. v. Beard*, 2019 IL App (1st) 181321. Unlike a hospital that always provides care to anyone needing it, a facility like the hospice involved in *Midwest Palliative* is inherently incapable of providing services to all who need and apply. That particular hospice did not even provide services to its existing residents, much less to all prospective residents, without regard to their ability to pay. The evidence showed that the hospice "ordinarily expect[ed] to be fully compensated for its services." *Id.* ¶ 31. In addition, the hospice failed to provide any

testimony regarding either the number of residents who received charity care or the costs incurred in providing that care. *Id.* ¶ 26. Applying a clearly erroneous standard of review—a deferential legal standard that even the defendants acknowledge is inapplicable to the Section 23-25(e) claims involved in this litigation—the Appellate Court held that the DOR did not clearly err in denying the exemption application. *Id.* ¶ 39.

Suffice it to say that the Appellate Court decision in *Midwest Palliative* did not overrule more than a 100 years of Supreme Court precedent upholding the issuance of property tax exemptions to not-for-profit hospitals that provide care to all who need and apply for it, avoid placing obstacles in the way of those who need that care, and comply with the private benefit prohibition. And neither *Midwest Palliative* nor any of the other cases cited by the defendants involve the use of property for the broad range of charitable purposes for which the Foundation uses its properties. As much as the defendants would like to cabin the Foundation's charitable purposes to solely the provision of charity care, the evidence showed that the Foundation has the following four discrete charitable purposes, all of which must be considered in evaluating its use of its properties for charitable purposes:

1. The provision of important, but money-losing, healthcare services to the entire community, including the maintenance of a Level One Trauma Center, a Level Three Perinatal Center, and a Primary Stroke Center, as well as the provision of geriatric and pediatric services, the AirLife helicopter service, and the ECHO program helping deaf children with cochlear implants. (CF at 18-21.)
2. The provision of medical education to healthcare professionals and the general public. (*Id.* at 21.)

3. The conducting of medical research in general and translational research in particular. (*Id.*)

4. The provision of care around the clock to all who need and apply for it, regardless of ability to pay. (*Id.* at 17-18.)

Keeping in mind the expansive scope of the Foundation's charitable purposes, the appropriate hospital-centric frame of reference, and a *de novo* standard of review that does not defer to the DOR, we now turn to consideration of the individual *Korzen* factors.

2. Application of the *Korzen* factors reveals that the Foundation uses its properties primarily for its charitable purposes

(a) *Oswald/Korzen* Factor No. 1: Providing a benefit to 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

The first *Korzen* factor includes consideration of both (i) the kind of activities that entail charitable purposes and (ii) whether there are defined limits on the number of persons who benefit from those activities. There is no serious disagreement that all four of the Foundation's charitable purposes involve the kind of activities that qualify for purposes of this *Korzen* factor and the Constitution's charitable use requirement. *See, e.g., Sisters*, 231 Ill. at 322-24 (charitable purposes included training for nurses and provision of healthcare to all who need and apply for it); *Lutheran Gen. Health Care Sys. v. Illinois Dep't of Revenue*, 231 Ill.App.3d 652 (1st Dist.), *appeal denied*, 146 Ill.2d 631 (1992) (charitable purposes included medical education and medical research, as well as provision of healthcare regardless of ability to pay).

The Township Defendants argue that the Foundation does not lessen the burdens of government because the defendants have no obligation to provide medical care. (TD at 8.) The Township Defendants are wrong for several reasons. Regardless whether they are obligated to

provide medical care, government entities do sometimes operate hospitals, and the existence of private not-for-profit hospitals reduces the need for public facilities. *Cf. People ex rel. Cannon*, 404 Ill. at 69 ("A hospital not owned by the State or any other municipal corporation … [has] been held by this court to be … exempt from taxation"). With specific regard to the burdens of government shouldered by the Township, the evidence showed that the Foundation "significantly reduced the amount that the township was spending for medical care" by providing free care to persons on Township General Assistance. (Mayol 1/23/19, 216:5-15.) And in any event, reducing the burden on government is not a requirement; the first *Korzen* factor includes it as an alternative to promoting the general welfare of the individuals who benefit from the services they receive. *See Korzen*, 39 Ill.2d at 157 (referring to benefitting recipients' "general welfare—*or* in some way reducing the burdens of government" (emphasis added)).

The second aspect of the first *Korzen* factor is uncontroverted. It requires that the property owner's charitable purposes benefit "an indefinite number of persons." *Id.* The Foundation satisfies this consideration by not imposing any limits on the number of persons (1) whom it is willing to treat regardless of ability to pay, (2) who ultimately receive charity care, (3) who receive important, but money-losing services, or (4) who benefit from its medical education or medical research. (CF Br. at 22-23.) None of the defendants contend otherwise.

(b) *Korzen* Factor No. 2: No capital, capital stock, or shareholders

It is undisputed that the Foundation is organized as a not-for profit corporation, has not issued capital stock, and has no shareholders. (*See* CD at 54; TD at 8.) The County Defendants argue that being organized in this fashion is not a sufficient condition of exemption (CD at 54), but the Foundation has never asserted that it is. This is but one of the *Korzen* factors.

The Township Defendants seek to transform this factor's consideration of capital—*i.e.*, sums invested by the equity owners of an organization—into consideration of the Foundation's assets. (TD at 8.) The Township Defendants cite no cases, and none exist, suggesting that an organization's possession of assets cuts against its entitlement to exemptions. No organization can exist without assets. What the *Korzen* factors consider, as shown in the following discussion of *Korzen* factor no. 3, is how the organization uses its assets, not whether it possesses any.

(c) *Korzen* Factor No. 3: Earns no profits or dividends, and holds funds in trust for its charitable purposes

The third *Korzen* factor asks whether the organization "earns no profits or dividends, but rather … [holds its funds] in trust for the objects and purposes expressed in its charter." *Korzen*, 39 Ill.2d at 157. Unable to claim that the Foundation ever issued dividends, the defendants train their sights on the net income generated by the Foundation. In equating net income with "profits" for purposes of this factor, the defendants once again advance an argument for which there is no case support. (CD at 54-56; TD at 8-9.) Their argument ignores the reality that all organizations have to generate net income if they are to survive. Thus, even the County Defendants concede that "a not-for-profit is not forbidden from earning a surplus…." (CD at 57-58.)

As suggested by the third factor's consideration of whether the organization holds its funds in trust for charitable purposes, what matters is how the organization uses its net income, rather than whether it has any. The County Defendants accuse the Foundation of "accumulat[ing] assets for no discernable charitable purpose" (CD at 54) and claim that "no one testified what the Foundation was doing with its money." (CD at 57-58.) Nonsense. The evidence showed how, even in the throes of the worst economic downturn since the Great Depression, the Foundation had the wherewithal to acquire the Clinic and thereby extend the

Foundation's charity care program to the primary and specialty care provided by the former Clinic physicians. The evidence also showed how the Foundation's finances enabled it to partner with the University of Illinois in launching the innovative Carle Illinois College of Medicine. (Leonard 1/4/19, 28:18 – 29:17.) In short, as Dr. Leonard explained, the Foundation's financial health enables it to "invest in tomorrow, future technologies … and allow [the Foundation] to continue to improve." (Leonard 1/4/19, 38:9 – 39:1.)

(d) *Korzen* Factor No. 4: Derives its funds mainly from public and private charity

The Foundation has never contended that it derives its funds mainly from public and private charity. Instead, the Foundation has shown that there are three reasons why this consideration does not prevent it from obtaining property tax exemptions:

1. This *Korzen* factor relates to the charitable ownership requirement of Section 15-65, as opposed to whether property is being used for charitable purposes;
2. No case has ever required a hospital to meet this factor as a condition of receiving a property tax exemption; and
3. There is no evidence that a single hospital in Illinois receives most of its revenue from donations. (*See* Leonard 1/3/19, 121/11-22; M. Hall 1/28/19, 207:10-17).

The defendants have no answer to the first point and, therefore, ignore it. With respect to applicable precedent, the County Defendants mischaracterize *Sisters* by claiming that case involved a hospital that operated "in main by gifts, bequests and donations" rather than user fees. (CD at 59.) The opinion in *Sisters* says no such thing. Without quantifying the amount of such gifts or comparing them to the amount of user fees, *Sisters* simply states that the "corporation has received, at various times, gifts and legacies from benevolent persons." 231 Ill. at 320. Any

doubt about whether the Supreme Court considered it necessary for hospitals to derive their funds mainly from charitable donations is dispelled by the Court's decision, later that same year, upholding a hospital's entitlement to exemption even though donations constituted less than one-sixth of its revenues. *Board of Review v. Chicago Policlinic*, 233 Ill. 268, 269 (1908).

As for the third reason why this *Korzen* factor does not undermine the Foundation's entitlement to exemptions, even the County Defendants do not dispute that there are no Illinois not-for-profit hospitals that receive most of their revenues from donations. They try to shrug that off, asserting that neither the *Korzen* factors nor the Constitution guarantee exemptions for not-for-profit hospitals. (CD at 59 n.8.) While it is true that there are no guarantees, it is equally true that not-for-profit hospitals historically have possessed, and currently do possess, property tax exemptions notwithstanding the fact that they do not derive funds primarily from private and public charity.

Unable to make any headway under existing precedent, the County Defendants advance a new standard for hospital property tax exemptions: the donative theory. (CD at 59.) The irony is that the County Defendants rely on publications by Professors Hall and Colombo espousing the donative theory, as if those publications were evidence, despite Hall's testimony disclaiming any reliance on what he himself characterized as an "economic ivory tower theory." (M, Hall 1/25/19, 76:3-22.) Hall admitted that the donative theory has not been adopted by any court anywhere. (*Id.* (the donative theory "was an academic theory that was pleasing to think through, but I don't know of a single instance where it has actually been adopted").) Faced with the Foundation's objection to the relevance of questions regarding the donative theory (*Id.*, 72:20 – 73:18), Hall insisted he could differentiate between that theory and the applicable law "given [his] agile mind." (*Id.*, 76:3-22.)

Unfortunately, the County Defendants are not displaying the claimed mental agility of their witness and, instead, present the donative theory as if it were actually part of the constitutional analysis. It is not—at best it represents musings by two professors about what they thought they "could improve law and public policy." (*Id.*, 74:1-11.)

(e) *Korzen* Factor No. 5: Dispenses charity to all who need and apply for it

The Foundation demonstrated at trial and in its opening brief that it dispenses charity to all who need and apply for it. The evidence proved that 84% of those who applied for charity care received it, and of those 87.5% received free care. (TR 509-510; Cornish 1/18/19, 71:3-17, 79:1-20.) The approval rates were consistent across the 2004-2011 period and in 2012. (TR 509.) Most importantly, there was no evidence, with respect to the entire period from 2004 through 2012, that anyone who applied for charity care and met the standards of need in the applicable policy was denied the free or discounted care to which they were entitled. (M. Hall 1/28/19 pm, 232:22 – 233:3.)

In response, the defendants criticize the Foundation for defining need and controlling the application process, and thereby, in the words of the Township Defendants, dispensing charity "strictly on its own terms." (TD at 11.) The Township Defendants criticize the charity care program because it required an applicant to "fill out a bunch of forms and get letters verifying no income and other such things," denied benefits to those who did not complete the application process, and required patients to apply for government programs for which they may be eligible. (TD at 11-12.) The State Defendants argue that "by defining 'need', Plaintiff clearly controls who can successfully apply for charity care." (SD at 27.) No defendant, however, has identified an alternative to the Foundation's definition of need or its application process.

The Foundation must have a way to distinguish between patients who are unable to pay and those who are merely unwilling to pay. Like others providing discounted or free medical care, such as Frances Nelson Health Center, the Foundation uses the federal poverty guidelines to establish its charity care criteria (its definition of "need") and gathers evidence of patients' income to verify whether the patient meets the criteria. (Boyd 1/11/19, 58:10 – 60:7; Cornish 1/18/19, 60:20 – 63:14.) No one has identified a better standard of need than the federal poverty guidelines. To the contrary, the Hospital Uninsured Patient Discount Act (210 ILCS 89/1 *et seq.*) expressly refers to the federal poverty income guidelines as a way of determining eligibility for discounted healthcare services. *See* 89 ILCS 89/10(a) (eff. 3-22-09).

Furthermore, the "bunch of forms" to which the Township Defendants refer (TD at 11) is in reality a simple two-page form. (TR 336.) The two-page application complies with the requirements of the Fair Patient Billing Act. *See* 77 Ill. Admin. Code 4500.30 (eff. 1-1-07) (regulation specifying requirements for an application for hospital financial assistance under the Fair Patient Billing Act). Although the Act was not in force during the entire period at issue in this case, the Foundation always conformed to its requirements—even before it was required to do so. The Foundation cannot be faulted for using an application that was consistent with, and in fact anticipated, the requirements of Illinois law.

Similarly, the Foundation's requirements for verification of income and assets were in line with the acceptable documentation, including paycheck stubs and federal tax returns, authorized by the Fair Patient Billing Act and the Uninsured Patient Discount Act. *See* 210 ILCS 89/15; 77 Ill. Admin. Code 4500.30(d). The Township Defendants chide the Foundation for requiring "letters verifying no income" (TD at 11), but they ignore that such letters were only requested if the patient had no other way of demonstrating a lack of income or any other benefits.

The Foundation's willingness to accept alternative methods of verifying income was an effort to make the application process easier and open to more patients. (Cornish 1/18/19, 60:20 – 65:24.)

Denial of benefits to patients who failed to complete the application is entirely consistent with *Korzen*'s consideration of whether charity was provided to "all who need *and apply for it.*" *Korzen*, 39 Ill.2d at 157 (emphasis added). The patient has the responsibility for applying for charity care, which means providing the required information so the Foundation can fairly assess need. The General Assembly recognized the importance of a patient cooperating with the requirements of the hospital's financial assistance program when it made benefits under the Fair Patient Billing Act contingent upon the patient "providing the hospital with all of the reasonably requested financial and other relevant information and documentation needed to determine the patient's eligibility under the hospital's financial assistance policy…." 210 ILCS 88/45(a).

In determining need, the Foundation also reasonably considered whether a patient receives, or is eligible to receive, government benefits. A hospital is not required to "extend its benefactions to those who did not need them…." *Sisters*, 231 Ill. at 322. Moreover, the Hospital Uninsured Patient Discount Act expressly permits hospitals to condition discounts under the Act on patients first applying for benefits under government programs for which they may be eligible. 210 ILCS 89/15(a). While the discounts available under the Act are not as generous as the free and discounted care provided under the Foundation's charity care policy, the Act demonstrates that this aspect of the Foundation's charity care program is not unreasonable, unduly burdensome, or inconsistent with the conclusion that, during the entire period from 2004 through 2012, the Foundation provided charity to all who needed and applied for it.

The County Defendants argue that good intentions are not enough and quip that the Foundation is substituting "exclusive use in attempting charity" for "exclusive charitable use."

(CD at 61.) Resorting to a *reductio ad absurdum*, the County Defendants say that under the Foundation's interpretation of this *Korzen* factor, the Foundation could obtain an exemption even if no one was actually given charity. (*Id*.) That hypothetical is a far cry from evidence here demonstrating that the Foundation provided charity care to the overwhelming majority of those who applied for it. That does not merely constitute attempting to provide charity—that is actually providing charity.

(f) *Korzen* Factor No. 6: Does not provide gain or profit in a private sense to any person connected with it

In its opening brief, the Foundation demonstrated that the sixth *Korzen* factor favors its entitlement to exemptions because the evidence showed that the Foundation did not provide gain or profit in a private sense to any person managing it. In response, the defendants challenged the compensation of Foundation executives in disregard of the evidence of the procedures by which their compensation was determined, suggested that the Foundation was actually managed by Clinic physicians, and focused on connections between the Foundation and the Clinic which (even if relevant) did not provide any improper benefit or gain to the Clinic. (TD at 11, 13-14; CD at 6-14, 17-18, 80-81.) As shown below, none of the defendants' arguments identify any way in which the Foundation provided any gain or profit in a private sense to any person connected to it.

i. The private benefit issue concerns improper benefits received by those managing the organization

The reference in *Korzen* to persons "connected to" the institution means those who manage the institution. *See Sisters*, 231 Ill. at 321; *Provena*, 236 Ill.2d at 392 (plurality opinion). There is no evidence that anyone managing the Foundation received any private benefit. The members of the Board of Trustees were not compensated; the compensation of officers was

determined through a rigorous, independent process; and as a result of this process, executive compensation was reasonable and represented fair market value for the services rendered to the Foundation. (Leonard 1/3/19, 101:24 – 102:1; Fallon 1/14/19, 224:18 – 225:2; TR 285-286; Cornish 1/8/19, 104:3 – 105:24.) This was true for the entire period between 2004 and 2011 and also in 2012. (Fallon 1/14/19, 223:2-9.)

Ignoring this evidence, the Township Defendants argue that the Foundation executives were overcompensated. (TD at 12-13.) They insinuate, based on newspaper articles which are hearsay and should not be considered for the truth of the matters they contain, that executive compensation increased while other employee compensation was frozen. (TD at 13.) They argue, without any pretense of authority, that although the compensation paid to Foundation executives "may be within industry standards and may be appropriate for a successful business," it is inappropriate for a charitable organization. (TD at 13.) Not only do these arguments lack legal support, they are refuted by the evidence regarding the careful process, which included an outside consultant, that the Foundation used to set executive compensation, the goal of which was to ensure that compensation represented fair market value of the services. (TR 285-286; Fallon 1/14/19, 224:18 – 225:2; Cornish 1/18/19, 104:3 – 105:24.) Importantly, this is the standard process used across the industry of *not-for-profit hospitals*. (Cornish 1/18/19, 104:3 – 105:24.) There is no support for the Township Defendants' assertion that this process is inappropriate for organizations that claim to use their property exclusively for charitable purposes. (TD at 13.)

The County Defendants took a different tack. Rather than challenge the compensation of the officers and executives who managed the Foundation, the County Defendants attempted to shoehorn this case into the inapposite facts of one in which an exemption was denied for a

hospital, medical office building, nursing home, and related facilities that were operated for the private benefit of the physician who had founded that institution. (CD at 78-79, citing *People ex rel. County Collector v. Hopedale Medical Foundation*, 46 Ill. 2d 450 (1970).) Contrary to the County Defendants' argument, the direct managerial role played by the physician in *Hopedale*—and the myriad ways in which he benefitted personally—bear no resemblance to the role of the Clinic physicians either before or after the acquisition of the Clinic by the Foundation.

The founding physician at issue in *Hopedale* was expressly cloaked with "full managerial authority for the operation of the [healthcare] complex" and personally received salary and other compensation, additional financial benefits, space for his office and related business, and various perks in connection with the institution's activities. *Hopedale*, 46 Ill.2d 450, 458 (1970). That is quite different from the roles played by any Clinic physician at the Hospital—including those who serve as a medical director spending a fraction of their time providing administrative oversight and consultation to the full-time Hospital administrative staff, or as a physician serving as an uncompensated member of the Board of Trustees.

Despite these differences, the County Defendants characterize unnamed Clinic physicians as "insiders" and suggest that any benefits to the Clinic as a whole constitute improper gain or profit to the alleged individual "insiders." (CD at 78.) For support, the County Defendants point to the IRS settlement agreement, which they claim "documents several questionable practices," and then rely on various policy arguments expressed by Professor Colombo. (CD at 78-80.) Contrary to the County Defendants' attempt to invoke the IRS settlement agreement, the evidence showed that the IRS did not require the end of any supposed "questionable practices," nor did the IRS assess any penalties or disrupt the status of the Foundation as exempt from

federal taxation.[4] (Tonkinson 1/8/19, 78:21 – 79:3, 86:1 – 87:8.) Second, the academic theories and policy views of Professor Colombo do not reflect Illinois law. They are simply the opinions of an undisclosed expert, which are inadmissible hearsay and irrelevant.

ii. The defendants' arguments regarding various aspects of the relationship between the Foundation and the Clinic are both irrelevant and unfounded

Ignoring that this *Korzen* factor focuses on private benefit to the individuals managing the organization, rather than third parties doing business with it, the County Defendants argue that various aspects of the relationship between the Clinic and the Foundation show private benefit to the entire Clinic. (CD at 78-81.) The County Defendants' arguments can be divided into two buckets: those relating to the relationship between the Clinic and the Foundation before the merger, and those relating to the merger itself. Neither holds water.

The County Defendants point to a number of aspects of the relationship between the Foundation and the Clinic that they characterize as showing "tight" integration or "commingled" affairs. (CD at 6-14, 80.) These include the delivery of ancillary services (lab and radiology) at the Hospital, Clinic physicians serving as medical directors for departments in the Hospital, Clinic physicians serving on the Foundation Board of Trustees, the provision of insurance and related services to the Hospital and Clinic physicians by HSIL/CRIMCO, common email addresses, integrated medical records, and each entity's read access to the other entity's collection and billing data. (CD at 6-14.) According to the County Defendants, such "tight"

[4] The County Defendants' rely on the IRS's supposed "questioning" of certain practices at the same time they argue that private inurement (the issue that concerned the IRS) is different from, and immaterial to, the question of private gain or profit for purposes of the applicable *Korzen* factor. (CD at 79.) The County Defendants are correct that private inurement and the question under this *Korzen* factor are different. One key difference is discussed above—the *Korzen* factor is limited to whether any gain or benefit in a private sense is received by one "managing" the institution.

integration inherently provided a mutual benefit, resulted in patients looking to "Carle as one", and undermined the claim that the property is used exclusively for charitable purposes. (CD at 6, 17.)

Without citation to any authority, the County Defendants proclaim that the integration "across the for-profit/not-for-profit divide is impossible to reconcile with the constitutional standard." (CD at 8.) That statement begs the question: Why? The Constitution requires that exempt property be used primarily for charitable purposes. The Foundation is only seeking a partial exemption on the parcels—for the portions that were used by the Foundation. That the Foundation was able to achieve efficiencies in its own operations by contracting with the Clinic (and paying negotiated, fair market rates for the services) in no way changes the primary charitable purposes for which the Foundation used its parts of the parcels. (*See* M. Hall 1/28/19, 220:9-14 (admitting that "the interorganizational agreements were designed to ensure that services going form the hospital to the clinic and vice versa were documented and paid at fair market value").)

The County Defendants claim that unprofitable operations like the emergency department were assumed by the Foundation, while profitable activities like lab and radiology were owned by the Clinic. (CD at 80.) The evidence showed that lab and radiology were historically owned by the Clinic. (Wellman 1/24/19, 49:4-18.) There was no evidence, nor any reason to believe, that the Foundation could have forced the Clinic to relinquish the lab and radiology services. Nor was there any evidence that patients would have benefitted if the Foundation had started its own (duplicative) ancillary services. Second, the Foundation operated the Hospital for charitable purposes. Providing critical services that may not be profitable is part of the Foundation's charitable mission. The Emergency Department is a key example of exactly such a service.

Thus, the Foundation operating the Emergency Department, even though it was not profitable, is an example of how the Foundation used the parcels primarily for charitable purposes, and in no way provided any improper benefit to the Clinic.

The County Defendants argue that HAMP, the health insurer previously owned by the Clinic that was a large commercial payor at the Hospital and in the Hospital's service area, somehow created private benefit to the Clinic. (CD at 10, 80.) Notably, the County Defendants point to no evidence that by providing healthcare services to HAMP insureds, the Hospital was providing an improper benefit to the Clinic. To the contrary, the Hospital's HAMP contracts were a result of contentious negotiations—symbolized by Cathy Emanuel's now-famous "tenacious" towel—in which the Hospital worked hard to get the best rates it could. (Leonard 1/4/19, 5:7 – 6:20; Emanuel 1/24/19, 243:14 – 244:15.)

The County Defendants point to the merger itself as supposed evidence of improper benefit. (CD at 80-81.) The County Defendants claim that regulatory changes (Stark IV) were the impetus for the merger and that charity care and the Foundation's charitable purposes were not. (CD at 18, 53.) Such arguments are not only irrelevant, they are also refuted by the testimony of Dr. Leonard, who did not include Stark IV among the reasons for the Foundation's acquisition of the Clinic. (Leonard 1/4/19, 10:6 – 12:16.) It is undeniable that the merger advanced the charitable mission of the Foundation by expanding the breadth and depth of the care provided by the Foundation, extending the charity care provided by the Foundation to the primary and specialty care provided by Clinic physicians, and increasing the amount of free and discounted care provided and the number of people served by the charity care program. (Leonard 1/4/19, 27:20 – 28:17.)

Finally, the County Defendants continue to suggest, without any evidence, that the price paid by the Foundation to acquire the Clinic conferred an improper benefit on the Clinic. (CD at 80-81.) The County Defendants point to the difference between the share price set forth in the Clinic bylaws with the price paid by the Foundation, but the share price in the Clinic bylaws was unrelated to the enterprise value of the Clinic. (Leonard 1/4/19, 18:20 – 24:3.)[5]

The County Defendants also criticize the discounted cash flow valuation methodology used by two prominent business valuation consulting firms to arrive at the enterprise value of the Clinic and HAMP. (CD at 80-81.) They rely on Professor Hall, who was not proffered as a valuation expert, has never performed a valuation, and aside from a handful of lectures that touched on the subject has never taken any course in valuation. (M. Hall 1/25/19, 29:19-21; M. Hall 1/28/19 pm, 223:3-14.) Hall admitted that "there was credible documentation that the purchase price paid by the Carle Foundation to acquire the clinic reflected fair market value…." (M. Hall 1/28/19 pm, 221:22 – 222:2.) Hall hypothesized that the use of the discounted cash flow method of valuation resulted in paying physicians for a percentage of future income from their practices (*Id.*, 223:20 – 225:16), but both valuations show that the enterprise value was driven by the value of HAMP, not the private physician practice. (TR 195 at 23; TR 204 at 31.) In fact, the Deloitte valuation estimated that the physician practice had a negative value that reduced the overall enterprise value. (TR 204 at 31.) Consequently, the suggestion that the price paid by the Foundation for the Clinic (including HAMP) resulted in an improper benefit to the Clinic is utterly baseless.

[5] Contrary to the argument of the County Defendants, the Clinic did not "divorce" the share price from the equity value of the stock in the early 2000's. The share price was never based on the equity value of the stock and was never intended to represent fair market value. (Wellman 1/24/19, 44:13 – 45:15.)

(g) *Korzen* Factor No. 7: 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

The Foundation did not place any obstacles in the way of anyone who needed charity care. To the contrary, the Foundation demonstrated at trial and its opening brief that it made extraordinary efforts to *remove* any obstacles and make the charity care program available to anyone who might need it, both through the way it structured its program and through its efforts to broadcast information about its program. In large part, the defendants ignored the evidence of the Foundation's efforts to publicize the program, its work with the community coalition, and the unique aspects of the program that were designed to make charity care accessible to as many patients as possible. Instead, the County Defendants criticized certain facets of the charity care policy itself, chastised the Foundation for making improvements to the program over time, and argued that the pre-merger relationship between the Foundation and the Clinic created obstacles to patients receiving charity care from the Foundation. (CD at 62-77.)

The County Defendants characterize as an "obstacle" the fact that the March 29, 2010, revision to the charity care policy limited eligibility for non-emergency care to persons who reside in the 39 counties comprising the Foundation's primary and secondary service areas. (*See* TR 216, at 2, ¶ A & Attachment 1 thereto.) The short answer is that there is no evidence that a single person was denied charity care on that basis. (Leonard 1/4/19, 157:13 – 158:9; Hesch 1/15/19, 92:5-11.) To the contrary, the addition of the residency requirements coincided with the inclusion of the former Clinic physicians in the charity care policy, which made primary care, specialty services, and all physicians' professional fees covered by the charity care program. The residency requirement in no way hindered this broad expansion of the program. The number of patients covered by the charity care program, and the cost of the free and discounted care provided under the program, rose significantly following the March 2010 revision. (TR 508.)

The County Defendants also criticize the charity care program for supposedly not taking into consideration the size of the patient's bill when determining eligibility. (CD at 68.) In reality, every charity care policy in the record either provided for "hardship charity" when a patient has experienced catastrophic medical expenses (TR 16, 40, 93, and 106) or set limits on personal financial responsibility for catastrophic medical expenses (TR 117, 165, 199, and 216).

The County Defendants recognize that the Foundation made improvements to the charity care program over time, but argue that this shows more could have been done sooner. (CD at 69.) The Foundation is proud of the fact that the number of patients receiving charity care, the amount of costs attributable to that care, the percentage of uncompensated care that was determined to be charity as opposed to bad debt, and the scope of the program all increased over the period at issue. Those improvements were not attributable to the removal of obstacles, but rather to the Foundation's ability to develop ways to do more and to reach more people.

Auto-qualifying patients for charity care is a good example of this. Recognizing that it needed evidence of need (and not merely an unpaid bill) to qualify a patient for charity care, over time the Foundation identified various criteria that were ascertainable by the Foundation and typically indicated that the patient met the income standards for the charity care program. Whether it was Medicaid eligibility, receipt of Township General Assistance, or referral from Frances Nelson, these criteria did not expand the eligibility requirements *per se*, but rather avoided the need for those patients to complete an application in order to qualify for benefits. That does not mean barriers to charity care existed in 2004 when only Medicaid eligibility was recognized an auto-qualifier. It simply meant that recipients of Township General Assistance and persons referred from Frances Nelson needed to apply for charity care in order to receive benefits.

The County Defendants also refer to the use of "chargemaster" rates for self-pay patients and point to the fact that the Foundation referred self-pay accounts to collection agencies. (CD at 64-65.) Neither charging patients the standard rate (which every patient was charged) nor attempting to collect a charge from a patient who refused to apply for charity care or enter into a payment plan constitutes an obstacle to the receipt of charity care. As Rob Tonkinson testified, few patients paid the chargemaster rate. He estimated that the Foundation collected "10% or less" of the chargemaster rate from an uninsured patient. (Tonkinson 1/8/19, 101:22 – 102:7.) The Foundation also gave patients every opportunity to apply for charity care or enter into a payment plan before any account was sent to a collection agency. In fact, when a patient requested an application or the Foundation otherwise learned that the patient may be eligible for charity care, all collection efforts stopped. (Tonkinson 1/7/19, 210:23 – 211:2.) The Foundation started the collection process with a series of letters, then patient accounting staff would make phone calls. As Pat Owens explained, "before we would send an account to a collection agency, the collection group within the hospital was responsible for making one final phone call and trying to offer, again, charity care to that particular patient. If we still had no response, no application, no acknowledgment, then it would eventually go to a collection agency." (Owens 1/11/19, 35:1-17.) Even after an account was sent to a collection agency, unless and until a court judgment was obtained, that patient could still apply for and receive charity care. (Tonkinson 1/17/19, 199:22 – 200:18; TR 93.)

The County Defendants then spend eight pages arguing that various aspects of the Clinic's operations constituted obstacles to the receipt of charity care from the Foundation. (CD at 69-76.) As an initial matter, even if any Clinic practice pre-merger was an obstacle (which, as explained below, was not the case), any such "obstacle" was removed as of the date of the

merger, April 1, 2010. More fundamentally, while the County Defendants argue that the Foundation should have forced the Clinic to "take down" the "barriers" (CD at 75), not forcing a third party to remove an alleged barrier is not the same as affirmatively placing obstacles in the way of those who need and would avail themselves of charitable benefits. The *Korzen* factor requires a showing that the exemption applicant "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 157. The alleged obstacles cited by the County Defendants were not placed there by the Foundation.

The County Defendants point to the Clinic's pre-merger collection practices and "payor strategies"[6] and that patients "looked to Carle as one" as barriers to patients receiving care at the Hospital. As supposed illustration of these barriers, the County Defendants present an elaborate hypothetical about a patient's journey from the Hospital emergency department through the care he would need at the Hospital, pointing out the various bills that the patient would receive from the Hospital, CFPS, and Clinic physicians. (CD at 76-77.) The County Defendants' hypothetical does not demonstrate barriers to a patient receiving charity care from the Foundation. To the contrary, the hypothetical shows that there were no such obstacles—the patient received all the care he needed and all the charity care he was entitled to under the Foundation's charity care policy. That the patient may receive various bills, some of which pre-merger were subject to the

[6] The County Defendants refer to the following as "payor strategies": the period when the Clinic did not have a contract with Blue Cross; the Clinic's supposed favoring of HAMP; and the period when the Clinic limited the number of new Medicaid patients it would accept in certain practice areas. The County Defendants also argue about practices concerning patients covered by "Medicare" (CD at 69-73), but there is no evidence that the Clinic ever had a policy that limited the number of patients covered by Medicare.

charity care policy and others of which were not, did not dissuade the hypothetical patient from seeking or receiving the care he needed.

Even putting aside the County Defendants' hypothetical, the County Defendants are wrong that the Clinic's practices or any confusion between Clinic and Hospital somehow affected the ability of Hospital patients to receive the care, including charity care, they needed from the Hospital. Professor Hall was unaware of a single instance in which a patient was denied necessary hospitalization because she was covered by Medicaid. (M. Hall 1/28/19 pm, 163:4-8.) Indeed, there is no evidence of any such incident involving any other payor, either.

The County Defendants are also wrong that the Hospital could have forced the Clinic to change or adopt various policies or practices. Hall admitted he was unaware of any hospital that dictates the billing practices of its private, for-profit medical staff. (M. Hall 1/28/19 pm, 163:24 – 166:7.) Contrary to Hall's uninformed and baseless opinion, the Hospital did not control the Clinic before the merger and could not dictate its practices. Hall has no meaningful experience in the real world of healthcare, but instead operates in a hypothetical land of policy with an incomplete and unrealistic understanding of the relationships between hospitals and physicians and the actual regulations that govern them. In reality, the "[C]linic was an independent entity owned by independent physicians, a private enterprise." (Cornish 1/18/19, 96:18-19.)

In fact, Cornish testified that in his expert opinion, the Foundation could not have required the Clinic to adopt the Foundation's charity care policy because "that probably would have been a violation of Stark and Anti-Kickback." (Cornish, 1/18/19, 99:10-16.) Putting aside the legal hurdles to Hall's suggestion, had the Foundation attempted to force a charity care policy or other billing practice upon the Clinic, the Clinic doctors could have chosen to practice at a different hospital.

Unable to identify any obstacles that the Foundation placed in the way of those needing charity care, the County Defendants rely upon Hall's *ipso facto* opinion in which he compared the percentage of the Foundation's non-Medicare services to the uninsured with the number of non-elderly uninsured persons living in the community at various multiples of the federal poverty guidelines. (CD at 77.) Hall concluded that the Foundation did not provide services "proportionate to the need in the community" and then concluded there must be some obstacle preventing those underserved individuals from receiving care. (CD at 77.) Hall's opinion lacks any scientific or statistical analysis by an accepted (or even disclosed) methodology and therefore is unreliable and should be disregarded. In addition, Hall's opinion ignores the myriad reasons that nonelderly people would not seek services from the Hospital in proportion to their percentage of the population, including the most obvious reason of all—namely, that non-elderly persons are relatively healthy and do not require hospitalization in proportion to their percentage of the population.

IV. DEFENDANTS' ADDITIONAL RED HERRING ARGUMENTS

We have just seen that, with the lone exception of whether it derives its revenue mainly from public and private charity, all of the *Korzen* factors support the Foundation's entitlement to exemptions for the Four Parcels. The following discussion refutes two additional arguments raised by the County Defendants that are neither tied to precedent nor to any *Korzen* factor.

A. The Foundation Does Not Need to Quantify the Costs Incurred in Conducting Charitable Activities on Any Particular Parcel

Everyone agrees that the Foundation is required to show that it uses each of the Four Parcels "exclusively for charitable purposes," within the meaning of the Constitution. In the case of the North Tower and main hospital properties, that requires proof that it conducts activities on those properties in furtherance of its charitable purposes. In the case of the Power Plant and The

Caring Place, that requires proof that the activities on those properties are "reasonably necessary" to support the Foundation's efforts on other properties to achieve its charitable purposes.

The evidence shows that the North Tower and main hospital properties are core aspects of the Hospital campus. The Foundation's activities on those properties include providing important, money-losing healthcare services that benefit the entire community, conducting medical research, providing medical education, and providing healthcare to all regardless of ability to pay, including free or discounted care to all who need and apply for it. The County Defendants insist that more is required. They leap from an unremarkable statement in *Oswald* that a property owner must show that the use of the "subject property" satisfies both the constitutional and statutory exemption requirements (*Oswald*, ¶ 18) to the unfounded and unprecedented assertion that "the constitution demands" that "the numbers given by Plaintiff as to its charitable operations are properly attributed to the specific parcels at issue in this case…." (CD at 39.) Neither *Oswald* nor any other case imposes that requirement.

The County Defendants cite a series of cases in which exemptions were denied simply because the property owner failed to prove that it was using its property for exempt purposes—not because it failed to quantify the amount of costs associated with exempt activities on the property. *See*, *e.g.*, *Mac Murray College v. Wright*, 38 Ill.2d 272, 279 (1967) (denying exemption for college faculty and staff housing because "the uses of the property were residential and private"); *Spring Hill Cemetery v. Ryan*, 20 Ill.2d 608, 616-18 (1960) (denying exemption because parcels were not used for cemetery purposes); *Mattoon v. Graham*, 386 Ill. 180 (1944) (denying exemption for property that was leased and used for farming, rather than municipal purposes).

The County Defendants erroneously claim that "[t]his issue was addressed squarely" by the Appellate Court decision in *Community Health Care, Inc. v. Illinois Dep't of Revenue*, 369 Ill.App.3d 353 (3d Dist. 2006), *appeal denied*, 223 Ill.2d 632 (2007). (CD at 41.) They mischaracterize that decision as being based on the property owner's failure to isolate data bearing on the use of the subject property from aggregated organization-wide data. The actual problem was the property owner's inability to provide any data at all about the use of the subject property. Its evidence attempting to "extrapolate" that data—not from aggregated organization-wide data, but from operations at similar facilities—was rejected as speculative. 369 Ill.App.3d at 357.

It is not surprising that the County Defendants are unable to cite a single case supporting their claim that the Constitution demands a property owner to quantify the costs incurred in connection with its charitable activities on the subject property. After all, no *Korzen* factors address any such quantitative consideration. On the other hand, courts have approved exemptions without imposing any such requirement. *See, e.g.*, *Lutheran Gen. Health Care Sys. v. Illinois Dep't of Revenue*, 231 Ill.App.3d 652 (1st Dist.), *appeal denied*, 146 Ill.2d 631 (1992) (approving exemption for building used to provide medical care, medical education, and medical research without mention of costs associated with any of those activities).

B. The Foundation's Entitlement to Exemptions Is Not Undermined by the Treatment of Charity Care in Its Strategic Plans

The County Defendants claim that the Foundation's strategic plans show a focus on "growth over charity care" (CD at 46-52) ignores the fact that the strategic plans were not intended to address every important challenge or objective. (Leonard 1/4/19, 35:20 – 36:12.) The Foundation's explanation that charity care was an important goal "at a mission level" and was "always there" does not, as the County Defendants argue, "reduce charity care to just one of

many different matters of possible importance to Plaintiff, rather than it being its primary or exclusive focus." (CD at 50.) To the contrary, the Foundation's charitable mission was (and is) its primary focus. (Leonard 1/4/19, 36:13 – 37:4.) By being "at the mission level," the provision of care to all without regard to ability to pay, including the provision of free and discounted care to those who need and apply for it, is a primary focus of the Foundation.

The County Defendants also assert that although the plans referenced a number of numeric indicators for profit margin, market share and growth, they did not do that for charity care. (CD at 47.) This ignores the 2007 plan, which contained a 3% of gross revenue goal for charity care. (TR 2378.) With respect to that goal, the County Defendants criticize the Foundation for tasking the accounting department with monitoring that goal, which according to the County Defendants somehow "suggests that charity care was more significant to Carle because of its effect on the bottom line rather than a role in the mission." (CD at 49.) The County Defendants' argument puts the Foundation in a no-win situation—they criticize the Foundation for not having a numeric charity care goal, and then when it does have a numeric goal, they criticize it for having the accounting department, which maintains all numeric accounting information, monitor progress on that goal. The catch-22 manufactured by the County Defendants is irrelevant, though, because regardless of whether there was a specific numeric goal or who was tasked with monitoring it, the basis for the charity care program was the Foundation's mission of the "treatment of everyone who comes to the organization" and as such charity care was an "underlying issue and assumption for all strategic plans." (Leonard 1/4/19, 36:13 – 37:4; Emanuel 1/24/19, 204:15-23.)

The County Defendants also contend that the Foundation did not meaningfully consider poverty statistics, rates of uninsured patients, or number of persons in Champaign County on

general assistance or food stamps in working out its strategic plan. (CD at 50-51.) Consideration of such information would not have improved the charity care program or a strategic plan for one simple reason: the Foundation never put a limit on the number of people who could receive charity care or on the amount of costs that it would absorb to ensure that it provided charity care to all who needed and applied for it. (Leonard 1/3/19, 51:7 – 52:16.)

V. REQUESTED RELIEF

The preceding discussion has demonstrated that, regardless whether the Foundation's exemption claims under Section 23-25(e) are decided in accordance with *Carle II* or on a *de novo* basis, the Foundation has established its entitlement to exemptions for the Four Parcels for each of the years between 2004 through 2011. The County Defendants have raised two objections to the amount of the refund to be paid the Foundation: first, they criticize the Foundation's claim for and calculation of partial exemptions; and second, they challenge the Foundation's entitlement to prejudgment interest. Neither objection has merit.

A. The Foundation Has Proven Its Claims for Partial Exemptions

For the period before the merger, the Foundation seeks partial exemptions for the portions of the Four Parcels it used, and does not seek exemptions for the portion of the parcels leased by the Clinic. We will first address the County Defendants' objections to the claims for the Power Plant and Caring Place, and next for the main hospital parcel and the North Tower.

1. The Foundation has proven its entitlement to partial exemptions for the Power Plant and Caring Place

a. A partial exemption does not require proof that a physically discrete portion of the parcel is dedicated to exempt purposes

The County Defendants argue that the Foundation is precluded from receiving partial exemptions for the Power Plant and the Caring Place because there were no discrete portions of

those buildings that were used for the Hospital or the children of its employees, respectively. (CD at 115-16.) The Supreme Court squarely rejected the County Defendants' "separate space allocation" argument in *Streeterville Corp. v. Dep't of Revenue*, 186 Ill.2d 534 (1999). Indeed, the *Streeterville* Court expressly endorsed the type of percentage use allocation that the Foundation proved at trial.

Where property is used for both exempt and non-exempt purposes, "there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation." *Illinois Inst. of Tech. v. Skinner*, 49 Ill.2d 59, 64 (1971). For a partial exemption, "there is no requirement that the entire property be used primarily for charitable purposes." *Highland Park Hosp. v. State Dep't of Revenue*, 155 Ill.App.3d 272, 278 (2d Dist. 1987). In order to qualify for a partial tax exemption, the Foundation must establish an identifiable portion of each parcel that is used exclusively for charitable purposes. *See Streeterville*, 186 Ill.2d at 536; *Skinner*, 49 Ill.2d at 66. As the Supreme Court made clear in *Streeterville*, "identifiable portion" is not limited to a separate physical space on the parcel. 186 Ill.2d at 536.

Streeterville addressed whether a parking garage that served both employees of Northwestern Memorial Hospital and the general public was entitled to a partial tax exemption. 186 Ill.2d at 535-36. The Supreme Court rejected the DOR's argument that the property owner had to designate specific parking spaces or levels of the garage for exclusive use by hospital personnel in order to obtain an exemption. *Id*. Instead, the Court endorsed the property owner's use of statistical evidence to identify the portion of the property used for exempt purposes. *Id*. at 538. The Court noted that statistical evidence established that 74% of customers parking in the garage received a hospital employee discount. *Id.* at 535, 539. The Court concluded that 74% of the garage was used for charitable purposes, thereby entitling the property owner to an

exemption on 74% of the property. *Id*. at 538-39; *see also Home Interiors and Gifts, Inc. v. Dep't of Revenue*, 318 Ill.App.3d 205, 214 (1st Dist. 2001) (noting that *Streeterville* "rejected the Department's argument that a taxpayer must segregate its property between taxable and exempt use to claim a partial exemption").

The *Streeterville* Court questioned and distinguished the appellate court decision relied on by the County Defendants, *Evangelical Hosps. Corp. v. Dep't of Revenue*, 223 Ill.App.3d 225 (2d Dist. 1991). In *Evangelical*, plaintiff sought an exemption for 2,951 square feet of a building used as a hospital pharmacy, arguing that the nonexempt use was "merely incidental" to the exempt use. *Id.* at 231-32. The property owner submitted evidence demonstrating that nonexempt sales constituted 15% to 20% of its operating costs. *Id.* The *Evangelical* court found this information failed to establish what portion of the pharmacy space was used for exempt purposes versus nonexempt purposes and that the use accounting for 15% to 20% of costs was not "incidental." *Id.* Notably, however, the *Evangelical* court did not "unequivocally require[] an allocation based upon space" as the County Defendants assert. (CD at 116.) Neither did the *Evangelical* court preclude the use of statistical evidence to support partial exemption.

b. The Foundation established a partial exemption for the Power Plant by showing the percentage used to support the Hospital

In order to qualify for an exemption, the use of the Power Plant must be "reasonably necessary" for accomplishing the charitable purposes of the Foundation. *Memorial Child Care*, 238 Ill.App.3d at 985 (hospital was entitled to exemption for child care facility); *see also Northwestern Mem'l Found. v. Johnson*, 141 Ill.App.3d 309, 313 (1st Dist. 1986) (hospital was entitled to exemption for employee parking lot). It is uncontroverted that the Power Plant supplies essential services that are more than just "reasonably necessary." (Lambert 1/10/19,

196:13-22 (explaining that the Power Plant supplies chilled water, steam, emergency power, and waste management to Carle Foundation Hospital).) Simply put, the Foundation could not operate the Hospital without the services provided by the Power Plant. (Lambert, 1/10/19, 199:4-7).

During the period 2004 through March 2010, the Power Plant also supplied services to the Clinic. The Foundation does not seek a property tax exemption for the percentage of the Power Plant used to provide services to the Clinic, but only for the percentage used to provide services to Carle Foundation Hospital.

The evidence demonstrates that the Foundation carefully determined the percentage of the Power Plant facility that was used by the Clinic by reference to the percentage of services provided by the Power Plant to the Clinic. (Lambert 1/10/19, 199:24 – 195:13.) The Foundation determined that percentage by reference to the square footage of the parcels served by the Power Plant that were used by the Clinic. (*Id.* at 211:5-213:19; TR 86; TR 306-311.) The Foundation used that square footage percentage to charge the Clinic for the percentage of Power Plant services that it used. (Lambert 1/10/19, 36:16-21.) That percentage also corresponds with the amount of the Power Plant parcel that was used for non-exempt (*i.e.*, Clinic) purposes. The balance of the Power Plant parcel was used for exempt purposes by Carle Foundation Hospital. Thus, the percentage of exempt use by the Foundation equals 100% minus the percentage of non-exempt use by the Clinic (100% minus CCA percentage = CFH percentage). (*See* TR 86; TR 306-11.)

c. The Foundation established a partial exemption for the Caring Place by showing the percentage of the facility that was used to support the Hospital

The Caring Place is a daycare facility that serves the children of employees of Carle Foundation Hospital, as well as other children in the community. (Hesch 1/15/19, 70:21 – 72:3.) As the County Defendants concede, a child daycare center can constitute an appropriate auxiliary use of an exempt hospital like Carle Foundation Hospital. *See Memorial Child Care v. Dep't of Revenue*, 238 Ill.App.3d 985, 989 (4th Dist. 1992) (hospital was entitled to exemption for child care facility).

As with the Power Plant, the Foundation seeks a partial exemption for The Caring Place equal to the percentage use of that property that supports the Hospital. Under *Streeterville*, the Foundation does not need to demonstrate that certain rooms or portions of The Caring Place are allocated to the children of Carle Foundation Hospital employees. Instead, the Foundation may rely on statistical data to demonstrate the percentage of The Caring Place used to care for the children of Carle Foundation Hospital employees.

At trial, the Foundation established the percentage of revenue received subject to the employee discount for its employees. (TR 303-304; Hesch 1/15/19, 71:8-74:3.) The relevant data identifies the "Gross Revenue" of the Caring Place. "Gross Revenue" represents the total tuition that would have been charged before application of the "Hospital Employee Discount" and other discounts. (*Id.*) The Hospital Employee Discount was a 10% discount available only to children who are the employees of Carle Foundation Hospital—and not to the children of Clinic employees or anyone else. (Hesch 1/15/19, 72:18 – 73:7; TR 304.) Thus, by multiplying the Hospital Employee Discount by 10, one can arrive at the "Gross Revenue" attributable to the children of employees of Carle Foundation Hospital, or "Hospital Employee Gross Revenue." That Hospital Employee Gross Revenue can be compared to the total Gross Revenue to arrive at

a percentage use of The Caring Place that supports Carle Foundation Hospital. (Hesch 1/15/19, 73:22-74:3; TR0304.) This percentage equals the percentage of The Caring Place property used for exempt purposes. (*See* TR 304.)

This is the same type of evidence introduced by the plaintiff in *Streeterville* and endorsed by the Supreme Court. The *Streeterville* Court relied upon discounts provided to hospital employees as the basis for calculating the percentage usage of the parking garage by hospital employees and, hence, the exemption percentage. 186 Ill.2d at 538.

2. The Foundation has proven its entitlement to partial property tax exemptions for the main hospital parcel and the North Tower

The County Defendants argue that the Foundation failed to prove partial exemptions for the main hospital parcel and the North Tower. First, the County Defendants argue that Section 15-86(c) only authorizes partial exemptions for parking lots and common areas. (CD at 117.) Here is the relevant statutory language:

> "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).

Hospital buildings do not just have common areas. The partial exemption for common areas contemplated by this provision presupposes a building that has discrete portions devoted to exempt and non-exempt uses, such as the space in the Hospital that the Foundation leased to the Clinic, as well as common areas like hallways and vestibules. This provision indicates that the common area in the building gets allocated between exempt and non-exempt uses in the same proportion as the other space in the building. For example, if 20% of the office space in an

otherwise exempt building is leased to private physicians, then 20% of the common space in the building would likewise be deemed allocated to non-exempt uses.

Section 15-86(c) does not limit partial exemptions to the common areas. It states that "those parcels"—not just the common areas—"may qualify for an exemption in proportion to the amount of qualifying use." *Id.*

The County Defendants also contend that the Foundation did not prove the partial exemptions for the main hospital parcel and the North Tower because the lease did not define the physical portion of the parcels that were leased to the Clinic and because the lease granted the Clinic and its staff "access to all hospital and accessory building, property and facilities, including full rights of ingress and egress." (CD at 120-21.) The County Defendants interpret the lease to mean that the Clinic had "unfettered access" to the Hospital. (CD at 120-21.)

The County Defendants' interpretation is wrong. The evidence demonstrated that the doctors and staff of the Clinic did not have carte blanche to go anywhere they liked on the hospital campus. As Von Lambert testified, there were limits. For instance, "if a physician has privileges to the OR, they could get into the OR. But if a radiology staff member wanted to get into the OR, they couldn't get into the OR." (Lambert 1/10/19, 228:5-8.) As another example, all doctors and staff could not simply walk into the emergency department "because it is a locked system." (*Id.*, 229:15-17.) In fact, Clinic staff and physicians were prohibited from going anywhere that the public could not go, unless they were there for a medical procedure or access was necessary for their job description. (*Id.*, 231:6-14.)

Areas in the hospital were locked. The Clinic was responsible for keying its own areas and the hospital for its areas. If a Clinic doctor wanted a key to hospital space, she needed to fill out a form explaining the need for the key, and then that request would have to be approved by

the hospital before access was granted. (*Id.*, 254:24 – 255:22.) Lambert was also not aware of Clinic physicians having keys to restricted areas of the Foundation. (*Id.*, 261:14 – 262:14.) "A Carle Clinic doctor who had privileges in the hospital could go to patient care floors." (*Id.*, 232:13-14.)

Moreover, the County Defendants' own citations fail to support their position. While they cite Dr. Wellman's testimony that he was not aware of any area of the hospital related to healthcare that Clinic staff did not have access to (CD at 121), they omit that in response to the question immediately preceding the cited testimony, Dr. Wellman testified that he did not know what the policies were related to access, but that if it was healthcare-related areas, the medical staff would potentially have access. (Wellman 1/24/19, 21:18 – 22:2.) Similarly, the County Defendants quote John Snyder as testifying that "[a]ccess wasn't determined [based on] whether it's a clinic person or a foundation person." (Snyder 1/23/19, 81:14-15.) Snyder's complete answer, though, was: "It was determined on did they have a legitimate need to be in there if it was a restricted area." (*Id.*, 81:15-17.) And this testimony was given after Snyder testified that the pharmacy would be restricted (*id.*, 80:18-22) and that access for a Clinic employee would "depend on what their function was and what they did." (*Id.*, 79:22-80:9.)

Although the County Defendants claim that "[n]one 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" (CD at 122), this claim is refuted by Lambert's unequivocal testimony that, "The primary purpose of the book was to identify occupants of the space" and the primary utilization of the book "was the management of the entire space owned by the Foundation." (Lambert 1/10/19, 224:10 – 225:4.)

In short, the Foundation has properly calculated the exemption percentages for the North Tower and main hospital properties in accordance with the portions of those properties that were leased to the Clinic. (*See* TR 205.) Refunds of the tax paid on those properties are therefore warranted in accordance with those exemption percentages. (*See* TR 504.)

B. The Foundation Is Entitled to Prejudgment Interest

The Foundation seeks prejudgment interest on its tax refunds under Section 23-20, which provides for interest "from the date of payment … to the date of refund" if a final order of a court results in a refund to a taxpayer. 35 ILCS 200/23-20. The following discussion demonstrates that the County Defendants and the Township Defendants are unable to defeat the Foundation's entitlement to prejudgment interest.

1. The County Defendants' equitable interest argument and the Township Defendants' argument regarding interest pursuant to a certificate of error are irrelevant

Both the County Defendants and the Township Defendants address potential grounds for prejudgment interest that the Foundation is not asserting. The County Defendants discuss the law regarding equitable prejudgment interest, but as the County Defendants acknowledge, "Plaintiff is not currently raising an equitable claim to prejudgment interest." (CD at 129.)[7]

Similarly, the Township Defendants address the law regarding interest under Sections 14-20 and 14-25 in the event that at certificate of error is issued. (TD at 25-26.) This is another strawman argument because the Foundation is not seeking a certificate of error or interest under those Code sections.

[7] However, if prejudgment interest were not available under Section 23-20, the Foundation would be entitled to interest under *Shell Oil Co. v. Dep't of Revenue*, 95 Ill.2d 541 (1983), which authorizes a taxpayer to recover "the income earned [by tax authorities] from money it was determined it had no legal duty to pay as taxes." *Id.* at 547.

2. The Foundation is entitled to prejudgment interest under Section 23-20

The County Defendants and Township Defendants argue, without any supporting citation, that the Foundation is not entitled to interest because Section 23-20 is limited to tax objection proceedings. (CD at 131-32; TD at 26-27.) This argument cannot be squared with the plain language of Section 23-20 awarding prejudgment interest "[i]f the final order of … a court … results in a refund to the taxpayer.…" 35 ILCS 200/23-20.

The Township Defendants argue that Section 23-20 is limited to tax objection proceedings because "Article 23 in its entirety concerns only the subject of tax objections." (TD at 26.) That is incorrect. The very cause of action brought by the Foundation—namely, a claim under Section 23-25(e)—is found in Article 23 of the Property Tax Code. 35 ILCS 200/23-25(e).

The County Defendants and Township Defendants seek to rewrite Section 23-20 to authorize interest "[i]f the final order of a court *in a tax objection proceeding* results in a refund to the taxpayer…" (added language italicized). This interpretation offends the fundamental principle that, in "interpreting a statute, courts should not add requirements or impose limitations that are inconsistent with the plain meaning of the enactment." *Mitchell v. Banary (In re M.J.),* 203 Ill.2d 526, 539-40 (2003). *See also Ill. Dep't of Healthcare & Family Servs. ex rel. Wiszowaty v. Wiszowaty,* 239 Ill.2d 483, 490 (2011) (declining to read unstated exception into statute authorizing post-judgment interest).

The defendants' claim that Section 23-20 is limited to tax objection proceedings is refuted by the award of prejudgment interest in *Evangelical Hospital Association v. Novak*, 125 Ill.App.3d 439, 443-44 (2d Dist. 1984). The property owner in that case received prejudgment interest under the predecessor to Section 23-20 in a lawsuit that was not a tax objection. Rather,

the lawsuit was a tax injunction action in which the plaintiff, like the Foundation in this case, sought to establish its entitlement to an exemption on the property at issue. *Id.* at 441. While the County Defendants attempt to distinguish *Evangelical* because the taxpayer there paid the taxes "under protest" (CD at 132), that argument further rewrites and distorts the plain language of Section 23-20. In light of *Evangelical*, the County Defendants construe Section 23-20 to authorize prejudgment interest "[i]f the final order of a court results in a refund to the taxpayer *in a tax objection proceeding or other case in which the taxpayer had paid the tax under protest.*"

In addition to improperly rewriting Section 23-20, the defendants' interpretation of that statute would also lead to absurd results. Tax objections cannot be filed on the ground that the property is exempt. 23 ILCS 200/23-25(a). Tax objection proceedings are used by property owners who seek to challenge taxes, assessments, or levies regarding non-exempt property. *See* 35 ILCS 200/23-15(b). A successful tax objection reduces, but unlike an exemption determination cannot completely eliminate, the amount of tax that the property owner was required to pay. Consequently, the Township Defendants and County Defendants interpret Section 23-20 to authorize prejudgment interest on a refund of a portion of the tax paid by the property owner, but to preclude prejudgment interest on a full refund if the property is determined to be exempt. Not being unequivocally required by the language of Section 23-20, and lacking any precedent, the defendants' narrow and illogical interpretation of Section 23-20 should be rejected. *See Mulligan v. Joliet Regional Port Dist.*, 123 Ill.2d 303, 312-13 (1988) (unless no other interpretation of a statute is possible, an interpretation "which would make the enactment absurd and illogical … must be avoided").

3. Adjustment to calculation of prejudgment interest

The calculation of prejudgment interest submitted by the Foundation in Appendix C to its opening brief included 5% interest on the payments for 2004 tax, from the dates of payment in 2005 until August 2, 2019. Citing *General Motors Corp. v. Pappas*, 242 Ill.2d 163, 187-88 (2011), the County Defendants assert that the 5% interest rate would stop at the end of 2005, and a CPI-based rate of 1.9% would apply as of January 1, 2006. (CD at 133-34.)

We agree. Accordingly, the revised Appendix C attached to this brief makes the necessary adjustment to the calculation of prejudgment interest, and the revised Appendix E contains a judgment that reflects the correct amount of prejudgment interest.

C. The Foundation Is Entitled to Costs

Costs are usually awarded to the prevailing party in a civil lawsuit. 735 ILCS 5/5-108. The County Defendants nevertheless challenge the Foundation's entitlement to costs, claiming that costs are typically denied unless a party exhibited bad faith. (CD at 134.)

The Foundation is entitled to costs under Section 5-108 of the Code of Civil Procedure, the provision that awards costs to a prevailing plaintiff in any action for money damages. 735 ILCS 5/5-108. The Supreme Court has held that award of costs under Section 5-108 "is mandatory." *Vicencio v. Lincoln-Way Builders, Inc.*, 204 Ill.2d 295, 301 (2003) ("It is undisputed that section 5-108 mandates the taxing of costs commonly understood to be 'court costs,' such as filing fees, subpoena fees, and statutory witness fees, to the losing party") (internal citation omitted); *Boehm v. Ramey*, 329 Ill.App.3d 357, 366 (4th Dist. 2002) ("Section 5-108 of the Code of Civil Procedure provides for the trial court to award a plaintiff certain costs if judgment is entered for the plaintiff").

VI. THE FOUNDATION IS ENTITLED TO DAMAGES FOR THE TOWNSHIP DEFENDANTS' BREACH OF THE 2002 SETTLEMENT AGREEMENT

The Township Defendants do not contest that Cunningham Township and the City of Urbana are joint obligors under the 2002 Settlement Agreement, and therefore both are liable for a breach committed by either one of them. (*See* CF at 62.) Instead, the Township Defendants attempt to escape liability for breach of the Settlement Agreement by: (1) asserting an unduly narrow interpretation of their responsibility under the agreement to refrain from challenging the Foundation's continued entitlement to exemptions for exempt properties on the Hospital's Urbana campus; (2) arguing that the Assessor's actions did not breach the Settlement Agreement and the Township is not liable for her actions; (3) denying that the Township and the City of Urbana breached the Settlement Agreement through their actions in this litigation; (4) asserting that the Settlement Agreement is invalid because of its duration; and (5) arguing that the Foundation is not entitled to attorneys' fees incurred in litigating against the State Defendants and County Defendants as an element of its damages. As shown below, each of these arguments fails.

A. The Township Defendants Cannot Rewrite the Settlement Agreement

The Township Defendants claim that the Settlement Agreement simply commits them to "not initiate or participate in any further … interventions on plaintiff's future applications for real property tax exemption" and "not to bring any further actions contesting the issuance of property tax exemptions to plaintiff." (TD at 29, 32.) The plain language of the Settlement Agreement is much broader. It contains an agreement by the Township, the City, the School District, and the Park District not to "*challenge either directly or indirectly*, publicly or privately, and through any form of cause of action of any kind available . . . the tax exempt or charitable

status" of the Four Parcels and other properties for which the Foundation possessed exemptions at the time the Settlement Agreement was executed. (TR 20 at 4 (emphasis added).)

B. The Actions of the Cunningham Township Assessor Breached the Settlement Agreement

The Township Defendants do not dispute that the Township Assessor's assessment of the main hospital parcel, the North Tower, and the Power Plant based on their full fair market value was the *casus belli* that led to the taxation of those properties without regard to any exemptions and triggered the litigation which is still raging more than 15 years later. Instead, the Township Defendants raise a series of arguments asserting that the Township Assessor's actions did not breach the Settlement Agreement. Each of those arguments fails.

First, the Township Defendants argue that the Township Assessor simply "performed her statutory duty" by valuing the subject properties. (TD at 32.) However, regardless of whether the assessor possessed the *authority* to assess the properties based on their full market value, she was not legally *required* to do so. This is consistent with this Court's September 4, 2018 ruling regarding Count I of the Fourth Amended Complaint. Although the Court concluded that the "local assessors had the authority to assess," the Court did not find that the assessor was required to exercise her authority and assess the Foundation's properties. (Order on Plaintiff's Motion for Summary Judgment on Count 1 of the Fourth Amended Complaint (September 4, 2018), at 17.)

Next, the Township Defendants argue that Section Four of the Settlement Agreement expressly allowed them to challenge the "valuation" of the Foundation's properties. (TD at 34-35.) The actual language of Section 4 referred to "actions regarding the valuation, *as opposed to tax-exempt status*, of any Carle properties. (TR 20 at 4 (emphasis added).) This provision allowed the Township and other taxing bodies to contest the assessed value placed on non-exempt properties if they believed it was too low, but it expressly prevented them from doing

what occurred here, namely, challenging "the tax-exempt status" of the Foundation's exempt properties. The Township's interpretation of Section Four, on the other hand, would render meaningless the prohibition contained in that provision. *See Thompson v. Gordon*, 241 Ill.2d 428, 442 (2011) ("A court will not interpret a contract in a manner that would nullify or render provisions meaningless").

Nor did this Court decide, as the Township Defendants insinuate, that the Assessor's actions in issuing assessments at full fair market value on the Foundation's properties constituted the lawful "valuation" of those properties permitted by the Settlement Agreement. (TD 34-35.) The Court's ruling addressed the Assessor's "authority to assess" under the Property Tax Code, rather than the tax bodies' ability to take actions regarding valuation authorized by the Settlement Agreement. (9-4-18 Order at 17.)

The Township Defendants also misconstrue a 2011 ruling by Judge Leonhard related to an allegation in the Second Amended Complaint that the Assessor was an "employee" of the Township. The Second Amended Complaint was superseded, first by the Third Amended Complaint and then by the Fourth Amended Complaint, which is the operative complaint in this litigation. The Third and Fourth Amended Complaints correctly allege that the Assessor was a Township "official." The allegations of earlier versions of the Complaint are irrelevant and moot. *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill.2d 150, 154 (1983) ("When a complaint is amended, without reference to the earlier allegations, it is expected that these allegations are no longer at issue").

Relying on the testimony of Joanne Chester, the Township Defendants argue that the Township Assessor is an independent elected officer whose actions cannot bind the Township, as

opposed to being an "agent" of the Township.[8] (TD at 38.) All that matters is that the Cunningham Township Assessor is a Cunningham Township official. The Township Defendants ignored the cases cited in the Foundation's opening brief holding public entities liable for actions of their officials that breached contracts. *See Mahoney Grease Service, Inc. v. City of Joliet,* 85 Ill.App.3d 578, 583 (3d Dist. 1980) (holding that the city could be liable for a breach of a settlement agreement committed by its elected councilmembers); *Arlington Heights Nat'l Bank v. Village of Arlington Heights,* 33 Ill.2d 557, 566 (1965) (concluding that the conduct of the village trustees constituted a breach of contract by the village).

The Township Defendants' reliance on *Heller v. Cnty. Bd. of Jackson Cnty.*, 71 Ill.App.3d 31 (5th Dist. 1979), is misplaced. *Heller* concluded that a county board may not "divest the supervisor of assessments of the duties and functions vested in him by law enacted by the General Assembly nor may the county board perform his duties or direct the manner in which they shall be performed." *Id.* at 38. Here, the Settlement Agreement did not divest the Assessor of authority to take any action that she was otherwise required to take. Notably, the *Heller* court also explained that:

> "The supervisor of assessments cannot expect, nor has he a right, to operate his office without any control of the county board, the body ultimately responsible to the public for the expenditure of public monies and the total operation of county government. The county board has both executive and legislative functions in its relationship to county officers. It has the power and responsibility to create salary classifications of general applicability for all county offices, elected or appointed, to the extent that it can require certain proficiencies for clerks and deputies by establishing

[8] Contrary to the Township Defendants' claim that the Foundation did not plead an agency relationship, Paragraphs 223-25 of the Fourth Amended Complaint contain allegations of agency. In any event, the Township Defendants forfeited any alleged pleading deficiency by not raising it before trial. *Novak v. Thies*, 89 Ill.App.3d 991, 994 (1st Dist. 1980).

> salary schedules, may establish hours of work and other general guidelines and conditions of employment" *Id.*[9]

Accordingly, Cunningham Township and Urbana are unable to escape liability for the Assessor's decision to issue full fair market value assessments in disregard of the properties' exempt status. Such action by a Township official constituted a challenge to the Foundation's exemptions in breach of the Township's obligations under the Settlement Agreement.

C. The Township Defendants Breached the Settlement Agreement by Challenging the Foundation's Claims for Exemption in This Litigation

Cunningham Township and Urbana are also liable for breaching the Settlement Agreement by opposing the Foundation's entitlement to exemptions in this litigation. Their insistence that all they have done is defend the claim against them is baseless. (TD at 39.) The only claim against the Township and Urbana is Count XXXV for breach of the Settlement Agreement. The Township and Urbana were not named as defendants in the other counts in the Complaint and were not required to participate in the adjudication of those counts, much less actively oppose the Foundation's entitlement to exemptions. Nevertheless, they have voluntarily and repeatedly insinuated themselves in the litigation of the exemption counts by expressly challenging the Foundation's entitlement to exemptions. (*See* TR 512-519, 521.) Indeed, they devoted 28 pages of their post-trial brief to Counts III-XXXIV, counts to which they are not parties.

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[9] The other cases relied upon by the Township Defendants are also inapplicable. *See Kotche v. Cnty. Bd. of Winnebago Cnty*, 87 Ill.App.3d 1127, 1128 (2nd Dist. 1980) (involving a declaratory judgment claim by the clerk of court against the county board regarding whether the board could control specific administrative duties of the clerk such as hiring, job classifications and other internal operations); *O'Connor v. Cnty. of Cook*, 337 Ill.App.3d 902, 904 (1st Dist. 2003) (concluding that the county was not the proper defendant when the plaintiff fell in a parking lot solely maintained by the sheriff's office).

The Township Defendants' active participation in the exemption counts and their express challenge to the Foundation's entitlement to exemptions with respect to those counts are not part of any defense against Count XXXV. Those actions constitute additional breaches of the Settlement Agreement.

D. The Settlement Agreement Is Enforceable as Written

The Township Defendants argue that the Settlement Agreement is actually a payment-in-lieu-of-taxes (PILOT) agreement that is invalid because it exceeds the five-year term authorized for such agreements. (TD at 29-30, citing 35 ILCS 200/15-30.) The Settlement Agreement does not purport to be a PILOT agreement or reference the statutory authorization for such agreements. The Township Defendants do not cite any authority in support of their contention that an agreement that does not purport to be a PILOT agreement can be construed to be subject to the limitations imposed on such agreements.

Even if it were possible to recharacterize a contract as a PILOT agreement, there is no basis to do that to the Settlement Agreement. The purpose of a PILOT agreement is for a tax-exempt entity to "make voluntary payments in lieu of property taxes for the direct or indirect costs of services provided by the taxing district." 35 ILCS 200/15-30. Here, the Settlement Agreement does not involve payments that were intended to compensate taxing bodies for the costs of services they provided to the Foundation. Instead, the Settlement Agreement involved what were termed "community service endowment grants" by the Foundation to the Urbana Free Library Children's Programs, Urbana School District #16, and Urbana Park District. (TR 20, § 2.) None of those public entities provides services to the Foundation. Accordingly, the Settlement Agreement is exactly what it purports to be—nothing more and nothing less—and is not subject to the limitations imposed on PILOT agreements.

Even if the Settlement Agreement were considered to be subject to the five-year limit on the duration of PILOT agreements, the obligations the agreement imposed on the taxing bodies would, at a minimum, be enforced for five years. *Cf. East St. Louis v. East St. Louis Gas Light & Coke Co.*, 98 Ill. 415, 427 (1881) (30-year contract was *ultra vires* but was enforced for entire period that contract was performed). Accordingly, the Settlement Agreement was in force when the Assessor breached it in 2004, two years after the the Settlement Agreement was reached.

Without citing any authorities, the Township Defendants argue that the Settlement Agreement would be unenforceable even if it is not a PILOT agreement, because government contracts are limited in duration to the term of office of the officials who approved it, which in the case of Cunningham Township is four years. (TD at 30.) This argument should be deemed forfeited by the Township Defendants' failure to cite any supporting authority. *Cf. Thanopoulos v. Pickens*, 87 Ill.App 3d 906, 909 (1st Dist. 1980) ("Attorneys are expected to assist the court in reaching a correct conclusion by submitting proper authorities supporting their views").

The Township Defendants' argument should be rejected even if it were not forfeited. The kind of limitations on government authority referenced by the Township Defendants are inapplicable to home rule entities. *See DMS Pharmaceutical Group v. County of Cook*, 345 Ill.App.3d 430, 439 (1st Dist. 2003) (Ill Const. art. VIII, § 6 was designed to given home rule units "the broadest powers possible"; home rule entity was authorized to determine its own procedures for making and performing a contract). The City of Urbana is a home rule entity. (*See* TR 20 at 1 (describing Urbana as "an Illinois home-rule municipality").) Accordingly, Urbana possessed the authority to enter into the Settlement Agreement and is liable for its breach.

Although Township is not a home rule entity, it is arguing that the Settlement Agreement is *ultra vires* in a limited sense, in that the Township Board did not have the power to contract beyond the duration of its term. (TD at 30.) The Township cannot accept the benefits of the Settlement Agreement and then argue *ultra vires* as a basis for breaching it with impunity.

Cunningham Township received payments from the Foundation under Section 1 of the Settlement Agreement. (TR 20 at 2; Leonard 1/3/19, 42:14-17, 42:23 – 43:18.) When a government body accepts the benefits of a contract, it is estopped from setting up or relying on its own irregularity or illegality in contracting to defeat recovery. *Branigar v. Riverdale*, 396 Ill. 534, 543 (1947); *McGovern v. Chicago*, 281 Ill. 264, 280 (1917) (affirming judgment in favor of contractor and holding that "[t]here is a distinction between contracts which are *ultra vires* and contracts which are within the power of the city to make but which have been irregularly or illegally made but have been performed in good faith").

For example, in *East St. Louis v. East St. Louis Gas Light & Coke Co.*, *supra*, the city contracted with an electric company to provide lighting for its streets for a term of thirty years. 98 Ill. 415, 423 (1881). The company sued to recover past due amounts, and the city argued that the contract was invalid because it bound future city councils. *Id.* at 425. The court held that the duration did not render the entire contract void and affirmed the ruling that the city must pay for the services it accepted and received. *Id.*; *see also Ryan v. Warren Twp. High Sch. Dist.,* 155 Ill.App.3d 203, 207 (2nd Dist. 1987) (holding that "although the contract was irregularly entered into, plaintiff is entitled to be reimbursed for his services where the school district ratified the contract by accepting the services and by making the partial payment"); *Stahelin v. Bd. of Education,* 87 Ill.App.2d 28, 42 (2d Dist. 1967) (enforcing a contract even though the "extra" construction had not been property voted on by the board because "a municipality may not assert

its want of authority or power, or the irregular exercise thereof, where to do so would give it an unconscionable advantage over the other party").[10]

Accordingly, the Township's acceptance of payments under the Settlement Agreement estops it from challenging the validity of that contract. The Township, like Urbana, remains bound by its obligations under the Settlement Agreement.

E. The Township and the City of Urbana Are Liable for Damages Resulting from Their Breaches

The Foundation's opening brief demonstrated that it is entitled to damages caused by the breach of the Settlement Agreement, including the taxes that it paid as a result of the breach[11] and the attorneys' fees it incurred in this litigation to restore the exemptions. The Township Defendants do not contest the damages relating to the tax payments, but instead focus on the claim for attorneys' fees. The Township Defendants argue that the Foundation cannot recover attorneys' fees because no statute authorizes an award of attorneys' fees, the Settlement Agreement does not provide for an award of attorneys' fees, and as to Count I, that claim was decided against the Foundation. (TD at 41.)

With respect to Count I, there is no requirement that a party prevail in a suit against a third party before it can seek attorneys' fees from the wrongdoer whose misconduct led to the

[10] The cases relied upon by the Township Defendants are inapposite, as both arise in the employment context. *Cannizzo v. Berwyn Twp. 708 Cmty. Mental Health Bd.,* 318 Ill.App.3d 478, 479, 484 (1st Dist. 2000); *Grassini v. DuPage Twp.*, 279 Ill.App.3d 614, 620 (3d Dist. 1996). Special considerations apply to contracts involving personal or professional services in light of the importance of enabling successor public officials to "choose for themselves those persons on whose honesty, skill and ability they must rely." *Cannizzo*, 318 Ill.App.3d at 485 (quoting *Mariano & Associates, P.C. v. Board of County Comm'rs,* 737 P.2d 323, 329 (Wyo. 1987)).

[11] Less the amounts that were already repaid by the School and Park Districts pursuant to their settlement with the Foundation, but including the amounts of the taxes allocated to the School and Park Districts that they were permitted to retain under the terms of their settlement.

litigation. *See Sorenson v. Fio Rito*, 90 Ill.App.3d 368, 371-74 (1st Dist. 1980) (plaintiff was entitled to recover attorneys' fees incurred during her unsuccessful attempts to obtain refunds of amounts paid to a third party as a result of defendant's legal malpractice).

Asserting that the Foundation is seeking attorneys' fees "for a claim it has made against defendants in the same case," the Township Defendants attempt to distinguish *Ritter v. Ritter*, 381 Ill. 549 (1943). (TD at 42.) However, the Foundation is not seeking to recover attorneys' fees from the Township Defendants based on Count XXXV, the only count in which the Township Defendants are named as defendants. The Foundation's attorneys' fees claim is limited to the claims that it asserted against separate parties, the County Defendants and State Defendants. Having proven a breach of contract, the Foundation is entitled to all damages caused by the breach, including attorneys' fees incurred in litigation with third parties, which resulted from the Township Defendants' breach. But for the Assessor's breach of the Settlement Agreement, the Foundation would not have been forced to litigate Counts I through XXXIV. This claim is consistent with *Ritter* and "the general rule that where the wrongful acts of a defendant involve the plaintiff in litigation with third parties…, the plaintiff can then recover damages against such wrongdoer, measured by the reasonable expenses of such litigation, including attorney fees." *Id.* at 554.[12]

Relying on *Evink v. Pekin Insurance Co.*, 122 Ill.App.3d 246 (2nd Dist. 1984), the Township Defendants claim that attorneys' fees cannot be recovered without evidence of

[12] The Township Defendants' citation to *Dreyfuss Metal Co. v. Berg,* 210 Ill.App.3d 189 (1st Dist. 1990) and *Goldstein v. DABS Asset Manager, Inc.*, 381 Ill.App.3d 298 (1st Dist. 2008) are inapplicable because those cases involved suits between two contracting parties, rather than recovery of attorneys' fees based on litigation with a third party. The Township Defendants are unable attempt to distinguish *Sorenson v. Fio Rito,* 90 Ill.App.3d 368 (1st Dist. 1980), as they rely on language from a dissenting opinion. *See Midwest Medical Records Ass'n v. Brown*, 2018 IL App (1st) 163230, ¶ 32 (dissenting opinions are not binding on the court).

"wrongful conduct," and there is no wrongful conduct here because the court ruled that the township assessor's assessment of the parcels was not wrongful and the tort immunity act applies. (TD at 42.) *Evink* is inapplicable to this matter. In that case, the court found the only action by the party accused of wrongful conduct was his intervention in a case involving the death of his daughter, but that the record was incomplete such that the court could not determine whether the intervention was wrongful. *Evink*, 122 Ill.App.3d at 251-52. Contrary to the Township's assertion, the *Evink* court did not hold that recovery of attorneys' fees could only arise from "illegal conduct of a tortious nature," nor did it make any reference to the tort immunity act. (TD at 42.)

Finally, the Township Defendants argue that the Foundation has not offered evidence of attorneys' fees incurred. Appendix E to the Foundation's opening brief contemplates that the court will direct the Foundation to submit a fee petition in support of its request for attorneys' fees after the court issues a decision. This is in accordance with the customary practice of submitting proof of the amount of attorneys' fees only after the court issues a decision. An earlier submission would be premature because damages (fees incurred in litigation with the State Defendants and County Defendants) are ongoing.

In sum, the Township and Urbana are unable to escape liability for their breach of the Settlement Agreement, which caused the Foundation to pay property taxes on parcels that had been exempt. Even if those taxes are refunded by Counts III through XXXIV, the Township and City of Urbana remain liable for the $6,089,000 in taxes that the School District and Park District retained in connection with their dismissal from this litigation. (*See* Appx D.) The Foundation is entitled to damages and reasonable attorneys' fees incurred in this litigation resulting from the Township's breach.

VII. CONCLUSION

After a month-long trial and hundreds of pages of briefing, this case boils down to whether a hospital that has provided millions of dollars of free or discounted care to thousands of patients year-after-year is ineligible under the Illinois Constitution to receive property tax exemptions because only a fraction of the hospital's costs and patients relate to the hospital's charity care program. Even leaving aside that this focus on charity care ignores the additional charitable purposes for which the Foundation uses its property, the defendants' insistence that the Foundation is not entitled to exemptions is at odds with more than a century of precedent interpreting the Constitution to allow not-for-profit hospitals to receive exemptions despite a "great disparity between the number of charity patients and those who pay for the care and attention they receive at [the] institution." *Sisters*, 231 Ill. at 322.

There is a good reason why, to this day, Loren Stouffe believes the DOR correctly decided that the Foundation was entitled to exemptions for 2012. When she and her DOR colleagues applied the Constitution's exemption requirements to the Foundation, they were doing what they had done for many years with respect to not-for-profit hospitals. On the other hand, when the defendants argue that the Foundation should have quantified its charitable activities on a parcel-by-parcel basis, continually restated its financials to update the amount of charity care provided during prior reporting periods, forced a for-profit physician group to adopt the Foundation's charity care policy, and complied with a host of other putative "requirements" fashioned out of whole cloth, the defendants are seeking to hold the Foundation to a standard that has never been the law of our State.

The evidence has shown that, regardless whether the Foundation's exemption claims under Section 23-25(e) are decided in accordance with *Carle II* or on a *de novo* basis, the Foundation is entitled to exemptions and tax refunds for the Four Parcels for each of the years

from 2004 through 2011. The evidence has also shown that Cunningham Township and the City of Urbana are liable for breaching their agreement not to oppose the Foundation's entitlement to exemptions, and that the damages for their breach of the 2002 settlement agreement include the attorneys' fees incurred by the Foundation in the resulting litigation with the State Defendants and the County Defendants. Accordingly, the Foundation respectfully requests entry of judgment in its favor in accordance with the proposed judgment contained in revised Appendix E.

Dated: June 17, 2019

Respectfully submitted,

THE CARLE FOUNDATION

By: /s/ Steven F. Pflaum
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Amy G. Doehring, an attorney, hereby certify that before 11:30 p.m. on June 17, 2019, I caused a true and correct copy of the foregoing **Post-Trial Reply Brief by The Carle Foundation** to be electronically filed and served by e-mail on the following counsel of record:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ Amy G. Doehring
Amy G. Doehring

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Prejudgment Interest Calculation

Tax Year	Amount of Tax to Be Refunded (from Appx. A)	Payment Due Dates	Prejudgment Interest Rate (from Appx. B)	Prejudgment Interest Through August 1, 2019
2004	$566,554.77	June 1 and September 1, 2005	5% from payment date to December 31, 2005 1.9% from January 1, 2006 through August 1, 2019	$159,347.80
2005	$629,633.79	June 1 and September 1, 2006	3.3%	$271,194.48
2006	$682,545.88	June 1 and September 4, 2007	3.4%	$279,591.36
2007	$931,609.42	June 2 and September 2, 2008	2.5%	$257,277.34
2008	$1,083,933.87	June 1 and September 1, 2009	4.1%	$446,604.51
2009	$1,121,846.81	June 1 and September 1, 2010	0.1%	$10,151.95
2010	$1,465,042.02	June 1 and September 1, 2011	2.7%	$318,399.79
2011	$1,601,229.42	June 1 and September 4, 2012	1.5%	$169,145.05
Total	$8,082,395.98			$1,911,716.28

Revised Appendix C

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

THE CARLE FOUNDATION, an Illinois not-for-profit corporation, Plaintiff, v. ILLINOIS DEPARTMENT OF REVENUE; BRIAN HAMER, in His Official Capacity as Director of the Illinois Department of Revenue; THE CHAMPAIGN COUNTY BOARD OF REVIEW; ELIZABETH BURGENER-PATTON, PAUL SAILOR, 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; CUNNINGHAM TOWNSHIP; DAN STEBBINS, in His Official Capacity as Cunningham Township Assessor; JOHN FARNEY, in His Official Capacity as Champaign County Treasurer; and THE CITY OF URBANA, Defendants, and CHAMPAIGN COUNTY, Intervenor-Defendant.	)	Case No. 08 L 0202 Hon. Randall B. Rosenbaum

[PROPOSED] JUDGMENT

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

1. With respect to Count I of the Fourth Amended Complaint, in accordance with the Order entered by this Court on December 4, 2018, judgment is entered in favor of Defendants 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 Defendant Cunningham Township Assessor, and against Plaintiff The Carle Foundation (the "Foundation"), dismissing with prejudice the claim asserted in Count I.[1]

2. With respect to Count II of the Fourth Amended Complaint, pursuant to the decision of the Illinois Supreme Court in this cause, *Carle Foundation v. Cunningham Township*, 2017 IL 120427, judgment is entered in favor of Defendants Illinois Department of Revenue (the "DOR") and Brian Hamer, in his official capacity as the Director of the DOR (the DOR and Brian Hamer are collectively referred to as the "State Defendants") and the County Defendants, and against the Foundation, dismissing with prejudice the claim asserted in Count II.

3. With respect to Counts III-X of the Fourth Amended Complaint, judgment is entered in favor of the Foundation, and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 ILCS 200/23-25(e), that the Foundation is entitled to exemptions for the Hospital's Main Campus parcel (PIN 91-21-08-310-001) for tax assessment years 2004 through 2011 pursuant to 35 ILCS 200/15-86, in accordance with the following exemption percentages:

a. 2004 Tax Assessment Year: 62.27%

b. 2005 Tax Assessment Year: 62.30%

c. 2006 Tax Assessment Year: 62.27%

d. 2007 Tax Assessment Year: 61.85%

e. 2008 Tax Assessment Year: 61.97%

f. 2009 Tax Assessment Year: 62.74%

[1] The Foundation's proffer of a Judgment dismissing Count I is intended to ensure that a final Judgment is entered disposing of all claims. The Foundation does not intend to waive the claim asserted in Count I.

g. 2010 Tax Assessment Year: 90.99%

h. 2011 Tax Assessment Year: 99.68%

4. With respect to Counts XI-XVIII of the Fourth Amended Complaint, judgment is entered in favor of the Foundation, and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 ILCS 200/23-25(e), that the Foundation is entitled to exemptions for the Power Plant parcel (PIN 91-21-08-307-004 through 91-21-08-307-006) for tax assessment years 2004 through 2011 pursuant to 35 ILCS 200/15-86, in accordance with the following exemption percentages:

a. 2004 Tax Assessment Year: 63.99%

b. 2005 Tax Assessment Year: 64.01%

c. 2006 Tax Assessment Year: 64.15%

d. 2007 Tax Assessment Year: 69.39%

e. 2008 Tax Assessment Year: 65.33%

f. 2009 Tax Assessment Year: 66.14%

g. 2010 Tax Assessment Year: 92.14%

h. 2011 Tax Assessment Year: 99.89%

5. With respect to Counts XIX-XXVI of the Fourth Amended Complaint, judgment is entered in favor of the Foundation, and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 ILCS 200/23-25(e), that the Foundation is entitled to exemptions for the North Tower parcel (PIN 91-21-08-309-001 through 91-21-08-309-009) for tax assessment years 2004 through 2011 pursuant to 35 ILCS 200/15-86, in accordance with the following exemption percentages:

a. 2004 Tax Assessment Year: 98.50%

b. 2005 Tax Assessment Year: 98.73%

c. 2006 Tax Assessment Year: 99.69%

d. 2007 Tax Assessment Year: 99.86%

e. 2008 Tax Assessment Year: 99.30%

f. 2009 Tax Assessment Year: 99.30%

g. 2010 Tax Assessment Year: 99.82%

h. 2011 Tax Assessment Year: 100%

6. With respect to Counts XXVII-XXXIV of the Fourth Amended Complaint, judgment is entered in favor of the Foundation, and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 ILCS 200/23-25(e), that the Foundation is entitled to exemptions for the Caring Place parcel (PIN 91-21-08-304-018) for tax assessment years 2004 through 2011 pursuant to 35 ILCS 200/15-86, in accordance with the following exemption percentages:

a. 2004 Tax Assessment Year: 42.33%

b. 2005 Tax Assessment Year: 38.31%

c. 2006 Tax Assessment Year: 48.41%

d. 2007 Tax Assessment Year: 50.39%

e. 2008 Tax Assessment Year: 49.21%

f. 2009 Tax Assessment Year: 52.29%

g. 2010 Tax Assessment Year: 64.83%

h. 2011 Tax Assessment Year: 66.22%

7. With respect to Counts III through XXXIV, Defendant Champaign County Treasurer is ordered to issue a refund to the Foundation in the sum of Eight Million Eighty-Two Thousand Three Hundred Ninety-Five Dollars and Ninety Eight Cents ($8,082,395.82). Said refund shall be assessed on a pro rata basis against all relevant taxing districts, with the exception

of Urbana School District No. 116 and the Urbana Park District (collectively, the "Settling Parties").

8. With respect to Counts III through XXXIV, Defendant Champaign County Treasurer is ordered to issue a further refund to the Foundation in the sum of One Million Nine Hundred Eleven Thousand Seven Hundred Sixteen Dollars and Twenty Eight Cents ($1,911,716.28), representing prejudgment interest through August 1, 2019, on the refund contained in Paragraph 7. Said refund shall be assessed on a pro rata basis against all relevant taxing districts, with the exception of the Settling Parties.

9. With respect to Count XXXV of the Fourth Amended Complaint, judgment is entered in favor of the Foundation, and jointly and severally against Cunningham Township and the City of Urbana, awarding the Foundation the following damages:

a. Six Million Eighty Nine Thousand Dollars ($6,089,000); and

b. Reasonable attorneys' fees, to be determined by the Court, incurred by the Foundation in pursuing all claims in this litigation with the exception of the breach of contract claim currently contained in Count XXXV of the Fourth Amended Complaint. The Foundation is directed to submit a fee petition no later than _____ Cunningham Township and the City of Urbana may file objections to the fee petition no later than _____. The Foundation may file a reply no later than _____.

10. Costs are awarded to the Foundation and against all defendants.

Dated: _____

_____
Hon. Randall B. Rosenbaum

Order Prepared by:

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TABLE OF UNSUPPORTED, INCORRECT, OR INCOMPLETE RECORD CITES IN THE COUNTY DEFENDANTS' POST-TRIAL BRIEF

PAGE IN BRIEF	WITNESS/ PAGE/LINE	CITED PROPOSITION	ACTUAL TESTIMONY/ OMITTED TESTIMONY
p. 6	Leonard (1/4/19) 173:21-174:6	Plaintiff's corporate structure is so incredibly complex that its executives had difficulty recalling which aspects were for- or not-for profit.	Dr. Leonard would need to see an organization chart to determine if Carle Physicians Group is part of the hospital's structure.
p. 6	Tonkinson (1/9/19) 142:18-143:2	Plaintiff's corporate structure is so incredibly complex that its executives had difficulty recalling which aspects were for- or not-for profit.	The Foundation has at least one for-profit subsidiary, but Tonkinson couldn't remember if it provided medical care.
p. 7	Leonard (1/7/19) 15:19-16:6	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.	Citation only supports this was true in 2008.
p. 7	Tonkinson (1/9/19) 89:24-90:6	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.	"[S]ubstantial percentage" were CCA physicians in period between 2002 and April 2010.
pp. 7-8	Tonkinson (1/9/19) 125:23-126:10	Plaintiff stressed CCA as a source of admissions.	An organization chart with a broken line relationship between CCA and the Foundation indicates a relationship between the two organizations and that CCA was admitting patients to the hospital.
pp. 7-8	Leonard (1/4/19) 180:15-181:21	Plaintiff stressed CCA as a source of admissions.	The broken line in the organization chart indicates some relationship between the two organizations.

PAGE IN BRIEF	WITNESS/ PAGE/LINE	CITED PROPOSITION	ACTUAL TESTIMONY/ OMITTED TESTIMONY
p. 8	Leonard (1/7/19) 14:1-10, 16-19	CCA's main office was on Plaintiff's hospital campus.	Citation supports 2008 only.
p. 8	Leonard (1/7/19) 19:16-20:16	CCA leased facilities from Plaintiff in the Champaign-Urbana area and satellite facilities in outlying towns, resulting in a substantial investment by Plaintiff in such facilities.	Cited testimony does not support that this resulted in "a substantial investment by Plaintiff in such facilities."
p. 9	Tonkinson (1/9/19) 212:13-214:18; TR-2781	Medical directors could be called upon to direct Plaintiff's staff.	Cited testimony does not support. Tonkinson did not so testify, and TR2781 provides only that upon request, a medical director will provide assistance to the Department Director and/or Manager in the supervision of staff.
p. 9	Tonkinson (1/9/19) 209:1-5	Tonkinson testified medical directors "provide[d] advice and quality review and other services in working with the administrative personnel who run those departments."	Medical directors did not exercise discretion or control over hospital departments or functions. 208:19-209:5
p. 9	Wellman 57:8-10	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.	Medical directors would give input if "the resources or environment needed to be addressed."

PAGE IN BRIEF	WITNESS/ PAGE/LINE	CITED PROPOSITION	ACTUAL TESTIMONY/ OMITTED TESTIMONY
p. 9	Tonkinson (1/9/19) 217:5-17	Medical directors would be involved with strategic planning for Plaintiff's departments and could be involved in setting operational goals.	Medical directors would not be involved in making strategic decisions. 216:18-217:15 TR4066 provides for medical directors assisting with "the development and operation of operating and capital budgets", not setting operational goals.
p. 9	Tonkinson (1/8/19) 94:8-14; TR-2497	Plaintiff agreed with the IRS to recharacterize these medical directors as Plaintiff's own employees.	Plaintiff agreed to recharacterize them with respect to their administrative services rendered to the hospital. TR2497 is Deferred Fee Agreement that does not contain a ¶ 14 on p. 11.
pp. 9-10	Snyder 86:6-20	This change had no direct effect on the medical directors' oversight over Plaintiff's employees.	Medical directors had no direct oversight of Foundation employees.
p. 10	Snyder 97:2-7	The doctors had an "integral role" in the clinical operations of the enterprise.	The management structure used by the Foundation is one used by a lot of healthcare organizations to be sure to get physician input into clinical operations, given their integral role and what they do.
p. 10	Tonkinson (1/9/19) 245:17-19	HAMP was the biggest commercial insurer in Plaintiff's primary and secondary service area.	HAMP was the biggest insurance company the Foundation dealt with.
p. 10	Wellman 33:5-7	In the local service area, a majority of HAMP enrollees were seen at CFH.	Only in the local service area, which was probably less than 25% of total membership across the State, were a majority of HAMP enrollees seen at CFH.

PAGE IN BRIEF	WITNESS/ PAGE/LINE	CITED PROPOSITION	ACTUAL TESTIMONY/ OMITTED TESTIMONY
p. 10	Emmanuel 221:12-16	HAMP was responsible for a significantly larger portion of receivables than any other individual private insurer.	Citations support 2004-2008 only.
p. 12	Owens 156:3-9	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.	Prior to the change in billing (Owens couldn't remember when it took place), this was true.
p. 14	Leonard (1/7/19) 71:1-7	CCA was the only physician service in the area that had this cooperative arrangement with Plaintiff through HSIL and CRIMCO.	This was because no other physician service received insurance through HSIL and no other medical provider received claims management services through CRIMCO.
p. 14	Tonkinson (1/9/19) 37:13-38:4; 40:3-13 TR-37, p. 15	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.	CCA took out loan for certain information systems hardware. Tonkinson assumed CCA needed the money to purchase whatever, and Foundation decided to extend loan. TR37 merely references fact of loan.
p. 14	Owens 85:21-86:5	Plaintiff had access to CCA's chargemaster.	Only to be able to know the technical portion for the government payors that they were responsible for billing.
p. 14	Owens 112:14-19	CCA had access to Plaintiff's collection notes between 2004 and 2010.	Owens didn't know the years that CCA had access.

PAGE IN BRIEF	WITNESS/ PAGE/LINE	CITED PROPOSITION	ACTUAL TESTIMONY/ OMITTED TESTIMONY
p. 15	Emmanuel 158:23-159:5	Plaintiff communicated with physicians in developing its strategic plan, including CCA physicians.	Emmanuel communicated internally with physicians, including CCA physicians, department heads, analysts, and the leadership team, and externally with agencies with whom they had collaborated and industry experts.
p. 15	Emmanuel 159:14-160:7	Plaintiff attempted to coordinate changes in specializations with CCA and worked with Wellman specifically, as part of this process.	Plaintiff considered CCA's plans and how they would impact it, and usually communicated with the physicians, but had occasion to talk to Wellman to learn the same.
p. 15	Billimack 76:12-18; TR-4084 p. 28	In the 2007 strategic plan, Plaintiff and CCA were working together on joint cardiology planning, and other new service lines.	Joint cardiology planning meant working with medical staff to do planning around cardiology service line. There were no other initiatives or priorities pursued. Billimack 78:15-79:5
p. 15	Emmanuel 192:5-9	Because radiology and imaging was handled by CCA required Plaintiff to coordinate with CCA in developing a strategic plan.	Emmanuel's testimony was limited to imaging, and not radiology.
p. 18	Wellman 47:15-24	It is clear the Stark IV regulations played a significant role in prompting the merger.	Cited testimony does not support. Testimony is that CCA was looking at impact of Stark law on it.
p. 18	Wellman 60:7-11	CCA's planning documents noted Stark IV regulations as most significant pressure impacting it.	Most significant market pressure impacting CCA are regulatory changes, including Stark IV.

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p. 18	Wellman 51:1-3	Because of high degree of integration between Plaintiff and CCA prior to merger, the Stark regulations were disruptive and would force Plaintiff and CCA to have duplicative services.	Plaintiff retained ownership of ancillary services to avoid duplication of services, and Stark was of concern because it would disrupt what would cause CCA to consider replicating and bifurcating services.
p. 18	Wellman 63:18-64:2	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.	Cited testimony does not support. Wellman testified regarding new regulations coming forth on a weekly and monthly basis and that they knew they had to change.
p. 19	Leonard (1/4/19) 74:18-20; TR-51, p. 3	While Plaintiff points to several charitable activities, this is undermined by Plaintiff's practice of recharacterizing bad debt as charity care, sometimes long after the fact.	Cited testimony does not support. Citation is that a 2004 press release states that enhanced community care program means some people will have accounts written off and others will now receive discounts.
p. 19	Tonkinson (1/9/19) 145:20-146:5	At the point at which bad debt was deemed an accrued expense, Plaintiff did not intend to treat it as charity care.	This was so because Plaintiff had no way of knowing if patients deserving of charity care.
p. 20	TR-2378, p. 1	In discussing charity care goals, Owens e-mailed Tonkinson that "we know with [Self-Pay] Compass we're going to clean out self-pay."	Owens said this means Plaintiff is going to identify patients not sent to bad debt and who have not paid that it believes qualifies for community care. Owens: 126:24-127:5
p. 21	Boyd 66:11-14	After a notice was sent that if they had past bills owed to CCA, they could apply for charity care, applications increased.	Boyd didn't know how much of that increase was attributable to past CCA debt. Boyd 68:16-20

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p. 21	Jackson 88:15-18	Jackson didn't know how much of the charity care corresponded with debt over three years old.	Without data in front of her, Jackson couldn't determine this.
p. 21	Jackson 87:10-18	Legacy receivables included all debts, including those previously referred to collections agencies.	Cited testimony does not support this included debts referred to collection agencies.
p. 23	Boyd 9:5-21	New applications were required of at least some of the old CCA account-holders.	Cited testimony does not support. Boyd testified that after the merger, the number of applications increased.
p. 24	Owens 121:16-23	Much of the debt not seen as charitable at the time services were provided or at any point prior to being deemed an accrued expense.	Cited testimony does not support. Owens testified about accruing debt and trying to reflect on income statements what actual net collections would be. Owens 121:14-122:22
p. 28	Robbins 143:3-24	Robbins could not testify what services medical and nursing students provided to CFH.	Cited testimony does not support. Robbins testified students provided patient care to the extent their program allows for it.
p. 33	Tonkinson (1/9/19) 156:17-20	Tonkinson testified that even before Plaintiff changed its policies to limit the number of people who could be admitted, he believed Owens had "ways to influence" the number of people who applied for and qualified for charity care.	Cited testimony does not support. Tonkinson did not testify regarding any change in policy, and with respect to Owens stated that he didn't agree completely "that she didn't have ways to influence that now."
p. 36	Jackson 75:23-76:2	The high charity care in 2011 is misleading as this was when Plaintiff's practice of repackaging its prior bad debt from CCA was at its peak.	Cited testimony does not support. Jackson testified approximately $4.8 million in legacy receivables were written off to charity care in the month following the merger.

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p. 37	Tonkinson (1/9/19) 141:19-23	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.	Cited testimony does not support. Tonkinson testified to the principle, and said that sometimes you have incurred expenses but not yet paid them, and you do an estimate of the accrual.
p. 37	Owens 134:2-14; 141:10-143:9	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 did not know what portion of charity care corresponded with medical services provided in 2004-2005 because it wasn't her job. When shown a community benefits report and asked if she could tell how much of charity care total was previously characterized as an accrued expense, Owens responded that it wasn't her job and she didn't know.
p. 42	Tonkinson (1/9/19) 164:7-19; Hesch 244:8-245:7, 251:2-6; Koch 182:8-11	Tonkinson, Hesch and Koch could not determine how much of the charity care reported corresponds with community benefits reports or audit financial reports correspond with parcels at issue in the case.	Tonkinson could not tell how much community care provided on parcels at issue simply by looking at community benefits reports. Without going to the underlying data, Hesch didn't know. Koch testified details about numbers is not his job.
p. 47	Leonard (1/4/19) 235:17-19; Emmanuel 179:20-180:13, 197:1-14	No selective growth indicators were set for charity care.	Cited testimony does not support. Leonard testified no target was set in the 2000 strategic plan. Emmanuel testified there was no reference to a goal on the pages of the 2005 strategic plan shown to her.

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p. 47	Billimack 13:2-18	Local and regional market studies made no distinctions between for-profit and not-for-profit hospitals, with the occasional exception of comparisons with specific organizations.	Inherently, most hospitals are not-for-profit, so the bulk of the data represented not-for-profit organizations; occasionally efforts were made to locate specific not-for-profits for comparison purposes.
p. 48	Billimack 69:1-18	This was accomplished by Plaintiff and CCA being aligned, and working together.	Cited testimony does not support. Goal was for Plaintiff to have number, mix and quality of physicians to achieve growth targets, and to be aligned with entire medical staff around quality of care.
p. 50	Emmanuel 198:10-12	Emmanuel did not recall any specific initiative surrounding community care in 2005 and 2006.	Cited testimony does not support. Emmanuel could not remember if it was 2005 or 2006, but knew that there was a specific initiative around community care.
p. 51	Wellman 79:13-80:4	Plaintiff regularly engaged in joint strategic planning with CCA.	Cited testimony does not support. Wellman was asked about what topics he communicated with Emmanuel about when engaged in strategic planning.
p. 53	Boyd 70:19-23	Boyd never received any incentive pay based upon anything other than accounts receivable.	Boyd never received any performance goals based on anything other than accounts receivable.
p. 53	Snyder 89:17-21	Snyder did not recall discussing poverty statistics at any point when talking to CCA representatives about physician recruitment.	Snyder did not recall discussing the rates of uninsured persons in the community when talking about physician recruitment.

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p. 55	Fallon 297:15-19	In describing joint tort liability between Plaintiff and CCA, Fallon described Plaintiff – not the for-profit CCA – as the "deep pocket".	Cited testimony does not support. Fallon testified that one of the efficiencies of HSIL serving both Plaintiff and CCA was that "there would not be the exposure to the Carle Foundation Hospital as what is traditionally known as the deep pocket."
p. 58	Leonard (1/7/19) 55:24-56:12	When asked what Plaintiff was saving for, Leonard responded with only vague statements about being good stewards of its money and its interest in growing as an entity.	Leonard testified monies Plaintiff saves are to try and assist the mission, and specifically gave as an example the Carle UIUC College of Medicine.
p. 58	Leonard (1/4/19) 38:14-39:1	Leonard did not relate any particular surplus to any particular charitable plan.	Cited testimony does not support. Leonard was asked about importance of generating net income, and testified to the importance of care to everyone.
p. 58	Leonard (1/4/19) 39:5-140:1	In 2007, Plaintiff started feeling the impact of the financial crisis, in terms of increased demands from other facilities.	Leonard testified he is "very clinically focused" and his recollection of the impact to Plaintiff is primarily around care in the region, and interactions with different facilities and providers trying to maintain their level of care.
p. 62	Staske 169:8-170:10	Community care was only available to Illinois residents.	There was a period of time where community care was only available to Illinois residents, but Staske did not recall when that changed.
p. 62	Everette 13:3-12	The vast majority of charity care applications were denied based on an applicant's failure to turn in the application.	Denial would have either been a failure to turn in an application or the application needed additional information.

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p. 63	Everette 15:1-8	Everette was not aware of any effort between 2002 and 2008 to address the vast majority of denials being because someone did not provide all of the requested information.	Everette testified to phone calls and letters to applicants to try and obtain income verification, whch was a common source of denial. 13:13-20
p. 63	Everette 50:13-16	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.	Cited testimony does not support. The testimony cited relates to Plaintiff's collection efforts and the ability to apply for charity care to forgive debt, not applications in general. 49:17-50:16
p. 63	Everette 52:23-53:2	Everette examined last 12 months of income, even if someone became unemployed during that time.	But, she made it very clear that an applicant could reapply and there was no time limit for doing so.
p. 64	Tonkinson (1/7/19) 198:1-13	At some point, Plaintiff began allowing persons to qualify for charity care in advance of receiving treatment.	Tonkinson testified that he served as Plaintiff's CFO beginning in October 2002, and that this practice began "fairly early in [his] stay"
p. 64	Everette 37:21-24	The collection agencies strenuously pursued collections on accounts referred to them.	Everette testified that this was her belief.
p. 64	Everette 40:14-20	Accounts with balances as small as $240.60 were referred to court for judgment.	Everette testified that the amount had been referred to court, but she did not know if that was before or after that payment was made.

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p. 65	Owens 78:12-79:22	There were flat increases in the chargemaster from year to year, and in some years there was a market-based review.	In some years there were flat percentage changes, but in others, based on the department, the flat amount may vary. The other method would be an in-depth analysis oftentimes with the assistance of consulting groups or software-type vendors where Plaintiff could look at different prices to determine if it made sense. Some prices would go up, others would go down, so sometimes it was a total revamp of methodology and in other years it was more of a market-based review. 77:13-79:22
p. 67	Tonkinson (1/7/19) 228:9-19, 255:2-7; Owens 30:17-31:4	Between 2004 and 2011, Plaintiff made efforts to make its charity care program better known, including adding the application to its website, advertising in multiple languages and putting ads on busses.	Material was also available at all registration sites, advertising on billboards, slides on televisions in patient rooms, full page newspaper ads and printing information on billing statements and envelopes.
p. 68	Everette 13:7-12, 16:1-8	Changes had limited impact because applications were typically denied based on incomplete information	Cited testimony does not support that the changes had limited impact.
p. 68	Tonkinson (1/7/19) 235:14-236:10	Changes had limited impact because typographical error with respect to income threshold not even noticed for three years.	Cited testimony does not support. Tonkinson noticed an error in the exhibit shown to him. This does not mean the policy was not applied correctly at the time it was implemented.

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p. 70	Leonard (1/4/19) 229:21-230:8	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.	"Limited distribution channels, reliance in CCA and HAMP" is listed under "Competitive Trends". "Access issues" is listed under "Marketplace Trends". Leonard also testified that Plaintiff's reliance on HAMP did not limit the number of patients Plaintiff could reach out to because it wasn't restricted to them.
p. 70	Tonkinson (1/9/19) 178:20-179:8	Patients would come to CFH and receive services from CCA doctors, who would then process the 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 testified that as part of the exclusive services agreement, Plaintiff included language that CCA needed to use its best efforts to contract with the same insurers as Plaintiff because at one point in time Plaintiff was contracted with Blue Cross and CCA was not, resulting in higher balances to patients.
pp. 70-71	Tonkinson (1/9/19) 180:4-9	Because CCA did not accept Blue Cross-Blue Shield, those patients were going to other physicians and being referred to Provena Covenant, which created a burden for them.	Tonkinson testified that this did not create a burden for people in need because most of them had Medicaid or qualified for charity care. 179:22-180:8
p. 71	Tonkinson (1/9/19) 205:2-7	Plaintiff did not request that CCA contract with Blue Cross-Blue Shield until the 2008 closing agreement with the IRS	Cited testimony does not support. Tonkinson testified that a number of items that are mentioned in the closing agreement had already been done by the time of the agreement. The audit took place over the course of four years, and he did not know if this had been done prospectively or not. 205:2-22

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p. 71	Wellman 30:15-31:11	Around 2002, CCA adopted a practice of freezing current levels of Medicaid recipients.	While CCA tried to control the volume of Medicaid patients, it did not deny treatment and people coming into the hospital were taken care of.
p. 72	Leonard (1/7/19) 6:22-24, 7:11-15	If Plaintiff was not receiving a stream of Medicaid patients, it would reach fewer people than it would otherwise.	Leonard testified that there was a risk that Plaintiff would reach fewer people.
p. 72	Billimack 53:3-7	CCA's refusal to see new Medicaid patients was significant because it affected the access of patients to CFH if they needed hospital-based services.	Billimack testified that the refusal was mentioned in the strategic plan – not that it was "significant" – because it affected access.
p. 72	Emmanuel 187:11-21	Emmanuel was not aware of Plaintiff ever requesting CCA to change its Medicare strategy. It was just taking CCA's decision as a given and responding to them.	Emmanuel testified that she was not aware of Plaintiff requesting this because it would not have impacted CCA. The hospital's planning was around CCA's decisions.
p. 73	Wellman 18:2-7; Jackson 61:10-62:22	CCA had a no-service list for those who did not make payments or discuss their ability to pay.	Wellman testified people may be on the no-service list because of interpersonal behavior, potentially violent behavior, failure to follow medical treatment plans and financial reasons – a failure to discuss their ability to pay. Jackson testified that if people were unwilling to work with them on outstanding balances, they were abusive to professional staff, they were implicated in theft of property within the organization, or they missed multiple appointments time and again with the same providers, they may be placed on the no-service list.

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p. 73	Wellman 18:15-19	CCA would still attempt to collect from patients on the no-service list.	Wellman testified that CCA reserved the right to collect.
p. 73	Billimack 48:18-22; Hall 69:2-11	The primary source of non-emergency admissions to CFH was through CCA doctors.	This was Billimack's understanding. Cited Hall testimony does not support. Hall testified generally, and not about CFH.
p. 73	Hall (1/28/19) 69:11-13, 70:7-18	If CCA did not take a patient, that created a barrier to access to the hospital. If CCA did not have a charity care policy, did not see Medicare of Medicaid patients, or restricted payors, this limited the pool of people in need that would be seen by Plaintiff.	Cited testimony does not support. Hall had no knowledge of CCA or Plaintiff, and did not testify with regard to either CCA or Plaintiff, but instead generally. Moreover, Hall testified in terms of something that "might" happen or "sometimes" happens.
p. 74	Snyder 71:4-5, 19-22	Hospitalists would only interact with patients after they had been admitted.	Hospitalists would typically interact with patients after they had been admitted.
p. 74	Leonard (1/3/19) 113:21-24	Plaintiff had control over admitting privileges at the hospital.	Cited testimony does not support. Leonard testified he was not sure when Carle Physician Group was formed and that it was not related to the merger.
P. 74	Snyder 149:21-24	"You know, you cannot operate an emergency room physician group or a hospitalist group and make – it's a losing – you just lose money."	Complete answer goes on to state that professional fees don't generate enough to cover salary costs and every hospital either has to employ doctors, and there's a subsidy because you lose money on that, or you go out and buy that service from a company and you pay them. Every single hospital in the country has that same exact situation.

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p. 75	Boyd 75:8-19	Plaintiff and CCA had virtually identical logos, with similar coloration and the same cross symbol with horizontal striping.	Plaintiff and CCA had relatively similar logos with red coloration and a cross symbol as part of their name with horizontal striping.
p. 75	Owens 112:14-19	This confusion was so widespread that Plaintiff was given access to CCA's collection notes so it could assist these patients.	Testimony only supports that Plaintiff had access to collection notes to assist patients with either organization.
p. 78	Tonkinson (1/8/19) 91:10-23	At trial, Plaintiff cited its 2008 closing agreement with the IRS to demonstrate that there was no improper private inurement.	Tonkinson only testified about the deferred fee agreement and that the IRS could not find anything wrong with it.
pp. 78-79	TR2497, ¶ 10	In 2000, CFH realized that it overpaid it allocated share for certain IT, and it did not insist on immediate repayment, but permitted CCA to repay, through a loan, the overpaid amounts with interest.	Cited exhibit fails to support. TR2497 is a Deferred Fee Agreement that fails to even contain a ¶10.
p. 80	Wellman 45:1-17	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 and a decision was made to instead set a share price divorced from the equity value of the stock, with simple interest ever year.	Wellman testified that the HAMP share price grew and in the early 2000s, it was confronted with a share price 2x or greater what the typical integrated groups were requesting for new members to buy in. Because it was a recruiting issue, the share price was lowered and simple interest was paid annually to shareholders.
p. 84	Leonard (1/7/19) 25:15-22	Leonard thought neonatal services might not be profitable, including neonatal intensive care.	Leonard didn't believe neonatal services were profitable. There was no reference to neonatal intensive care.

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p. 86	Leonard (1/3/19) 143:7-16, 144:16-21	Operation of the day care center made Plaintiff more responsive to employee complaints.	Leonard testified that the day care center was important to employees and important to the operation of the hospital because people are important, and the day care center helps with retention, as well as people coming to work for the hospital. He also believes it helps with the nursing shortfall. 143:2-144:11
p. 109	Leonard (1/7/19) 108:20-24	Doctors formerly employed by CCA were given a defined leadership role in the new entity, through Carle Physicians Group.	Leonard testified they were given a defined role, not a leadership role.
p. 110	Leonard (1/7/19) 112:9-16	After the merger, a physician's council was founded to give "advice regarding management and oversight of the enterprise."	Full cite provides that it was founded to "to give advices regarding management and oversight of the enterprise as it moved forward to help with the – the cultural changes that we knew were going to be happening."
p. 110	Wellman 72:6-10	This council also reviewed physician compensation and was responsible for physician recruiting.	The council was responsible for reviewing the physician compensation model for fairness and appropriateness and were part of the recruiting process to engage physician leaders and potential recruits around the organization's history and culture. 71:20-72:10
p. 111	Stouffe 67:2-4	Stouffe testified that it would not be significant under the standard prior to Section 15-86 whether a hospital's charity care were 5% instead of 2.5% of expenses, but declined to state this as a categorical rule.	Stouffe testified that she could not remember if this was a categorical rule.

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p. 111	Stouffe 65:11-21	It would be significant to Stouffe in evaluating charitable use that the for-profit clinic was providing medical services without being subject to the hospital's charity care policy.	Stouffe testified that it would make a difference, not that it would be significant.
pp. 111-12	Stouffe 65:22-67:3	Stouffe testified it would be significant whether the space of a for-profit clinic were physically interspersed with that of the non-profit hospital.	Stouffe testified that it was make a difference, not that it would be significant.
p. 114	Leonard (1/4/19) 169:16-20, (1/7/19) 9:24-12:16	Section 15-86 promotes public accountability by requiring the exemption application be signed by the organization's CEO under oath and threat of prosecution under the False Claims Act. Leonard had never seen any applications prior to trial.	Leonard testified that he was not aware of being shown exhibits that had been prepared that were PTAX forms (but were not shown to him), and when shown actual PTAX forms from between 2004 and 2012, some of which were demonstrative exhibits, he testified that he may have seen some of them, and that he did not recall seeing some of them.
p. 114	Robbins 83:24-84:3, 150:16-152:10, 152:11-15, 174:1-10,	With the exception of grants, United Way donations and the community safety program, Robbins candidly admitted she did not know how the community benefit costs were calculated.	Robbins testified that she did not specifically know how the costs were calculated, and that the figures came to her from different sources, and that patient accounting had its own rules and finance had its own rules, so that she could not personally determine the basis. She also testified that backup exists for all of the numbers and that some calculations supporting the final numbers are accessible via CBISA. 174:10-15

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p. 114	Robbins 174:22-24	When asked if she ensured numbers were double counted in preparing estimates, Robbins testified, "we did our very best."	Robbins also testified that when looking at data that came to her department, they always tried to evaluate it and if they questioned it, they asked someone. 174:15-21
p. 114	Robbins 169:8-9	Robbins did not even know if Plaintiff received reimbursement for some of the costs listed on its trial summary of these costs.	Robbins testified that she didn't think there was anyone reimbursing Plaintiff for most anything for most of the items on the summary. 168:4-169:7
p. 120	Tonkinson (1/8/19) 46:11-17	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."	This email discusses improvements to the Power Plant and allocation of square footage based on them. Tonkinson testified the goal was to charge the Clinic fair market value, but that the IRS may have questioned Plaintiff varying from past practices in order to do so. 46:11-47:16; TR98
p. 120	Lambert 200:21-201:6	Splitting utility payments based on square footage of space allocated to each entity resulted in discrepancies because some departments used more power.	Lambert testified only to high use departments, and never said anything about discrepancies.
p. 120	Lambert 202:6-8	There was a trend in utilization in favor of charging CCA more, once metered.	Lambert testified price was based on utilization, and once metered, the Clinic was hit harder than the hospital.
p. 121	Lambert 232:8-9	Lambert was not aware of anything in the lease that would limit CCA's access to the hospital.	Lambert testified that a CCA staff member could not got anywhere that the public would not be able to go. including maintenance, food, laundry and sterile areas. 230:17-231:17

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p. 121	Wellman 22:3-6	Wellman testified that he was not aware of any area of CFH related to healthcare that CCA staff did not have access to.	Wellman testified that he did not know what the policies were related to access, but that if it was healthcare-related areas, the medical staff would potentially have access. 21:18-22:2
p. 121	Lambert 187:1-4	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."	When asked what was meant by space allocation, Lambert testified, "It's a term we use to define who resided in the space or who owned – that's probably the wrong word. Who was responsible for the financial burden of the rent or the space, the budget of the space." 186:23-187:4
p. 121	Lambert 218:13-24, 219:9	When disputes arose, it was over doctors being concerned about being charged for space.	Lambert testified the reasons for the disagreements over square footage were "a little above my pay grade" and that "the hearsay he was getting" was that they were paying too much.
p. 121	Lambert 220:16-22	Lambert was not aware of any disputes about CCA staff wanting to do anything in space occupied by Plaintiff.	When asked about disputes, Lambert testified that "it happened all the time" that someone wanted space that someone else had. 221:22-222:8
p. 122	Leonard (1/7/19) 76:21-77:2	Plaintiff's Medical Director contracts with CCA gave CCA doctors authority to oversee and plan activity in space allocated to Plaintiff in the lease.	Leonard testified only that the Foundation hired Carle Clinic directors to oversee activity in space allocated to the Foundation in the hospital.

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p. 122	Lambert 255:12-22	Lambert mentioned that CCA and Plaintiff had separate keys for their spaces, and that a CCA physician had to fill out a form stating why they needed access to CF space.	Lambert also testified that the request had to be approved, and that a CCA staff member could not got anywhere that the public would not be able to go. including maintenance, food, laundry and sterile areas. 230:17-231:17
p. 122	Snyder 80:1-9	Limits on access had nothing to do with the lines in the square foot book.	Cited testimony does not support. Snyder was asked about differences in physical access between a CCA employee and a Foundation employee, to which he said it would depend on your job. He was not asked about the square foot book.
p. 122	Snyder 81:14-17	According to Snyder, "[a]ccess wasn't determined [based on] whether it's a clinic person or a foundation person.	Snyder went on to testify that "[i]t was determined on did they have a legitimate need to be in there if it was a restricted space," and that "[m]ost areas in the hospital aren't restricted. Even I could walk in" 81:8-20