JUDGE NEIL M. GORSUCH

SENATE JUDICIARY COMMITTEE

QUESTIONNAIRE

APPENDIX 16(d)

Cases Tried or Litigated

D.C. Courts Home

Court Cases Online

Click here to view search criteria

Case Search for Company: NCRIC

Search retrieved 10 cases in 4.65 seconds.

Click here to view search results

Selected 1 cases to view

Viewing single case; Details retrieved in less than a second.

Click here to view case summary

2000 CA 007308 B: NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

Case Type: Civil II	File Date: 10/03/2000
Status: Closed	Status Date: 10/03/2000
Disposition: Judgment-From Jury Trial Entered On Docket	Disposition Date: 02/20/2004

Party Name	Party Alias(es)	Party Type	Attorney(s)
NCRIC INC		PLAINTIFF	BADAMI, Mr SCOTT M BARUCH, Mr DOUGLAS W NIEDERMAYER, Mr ROY I I PAGE, Mr RODNEY F F POLEBAUM, Mr ELLIOT E E ROBINSON, STEPHEN D
COLUMBIA HOSPITAL FOR WOMEN		Defendant	AIYAR, PRIYA R GORSUCH, Mr NEIL M HANSEN, Mr MARK C SCHULMAN, Mr ELI C

Docket Date	Description	Messages
03/17/2009	Additional eFiling Document to	Proof of Service to Order Granting Defendant's Motion for Assessment of Costs Signed by Judge Long on 03/17/09. Submitted 03/17/2009 14:04 jhc.
03/17/2009	Order Filed	Order Granting Defendant's Motion for Assessment of Costs Signed by Judge Long on 03/17/09. Submitted 03/17/2009 14:04 jhc.
03/17/2009	Order Granting Motion * Entered on the Docket	Order Granting Defendant's Motion for Assessment of Costs signed by Judge Long, efiled, eserved, and docketed in chambers on March 17, 2009. It is further ordered that the sum of $35,896.83 is awarded to defendant as costs and shall be added to the money judgment already docketed. mlo
02/27/2009	Miscellaneous Docket	Notice of Order Granting Relief from the Automatic Stay. Filed. Submitted. 02/27/2009 14:06. ncv. Attorney: BENZ, Mr STEVEN F (428026) COLUMBIA HOSPITAL FOR WOMEN (Defendant);
02/27/2009	Miscellaneous Docket	Notice of Order Granting Relief from the Automactic Stay. Filed. Submitted. 02/27/2009 11:16. ncv. Attorney: BENZ, Mr STEVEN F (428026) COLUMBIA HOSPITAL FOR WOMEN (Defendant);
01/07/2009	Miscellaneous Docket	ORDERED that the bill of costs is granted in the amount of $434.55. See D.C. App. R. 39.
01/07/2009	Notice:	Notice of Bankruptcy Filing Filed. submitted 01/07/2009 11:08. tw Attorney: AIYAR, PRIYA R (486248) COLUMBIA HOSPITAL FOR WOMEN (Defendant);
11/17/2008	Additional eFiling Document to	Proof of Service to Order Approving Rider To Supersedas Bond submitted 11/17/2008 17:34. ksc. signed by J/Beck on 11/14/08
11/17/2008	Order Filed	Order Approving Rider To Supersedas Bond submitted 11/17/2008 17:34. ksc. signed by J/Beck on 11/14/08
11/17/2008	Order Granting Motion for Supersedeas Bond Entered on the Docket	Order Granting Motion Approving Rider to Supersedeas Bond, signed by J/Beck on 11/14/08; efiled, counsel eserved, and docketed on 11/17/08. sbg
11/10/2008	Judge Caseload Transfer	Judge Caseload Transfer The judge was changed from BLACKBURNE-RIGSBY, ANNA to BECK, RONNA L
11/10/2008	Motion Filed:	NCRIC'S Consent Motion for Approval of Rider to Supersedas Bond Filed: Attorney: BARUCH, Mr DOUGLAS W (414354) NCRIC INC (PLAINTIFF); Receipt: 119285 Date: 11/10/2008
10/02/2008	Miscellaneous Docket	ORDERED and ADJUDGED, that the judgment on the Superior Court is affirmed. Signed by Pinkston
10/02/2008	Mandate Issued	Mandate Issued. Signed by PInkston
02/27/2006	Miscellaneous Docket	Copy of Orginial Bond (filed in jacket 3/04/04) released to Joseph R. DeSantis, plaintiff attorney this date 27th, February, 2006. dcm.
02/27/2006	Miscellaneous Docket	Supersedeas Bond in the amount not to exceed $20,500,000 (twenty million, five hundred thousand dollars) approved by Judge Blackburne-Rigsy 2/24/06 (The Medical Assurance Company, Inc.)
02/24/2006	Order Sua Sponte to/for: Entered on Docket	Order Replacing Supersedeas Bond: Entered on Docket. Order docketed and mailed from chambers on 2/24/06. Judge Blackburne-Rigsby.
02/10/2006	Motion Filed:	NCRIC'S Consent Motion for Approval of Replacement Supersedeas Bond Attorney: BARUCH, Mr DOUGLAS W (414354) NCRIC INC (PLAINTIFF); ; Mr SCOTT M BADAMI (Attorney) on behalf of NCRIC INC (PLAINTIFF); Mr DOUGLAS W BARUCH (Attorney) on behalf of NCRIC INC (PLAINTIFF); Mr ROY I NIEDERMAYER (Attorney) on behalf of NCRIC INC (PLAINTIFF); Mr RODNEY F PAGE (Attorney) on behalf of NCRIC INC (PLAINTIFF); Mr ELLIOT E POLEBAUM

16d-000002

Docket Date	Description	Messages
		(Attorney) on behalf of NCRIC INC (PLAINTIFF); STEPHEN D ROBINSON (Attorney) on behalf of NCRIC INC (PLAINTIFF) Receipt: 27867 Date: 02/10/2006
11/04/2005	Case Jkt rec from Br on . NOA Filed On . Notice Mailed to Parties On . Prelim Pkg To DCCA on .	Notice of Appeal filed 10/26/05 & recv'd 10/28/05 with jackets-11 vols. NOA mailed to parties on 11/4/05
10/26/2005	Notice of Appeal Filed	Pltf's Notice of Appeal Filed by NICRIC,INC. from order entered September 30,2005 Notice of Appeal mailed to interested parties NCRIC INC (PLAINTIFF); ; Mr SCOTT M BADAMI (Attorney) on behalf of NCRIC INC (PLAINTIFF); Mr ROY I NIEDERMAYER (Attorney) on behalf of NCRIC INC (PLAINTIFF); Mr RODNEY F PAGE (Attorney) on behalf of NCRIC INC (PLAINTIFF) Receipt: 17301 Date: 10/26/2005
10/25/2005	Praecipe to Enter Appearance Filed	Praecipe to Enter Appearance Filed NCRIC INC (PLAINTIFF);
10/25/2005	Praecipe to Enter Appearance Filed	Praecipe to Enter Appearance Filed NCRIC INC (PLAINTIFF);
10/25/2005	Praecipe to Enter Appearance Filed	Praecipe to Enter Appearance Filed NCRIC INC (PLAINTIFF);
09/30/2005	Order Denying Motion * Entered on the Docket	Order Denying Motion fora new trial and renewed motion for judgment as a matter of law Entered on the Docket Order docketed and mailed from chambers on 9/30/05 - Judge Blackburne-Rigsby
04/20/2005	Stay Entered	STAY TDMS TYPE: JSD TDMS EVENT: 1442sta TDMS FLAG: sp CREATED BY/ON: #485 Cox, Kin 04-21-2004 LAST MODIFIED BY/ON: #485 Cox, Kin 04-21-2004
02/03/2005	Praecipe Filed:	Praecipe changing the firm name of deft's counsel to Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #486 Colaire, 02-04-2005 LAST MODIFIED BY/ON: #486 Colaire, 02-04-2005
04/20/2004	Miscellaneous Docket	Coluumbia 's reply in support of motion for assessment of cost ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000col CREATED BY/ON: #469 Wilson, 04-21-2004 LAST MODIFIED BY/ON: #469 Wilson, 04-21-2004
04/20/2004	Stay Entered	STAY ENTRY BY: J/Blackburne-Rig TDMS TYPE: JSD TDMS EVENT: 1442sta CREATED BY/ON: #485 Cox, Kin 04-21-2004 LAST MODIFIED BY/ON: #485 Cox, Kin 04-21-2004
04/20/2004	Miscellaneous Docket	ORDER GRANTING mot for approval of a supersedeas bond & to stay execution pending decision,see lg,fld 4-20-04,mld 4-21-04 on rule 50 & 59 mtns & any appeal, ORDERED that the supersedeas bondin the form, amt and with the surety as shown in exhibit A to ncric's mtn is approved by the court & that the execution of the judgment docketed in this action on 2-20-04 and any proceedings to enforce said judgment are hereby stayed pending a determination of ncrics mtn for a new trial & renewed mtn for judgment as a matter of law & any appeal taken from the judgmentt ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #47E Smith, N 03-08-2004 LAST MODIFIED BY/ON: #485 Cox, Kin 04-21-2004
04/07/2004	Miscellaneous Docket	NCRIC's opposition to Columbia's motion for assessment of costs ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000ncr* CREATED BY/ON: #486 Colaire, 04-08-2004 LAST MODIFIED BY/ON: #486 Colaire, 04-08-2004
04/06/2004	Motion for New Trial Filed	(opp) Motion for a new trial and renewed motion for jdgmt as a matter of law ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 1040mop CREATED BY/ON: #445 Terry, P 04-09-2004 LAST MODIFIED BY/ON: #445 Terry, P 04-09-2004
04/05/2004	Motion Filed:	Motion for Assessment of Costs filed. Attorney: GORSUCH, Mr NEIL M (456411) COLUMBIA HOSPITAL FOR WOMEN (Defendant);
04/05/2004	Miscellaneous Docket	Reply memo in support of NCRIC'S mot for a new trial and renewed mot for jurdgment as a matter of Law ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000rep CREATED BY/ON: #469 Wilson, 04-08-2004 LAST MODIFIED BY/ON: #469 Wilson, 04-08-2004
03/26/2004	Motion for New Trial Filed	(opp) Motion for a new trial and renewed motion for jdgmt as a matter of law TDMS TYPE: MOT TDMS EVENT: 1040mop

16d-000003

Docket Date	Description	Messages
		TDMS FLAG: m* CREATED BY/ON: #465 Jones, G 03-08-2004 LAST MODIFIED BY/ON: #445 Terry, P 04-09-2004
03/25/2004	Notice:	Reply in support of its notice to amend the certificate of witnesses ENTRY BY: NCRIC,Inc TDMS TYPE: DOC TDMS EVENT: 9107rep* CREATED BY/ON: #2DE Vosh, Ja 03-26-2004 LAST MODIFIED BY/ON: #2DE Vosh, Ja 03-26-2004
03/19/2004	Notice:	response to NCRIC's notice to amend the certificate of witnesses ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9107res* CREATED BY/ON: #47E Smith, N 03-22-2004 LAST MODIFIED BY/ON: #47E Smith, N 03-22-2004
03/18/2004	Motion to Extend Filed	ORDER GRANTING Motion to EXTEND time (Consent), See Lg., Fld 040318, Mld 040322 ORDERED, that the Motion is GRANTED, FURTHER ORDERED, that Columbia's opposition to NCRIC's Motion for a New Tri al & Renewed Motion for Judgment as a Matter of Law shall be due March 26, 2004 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9203mot+ CREATED BY/ON: #465 Jones, G 03-18-2004 LAST MODIFIED BY/ON: #486 Colaire, 03-22-2004
03/17/2004	Motion to Extend Filed	Motion to EXTEND time (Consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #465 Jones, G 03-18-2004 LAST MODIFIED BY/ON: #465 Jones, G 03-18-2004
03/05/2004	Notice:	Notice to amend the certificate of witnesses ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9107not* CREATED BY/ON: #465 Jones, G 03-10-2004 LAST MODIFIED BY/ON: #465 Jones, G 03-10-2004
03/05/2004	Miscellaneous Docket	mot for approval of a supersedeas bond & to stay execution pending decision on its rules 50 & 59 mots and any appeal ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47E Smith, N 03-08-2004 LAST MODIFIED BY/ON: #47E Smith, N 03-08-2004
03/05/2004	Motion for New Trial Filed	Motion for a new trial and renewed motion for jdgmt as a matter of law ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1040mot CREATED BY/ON: #465 Jones, G 03-08-2004 LAST MODIFIED BY/ON: #465 Jones, G 03-08-2004
02/24/2004	Miscellaneous Docket	Witness list RECEIVED ENTRY BY: CHFWMC,Inc TDMS TYPE: DOC TDMS EVENT: 1457wit* CREATED BY/ON: #2DE Vosh, Ja 02-25-2004 LAST MODIFIED BY/ON: #2DE Vosh, Ja 02-25-2004
02/24/2004	Motion for Subpoena Duces Tecum Filed	(mot) mot to quash columbia's SUBPOENA duces tecum TDMS TYPE: MOT TDMS EVENT: 1048mot CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/19/2004	Order Denying * Entered on Docket	ORDER DENYING IN PART Columbia's Motion for Add'l Sanctions w/Respect to NCRIC's Late Produced Expert Docs., fld 040219/mld 040220 ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 1132ord CREATED BY/ON: #465 Jones, G 02-20-2004 LAST MODIFIED BY/ON: #465 Jones, G 02-20-2004
02/17/2004	Motion to Amend Complaint Filed	(ORDER GRANTING/DENYING IN PRT) Mot to add'l sanctions w/respect to NCRIC's late prod. expert docs. & slides, fld 040217/mld 040218 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9202mot* CREATED BY/ON: #47E Smith, N 02-03-2004 LAST MODIFIED BY/ON: #465 Jones, G 02-18-2004
02/13/2004	Miscellaneous Docket	case called for jury trial. all present. jury reached a verdict @ for the deft/counter-pltf for the amount of $18,220,002.00 (Jkt E ENTRY BY: J/Blackburne-Rig

16d-000004

Docket Date	Description	Messages
		TDMS TYPE: DOC TDMS EVENT: 0000cas CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/13/2004	Judgment from Jury Trial Entered on Docket	(fin) JUDGMENT from JURY TRIAL for Deft against Pltf. In The Amount Of $18,220,002, See Lg., Fld 2-20-04, Mld. 2-20-04 FOR: Deft INTRATE J$AMT: 18,220.002 ?: (fin) JUDGMENT from JURY TRIAL for Deft against Pltf., ORDERED that judgment is entered in favor of the deft CHFWMC, Inc. agst the plaintiffs NCRIC, Inc, and that the deft recover of the plaintiffs its costs of action. FURTHER ORDERED th at the Counter-Claimant Columbia Hosp For Women Medical Ctr, Inc., recover of th e counter deft NCRIC, Inc, the sum of $18,220,002 with interest at the statutory rate and its costs of action ENTRY BY: J/Blackburne-Rig TDMS TYPE: JSD TDMS EVENT: 1306fin+ TDMS FLAG: fj CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/12/2004	Miscellaneous Docket	case called for jury trial. trial respited until 2-13-04 @ 9:30am. no verdict. (Jkt Entry) ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas* CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/11/2004	Miscellaneous Docket	case called for jury trial con't. no verdict trial respited until 2-12-04 @ 9:30am (Jkt Entry) ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas* CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/10/2004	Miscellaneous Docket	case called for jury trial con't. oral exam of...con't & completed NCRICs Mot For Summ Judg Denied, See Lg (Jkt Entry) Pltf Mot as a matter of law Denied. trial respited until 2-11-04 @ 9:3 0am NCRIC's mot for judg on counterclaim denied. Mot granted on fraud claim. Plt f's mot as to punitive damages denied & pltf mot as to compensatory damages also denied ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/09/2004	Miscellaneous Docket	case called for jury trial cont. All parties present. Oral exam of William Henderson con't & heard in full, See Lg (Jkt Entry) Oral exam of Mr...heard in part. Trial respited until 2-10-04 @ 9:30a m... ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/06/2004	Miscellaneous Docket	case called for jury trial cont. All parties present. Oral exam of Steven Moore heard in full, See Lg (Jkt Entry) Oral Exa, of William Henderson heard in part. Trial respited util 2-9- 04 @ 9:30am ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/05/2004	Miscellaneous Docket	case called for jury trial cont. All parties present. mot for judg for fudiciary duties granted, See Lg (Jkt Entry) deft's counterclaim for mot for judg denied w/o prej. Oral exam of Steve Fa rus heard in full. Trial respited until 2-6-04 @ 2:30pm ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/04/2004	Miscellaneous Docket	case called for jury trial cont. All parties present. Oral exam of Dr. Larry Wilson heard in full, See Lg (Jkt Entry) deft's judgment as a matter of law heard and denied w/o prej. Deft's mo t to recuse judge Blackburne-Rigsby is Denied. Pltfs opposition to Columbia's mo t for sanctions with respect to certain NCRIC's Expert documents and slides in o pen court. Oral exam of Der. Dukes heard in full. Trial respited until 2-5-04 @ 9:30am ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/03/2004	Miscellaneous Docket	case called for jury trial cont. oral exam of Dr. Ben Ezra heard in full. NCRIC's Mot to quash Columbia's, See Lg. (Jkt Entry) subpoena duces tecum filed in open court. Oral exam of Dr Rifka Sifka c on't and completed case respited until 2-4-04 @ 9:30am

16d-000005

Docket Date	Description	Messages
		ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/03/2004	Motion for Subpoena Duces Tecum Filed	mot to quash columbia's SUBPOENA duces tecum ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1048mot CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
02/03/2004	Miscellaneous Docket	ORDER DENYING mot to excude evidence based on documents produced 3e business days,see lg,fld 2-3-04,mld 2-5-04 before trial & demonstratives produced after the ct ordered deadline, ORDERED that the record shall reflect that the mtn was denied in open court on 1 -28-04 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #47E Smith, N 01-28-2004 LAST MODIFIED BY/ON: #485 Cox, Kin 02-05-2004
02/03/2004	Miscellaneous Docket	(ORDER DENYING W/O PREJUDICE) Motion to voir dire Peter Ben Ezra prior to impaneling the jury, seelg, fld 040203, mld 040204 ORDERED that the record shall reflect that the motion was denied in open court on Jan. 28, 2004 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #468 Vaughn, 01-12-2004 LAST MODIFIED BY/ON: #465 Jones, G 02-04-2004
02/02/2004	Motion to Amend Complaint Filed	Motion to additional sanctions with respect to NCRIC's late produced expert documents and slides ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9202mot* CREATED BY/ON: #47E Smith, N 02-03-2004 LAST MODIFIED BY/ON: #47E Smith, N 02-03-2004
01/30/2004	Miscellaneous Docket	case called for jury trial. all present. oral exam of Dr Wayne Cooper heard in part Case respited until 2-2-04 @ 9:30 (Jkt Entry) ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
01/29/2004	Miscellaneous Docket	case called for jury trial con't. All Parties Present. Trial Respited Until 1-30-04 @ 2:30pm (Jkt Entry) ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas* CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
01/28/2004	Miscellaneous Docket	case called for jury trial con't. All Parties Present. deft's mot to exclude Dr. Ben, Ezra testimony denied, See Lg (Jkt Entry) Pltf's mot to voire dire Dr. Ben Ezra prior to impaneling jury is deni ed. Deft's mot to exclude evidence is denied. Jury selection began @ 3pm. Trial respited until 1-29-04 @ 9:30am ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004
01/28/2004	Praecipe Filed:	Praecipe re: deposition designations ripe for decision ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #47E Smith, N 01-28-2004 LAST MODIFIED BY/ON: #47E Smith, N 01-28-2004
01/28/2004	Miscellaneous Docket	mot to excude evidence based on documents produced three business days before trial and demonstratives produced after the see lg ct ordered deadline ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #47E Smith, N 01-28-2004 LAST MODIFIED BY/ON: #47E Smith, N 01-28-2004
01/26/2004	Trial	(jsd) TRIAL @ 9:30am TDMS TYPE: EVT TDMS EVENT: 0102b2H CREATED BY/ON: #T99 Young, C 09-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 09-11-2003
01/26/2004	Pretrial Conference	

16d-000006

Docket Date	Description	Messages
		(rst) PRE-TRIAL conference @ 9:30am NSDATE: 20031015pt cnt LSDATE: 20031015pt cnx TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #437 Young, V 08-18-2003 LAST MODIFIED BY/ON: #T99 Young, C 09-11-2003
01/09/2004	Miscellaneous Docket	Motion to voir dire Peter Ben Ezra prior to impaneling the jury ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 01-12-2004 LAST MODIFIED BY/ON: #468 Vaughn, 01-12-2004
12/19/2003	Order Docketed Resolving Motion to/for: Entered on the Docket	ORDERED That The Use Of Such Equipment Shall Be Permitted @ Trial, See Lg., Fld. 12-19-03 & It Is FURTHER ORDERED that the Parties Shall Be Permitted To Bring Su ch Items Into The Courthouse. 1. laptop computers 2. LCD projectors and tripod 3 . Cabling 4. Theater screen (80" measured diagonally) 5. flat-screen monitors, i f needed 6. other equipment, as necessary to facilitate use of this technology. SEE ORIGINAL ORDER IN COURT JKT ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 1133ord+ CREATED BY/ON: #4AU Russell, 12-23-2003 LAST MODIFIED BY/ON: #4AU Russell, 12-23-2003
12/19/2003	Motion to Amend Complaint Filed	Status held. Parties present. Representations made + indicated on the record. Case ready for trial. Trial, SEE LG. (Jkt Entry) date previously set to remain in effect ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000sta+ CREATED BY/ON: #47F Newell, 12-23-2003 LAST MODIFIED BY/ON: #47F Newell, 12-23-2003
12/18/2003	Miscellaneous Docket	Response to NCRIC's attempt to introduce incomplete docs. as trial exhibits ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000res* CREATED BY/ON: #465 Jones, G 12-24-2003 LAST MODIFIED BY/ON: #465 Jones, G 12-24-2003
12/12/2003	Motion to Amend Complaint Filed	ORDER GRANTING Motion for admission Pro Hac Vice of Priya A Aiyar (consent),fld 12-12-03,mld 12-12-03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9202mot* CREATED BY/ON: #47F Newell, 12-12-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 12-12-2003
12/10/2003	Motion to Amend Complaint Filed	Motion for admission Pro Hac Vice of Priya A Aiyar (consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9202mot* CREATED BY/ON: #47F Newell, 12-12-2003 LAST MODIFIED BY/ON: #47F Newell, 12-12-2003
12/01/2003	Miscellaneous Docket	columbia's response to ncric's objections re: columbia proposed trial exhibits ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 0000col* CREATED BY/ON: #485 Cox, Kin 12-02-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 12-02-2003
11/26/2003	Notice:	Notice regarding Columbia's purported withdrawal of trial exhibits ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9107not* CREATED BY/ON: #47F Newell, 12-02-2003 LAST MODIFIED BY/ON: #47F Newell, 12-02-2003
11/26/2003	Miscellaneous Docket	Memorandum in opposition to Columbia's objections to NCRIC's proposed trial exhibits ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000mem* CREATED BY/ON: #486 Colaire, 11-28-2003 LAST MODIFIED BY/ON: #486 Colaire, 11-28-2003
11/14/2003	Miscellaneous Docket	NCRIC's revised exhibit list ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000ncr* CREATED BY/ON: #468 Vaughn, 11-17-2003 LAST MODIFIED BY/ON: #468 Vaughn, 11-17-2003
11/14/2003	Miscellaneous Docket	Supplemental objections to Columbia's trial exhibits ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000sup*

16d-000007

Docket Date	Description	Messages
		CREATED BY/ON: #4BZ Barnett, 11-17-2003 LAST MODIFIED BY/ON: #4BZ Barnett, 11-17-2003
11/14/2003	Miscellaneous Docket	Memorandum in support of objections to NCRIC's proposed trial exhibits ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000mem* CREATED BY/ON: #4BZ Barnett, 11-17-2003 LAST MODIFIED BY/ON: #4BZ Barnett, 11-17-2003
10/15/2003	Pretrial Conference Held. Order Filed	PRETRIAL held. on 10-15-03 trial schedul for 1-26-04 at 9:30am transmittal forward to Civil A/O Copies of Pretrial Order SeeLg Given to parties following hearing ENTRY BY: (clerk) TDMS TYPE: MSC TDMS EVENT: 1168pre+ CREATED BY/ON: #477 Hartfiel 10-22-2003 LAST MODIFIED BY/ON: #477 Hartfiel 10-22-2003
10/15/2003	Pretrial Conference	(jsd) PRE-TRIAL conference @ 4:00pm LSDATE: 20040126pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 09-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 09-11-2003
10/15/2003	Pretrial Conference	(rst) PRE-TRIAL conference @ 4:00pm NSDATE: 20040126pt cnx LSDATE: 20030731pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 08-13-2003 LAST MODIFIED BY/ON: #437 Young, V 08-18-2003
10/08/2003	Witness List Filed	Witness list RECEIVED Amended ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1457ame* CREATED BY/ON: #4CM Haggins, 10-09-2003 LAST MODIFIED BY/ON: #4CM Haggins, 10-09-2003
10/08/2003	Miscellaneous Docket	Witness list RECEIVED ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1457wit* CREATED BY/ON: #445 Terry, P 10-09-2003 LAST MODIFIED BY/ON: #445 Terry, P 10-09-2003
10/08/2003	Motion to Amend Filed:	(ORDER DENYING) Mot for leave to AMEND the complaint, fld 031008, mld 031008 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9201mot* CREATED BY/ON: #477 Hartfiel 06-06-2003 LAST MODIFIED BY/ON: #465 Jones, G 10-08-2003
10/06/2003	Miscellaneous Docket	(ORDER DENYING) Motion to join parties as defendants/counter-plaintiffs, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #468 Vaughn, 08-21-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003
10/06/2003	Miscellaneous Docket	(ORDER DENYING) Motion in limine to exclude testimony of NCRIC's purported expert witnesses, seelg, fld 10/6/03, mailed 10/7/03 ORDERED, that plaintiff's R. 26(b)(4) statements were timely submitted on A ugust 9, 2001 and supplemented on February 2, 2002. Defendant's did not object to the inclusion of the experts in question until nearly two years after the R. 26(b)(4) statements were filed; and it is FURTHER ORDERED, that Mary A. Woodford meets the standards for expert witne sses pursuant to the controlling law in this jurisdiction ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop+ CREATED BY/ON: #465 Jones, G 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003
10/06/2003	Miscellaneous Docket	(ORDER DENYING) Motion to require defendant to provide security for costs, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #465 Jones, G 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003
10/06/2003	Miscellaneous Docket	(ORDER DENYING) Motion to compel and for sanctions, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9205mop* CREATED BY/ON: #468 Vaughn, 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003

16d-000008

Docket Date	Description	Messages
10/06/2003	Miscellaneous Docket	(ORDER DENYING) Motion to exclude evidence of certain counterclaim damages, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #468 Vaughn, 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003
10/06/2003	Order Granting Entered on the Docket	ORDER granting Motion to Exclude the testimony of Columbia's newly named witnesses See Lg fld 10-8-0,mld 10-8-03 ORDERED:That NCRICS Mot to Exclude the Testimony of Columbia newly named witness is granted The names ofthe following persons are stricken from th e witness list of columbia:Elizabeth Jackson,Francis Renee Perkins,Gideon kioko, Jerome O'Connell ,David Young ENTRY BY: J/Blackburne -Ri TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #47F Newell, 06-06-2003 LAST MODIFIED BY/ON: #477 Hartfiel 10-08-2003
10/06/2003	Miscellaneous Docket	(RODER GRANTING) Motion in limine, seelg, fld 10/6/03, mailed 10/7/03 FURTHER ORDERED, that (1) the presentation of proof at trial shall conform to the evidence, such tht at trial Columbia shall present evidence on its ten cl aims, and it opening and closing statement, first; and (2) a pre-trial hearing t o address the admissibility of documentary exhibits at trial is set for October 15, 2003 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003
10/06/2003	Miscellaneous Docket	(ORDER DENYING) Motion to exclude certain documents and calculations, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003
10/06/2003	Miscellaneous Docket	(ORDER DENYING) Motion to exclude the opinions & testimony of deft Columbia's designated damages expert, fld 10/6/03, mld 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003
10/06/2003	Miscellaneous Docket	(ORDER DENYING) Motion for reference to a special master, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #485 Cox, Kin 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003
09/11/2003	Trial	Set case for trial on 20040126tr @ 9:30am (per tm form) TDMS TYPE: SCH TDMS EVENT: 0102b2H CREATED BY/ON: #T99 Young, C 09-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 09-11-2003
09/11/2003	Per transmittal	Continued to 20031015pt @ 4:00pm from 20040126pt - Per transmittal form LSDATE: 20040126pt cnt TDMS TYPE: SCX TDMS EVENT: 0218cnt CREATED BY/ON: #T99 Young, C 09-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 09-11-2003
09/04/2003	Miscellaneous Docket	(opp) Motion to join parties as defendants/counter-plaintiffs ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #477 Hartfiel 09-09-2003 LAST MODIFIED BY/ON: #477 Hartfiel 09-09-2003
08/20/2003	Miscellaneous Docket	Motion to join parties as defendants/counter-plaintiffs ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 08-21-2003 LAST MODIFIED BY/ON: #468 Vaughn, 08-21-2003
08/18/2003	Continuance	Continued to 20040126pt @ 9:30am from 20031015pt (PER T.M. FORM) LSDATE: 20031015pt cnx TDMS TYPE: SCX TDMS EVENT: 0200cnx CREATED BY/ON: #437 Young, V 08-18-2003 LAST MODIFIED BY/ON: #437 Young, V 08-18-2003
08/13/2003	Per transmittal	Continued to 20031015pt @ 4:00pm from 20030731pt - Per transmittal form LSDATE: 20030731pt cnt

16d-000009

Docket Date	Description	Messages
		TDMS TYPE: SCX TDMS EVENT: 0218cnt CREATED BY/ON: #T99 Young, C 08-13-2003 LAST MODIFIED BY/ON: #T99 Young, C 08-13-2003
07/31/2003	Pretrial Conference	(rst)PRE-TRIAL conference @ 4:30pm NSDATE: 20031015pt cnt LSDATE: 20030619pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 06-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 08-13-2003
07/24/2003	Miscellaneous Docket	Defts Opp to NCRIC'S mot for leave to amend the complaint ENTRY BY: NCRIC,Inc TDMS TYPE: DOC TDMS EVENT: 0000def* CREATED BY/ON: #477 Hartfiel 07-29-2003 LAST MODIFIED BY/ON: #477 Hartfiel 07-29-2003
07/24/2003	Miscellaneous Docket	Opposition to Pltfs Motion to exclude certain corroborating fact witnesses ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000opp* CREATED BY/ON: #47F Newell, 07-28-2003 LAST MODIFIED BY/ON: #47F Newell, 07-28-2003
07/24/2003	Miscellaneous Docket	(opp) mot to exclude certain documents and calculations ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #47E Smith, N 07-28-2003 LAST MODIFIED BY/ON: #47E Smith, N 07-28-2003
07/24/2003	Miscellaneous Docket	(opp) Motion to require deft to provide security for costs ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #465 Jones, G 07-28-2003 LAST MODIFIED BY/ON: #465 Jones, G 07-28-2003
07/24/2003	Miscellaneous Docket	(opp) mot to exclude the opinions & testimony of deft Columbia's designated damages expert ENTRY BY: columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #485 Cox, Kin 07-28-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 07-28-2003
07/24/2003	Miscellaneous Docket	(opp) Motion to exclude evidence of certain counterclaim damages ENTRY BY: columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #485 Cox, Kin 07-28-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 07-28-2003
07/24/2003	Miscellaneous Docket	(opp) motion for reference to a special master ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #468 Vaughn, 07-28-2003 LAST MODIFIED BY/ON: #468 Vaughn, 07-28-2003
07/24/2003	Miscellaneous Docket	ncric's opposition to defts mtn to change the order of the proof of trial ENTRY BY: ncric TDMS TYPE: DOC TDMS EVENT: 0000to * CREATED BY/ON: #485 Cox, Kin 07-25-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 07-25-2003
07/24/2003	Miscellaneous Docket	(opp) Motion in limine to exclude testimony of NCRIC's purported expert witnesses ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #47F Newell, 07-25-2003 LAST MODIFIED BY/ON: #47F Newell, 07-25-2003
07/24/2003	Pretrial Statement Filed	PRETRIAL statement (Joint) ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1134pre CREATED BY/ON: #4AU Russell, 07-24-2003 LAST MODIFIED BY/ON: #4AU Russell, 07-24-2003
07/08/2003	Praecipe to Enter Appearance Filed	PRAECIPE to enter appearance Neil M Gorsuch for Deft ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1120nei

16d-000010

Docket Date	Description	Messages
		CREATED BY/ON: #445 Terry, P 07-09-2003 LAST MODIFIED BY/ON: #445 Terry, P 07-09-2003
06/19/2003	Miscellaneous Docket	(opp) Motion to COMPEL and for sanctions ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9205mop* CREATED BY/ON: #465 Jones, G 06-23-2003 LAST MODIFIED BY/ON: #465 Jones, G 06-23-2003
06/19/2003	Pretrial Conference	(rst) PRE-TRIAL conference @ 4:30pm NSDATE: 20030731pt cnt LSDATE: 20030321pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 05-08-2003 LAST MODIFIED BY/ON: #T99 Young, C 06-11-2003
06/11/2003	Per transmittal	Continued to 20030731pt @ 4:30pm from 20030619pt - Per transmittal form LSDATE: 20030619pt cnt TDMS TYPE: SCX TDMS EVENT: 0218cnt CREATED BY/ON: #T99 Young, C 06-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 06-11-2003
06/05/2003	Miscellaneous Docket	Motion in limine to exclude testimony of NCRIC's purported expert witnesses ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #465 Jones, G 06-06-2003 LAST MODIFIED BY/ON: #465 Jones, G 06-06-2003
06/05/2003	Miscellaneous Docket	Motion to require deft to provide security for costs ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #465 Jones, G 06-06-2003 LAST MODIFIED BY/ON: #465 Jones, G 06-06-2003
06/05/2003	Motion to Compel Filed:	Motion to COMPEL and for sanctions ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9205mot* CREATED BY/ON: #468 Vaughn, 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 06-06-2003
06/05/2003	Miscellaneous Docket	Motion to exclude evidence of certain counterclaim damages ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 06-06-2003
06/05/2003	Motion to Amend Filed:	Mot for leave to AMEND the complaint ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9201mot* CREATED BY/ON: #477 Hartfiel 06-06-2003 LAST MODIFIED BY/ON: #477 Hartfiel 06-10-2003
06/05/2003	Miscellaneous Docket	Motion to Exclude the testimony of Columbia's newly named witnesses ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47F Newell, 06-06-2003 LAST MODIFIED BY/ON: #47F Newell, 06-06-2003
06/05/2003	Miscellaneous Docket	mot in limine of deft ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #47E Smith, N 06-06-2003
06/05/2003	Miscellaneous Docket	mot to exclude certain documents and calculations ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #47E Smith, N 06-06-2003
06/05/2003	Miscellaneous Docket	mot to exclude the opinions & testimony of deft Columbia's designated damages expert ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #47E Smith, N 06-06-2003
06/05/2003	Miscellaneous Docket	motion for reference to a special master

16d-000011

Docket Date	Description	Messages
		ENTRY BY: ncric,inc TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #485 Cox, Kin 06-06-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 06-06-2003
05/19/2003	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #486 Colaire, 05-20-2003 LAST MODIFIED BY/ON: #486 Colaire, 05-20-2003
05/08/2003	Per transmittal	Continued to 20030619pt @ 4:30pm from 20030321pt - Per transmittal form LSDATE: 20030321pt cnt TDMS TYPE: SCX TDMS EVENT: 0218cnt CREATED BY/ON: #T99 Young, C 05-08-2003 LAST MODIFIED BY/ON: #T99 Young, C 05-08-2003
05/06/2003	Pretrial Conference	(rst) PRE-TRIAL conference @ 4:30pm NSDATE: 20030731pt cnt LSDATE: 20030307pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 02-25-2003 LAST MODIFIED BY/ON: #T99 Young, C 06-11-2003
05/02/2003	Miscellaneous Docket	Motion to reschedule pretrial hearing ENTRY BY: NCRIC, Inc TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 05-05-2003 LAST MODIFIED BY/ON: #468 Vaughn, 05-05-2003
05/02/2003	Miscellaneous Docket	ORDER GRANTING Motion to reschedule pretrial hearing, See Lg., Fld 030505, Mld 030506 ORDERED, that the pretrial conference is rescheduled for a date within 30 d ays from the date of this order. The clerk's office shall issue notice ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #468 Vaughn, 05-05-2003 LAST MODIFIED BY/ON: #486 Colaire, 05-06-2003
04/14/2003	Miscellaneous Docket	ORDER DENYING Motion to continue pretrial hearing (consent),see lg,fld 4-15-03,mld 4-15-03 Because all outstanding mtns have been ruled on as of 4-10-03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #468 Vaughn, 04-15-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 04-15-2003
04/11/2003	Miscellaneous Docket	Motion to continue pretrial hearing (consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 04-15-2003 LAST MODIFIED BY/ON: #468 Vaughn, 04-15-2003
04/10/2003	Miscellaneous Docket	(ORDER DENYING) MOTION for summary judgment. FLD 4/11/03 MLD 4/11/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 1075mop CREATED BY/ON: #47F Newell, 02-08-2002 LAST MODIFIED BY/ON: #47F Newell, 04-11-2003
04/03/2003	Opposition to Motion to Compel Discovery Filed	ORDER GRANTING IN PART AND DENYING MOT to compel discovery by designation under SCR 30(b)(6) & See Lg FLD 4-4-03,mld 4-7-03 And appearance at deposition ENTRY BY: J/Blackburne -Ri TDMS TYPE: MOT TDMS EVENT: 1189mop+ CREATED BY/ON: #468 Vaughn, 08-13-2001 LAST MODIFIED BY/ON: #477 Hartfiel 04-07-2003
04/02/2003	Motion to Extend Filed	(ORDER DENYING) Motion to EXTEND time for discovery. FLD 4/4/03 MLD 4/8/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9203mop* CREATED BY/ON: #47F Newell, 10-10-2002 LAST MODIFIED BY/ON: #47F Newell, 04-08-2003
04/02/2003	Motion for Summary Judgment Filed	(ORDER DENYING) MOTION for summary judgment. FLD 4/3/03 MLD 4/3/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 1075mot CREATED BY/ON: #477 Hartfiel 02-11-2002 LAST MODIFIED BY/ON: #47F Newell, 04-03-2003
04/02/2003	Miscellaneous Docket	

16d-000012

Docket Date	Description	Messages
		(ORDER GRANTING) Motion for protective order barring inquiry into subject matter areas, SEE LG. FLD 4/4/03 MLD 4/8/03 for 30(b)(6) deposition of pltf ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop+ CREATED BY/ON: #485 Cox, Kin 08-22-2001 LAST MODIFIED BY/ON: #47F Newell, 04-08-2003
03/21/2003	Pretrial Conference	* (rst) *DELETED* NSDATE: 20030619pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 12-19-2002 LAST MODIFIED BY/ON: #T99 Young, C 05-08-2003
03/07/2003	Pretrial Conference	(rst) PRE-TRIAL conference @ 3:00pm NSDATE: 20030506pt cnt LSDATE: 20030321pt cnx TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 02-25-2003 LAST MODIFIED BY/ON: #T99 Young, C 02-25-2003
02/25/2003	Per transmittal	Continued to 20030506pt @ 4:30pm from 20030307pt - Per transmittal form LSDATE: 20030307pt cnt TDMS TYPE: SCX TDMS EVENT: 0218cnt CREATED BY/ON: #T99 Young, C 02-25-2003 LAST MODIFIED BY/ON: #T99 Young, C 02-25-2003
02/06/2003	Order Granting Entered on the Docket	ORDER GRANTING Motion to reschedule the pretrial conference, See Lg., Fld 030306, Mld 030307 ORDERED, that the Pretrial Conference is rescheduled for a date after May 5 , 2003. The clerk's office shall issue notice of the new date ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #486 Colaire, 03-07-2003 LAST MODIFIED BY/ON: #486 Colaire, 03-07-2003
01/21/2003	Pretrial Conference	(rst) PRE-TRIAL conference @ 4:00pm NSDATE: 20030321pt cnx TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #521 Randall, 10-31-2002 LAST MODIFIED BY/ON: #T99 Young, C 12-19-2002
12/19/2002	Continuance	Continued to 20030321pt @ 3:00pm from 20030121pt (per tm form) LSDATE: 20030121pt cnx TDMS TYPE: SCX TDMS EVENT: 0200cnx CREATED BY/ON: #T99 Young, C 12-19-2002 LAST MODIFIED BY/ON: #T99 Young, C 12-19-2002
12/12/2002	Motion Hearing	(jsd) MOTION hearing @11:00am TDMS TYPE: EVT TDMS EVENT: 0111b2H CREATED BY/ON: #T99 Young, C 11-12-2002 LAST MODIFIED BY/ON: #T99 Young, C 11-12-2002
11/12/2002	Motion Hearing	Set motion hearing for 20021212mh @11:00am (per tm form) TDMS TYPE: SCH TDMS EVENT: 0111b2H CREATED BY/ON: #T99 Young, C 11-12-2002 LAST MODIFIED BY/ON: #T99 Young, C 11-12-2002
11/08/2002	Order Docketed Resolving Motion to/for: Entered on the Docket	ORDER RE: Scheduling hearing on Summ judg., see lg., fld 11/8/02, mld 11/12/02 ORDERED, that the parties shall appear for a heraring on the outstanding su mmary jdugment motions. Pursuant to SUperior COurt Civil Procedure Rule 12-I(f) , "if the jduge assigned to the case determines to hold a hearing on the motion, that judge shall give to all parties appropriate notice of the hearing... and t he amount of time afforded to each party." Each party will have (10) ten minute s to present its argument. The opposition will also have (10) ten minutes to pr esent its argument. Further, the moving party shall be given an additional (5)f ive minutes for rebuttal, if necessary. Therfore, since each party has filed mo tions for summary jdugment , the oral arguments in this hearing will last (50) f ifty minutes. Therefore, it is hereby ORDERED that the parties shall appear on 12/12/02, at 11:00 am. for a hearing on the outstanding motins for summary jdugm ent and the other outstanding motinos listed above ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 1133ord+ CREATED BY/ON: #47E Smith, N 11-12-2002 LAST MODIFIED BY/ON: #47E Smith, N 11-12-2002
10/31/2002	Pretrial Conference	Set hearing on pre-trial calendar for 20030121pt @ 4:00pm after mediation TDMS TYPE: SCH TDMS EVENT: 0103b2H

16d-000013

Docket Date	Description	Messages
		CREATED BY/ON: #521 Randall, 10-31-2002 LAST MODIFIED BY/ON: #521 Randall, 10-31-2002
10/31/2002	Mediation Conference	(jsd) MEDIATION conference @11:00am LSDATE: 20020228sw cnx CSSDUE: 20020920 TDMS TYPE: EVT TDMS EVENT: 0118bsw1 CREATED BY/ON: #437 Young, V 09-23-2002 LAST MODIFIED BY/ON: #437 Young, V 09-23-2002
10/24/2002	Motion to Extend Filed	(opp) Motion to EXTEND time for discovery ENTRY BY: columbia TDMS TYPE: MOT TDMS EVENT: 9203mop* CREATED BY/ON: #485 Cox, Kin 10-25-2002 LAST MODIFIED BY/ON: #485 Cox, Kin 10-25-2002
10/09/2002	Motion to Extend Filed	Motion to EXTEND time for discovery ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #47F Newell, 10-10-2002 LAST MODIFIED BY/ON: #47F Newell, 10-10-2002
09/23/2002	Continuance	Continued to 021031sw @11:00am from 020228sw PER ORDER & TRANSMITTAL DATED 9/20/02 LSDATE: 20020228sw cnx TDMS TYPE: SCX TDMS EVENT: 0200cnx CREATED BY/ON: #437 Young, V 09-23-2002 LAST MODIFIED BY/ON: #437 Young, V 09-23-2002
09/20/2002	Order Granting Entered on the Docket	ORDER GRANTING Consent Motion to Clarify that mediation has been postponed, See Lg., Fld 020920, Mld 020923 The parties Consent Motion to Clarify that Mediation has be Postponed is GR ANTED. The scheduling order dated December 20, 2001, postponed the due date for the parties' Confidential Settlement Statements to May 19, 2002. The Mediation i n the above-captioned matter, which was previously scheduled for February 28, 20 02, at 11:00 a.m., is therefore continued. The Clerk's Office shall reschedule M ediation within 30 days & send notices to the parties ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #486 Colaire, 09-23-2002 LAST MODIFIED BY/ON: #486 Colaire, 09-23-2002
09/20/2002	Miscellaneous Docket	ORDER GRANTING Motion to clarify that mediation has been postponed (consent) see lg., fld 9/20/02, mld 9/23/02 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #477 Hartfiel 03-04-2002 LAST MODIFIED BY/ON: #47E Smith, N 09-23-2002
05/20/2002	Praecipe to Enter Appearance Filed	PRAECIPE to enter appearance of Eli C. Schulman as attorney for the defendant ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1120app CREATED BY/ON: #468 Vaughn, 05-21-2002 LAST MODIFIED BY/ON: #468 Vaughn, 05-21-2002
03/28/2002	Miscellaneous Docket	Pltf's reply in support of its motion for summary jdgmt ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000plt* CREATED BY/ON: #465 Jones, G 04-01-2002 LAST MODIFIED BY/ON: #465 Jones, G 04-01-2002
03/28/2002	Miscellaneous Docket	Reply in support of deft's motion for summary judgment ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000rep* CREATED BY/ON: #486 Colaire, 04-01-2002 LAST MODIFIED BY/ON: #486 Colaire, 04-01-2002
03/28/2002	Miscellaneous Docket	Opposition to Deft Columbia's statement of material facts not in dispute ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000opp* CREATED BY/ON: #47F Newell, 03-29-2002 LAST MODIFIED BY/ON: #47F Newell, 03-29-2002
03/07/2002	Miscellaneous Docket	(opp) MOTION for summary judgment ENTRY BY: CHFW TDMS TYPE: MOT TDMS EVENT: 1075mop CREATED BY/ON: #4AU Russell, 03-08-2002 LAST MODIFIED BY/ON: #4AU Russell, 03-08-2002
03/04/2002	Motion to Extend Filed	Motion to EXTEND time for filing summary jdgmt papers

Docket Date	Description	Messages
		ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #465 Jones, G 03-05-2002 LAST MODIFIED BY/ON: #465 Jones, G 03-05-2002
03/04/2002	Motion to Extend Filed	ORDER GRANTING Motion to EXTEND time for filing summary jdgmt papers,SEE LG,FLD 3-6-02,MLD 3-7-02 Further Ordered that the time for each party to file and serve its o pposition to the opposing party's mtn for summary judgment is hereby extended up through and including 3-07-02 & that the time for each party to file and serve its reply to the opposing party's summary judgment opposition is hereby extended up through & including 3-28-02 ENTRY BY: J/Blackburne TDMS TYPE: MOT TDMS EVENT: 9203mot+ CREATED BY/ON: #465 Jones, G 03-05-2002 LAST MODIFIED BY/ON: #485 Cox, Kin 03-07-2002
02/28/2002	Order Docketed Resolving Motion to/for: Entered on the Docket	ORDERED, that pursuant to the scheduling order dated December 20, 2001, which, See Lg., Fld 020304, Mld 020305 postponed the due date for the parties' Confidential Settlement Statement t o May 19, 2002, the ADR session in the above-captioned matter, which was previou sly scheduled for February 28, 2002 at 11:00 a.m. is POSTPONED until a to-be-det ermined date sufficiently after May 19, 2002 ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 1133ord+ CREATED BY/ON: #486 Colaire, 03-05-2002 LAST MODIFIED BY/ON: #486 Colaire, 03-05-2002
02/28/2002	Mediation Conference	(rst) MEDIATION conference @11:00am NSDATE: 20021031sw cnx CSSDUE: 20020118 TDMS TYPE: EVT TDMS EVENT: 0118bsw1 CREATED BY/ON: #2CJ Wilson, 11-27-2001 LAST MODIFIED BY/ON: #437 Young, V 09-23-2002
02/27/2002	Miscellaneous Docket	Motion to clarify that mediation has been postponed (consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #477 Hartfiel 03-01-2002 LAST MODIFIED BY/ON: #477 Hartfiel 03-06-2002
02/26/2002	Praecipe Filed:	Praecipe noting that pltf has consented to extend the following deadlines in the current sched. order: seelg, DEADLINE IN CURRENT SCHED. ORDER ORDER DATE NEW DATE Oppositions to dispositive motions filed 02/28/02 03/04/02 Replies to opps. to dispositive motions filed 03/18/02 03/25/02 ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9104pra+ CREATED BY/ON: #465 Jones, G 03-04-2002 LAST MODIFIED BY/ON: #465 Jones, G 03-04-2002
02/21/2002	Praecipe Filed:	Praecipe noting the enclosed errata pgs. 6-9 & 14 to Statement of Material Facts Not In Dispute ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #465 Jones, G 03-04-2002 LAST MODIFIED BY/ON: #465 Jones, G 03-04-2002
02/14/2002	Rule 26 (b)(4) Statement Filed	Rule 26(b)(4) statement RECEIVED (supplemental) ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1458rul* CREATED BY/ON: #485 Cox, Kin 02-15-2002 LAST MODIFIED BY/ON: #485 Cox, Kin 02-15-2002
02/12/2002	Praecipe to Withdraw/Strike Appearance Filed	PRAECIPE to withdraw Exhibit 20 to deft's stmts of material facts not in dispute...& submits the attached copy of the, seelg, same exhibit ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1121pra+ CREATED BY/ON: #465 Jones, G 02-13-2002 LAST MODIFIED BY/ON: #465 Jones, G 02-13-2002
02/11/2002	Praecipe Filed:	Praecipe noting that deft hereby submits errata pages 6-9 & 14 of its statement of material facts not in dispute ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104???* CREATED BY/ON: #485 Cox, Kin 02-13-2002 LAST MODIFIED BY/ON: #485 Cox, Kin 02-13-2002
02/08/2002	Miscellaneous Docket	Defendant's statement of material facts not in dispute ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000???*

16d-000015

Docket Date	Description	Messages
		CREATED BY/ON: #468 Vaughn, 02-12-2002 LAST MODIFIED BY/ON: #468 Vaughn, 02-12-2002
02/07/2002	Motion for Summary Judgment Filed	MOTION for summary judgment ENTRY BY: columbia TDMS TYPE: MOT TDMS EVENT: 1075mot CREATED BY/ON: #477 Hartfiel 02-11-2002 LAST MODIFIED BY/ON: #477 Hartfiel 02-11-2002
02/07/2002	Motion for Summary Judgment Filed	MOTION for summary judgment ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1075mot CREATED BY/ON: #47F Newell, 02-08-2002 LAST MODIFIED BY/ON: #47F Newell, 02-08-2002
01/22/2002	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 01-24-2002 LAST MODIFIED BY/ON: #477 Hartfiel 01-24-2002
01/22/2002	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 01-23-2002 LAST MODIFIED BY/ON: #477 Hartfiel 01-23-2002
01/15/2002	Praecipe Filed:	Praecipe extending deadlines in the current scheduling order by one week ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #486 Colaire, 01-17-2002 LAST MODIFIED BY/ON: #486 Colaire, 01-17-2002
01/14/2002	Mediation Conference	(jsd) MEDIATION within 30 days following(Amended Per T.F. Date 8/31/01) TDMS TYPE: EVT TDMS EVENT: 0325med CREATED BY/ON: #DM1 DP (batc 01-18-2001 LAST MODIFIED BY/ON: #2CJ Wilson, 09-05-2001
01/11/2002	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: COLUMBIA TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 01-14-2002 LAST MODIFIED BY/ON: #477 Hartfiel 01-14-2002
01/10/2002	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 01-14-2002 LAST MODIFIED BY/ON: #477 Hartfiel 01-14-2002
12/21/2001	Miscellaneous Docket	Reply in support of its motion for a protective order ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000rep* CREATED BY/ON: #465 Jones, G 12-26-2001 LAST MODIFIED BY/ON: #465 Jones, G 12-26-2001
12/21/2001	Miscellaneous Docket	NCRIC's reply in support of its motions to compel designations & deposition testimony ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000ncr* CREATED BY/ON: #486 Colaire, 12-26-2001 LAST MODIFIED BY/ON: #486 Colaire, 12-26-2001
12/21/2001	Motion to Amend Filed:	ORDER GRANTING Motion to AMEND scheduling order (consent), See Lg., Fld 011227 The current scheduling order shall be amended as follows: Deadline Current As Amended Non-expert, non-party depositions first 12/13/01 1/17/02 noticed prior to 8/13/01 discovery deadline shall be completed: Rule 30(b)(6) depositions first noticed 12/13/01 1/17/02 prior to 8/13/01 discovery deadline shall be completed Expert depositions completed; 12/20/01 1/17/02 All discovery closes 12/20/01 1/17/02 Dispositive Motions filed 1/3/02 1/31/02 Oppositions to dispositive motions filed 1/31/02 2/28/02 Replies to oppositions to dispositive motins filed 2/18/02 3/18/02 Dispositive motions decided 4/11/02 5/9/02 Confidential Settlement due 4/22/02 5/19/02 . . . (SEE ORIGINAL ORDER) ENTRY BY: J/Davis TDMS TYPE: MOT

16d-000016

Docket Date	Description	Messages
		TDMS EVENT: 9201mot+ CREATED BY/ON: #47E Smith, N 12-14-2001 LAST MODIFIED BY/ON: #486 Colaire, 12-28-2001
12/13/2001	Motion to Amend Filed:	Motion to AMEND scheduling order (consent) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9201mot* CREATED BY/ON: #47E Smith, N 12-14-2001 LAST MODIFIED BY/ON: #47E Smith, N 12-14-2001
12/11/2001	Praecipe to Enter Appearance Filed	PRAECIPE to enter appearance of Scott Badami as co-counsel for pltf ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1120pra CREATED BY/ON: #485 Cox, Kin 12-14-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 12-14-2001
12/04/2001	Miscellaneous Docket	ORDER GRANTING mot to stay proceedings to finalize settlement agreement (consent),see lg,fld 12-7-01 Ordered that discovery and other proceedings in this action shall be stayed until and up through 12-7-01 & that once the day ends on 12-7-01 the cur rent scheduling order shall be amended by extending all deadlines stated therein as follows: (see original order) Deadline in current scheduling order current As amende d Non-expert, non-party depositions first noticed prior 12-6-01 12-13-0 1 to 8-13-01 discovery deadline shall be completed: R. 30(b)(6)depositions 1st noticed prior to 8-3 1-01 discovery deadline shall be completed: 12-6-01 12-13-01 Dam ages discovery closes: 12-6-01 12-13-01 ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #47E Smith, N 12-04-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 12-10-2001
12/03/2001	Miscellaneous Docket	mot to stay proceedings to finalize settlement agreement (consent) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47E Smith, N 12-04-2001 LAST MODIFIED BY/ON: #47E Smith, N 12-04-2001
11/27/2001	Mediation Conference	Set mediation conference for 20020228sw @11:00am PER. SR LIST TDMS TYPE: SCH TDMS EVENT: 0118bsw1 CREATED BY/ON: #2CJ Wilson, 11-27-2001 LAST MODIFIED BY/ON: #2CJ Wilson, 11-27-2001
11/20/2001	Miscellaneous Docket	(opp) Motion for protective order barring inquiry into subject matter areas for 30(b)(6) deposition of pltf ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #486 Colaire, 11-28-2001 LAST MODIFIED BY/ON: #486 Colaire, 11-28-2001
11/19/2001	Opposition to Motion to Compel Discovery Filed	(opp) MOTION to compel discovery by designation under SCR 30(b)(6) & appearance at deposition ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 1189mop CREATED BY/ON: #485 Cox, Kin 11-21-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 11-21-2001
11/15/2001	Praecipe Filed:	Praecipe noting that parties has consented to extend by 2 business days, the following deadlines in the current sched. order ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #485 Cox, Kin 11-21-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 11-21-2001
11/08/2001	Stay Entered	STAY TDMS TYPE: JSD TDMS EVENT: 1442sta TDMS FLAG: sp CREATED BY/ON: #465 Jones, G 10-03-2001 LAST MODIFIED BY/ON: #465 Jones, G 10-03-2001
11/06/2001	Mediation Conference	(can) MEDIATION conference @ 9:00am CSSDUE: 20010926 TDMS TYPE: EVT TDMS EVENT: 0118bsw1 CREATED BY/ON: #T99 Young, C 08-13-2001 LAST MODIFIED BY/ON: #2CJ Wilson, 09-05-2001
10/04/2001	Motion to Extend Filed	(mot) Motion to EXTEND time to FOR COLUMBIA TO OPPOSE NCRIC'S PENDING MOTIONS.TO COMPEL (Consent) TDMS TYPE: MOT TDMS EVENT: 9203mot*

16d-000017

Docket Date	Description	Messages
		CREATED BY/ON: #477 Hartfiel 09-14-2001 LAST MODIFIED BY/ON: #465 Jones, G 09-20-2001
09/28/2001	Stay Entered	STAY ENTRY BY: J/Davis TDMS TYPE: JSD TDMS EVENT: 1442sta CREATED BY/ON: #465 Jones, G 10-03-2001 LAST MODIFIED BY/ON: #465 Jones, G 10-03-2001
09/28/2001	Miscellaneous Docket	(ORDER GRANTING) Motion to temporarily stay proceedings & amend scheduling order (consent), seelg, fld 011002 ORDERED that all discovery & other proceedings in this action (including but not limited to all deadlines for opps. to NCRIC's pending mtns) shall be sta yed until & up through 11/8/01; & FURTHER, the stay shall be lifted w/o further order of the Ct. if, prior to 11/1/01, either pty certifies in a Praecipe, filed with the Ct., that the settlement discussions are at an impasse; & FURTHER, if the stay is lifted by the filing of a Praecipe with the Ct., the stay shall end effective five business days after said Praecipe is served on the opposing pty; & FURTHER, if the stay ends as sched. on 11/8/01, the most recent Consent Order shall be amended by ext. the deadlines stated therein by 52 days as follows:...& , FURTHER, if the stay ends as sched. on 11/8/01, the current Sched. Order shall be amended by ext. all deadlines stated therein by 62 days as follows:...&, FUR THER, is the stay is lifted by the filing of a Praecipe with this Ct., the 2nd A mended Sched. Order shall be amended by ext. all deadlines set forth therein by the no. of cal. days from 9/24/01 up to (& including) the effective date on whic h the stay was lifted (including the 5-day notice period & any time added for se rvice by mail) plus 17 cal. days;...(see orig.) ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #47F Newell, 09-27-2001 LAST MODIFIED BY/ON: #465 Jones, G 10-03-2001
09/26/2001	Miscellaneous Docket	Motion to temporarily stay proceedings & amend scheduling order (consent) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47F Newell, 09-27-2001 LAST MODIFIED BY/ON: #47F Newell, 09-27-2001
09/13/2001	Motion to Extend Filed	Motion to EXTEND time to FOR COLUMBIA TO OPPOSE NCRIC'S PENDING MOTIONS...(Consent) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #477 Hartfiel 09-14-2001 LAST MODIFIED BY/ON: #477 Hartfiel 09-14-2001
09/10/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #47E Smith, N 09-12-2001 LAST MODIFIED BY/ON: #47E Smith, N 09-12-2001
09/10/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #47E Smith, N 09-12-2001 LAST MODIFIED BY/ON: #47E Smith, N 09-12-2001
09/10/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #47E Smith, N 09-12-2001 LAST MODIFIED BY/ON: #47E Smith, N 09-12-2001
09/06/2001	Motion to Extend Filed	Motion to EXTEND time to FOR COLUMBIA TO OPPOSE NCRIC'S PENDING MOTIONS TO ENTRY BY: NCRIC,INC TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #477 Hartfiel 09-07-2001 LAST MODIFIED BY/ON: #477 Hartfiel 09-07-2001
09/06/2001	Motion to Extend Filed	(ORDER GRANTING) Motion to EXTEND time to FOR COLUMBIA TO OPPOSE NCRIC'S PENDING MOTIONS TO COMPEL (Consent), seelg, fld 010918 ORDERED that the time for Columbia to file and serve its opps. to NCRIC's Motion to Compel Discovery By Designation Under SCR 30(b)(6) And Appearance at Deposition and Motion to Compel Deft's Designated Witnesses to Answer Questions Properly Posed at Deposition is hereby extended up through and including Sept. 1 3, 2001 ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9203mot+ CREATED BY/ON: #477 Hartfiel 09-07-2001 LAST MODIFIED BY/ON: #465 Jones, G 09-20-2001
09/06/2001	Motion to Compel Filed:	(WITHDRAWN 8-22-01) Motion to COMPEL DEFT TO PRODUCE PRIVILEGE LOG TDMS TYPE: MOT TDMS EVENT: 9205mot*

16d-000018

Docket Date	Description	Messages
		CREATED BY/ON: #477 Hartfiel 08-17-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 02-21-2002
08/31/2001	Motion to Amend Filed:	(ORDER GRANTING) Motion to AMEND Scheduling Order (Consent), seelg, fld 010904 ORDERED: the deadlines for this case are hereby amended, as follows: DEADLINE CURRENT PROPOSED NON-expert, non-pty depos. 1st noticed prior t o 8/13/01 discovery deadline shall be cmpltd: 9/14/01 10/5/01 R ULE 30(b)(6) depos. first noticed prior to 8 /31/01 discovery deadline shall be cmpltd: 9/14/01 10/5/01 D AMAGES discovery closes: 9/21/01 10/5/01 E XPERT depos. cmpltd: 10/5/01 10/12/01 D ISPOSITIVE motions filed: 9/10/01 10/19/01 O PPS. to dispositive motions filed: 10 days 10/19/01 R EPLIES to opps. to dispositive motions filed: -- 12/3/01 D ISPOSITIVE motions decided: 10/11/01 1/25/02 C ONFIDENTIAL Settlement Statement due: 9/26/01 2/1/02 A DR: 11/6/01 to be sched by AO P retrial: -- to be sched by AO S O ORDERED ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9201mot+ CREATED BY/ON: #477 Hartfiel 08-30-2001 LAST MODIFIED BY/ON: #465 Jones, G 09-05-2001
08/28/2001	Motion to Amend Filed:	Motion to AMEND Scheduling Order (Consent) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9201mot* CREATED BY/ON: #477 Hartfiel 08-30-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-30-2001
08/28/2001	Motion to Compel Filed:	(mot) Motion to COMPEL dfts designated witnesses to answer questions properly posed at deposition TDMS TYPE: MOT TDMS EVENT: 9205mot* CREATED BY/ON: #485 Cox, Kin 08-13-2001 LAST MODIFIED BY/ON: #4AU Russell, 04-16-2003
08/23/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-28-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-28-2001
08/23/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-28-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-28-2001
08/22/2001	Praecipe to Extend Time Filed	PRAECIPE to extend time for serving &/or filing papers by 14 calendar days ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1178pra CREATED BY/ON: #486 Colaire, 08-29-2001 LAST MODIFIED BY/ON: #486 Colaire, 08-29-2001
08/22/2001	Praecipe to Withdraw/Strike Appearance Filed	PRAECIPE to withdraw w/o prej. its Mot to compel deft to produce Privelege Log, Filed on 8/13/01 ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1121pra CREATED BY/ON: #486 Colaire, 08-29-2001 LAST MODIFIED BY/ON: #486 Colaire, 08-29-2001
08/22/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC,INC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-23-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-23-2001
08/22/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC,INC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-23-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-23-2001
08/20/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-22-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-22-2001
08/17/2001	Praecipe Filed:	Praecipe noting that dft by counsel hereby stipulate & agree that the following deadlines set forth in the sched order,see lg dated 5-16-01 & the order dated 7-20-01 shall be extended by 14 cale

16d-000019

Docket Date	Description	Messages
		ndars days ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9104pra+ CREATED BY/ON: #485 Cox, Kin 08-29-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 08-29-2001
08/15/2001	Miscellaneous Docket	Motion for protective order barring inquiry into subject matter areas for 30(b)(6) deposition of pltf ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #485 Cox, Kin 08-22-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 08-22-2001
08/15/2001	Motion to Compel Filed:	Motion to COMPEL DEFT TO PRODUCE PRIVILEGE LOG ENTRY BY: NCRIC INC TDMS TYPE: MOT TDMS EVENT: 9205mot* CREATED BY/ON: #477 Hartfiel 08-17-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-17-2001
08/13/2001	Mediation Conference	Set mediation conference for 20011106sw @ 9:00am SR LIST TDMS TYPE: SCH TDMS EVENT: 0118bsw1 CREATED BY/ON: #T99 Young, C 08-13-2001 LAST MODIFIED BY/ON: #T99 Young, C 08-13-2001
08/09/2001	Rule 26 (b)(4) Statement Filed	Rule 26(b)(4) statement as opponent of a claim ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1458rul* CREATED BY/ON: #465 Jones, G 08-23-2001 LAST MODIFIED BY/ON: #465 Jones, G 08-23-2001
08/09/2001	Mediation Conference	(can) MEDIATION conference @11:00am FSDATE: 20010809sw CSSDUE: 20010629 TDMS TYPE: EVT TDMS EVENT: 0118bsw1 CREATED BY/ON: #2CJ Wilson, 05-11-2001 LAST MODIFIED BY/ON: #2CJ Wilson, 05-23-2001
08/08/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: COLUMBIA TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-10-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-10-2001
08/07/2001	Motion to Compel Filed:	Motion to COMPEL dfts designated witnesses to answer questions properly posed at deposition ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9205mot* CREATED BY/ON: #485 Cox, Kin 08-13-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 08-13-2001
08/07/2001	Miscellaneous Docket	MOTION to compel discovery by designation under SCR 30(b)(6) & appearance at deposition ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1189mot CREATED BY/ON: #468 Vaughn, 08-13-2001 LAST MODIFIED BY/ON: #468 Vaughn, 08-13-2001
07/27/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-02-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-02-2001
07/27/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-02-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-02-2001
07/23/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-06-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-06-2001
07/20/2001	Order Granting Entered on the Docket	ORDER GRANTING Pltf's Alternative Motion for additional time to file opponent's Rule 26(b)(4), See Lg statement ORDERED, that pltf's Alternative Motion for Additional Time to file Opponen t's Rule 26(b)(4) Statement be, & hereby is, granted with a new deadline of 8/9/ 01

16d-000020

Docket Date	Description	Messages
		FURTHER ORDERED, that pltf's Alternative Motion for leave to complete disco very on damages after the discovery deadline be, & hereby is granted with a dead line of 9/7/01 FURTHER ORDERED, that pltf's Alternative Motion for leave to depose deft's experts be, & hereby is, granted with a deadline of 9/21/01 ENTRY BY: J/Davis TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #486 Colaire, 07-26-2001 LAST MODIFIED BY/ON: #486 Colaire, 07-26-2001
07/20/2001	Miscellaneous Docket	ORDER GRANTING Motion in limine to preclude defendant's expert testimony (renewed), Fld 010723 ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 07-16-2001 LAST MODIFIED BY/ON: #486 Colaire, 07-26-2001
07/20/2001	Motion to Extend Filed	ORDER GRANTING Motion to EXTEND deadline for proponent's Rule 26(b)(4) Statement, Fld 010723 ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9203mop* CREATED BY/ON: #468 Vaughn, 07-02-2001 LAST MODIFIED BY/ON: #486 Colaire, 07-26-2001
07/18/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-31-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-31-2001
07/17/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-01-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-01-2001
07/17/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-01-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-01-2001
07/17/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-01-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-01-2001
07/17/2001	Answer to Counter Claim Filed	ANSWER to amended counter claim ENTRY BY: NCRIC TDMS TYPE: CAC TDMS EVENT: 1156atc CREATED BY/ON: #465 Jones, G 07-25-2001 LAST MODIFIED BY/ON: #465 Jones, G 07-25-2001
07/16/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-01-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-01-2001
07/16/2001	Praecipe to Withdraw/Strike Appearance Filed	PRAECIPE to withdraw ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1121pra CREATED BY/ON: #477 Hartfiel 07-31-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-31-2001
07/12/2001	Rule 26 (b)(4) Statement Filed	Rule 26(b)(4) statement RECEIVED ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1458rul* CREATED BY/ON: #477 Hartfiel 07-31-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-31-2001
07/12/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-30-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-30-2001
07/11/2001	Miscellaneous Docket	

16d-000021

Docket Date	Description	Messages
		Motion in limine to preclude defendant's expert testimony (renewed) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 07-16-2001 LAST MODIFIED BY/ON: #468 Vaughn, 07-16-2001
07/11/2001	Motion to Extend Filed	(opp) Motion to EXTEND deadline for proponent's Rule 26(b)(4) Statement ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9203mop* CREATED BY/ON: #468 Vaughn, 07-16-2001 LAST MODIFIED BY/ON: #468 Vaughn, 07-16-2001
07/09/2001	Praecipe to Withdraw/Strike Appearance Filed	PRAECIPE to withdraw ENTRY BY: NCRIC INC TDMS TYPE: DOC TDMS EVENT: 1121pra CREATED BY/ON: #477 Hartfiel 07-27-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-27-2001
07/03/2001	Order Granting Entered on the Docket	ORDER GRANTING & DENYING IN PART Motion to dismiss counterclaims, See Lg., Fld 010706 ORDERED, that pltf's motion is GRANTED IN PART & DENIED IN PART, as seth fo rth with particularity above ENTRY BY: J/Davis TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #486 Colaire, 07-10-2001 LAST MODIFIED BY/ON: #486 Colaire, 07-10-2001
07/02/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: ncric TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-09-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-09-2001
07/02/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC INC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-03-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-03-2001
07/02/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC INC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-03-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-03-2001
07/02/2001	Motion to Extend Filed	Motion to EXTEND deadline for proponent's Rule 26(b)(4) Statement ENTRY BY: (clerk) TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #468 Vaughn, 07-02-2001 LAST MODIFIED BY/ON: #468 Vaughn, 07-02-2001
06/27/2001	Miscellaneous Docket	Deadline for ruling on DISPOSITIVE motions..... TDMS TYPE: EVS TDMS EVENT: 0332rul CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988
06/27/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-02-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-02-2001
06/27/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-02-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-02-2001
06/22/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 06-27-2001 LAST MODIFIED BY/ON: #477 Hartfiel 06-27-2001
06/18/2001	Miscellaneous Docket	Witness list RECEIVED ENTRY BY: columbia TDMS TYPE: DOC

16d-000022

Docket Date	Description	Messages
		TDMS EVENT: 1457wit* CREATED BY/ON: #477 Hartfiel 06-21-2001 LAST MODIFIED BY/ON: #477 Hartfiel 06-21-2001
06/18/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 06-20-2001 LAST MODIFIED BY/ON: #477 Hartfiel 06-20-2001
05/27/2001	Miscellaneous Docket	Deadline for filing MOTIONS..... TDMS TYPE: EVS TDMS EVENT: 0323mot CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988
05/23/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 05-24-2001 LAST MODIFIED BY/ON: #477 Hartfiel 05-24-2001
05/23/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 05-24-2001 LAST MODIFIED BY/ON: #477 Hartfiel 05-24-2001
05/18/2001	Answer to Amended Complaint Filed	ANSWER to amended complaint ENTRY BY: NCRIC TDMS TYPE: CAC TDMS EVENT: 1152aac CREATED BY/ON: #465 Jones, G 05-24-2001 LAST MODIFIED BY/ON: #465 Jones, G 05-24-2001
05/16/2001	Miscellaneous Docket	Mots hrg held. Deft Columbia Hospital for Women Medical Center Inc's mot to amend sched order granted &, See Lg the scheduling order dated January 12, 2001 is amended to Track IV. Order f ld (Jkt Entry) ENTRY BY: J/Davis TDMS TYPE: DOC TDMS EVENT: 0000hrg+ CREATED BY/ON: #486 Colaire, 05-24-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-24-2001
05/16/2001	Motion to Amend Filed:	ORDER GRANTING Motion to AMEND Scheduling Order, See Lg., Fld 010522 ORDER GRANTING Motion to Amend Scheduling Order is hereby GRANTED, & the sc heduling Order dated January 12, 2001 is amended as follows: 1. This case is transferred to Track 4 2. the deadlines for this case are amended to state as follows: Deadline for discovery requests 6/12/01 Exchange Witness Lists: 6/12/01 Proponent's Rule 26(b): 6/26/01 Opponent's Rule 26(b): 7/12/01 for deft/counter pltf 7/26/01 for pltf/couter deft Discovery Closes: 8/12/01 Deadline for filing motons: 8/27/01 Dispositive motions decided: 9/27/01 ADR: 10/12/01- 11/12/01 Pretrial: 30 days ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9201mot+ CREATED BY/ON: #4AU Russell, 03-14-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-24-2001
05/12/2001	Miscellaneous Docket	All DISCOVERY CLOSED..... TDMS TYPE: EVS TDMS EVENT: 0322dis CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988
05/11/2001	Order Granting Entered on the Docket	ORDER GRANTING & DENYING IN PART Motion for More Definite Statement of allegations of fraud, See Lg., Fld 010515 & misrepresentation & motion to strike insufficient defense ENTRY BY: J/Davis TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #486 Colaire, 05-18-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-18-2001
05/11/2001	Mediation Conference	Set mediation conference for 20010809sw @11:00am TDMS TYPE: SCH TDMS EVENT: 0118bsw1 CREATED BY/ON: #2CJ Wilson, 05-11-2001 LAST MODIFIED BY/ON: #2CJ Wilson, 05-11-2001
05/11/2001	Miscellaneous Docket	

16d-000023

Docket Date	Description	Messages
		ORDER DENYING Motion in limine to exclude experts of deft or, in the altern., to compel deft, See Lg., Fld 010515 to provide the answer to interrogatory or supplement its r. 26(b)(4) statem ent & for leave to take depositions of deft's experts ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9103mop+ CREATED BY/ON: #465 Jones, G 04-24-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-18-2001
05/11/2001	Miscellaneous Docket	ORDER GRANTING Motion for protective order regarding confidentiality of documents &, See Lg., Fld 010515 other materials The Protective Order as amended by the Court is attached hereto ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9103mop+ CREATED BY/ON: #486 Colaire, 04-06-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-18-2001
05/07/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC, IN TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 05-10-2001 LAST MODIFIED BY/ON: #477 Hartfiel 05-10-2001
05/07/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC, IN TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 05-10-2001 LAST MODIFIED BY/ON: #477 Hartfiel 05-10-2001
05/01/2001	Miscellaneous Docket	(opp) Motion in limine to exclude experts of deft or, in the altern., to compel deft to provide the answer to, seelg, ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop+ CREATED BY/ON: #486 Colaire, 05-03-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-03-2001
05/01/2001	Miscellaneous Docket	Reply memorandum in support of motion to amend scheduling order ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000rep* CREATED BY/ON: #486 Colaire, 05-02-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-02-2001
04/30/2001	Praecipe to Change Address Filed	PRAECIPE to change address of Roy Niedermayer counsel for the plaintiff ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1177pra CREATED BY/ON: #468 Vaughn, 05-07-2001 LAST MODIFIED BY/ON: #468 Vaughn, 05-07-2001
04/23/2001	Miscellaneous Docket	sur-reply to deft ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000fin* CREATED BY/ON: #485 Cox, Kin 04-24-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 04-24-2001
04/16/2001	Miscellaneous Docket	Motion in limine to exclude experts of deft or, in the altern., to compel deft to provide the answer to interrogatory, seelg, or supplement its r. 26(b)(4) statement & for leave to take depositions o f deft's experts ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #465 Jones, G 04-24-2001 LAST MODIFIED BY/ON: #465 Jones, G 04-24-2001
04/12/2001	Miscellaneous Docket	OPPONENT'S Rule 26(b) (4) statements due..... TDMS TYPE: EVS TDMS EVENT: 0320opp CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988
04/12/2001	Miscellaneous Docket	(opp) Motion for protective order regarding confidentiality of documents & other materials ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #465 Jones, G 04-20-2001 LAST MODIFIED BY/ON: #465 Jones, G 04-20-2001
04/09/2001	Miscellaneous Docket	Reply memorandum in support of motion to compel ENTRY BY: NCRIC Inc TDMS TYPE: DOC TDMS EVENT: 0000rep*

16d-000024

Docket Date	Description	Messages
		CREATED BY/ON: #468 Vaughn, 04-12-2001 LAST MODIFIED BY/ON: #468 Vaughn, 04-12-2001
04/05/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 04-06-2001 LAST MODIFIED BY/ON: #477 Hartfiel 04-06-2001
04/03/2001	Miscellaneous Docket	Motion for protective order regarding confendiality of documents & other materials ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #486 Colaire, 04-06-2001 LAST MODIFIED BY/ON: #486 Colaire, 04-06-2001
04/03/2001	Opposition to Motion to Compel Discovery Filed	(opp) MOTION to compel discovery by production of documents from defendants TDMS TYPE: MOT TDMS EVENT: 1189mop CREATED BY/ON: #468 Vaughn, 03-13-2001 LAST MODIFIED BY/ON: #4AU Russell, 11-30-2001
03/29/2001	Opposition to Motion to Compel Discovery Filed	(opp) MOTION to compel discovery by production of documents from defendants ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 1189mop CREATED BY/ON: #468 Vaughn, 04-03-2001 LAST MODIFIED BY/ON: #468 Vaughn, 04-03-2001
03/16/2001	Praecipe to Withdraw/Strike Appearance Filed	PRAECIPE to withdraw ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1121pra CREATED BY/ON: #477 Hartfiel 03-22-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-22-2001
03/15/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 03-20-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-20-2001
03/12/2001	Miscellaneous Docket	PROPONENT'S Rule 26(b) (4) statements due..... TDMS TYPE: EVS TDMS EVENT: 0319pro CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988
03/12/2001	Miscellaneous Docket	EXCHANGE lists of fact WITNESSES..... TDMS TYPE: EVS TDMS EVENT: 0318exc CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988
03/12/2001	Miscellaneous Docket	Deadline for DISCOVERY REQUESTS..... TDMS TYPE: EVS TDMS EVENT: 0301dis CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988
03/12/2001	Rule 26 (b)(4) Statement Filed	Rule 26(b)(4) statement RECEIVED ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1458rul* CREATED BY/ON: #477 Hartfiel 03-14-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-14-2001
03/12/2001	Rule 26 (b)(4) Statement Filed	Rule 26(b)(4) statement RECEIVED ENTRY BY: NCRIC Inc TDMS TYPE: DOC TDMS EVENT: 1458rul* CREATED BY/ON: #477 Hartfiel 03-14-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-14-2001
03/12/2001	Miscellaneous Docket	Witness list RECEIVED ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1457wit* CREATED BY/ON: #477 Hartfiel 03-14-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-14-2001
03/12/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC,INC TDMS TYPE: DOC TDMS EVENT: 1440cer

16d-000025

Docket Date	Description	Messages
		CREATED BY/ON: #477 Hartfiel 03-14-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-14-2001
03/12/2001	Motion to Amend Filed:	Motion to AMEND Scheduling Order ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9201mot* CREATED BY/ON: #4AU Russell, 03-14-2001 LAST MODIFIED BY/ON: #4AU Russell, 03-14-2001
03/12/2001	Miscellaneous Docket	MOTION to compel discovery by production of documents from defendants ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1189mot CREATED BY/ON: #468 Vaughn, 03-13-2001 LAST MODIFIED BY/ON: #468 Vaughn, 03-13-2001
03/06/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 03-09-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-09-2001
03/06/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 03-09-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-09-2001
02/22/2001	Miscellaneous Docket	(WITHDRAWN 010209) Motion for strike defense & supporting memorandum of points & authorities TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #432 Rogers, 02-05-2001 LAST MODIFIED BY/ON: #486 Colaire, 02-12-2001
02/16/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 02-22-2001 LAST MODIFIED BY/ON: #477 Hartfiel 02-22-2001
02/16/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 02-22-2001 LAST MODIFIED BY/ON: #477 Hartfiel 02-22-2001
02/09/2001	Praecipe Filed:	Joint praecipe stating that (1) The Deft will withdraw its pending Motion to strike Defense & (2) Pltf, See Lg will withdraw the Sixth Defense in its Reply of Pltf to Amended Counterclai ms 1 & 2 of Deft. These actions shall both be effective upon the filing of this Joint Praecipe ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104joi+ CREATED BY/ON: #486 Colaire, 02-12-2001 LAST MODIFIED BY/ON: #486 Colaire, 02-12-2001
02/07/2001	Miscellaneous Docket	reply memorandum in support of motion of dismiss ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000rep* CREATED BY/ON: #485 Cox, Kin 02-09-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 02-09-2001
02/01/2001	Miscellaneous Docket	Motion for strike defense & supporting memorandum of points & authorities ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #432 Rogers, 02-05-2001 LAST MODIFIED BY/ON: #432 Rogers, 02-05-2001
01/27/2001	Miscellaneous Docket	Memorandum of points & authorities in opposition to NCRIC's motion for more definite statement & motion to strike ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000mem* CREATED BY/ON: #486 Colaire, 01-30-2001 LAST MODIFIED BY/ON: #486 Colaire, 01-30-2001
01/26/2001	Miscellaneous Docket	Supplemental memorandum of pts. & auths. in opp. to pltf's motion to dismiss counterclaims ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000sup* CREATED BY/ON: #465 Jones, G 01-31-2001 LAST MODIFIED BY/ON: #465 Jones, G 01-31-2001

16d-000026

Docket Date	Description	Messages
01/26/2001	Miscellaneous Docket	Memorandum of Points & Authorities in opposition to NCRIC's motion for more definite statement & motion to strike ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000mem* CREATED BY/ON: #432 Rogers, 01-30-2001 LAST MODIFIED BY/ON: #432 Rogers, 01-30-2001
01/19/2001	Miscellaneous Docket	Supplemental Memorandum in support of motion to dismiss counterclaim counts 4 & 5 ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000sup* CREATED BY/ON: #486 Colaire, 01-24-2001 LAST MODIFIED BY/ON: #486 Colaire, 01-24-2001
01/16/2001	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC INC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 01-18-2001 LAST MODIFIED BY/ON: #477 Hartfiel 01-18-2001
01/12/2001	Miscellaneous Docket	present as indicated on the order. sched. conf. held. T-2 (med). columbia hosp. has until 1-26-00 to respond to pltfs,See lg mtn to dismiss counter claims (jkt entry) ENTRY BY: J/Davis TDMS TYPE: DOC TDMS EVENT: 0000pre+ CREATED BY/ON: #485 Cox, Kin 01-25-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 01-25-2001
01/12/2001	Scheduling Conference Hearing	(jsd) Initial SCHEDULING conference @ 9:15am FSDATE: 20010112ss TDMS TYPE: EVT TDMS EVENT: 0296b2H- CREATED BY/ON: #469 Wilson, 10-03-2000 LAST MODIFIED BY/ON: #G22 Bynum, F 01-17-2001
01/09/2001	Miscellaneous Docket	(mot) Motion for enlargement of time to respond to counter-deft's motions (Consent) TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #465 Jones, G 12-19-2000 LAST MODIFIED BY/ON: #4AU Russell, 04-06-2001
01/08/2001	Miscellaneous Docket	Memorandum of pts. & auths. in opp. to counter-deft's motion to dismiss counterclaims, motion for a more definite, seelg, statement, & motion to strike ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000mem+ CREATED BY/ON: #465 Jones, G 01-29-2001 LAST MODIFIED BY/ON: #465 Jones, G 01-29-2001
01/05/2001	Amended Complaint Filed	AMENDED complaint for damages, chaning the pray amount ENTRY BY: NCRIC TDMS TYPE: CAC TDMS EVENT: 1142nac CREATED BY/ON: #468 Vaughn, 01-17-2001 LAST MODIFIED BY/ON: #468 Vaughn, 01-17-2001
01/05/2001	Praecipe Filed:	Praecipe noting that the parties consent to the filing by pltf of an Amended Complaint (tab 1) & by deft of an, seelg, Amended Answer & Counterclaims (tab 2) in the forms attached hereto pursu ant to SCR 15(a), which pleadings shall be deemed filed & served upon the filing of this Praecipe. This agreement shall not be construed as a waiver by either party of any defense to procedural defects in the opposing party's orig. pleadin g or response ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9104pra+ CREATED BY/ON: #465 Jones, G 01-16-2001 LAST MODIFIED BY/ON: #465 Jones, G 01-16-2001
01/05/2001	Answer with Counter Claim Filed	ANSWER and counterclaim (amended) ENTRY BY: Columbia TDMS TYPE: CAC TDMS EVENT: 1148awc CREATED BY/ON: #409 Dew, Dor 01-09-2001 LAST MODIFIED BY/ON: #409 Dew, Dor 01-09-2001
01/03/2001	Praecipe Filed:	Praecipe noting that both pltf & deft by counsel consent to the filing by pltf of an amended complaint ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #485 Cox, Kin 01-09-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 01-09-2001
12/23/2000	Motion to Dismiss Filed	(ORDER GRANTING) Motion to dismiss counterclaims, fld 1/3/01, mailed 1/12/01 ENTRY BY: J/Diaz

16d-000027

Docket Date	Description	Messages
		TDMS TYPE: MOT TDMS EVENT: 1076mot CREATED BY/ON: #486 Colaire, 12-12-2000 LAST MODIFIED BY/ON: #468 Vaughn, 01-12-2001
12/23/2000	Miscellaneous Docket	(ORDER GRANTING) Motion for more definite statement of allegations of fraud & misrepresentation &, seelg, fld 1/3/01, mld 1/12/01 motion to strike insufficient defense ENTRY BY: J/Diaz TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #432 Rogers, 12-12-2000 LAST MODIFIED BY/ON: #468 Vaughn, 01-12-2001
12/18/2000	Miscellaneous Docket	Motion for enlargement of time to respond to counter-deft's motions (Consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #465 Jones, G 12-19-2000 LAST MODIFIED BY/ON: #465 Jones, G 12-19-2000
12/11/2000	Miscellaneous Docket	Reply of Pltf to counterclaims 1 & 2 of deft ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000rep* CREATED BY/ON: #486 Colaire, 12-12-2000 LAST MODIFIED BY/ON: #486 Colaire, 12-12-2000
12/11/2000	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 12-12-2000 LAST MODIFIED BY/ON: #477 Hartfiel 12-12-2000
12/11/2000	Motion to Dismiss Filed	MOTION to dismiss counterclaims ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1076mot CREATED BY/ON: #486 Colaire, 12-12-2000 LAST MODIFIED BY/ON: #486 Colaire, 12-12-2000
12/11/2000	Miscellaneous Docket	Motion for more definite statement of allegations of fraud & misrepresentation & motion to strike insufficient defense ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #432 Rogers, 12-12-2000 LAST MODIFIED BY/ON: #432 Rogers, 12-12-2000
12/01/2000	Certificate Regarding Discovery Filed	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 12-04-2000 LAST MODIFIED BY/ON: #477 Hartfiel 12-04-2000
11/29/2000	Miscellaneous Docket	Stipulation for Enlargement of Time for pltf to file motion or responsive pleading to counterclaims of deft, seelg, Pltf shall have up to and including Dec. 11, 2000 within which to file it s responses to deft's Counterclaims ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000sti+ CREATED BY/ON: #465 Jones, G 12-06-2000 LAST MODIFIED BY/ON: #465 Jones, G 12-06-2000
11/06/2000	Answer with Counter Claim Filed	ANSWER and counterclaim ENTRY BY: Columbia TDMS TYPE: CAC TDMS EVENT: 1148awc CREATED BY/ON: #468 Vaughn, 11-08-2000 LAST MODIFIED BY/ON: #468 Vaughn, 11-08-2000
10/30/2000	Miscellaneous Docket	ORDER GRANTING Motion for enlargement of time to answer and file counterclaims (consent), FLD 11-1-00, MLD 11-6-00 ENTRY BY: J/Diaz TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #485 Cox, Kin 10-25-2000 LAST MODIFIED BY/ON: #485 Cox, Kin 11-06-2000
10/24/2000	Miscellaneous Docket	Motion for enlargement of time to answer and file counterclaims (consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #485 Cox, Kin 10-25-2000 LAST MODIFIED BY/ON: #485 Cox, Kin 10-25-2000
10/23/2000	Miscellaneous Docket	AFFIDAVIT of service of summons and complaint by special process server on Columbia Hospital for Women on 10/5/00

16d-000028

Docket Date	Description	Messages
		ENTRY BY: (clerk) TDMS TYPE: DOC TDMS EVENT: 1180sps CREATED BY/ON: #468 Vaughn, 10-26-2000 LAST MODIFIED BY/ON: #468 Vaughn, 10-26-2000
10/23/2000	Praecipe Filed:	Praecipe of Service of Summons By Process Server ENTRY BY: NCRIC, Inc TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #456 Frye, Ka 10-26-2000 LAST MODIFIED BY/ON: #456 Frye, Ka 10-26-2000
10/03/2000	Alias Summons Filed	ALIAS summons Issued on Nabil Asterbadi, Registered Agent ENTRY BY: (clerk) TDMS TYPE: DOC TDMS EVENT: 1162ali CREATED BY/ON: #456 Frye, Ka 10-04-2000 LAST MODIFIED BY/ON: #456 Frye, Ka 10-04-2000
10/03/2000	Complaint for Breach of Contract Filed	Complaint TDMS TYPE: CAC TDMS EVENT: 9101A01 CREATED BY/ON: #469 Wilson, 10-03-2000 LAST MODIFIED BY/ON: #485 Cox, Kin 12-12-2003

Receipt #	Date	From	Payments		Fee		Amount Paid
119285	11/10/2008	ROBINSON, STEPHEN D	Cash	$20.00	Cost	$20.00	$20.00
27867	02/10/2006	ROBINSON, STEPHEN D	Cash	$20.00	Cost	$20.00	$20.00
17301	10/26/2005	PAGE, Mr RODNEY F	Check	$100.00	Cost	$100.00	$100.00

16d-000029

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

0007308-08

RECEIVED
Civil Clerk's Office
OCT 0 3 2008
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.
1115 30th Street, N.W.
Washington, DC 20007

Plaintiff,

v.

Civil Action No.

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.
2425 L Street, N.W.
Washington DC 20008

Serve: Nabil Asterbadi, Registered Agent
2440 M Street, N.W.
Washington, D.C. 20037

Defendant.

COMPLAINT FOR DAMAGES

NCRIC, Inc., Plaintiff, by counsel, sues Columbia Hospital for Women Medical Center, Inc. as follows:

1. NCRIC, Inc. ("NCRIC") is a corporation in the business of providing liability insurance and doing business in the District of Columbia. It is the successor in interest to National Capital Reciprocal Insurance Company.

2. Columbia Hospital for Women Medical Center, Inc. ("Hospital") is a medical hospital with its principal place of business in the District of Columbia.

3. This Court has jurisdiction pursuant to D.C. Code § 11-921.

4. NCRIC and Hospital are parties to Retrospective Rating Plan Agreement for

insurance (the "Agreement") by which NCRIC provided medical doctors at the Hospital with certain insurance against liability resulting from described events, including professional negligence in consideration for which Hospital agreed to pay certain premiums. A copy of the Agreement is attached hereto as Exhibit A.

5. Pursuant to the terms of the Agreement, Hospital owed NCRIC payment of additional insurance premiums based on the Agreement.

6. NCRIC performed all its obligations pursuant to the Agreement by providing the agreed insurance coverage.

7. Hospital breached the Agreement by failing to pay NCRIC the additional premiums due under the Agreement.

8. Hospital owes NCRIC the sum of $1,286,525.00.

9. Despite written demand for payment therefore, and compliance with all its other obligations under the Agreement, Hospital has failed and refused to pay NCRIC the amount owed.

WHEREFORE, NCRIC demands judgment against Hospital in the amount of One Million Two Hundred Eighty-six Thousand Five Hundred twenty-five Dollars ($1, 286,525), interest, and costs incurred herein.

Roy Niedermayer, Esq. D.C. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for NCRIC

RETROSPECTIVE RATING PLAN AGREEMENT

This Retrospective Rating Plan Agreement ("Agreement") is made and entered into effective the first day of September, 1993, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

WHEREAS, NCRIC offers medical professional liability insurance to physicians duly licensed as such by the District of Columbia Government ("physicians") on a claims-made basis, for which an annual premium is assessed and paid; and

WHEREAS, Medical Center operates and conducts a not-for-profit hospital in the District of Columbia which has on its medical staff duly licensed physicians who are insured with NCRIC; and

WHEREAS, certain of these physicians desire to secure a reduction or discount on their insurance premiums on a preferred risk basis through the establishment of and participation in an Attending Faculty Program ("AFP"), which shall be designed to reduce the risks involved in the delivery of medical care to patients as set forth in the Attending Faculty Program Agreement entered into between the physicians and Medical Center; and

WHEREAS, NCRIC is willing to provide such a reduction or discount on said insurance premiums to those physicians who agree to participate in the AFP on condition that Medical Center agrees to be financially responsible for certain premium amounts as hereinafter provided; and

WHEREAS, as a mechanism for reducing its own exposure for professional liability, Medical Center is willing to assume such responsibility;

NOW, THEREFORE, the parties hereto agree as follows:

1. NCRIC has established a three-year Retrospective Rating Plan, a copy of which is attached hereto as Exhibit A (the "Plan") and incorporated herein by reference. NCRIC makes available the benefits of the Plan to its physician insureds who are parties to the AFP Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and who are issued a Retrospective Rating Plan Endorsement, a copy of which is attached hereto as Exhibit C. With the exception of the Plan Participants

PLAINTIFF'S EXHIBIT 4
16d-000032

listed on Exhibit D, attached hereto and incorporated herein by this reference, the effective date of any Plan Participant's participation, or termination of participation, in the Plan shall be the date on which NCRIC receives notice thereof from Medical Center.

2. NCRIC agrees to issue Retrospective Rating Plan Endorsements to its physician insureds who otherwise qualify in accordance with the standard underwriting practices of NCRIC and who are members of the AFP.

3. As an inducement to NCRIC to cause it to issue the Retrospective Rating Plan Endorsements to its physician insureds who are members of the AFP, Medical Center agrees to be solely responsible for, and to pay, any Additional Premium due in accordance with the terms of the Plan.

4. Medical Center shall correspondingly be entitled to receive Return Premium, if any, and investment return thereon, if any, in accordance with the terms of the Plan.

5. Notice of any Additional Premium due from Medical Center, or any Return Premium due to Medical Center, shall be provided to Medical Center within 60 days following the close of the Reconciliation Period, and payment due, whether to Medical Center or from Medical Center, shall be due and payable within 30 days of receipt of said notice.

6. Medical Center's obligations hereunder are primary, and not secondary, and NCRIC shall have no right to seek recourse or payment of any Additional Premium due pursuant to the Plan from any Plan Participant. In the event Medical Center fails to make any payment for which it is responsible hereunder when due, the Company shall have the right to recover reasonable attorneys fees incurred in recovering such payment from Medical Center.

7. NCRIC hereby represents and warrants that any claims made against Plan Participants will be processed, including the setting of loss reserves, in the normal and ordinary course of the Company's business, without consideration of the insured's status as a Plan Participant.

8. Medical Center hereby represents and warrants that it has made, and will continue to make, adequate provision for the contingent liabilities it has assumed hereunder.

9. Medical Center will provide NCRIC with the following:

a. a list of all Plan Participants, and any additions or deletions thereto;

b. copies of Medical Center's Agreement between Medical Center and Participants in the Attending Faculty Program who are Insured with NCRIC, and amendments, if any, as made from time to time, with each Plan Participant, which contract shall include an authorization by the Plan Participant in form and substance satisfactory to NCRIC to release to Medical Center the information set forth in Paragraph 10(a)(iii) below;

c. copies of, and any amendments to, the AFP Agreement; and

d. a review and summary of risk management activities undertaken pursuant to the Attending Faculty Program Agreement.

10. NCRIC and a Medical Center representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

a. At such meetings, NCRIC will provide Medical Center with the following:

i. for purposes of cross-reference and confirmation of participation or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

ii. the aggregate amount of losses reserved under the Plan, and the verification thereof by NCRIC's consulting actuary;

iii. with respect to any medical incident or professional liability claim reported to NCRIC by a Plan Participant under the Plan (hereinafter, "incident"), and subject to a Plan Participant's authorization to release same to Medical Center, the name of the physician, the date of the incident, the date said incident was reported to NCRIC, any complaint or suit filed in a court of law with respect to such claim; and any payments made on behalf of said Plan Participant by NCRIC; and

iv. a review of Medical Center risk management activities.

b. Annually, at such meeting taking place in the first quarter of each year, Medical Center will provide NCRIC with the statement of Medical Center's consulting actuary that adequate reserves have been made for the contingent liabilities Medical Center has assumed under this Agreement.

11. This Agreement shall remain in full force and effect as to any renewal, extension or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, or new issuances.

12. This Agreement shall remain in full force and effect until all claims applicable to the final Experience Period of the Plan are finally closed or upon payment of maximum premium amount required by paragraph 3 hereof applicable to the final Experience Period, whichever occurs first. For purposes of this Paragraph 12, any claim "closed" without payment made to, and a release having been signed by, the claimant shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the retrospective adjustment according to the Plan.

13. For purposes of clarification, and not to vary, alter or amend the terms hereof or of the Plan, attached hereto as Exhibit E and incorporated herein by reference is an example of the operation of the Plan.

14. All bookkeeping and record keeping shall be handled by NCRIC.

15. Upon ninety (90) days' written notice prior to the end of any Experience Period, to be effective after the last day of such Experience Period, the Plan may be discontinued by either party for cause, provided that such discontinuance shall not affect any obligation or liability accrued prior to the date of such discontinuance. For purposes of this Paragraph 15, "cause" shall mean any material breach of the terms of this Agreement, or any change in any applicable federal, state or local law which would render any of the terms of this Agreement unlawful.

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

If to NCRIC:

Mr. David K. Little
President
National Capital Underwriters, Inc.
Attorney-in-fact for
National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, D.C. 20007

If to Medical Center:

Mr. G. Patrick Kane, FACHE
President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, N.W.
Washington, D.C. 20037

The date of service of any such notice shall be the date that such notice is deposited with the U.S. Postal Service or the date of personal delivery, as applicable.

17. Medical Center hereby warrants and represents that it has made, and agrees to provide NCRIC with its auditor's or actuary's annual statement reflecting, adequate provision for the contingent liabilities it has assumed hereunder.

18. This Agreement constitutes the entire agreement between the parties and no modifications, amendments or additions thereto shall be binding unless in writing and executed by all the parties hereto.

19. This Agreement shall not be assignable without the prior written consent of the parties hereto.

20. The agreements, terms and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, if any.

21. This Agreement is made and executed in the District of Columbia, and shall be governed by the law of the District of Columbia.

16d-000036

IN WITNESS WHEREOF, the parties have caused their corporate names to be subscribed hereto by their duly authorized officers or attorneys-in-fact, and their corporate seal to be hereunto affixed effective the day and year first above written.

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

BY: _____
David K. Little, President

(Corporate Seal)

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST:

BY: _____

(Corporate Seal)

List of Exhibits

A	Retrospective Rating Plan
B	Attending Faculty Program Agreement
C	Retrospective Rating Plan Endorsement
D	List of Initial Plan Participants
E	Example of operation of the Plan

16d-000038

EXHIBIT A

THREE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center dated September 1, 1993, (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be three years, beginning on September 1, 1993 and ending on September 1, 1996. The Plan shall consist of three separate and distinct Experience Periods of:

Beginning 12:01 A.M. on	and Ending 12:01 A.M. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19% of the otherwise applicable premium for such coverage. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return premium (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =

{[[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor} + Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedule:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1996
September 1, 1994 to September 1, 1995	September 1, 1997
September 1, 1994 to September 1, 1996	September 1, 1998

Additional reconciliations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall not be deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the Reconciliation Date, Reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"Basic Premium" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by

multiplying the Subject Premium by the insurance charge factor set forth below:

Three(3) Year Subject Premium	Insurance Charge Factor
$ 1,539,000 - $ 2,565,999	20.7%
$ 2,566,000 - $ 3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"Deposit Premium" means the Subject Premium multiplied by eighty-one percent (81%). This percentage shall remain unchanged for the three year term of the Plan.

"Development Factor" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and shall remain unchanged for the three year term of the Plan and all reconciliations applicable thereto:

Year 1 Reconciliation -	88.5%
Year 2 Reconciliation -	87.5%
Year 3 Reconciliation -	90.5%
Year 4 Reconciliation -	96.0%
Year 5 Reconciliation -	100.0%
All Subsequent Reconciliations-	100.0%

"Discount Factor" means a factor of 86.33%. This factor shall remain unchanged for the three-year term of the plan.

"Experience Period" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the pro-rated period involved shall be deemed to be an Experience Period.

"Insurance Policy" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"Losses" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"Loss Limitation" - for the purpose of application of the

retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (i) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"Loss Reserves" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"Maximum Premium" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (115%) of the Subject Premium amount.

"Minimum Premium" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (75%) of the Subject Premium amount.

"Paid Losses" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid Losses are subject to Loss Limitation, defined above.

"Plan Participants" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"Subject Premium" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insureds were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall be determined by NCRIC's consulting actuary, but shall not exceed 83%, nor be less than 77%, of the undiscounted premium charged for coverage limits of $1 million each claim/$3 million aggregate.

CA Form 1

Superior Court of the District of Columbia
CIVIL DIVISION
500 Indiana Avenue, N.W., Room JM-170
Washington, D.C. 20001 Telephone: 879-1133

NCRIC, INC *Plaintiff*
vs.
Civil Action No. 00[illegible]

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. *Defendant*

Received 10/5/2000

Serve: Nabil Asterbadi, Registered Agent
2440 M Street, N.W.
Washington, D.C. 20037

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have 60 days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Room JM 170 at 500 Indiana Avenue, N.W. between 9:00 a.m. and 4:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 Noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Clerk of the Court

Jay I. Wiedemayer, Esq.
Name of Plaintiff's Attorney

7475 Wisconsin Avenue, Suite 500
Address
Bethesda, MD 20814

301-951-0456
Telephone

By _____
Deputy Clerk

Date OCT 03 2000

PUEDE OBTENERSE COPIAS DE ESTE FORMULARIO EN ESPANOL EN EL TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA, 500 INDIANA AVENUE, N.W., SALA JM 170

YOU MAY OBTAIN A COPY OF THIS FORM IN SPANISH AT THE SUPERIOR COURT OF D.C., 500 INDIANA AVENUE, N.W., ROOM JM 170

Form CV(6)-456/Mar. 98

NOTE: SEE IMPORTANT INFORMATION ON BACK OF THIS FORM.

16d-000043

Superior Court of the District of Columbia
Civil Division

NCRIC, Inc. vs Columbia Hospital for Women C.A. No. 00ca007308

INITIAL ORDER

Pursuant to D.C. Code §11-906 and District of Columbia Superior Court Rule of Civil Procedure ("SCR Civ") 40-I, it is hereby **ORDERED** as follows.

(1) Effective this date, this case is assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the Summons, the Complaint, and this Initial Order, and any General Order issued by the judge to whom the case is assigned. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in SCR Civ 4(m).

(3) Within 20 days of service as described above, except as otherwise noted in SCR Civ 12, each defendant must respond to the Complaint by filing an Answer or other responsive pleading. As to any defendant who has failed to so respond, a default and judgement will be entered unless the time to respond has been extended as provided in SCR Civ 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an Initial Scheduling and Settlement Conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients prior to the Conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Civil Assignment Office (202) 879-1750 may continue the Conference once, with the consent of all parties, to either of the two succeeding Fridays. Requests must be made not less than five business days before the scheduling conference date. No other continuance of the Conference will be granted except upon motion for good cause shown.

October 03,2000 Chief Judge Eugene N. Hamilton

Case Assigned to: Calendar #8 (Judge Rafael Diaz)

Initial conference: @ 9:15am 01/12/01 Courtroom: 519, Main Bldg. 5th Floor
500 Indiana Ave., N.W.
Washington, D.C. 20001

10/3/00

CA Form 1

Superior Court of the District of Columbia
CIVIL DIVISION
500 Indiana Avenue, N.W., Room JM-170
Washington, D.C. 20001 Telephone: 879-1133

NCRIC, INC
vs.
Plaintiff

Civil Action No. 0007306-00

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.
Defendant

Received 10/5/2000

Serve: Nabil Asterbadi, Registered Agent
2440 M Street, N.W.
Washington, D.C. 20037

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have 60 days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Room JM 170 at 500 Indiana Avenue, N.W. between 9:00 a.m. and 4:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 Noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Clerk of the Court

Roy I. Niedermayer, Esq.
Name of Plaintiff's Attorney

7475 Wisconsin Avenue, Suite 500
Address
Bethesda, MD 20814

301-951-4456
Telephone

By _____
Deputy Clerk

Date OCT 03 2000

PUEDE OBTENERSE COPIAS DE ESTE FORMULARIO EN ESPANOL EN EL TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA, 500 INDIANA AVENUE, N.W., SALA JM 170

YOU MAY OBTAIN A COPY OF THIS FORM IN SPANISH AT THE SUPERIOR COURT OF D.C., 500 INDIANA AVENUE, N.W., ROOM JM 170

Form CV(6)-456/Mar. 98

NOTE: SEE IMPORTANT INFORMATION ON BACK OF THIS FORM.

16d-000045

Superior Court of the District of Columbia
Civil Division

NCRIC, Inc. vs Columbia Hospital for Women C.A. No. 00ca007308

INITIAL ORDER

Pursuant to D.C. Code §11-906 and District of Columbia Superior Court Rule of Civil Procedure ("SCR Civ") 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case is assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the Summons, the Complaint, and this Initial Order, and any General Order issued by the judge to whom the case is assigned. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in SCR Civ 4(m).

(3) Within 20 days of service as described above, except as otherwise noted in SCR Civ 12, each defendant must respond to the Complaint by filing an Answer or other responsive pleading. As to any defendant who has failed to so respond, a default and judgement will be entered unless the time to respond has been extended as provided in SCR Civ 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an Initial Scheduling and Settlement Conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients prior to the Conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Civil Assignment Office (202) 879-1750 may continue the Conference once, with the consent of all parties, to either of the two succeeding Fridays. Requests must be made not less than five business days before the scheduling conference date. No other continuance of the Conference will be granted except upon motion for good cause shown.

October 03,2000 Chief Judge Eugene N. Hamilton

Case Assigned to: Calendar #8 (Judge Rafael Diaz)

Initial conference: @ 9:15am 01/12/01 Courtroom: 519, Main Bldg. 5th Floor
500 Indiana Ave., N.W.
Washington, D.C. 20001

16d-000046

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

0007308-08

RECEIVED
Civil Clerk's Office
OCT 0 3 2008
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.
1115 30th Street, N.W.
Washington, DC 20007

Plaintiff,

v.

Civil Action No.

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.
2425 L Street, N.W.
Washington DC 20008

Serve: Nabil Asterbadi, Registered Agent
2440 M Street, N.W.
Washington, D.C. 20037

Defendant.

COMPLAINT FOR DAMAGES

NCRIC, Inc., Plaintiff, by counsel, sues Columbia Hospital for Women Medical Center, Inc. as follows:

1. NCRIC, Inc. ("NCRIC") is a corporation in the business of providing liability insurance and doing business in the District of Columbia. It is the successor in interest to National Capital Reciprocal Insurance Company.

2. Columbia Hospital for Women Medical Center, Inc. ("Hospital") is a medical hospital with its principal place of business in the District of Columbia.

3. This Court has jurisdiction pursuant to D.C. Code § 11-921.

4. NCRIC and Hospital are parties to Retrospective Rating Plan Agreement for

insurance (the "Agreement") by which NCRIC provided medical doctors at the Hospital with certain insurance against liability resulting from described events, including professional negligence in consideration for which Hospital agreed to pay certain premiums. A copy of the Agreement is attached hereto as Exhibit A.

5. Pursuant to the terms of the Agreement, Hospital owed NCRIC payment of additional insurance premiums based on the Agreement.

6. NCRIC performed all its obligations pursuant to the Agreement by providing the agreed insurance coverage.

7. Hospital breached the Agreement by failing to pay NCRIC the additional premiums due under the Agreement.

8. Hospital owes NCRIC the sum of $1,286,525.00.

9. Despite written demand for payment therefore, and compliance with all its other obligations under the Agreement, Hospital has failed and refused to pay NCRIC the amount owed.

WHEREFORE, NCRIC demands judgment against Hospital in the amount of One Million Two Hundred Eighty-six Thousand Five Hundred twenty-five Dollars ($1, 286,525), interest, and costs incurred herein.

Roy Niedermayer, Esq. D.C. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for NCRIC

RETROSPECTIVE RATING PLAN AGREEMENT

This Retrospective Rating Plan Agreement ("Agreement") is made and entered into effective the first day of September, 1993, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

WHEREAS, NCRIC offers medical professional liability insurance to physicians duly licensed as such by the District of Columbia Government ("physicians") on a claims-made basis, for which an annual premium is assessed and paid; and

WHEREAS, Medical Center operates and conducts a not-for-profit hospital in the District of Columbia which has on its medical staff duly licensed physicians who are insured with NCRIC; and

WHEREAS, certain of these physicians desire to secure a reduction or discount on their insurance premiums on a preferred risk basis through the establishment of and participation in an Attending Faculty Program ("AFP"), which shall be designed to reduce the risks involved in the delivery of medical care to patients as set forth in the Attending Faculty Program Agreement entered into between the physicians and Medical Center; and

WHEREAS, NCRIC is willing to provide such a reduction or discount on said insurance premiums to those physicians who agree to participate in the AFP on condition that Medical Center agrees to be financially responsible for certain premium amounts as hereinafter provided; and

WHEREAS, as a mechanism for reducing its own exposure for professional liability, Medical Center is willing to assume such responsibility;

NOW, THEREFORE, the parties hereto agree as follows:

1. NCRIC has established a three-year Retrospective Rating Plan, a copy of which is attached hereto as Exhibit A (the "Plan") and incorporated herein by reference. NCRIC makes available the benefits of the Plan to its physician insureds who are parties to the AFP Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and who are issued a Retrospective Rating Plan Endorsement, a copy of which is attached hereto as Exhibit C. With the exception of the Plan Participants

PLAINTIFF'S EXHIBIT A
16d-000049
PENGAD-Bayonne, N.J.

listed on Exhibit D, attached hereto and incorporated herein by this reference, the effective date of any Plan Participant's participation, or termination of participation, in the Plan shall be the date on which NCRIC receives notice thereof from Medical Center.

2. NCRIC agrees to issue Retrospective Rating Plan Endorsements to its physician insureds who otherwise qualify in accordance with the standard underwriting practices of NCRIC and who are members of the AFP.

3. As an inducement to NCRIC to cause it to issue the Retrospective Rating Plan Endorsements to its physician insureds who are members of the AFP, Medical Center agrees to be solely responsible for, and to pay, any Additional Premium due in accordance with the terms of the Plan.

4. Medical Center shall correspondingly be entitled to receive Return Premium, if any, and investment return thereon, if any, in accordance with the terms of the Plan.

5. Notice of any Additional Premium due from Medical Center, or any Return Premium due to Medical Center, shall be provided to Medical Center within 60 days following the close of the Reconciliation Period, and payment due, whether to Medical Center or from Medical Center, shall be due and payable within 30 days of receipt of said notice.

6. Medical Center's obligations hereunder are primary, and not secondary, and NCRIC shall have no right to seek recourse or payment of any Additional Premium due pursuant to the Plan from any Plan Participant. In the event Medical Center fails to make any payment for which it is responsible hereunder when due, the Company shall have the right to recover reasonable attorneys fees incurred in recovering such payment from Medical Center.

7. NCRIC hereby represents and warrants that any claims made against Plan Participants will be processed, including the setting of loss reserves, in the normal and ordinary course of the Company's business, without consideration of the insured's status as a Plan Participant.

8. Medical Center hereby represents and warrants that it has made, and will continue to make, adequate provision for the contingent liabilities it has assumed hereunder.

9. Medical Center will provide NCRIC with the following:

a. a list of all Plan Participants, and any additions or deletions thereto;

b. copies of Medical Center's Agreement between Medical Center and Participants in the Attending Faculty Program who are Insured with NCRIC, and amendments, if any, as made from time to time, with each Plan Participant, which contract shall include an authorization by the Plan Participant in form and substance satisfactory to NCRIC to release to Medical Center the information set forth in Paragraph 10(a)(iii) below;

c. copies of, and any amendments to, the AFP Agreement; and

d. a review and summary of risk management activities undertaken pursuant to the Attending Faculty Program Agreement.

10. NCRIC and a Medical Center representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

a. At such meetings, NCRIC will provide Medical Center with the following:

i. for purposes of cross-reference and confirmation of participation or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

ii. the aggregate amount of losses reserved under the Plan, and the verification thereof by NCRIC's consulting actuary;

iii. with respect to any medical incident or professional liability claim reported to NCRIC by a Plan Participant under the Plan (hereinafter, "incident"), and subject to a Plan Participant's authorization to release same to Medical Center, the name of the physician, the date of the incident, the date said incident was reported to NCRIC, any complaint or suit filed in a court of law with respect to such claim; and any payments made on behalf of said Plan Participant by NCRIC; and

iv. a review of Medical Center risk management activities.

b. Annually, at such meeting taking place in the first quarter of each year, Medical Center will provide NCRIC with the statement of Medical Center's consulting actuary that adequate reserves have been made for the contingent liabilities Medical Center has assumed under this Agreement.

11. This Agreement shall remain in full force and effect as to any renewal, extension or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, or new issuances.

12. This Agreement shall remain in full force and effect until all claims applicable to the final Experience Period of the Plan are finally closed or upon payment of maximum premium amount required by paragraph 3 hereof applicable to the final Experience Period, whichever occurs first. For purposes of this Paragraph 12, any claim "closed" without payment made to, and a release having been signed by, the claimant shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the retrospective adjustment according to the Plan.

13. For purposes of clarification, and not to vary, alter or amend the terms hereof or of the Plan, attached hereto as Exhibit E and incorporated herein by reference is an example of the operation of the Plan.

14. All bookkeeping and record keeping shall be handled by NCRIC.

15. Upon ninety (90) days' written notice prior to the end of any Experience Period, to be effective after the last day of such Experience Period, the Plan may be discontinued by either party for cause, provided that such discontinuance shall not affect any obligation or liability accrued prior to the date of such discontinuance. For purposes of this Paragraph 15, "cause" shall mean any material breach of the terms of this Agreement, or any change in any applicable federal, state or local law which would render any of the terms of this Agreement unlawful.

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

If to NCRIC:

Mr. David K. Little
President
National Capital Underwriters, Inc.
Attorney-in-fact for
National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, D.C. 20007

If to Medical Center:

Mr. G. Patrick Kane, FACHE
President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, N.W.
Washington, D.C. 20037

The date of service of any such notice shall be the date that such notice is deposited with the U.S. Postal Service or the date of personal delivery, as applicable.

17. Medical Center hereby warrants and represents that it has made, and agrees to provide NCRIC with its auditor's or actuary's annual statement reflecting, adequate provision for the contingent liabilities it has assumed hereunder.

18. This Agreement constitutes the entire agreement between the parties and no modifications, amendments or additions thereto shall be binding unless in writing and executed by all the parties hereto.

19. This Agreement shall not be assignable without the prior written consent of the parties hereto.

20. The agreements, terms and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, if any.

21. This Agreement is made and executed in the District of Columbia, and shall be governed by the law of the District of Columbia.

IN WITNESS WHEREOF, the parties have caused their corporate names to be subscribed hereto by their duly authorized officers or attorneys-in-fact, and their corporate seal to be hereunto affixed effective the day and year first above written.

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

BY: _____
David K. Little, President

(Corporate Seal)

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST:

BY: _____

(Corporate Seal)

List of Exhibits

A Retrospective Rating Plan

B Attending Faculty Program Agreement

C Retrospective Rating Plan Endorsement

D List of Initial Plan Participants

E Example of operation of the Plan

EXHIBIT A

THREE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center dated September 1, 1993, (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be three years, beginning on September 1, 1993 and ending on September 1, 1996. The Plan shall consist of three separate and distinct Experience Periods of:

Beginning 12:01 A.M. on	and Ending 12:01 A.M. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19% of the otherwise applicable premium for such coverage. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return premium (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =

{[[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor} + Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedule:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1996
September 1, 1994 to September 1, 1995	September 1, 1997
September 1, 1994 to September 1, 1996	September 1, 1998

Additional reconciliations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall not be deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the Reconciliation Date, Reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"Basic Premium" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by

multiplying the Subject Premium by the insurance charge factor set forth below:

Three(3) Year Subject Premium	Insurance Charge Factor
$ 1,539,000 - $ 2,565,999	20.7%
$ 2,566,000 - $ 3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"Deposit Premium" means the Subject Premium multiplied by eighty-one percent (81%). This percentage shall remain unchanged for the three year term of the Plan.

"Development Factor" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and shall remain unchanged for the three year term of the Plan and all reconciliations applicable thereto:

Year 1 Reconciliation	-	88.5%
Year 2 Reconciliation	-	87.5%
Year 3 Reconciliation	-	90.5%
Year 4 Reconciliation	-	96.0%
Year 5 Reconciliation	-	100.0%
All Subsequent Reconciliations	-	100.0%

"Discount Factor" means a factor of 86.33%. This factor shall remain unchanged for the three-year term of the plan.

"Experience Period" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the pro-rated period involved shall be deemed to be an Experience Period.

"Insurance Policy" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"Losses" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"Loss Limitation" - for the purpose of application of the

retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (i) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"Loss Reserves" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"Maximum Premium" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (115%) of the Subject Premium amount.

"Minimum Premium" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (75%) of the Subject Premium amount.

"Paid Losses" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid Losses are subject to Loss Limitation, defined above.

"Plan Participants" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"Subject Premium" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insureds were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall be determined by NCRIC's consulting actuary, but shall not exceed 83%, nor be less than 77%, of the undiscounted premium charged for coverage limits of $1 million each claim/$3 million aggregate.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

0007308-08

RECEIVED
Civil Clerk's Office
OCT 0 3 2008
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.
1115 30th Street, N.W.
Washington, DC 20007

Plaintiff,

v.

Civil Action No.

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.
2425 L Street, N.W.
Washington DC 20008

Serve: Nabil Asterbadi, Registered Agent
2440 M Street, N.W.
Washington, D.C. 20037

Defendant.

COMPLAINT FOR DAMAGES

NCRIC, Inc., Plaintiff, by counsel, sues Columbia Hospital for Women Medical Center, Inc. as follows:

1. NCRIC, Inc. ("NCRIC") is a corporation in the business of providing liability insurance and doing business in the District of Columbia. It is the successor in interest to National Capital Reciprocal Insurance Company.

2. Columbia Hospital for Women Medical Center, Inc. ("Hospital") is a medical hospital with its principal place of business in the District of Columbia.

3. This Court has jurisdiction pursuant to D.C. Code § 11-921.

4. NCRIC and Hospital are parties to Retrospective Rating Plan Agreement for

insurance (the "Agreement") by which NCRIC provided medical doctors at the Hospital with certain insurance against liability resulting from described events, including professional negligence in consideration for which Hospital agreed to pay certain premiums. A copy of the Agreement is attached hereto as Exhibit A.

5. Pursuant to the terms of the Agreement, Hospital owed NCRIC payment of additional insurance premiums based on the Agreement.

6. NCRIC performed all its obligations pursuant to the Agreement by providing the agreed insurance coverage.

7. Hospital breached the Agreement by failing to pay NCRIC the additional premiums due under the Agreement.

8. Hospital owes NCRIC the sum of $1,286,525.00.

9. Despite written demand for payment therefore, and compliance with all its other obligations under the Agreement, Hospital has failed and refused to pay NCRIC the amount owed.

WHEREFORE, NCRIC demands judgment against Hospital in the amount of One Million Two Hundred Eighty-six Thousand Five Hundred twenty-five Dollars ($1, 286,525), interest, and costs incurred herein.

Roy Niedermayer, Esq. D.C. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for NCRIC

RETROSPECTIVE RATING PLAN AGREEMENT

This Retrospective Rating Plan Agreement ("Agreement") is made and entered into effective the first day of September, 1993, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

WHEREAS, NCRIC offers medical professional liability insurance to physicians duly licensed as such by the District of Columbia Government ("physicians") on a claims-made basis, for which an annual premium is assessed and paid; and

WHEREAS, Medical Center operates and conducts a not-for-profit hospital in the District of Columbia which has on its medical staff duly licensed physicians who are insured with NCRIC; and

WHEREAS, certain of these physicians desire to secure a reduction or discount on their insurance premiums on a preferred risk basis through the establishment of and participation in an Attending Faculty Program ("AFP"), which shall be designed to reduce the risks involved in the delivery of medical care to patients as set forth in the Attending Faculty Program Agreement entered into between the physicians and Medical Center; and

WHEREAS, NCRIC is willing to provide such a reduction or discount on said insurance premiums to those physicians who agree to participate in the AFP on condition that Medical Center agrees to be financially responsible for certain premium amounts as hereinafter provided; and

WHEREAS, as a mechanism for reducing its own exposure for professional liability, Medical Center is willing to assume such responsibility;

NOW, THEREFORE, the parties hereto agree as follows:

1. NCRIC has established a three-year Retrospective Rating Plan, a copy of which is attached hereto as Exhibit A (the "Plan") and incorporated herein by reference. NCRIC makes available the benefits of the Plan to its physician insureds who are parties to the AFP Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and who are issued a Retrospective Rating Plan Endorsement, a copy of which is attached hereto as Exhibit C. With the exception of the Plan Participants

listed on Exhibit D, attached hereto and incorporated herein by this reference, the effective date of any Plan Participant's participation, or termination of participation, in the Plan shall be the date on which NCRIC receives notice thereof from Medical Center.

2. NCRIC agrees to issue Retrospective Rating Plan Endorsements to its physician insureds who otherwise qualify in accordance with the standard underwriting practices of NCRIC and who are members of the AFP.

3. As an inducement to NCRIC to cause it to issue the Retrospective Rating Plan Endorsements to its physician insureds who are members of the AFP, Medical Center agrees to be solely responsible for, and to pay, any Additional Premium due in accordance with the terms of the Plan.

4. Medical Center shall correspondingly be entitled to receive Return Premium, if any, and investment return thereon, if any, in accordance with the terms of the Plan.

5. Notice of any Additional Premium due from Medical Center, or any Return Premium due to Medical Center, shall be provided to Medical Center within 60 days following the close of the Reconciliation Period, and payment due, whether to Medical Center or from Medical Center, shall be due and payable within 30 days of receipt of said notice.

6. Medical Center's obligations hereunder are primary, and not secondary, and NCRIC shall have no right to seek recourse or payment of any Additional Premium due pursuant to the Plan from any Plan Participant. In the event Medical Center fails to make any payment for which it is responsible hereunder when due, the Company shall have the right to recover reasonable attorneys fees incurred in recovering such payment from Medical Center.

7. NCRIC hereby represents and warrants that any claims made against Plan Participants will be processed, including the setting of loss reserves, in the normal and ordinary course of the Company's business, without consideration of the insured's status as a Plan Participant.

8. Medical Center hereby represents and warrants that it has made, and will continue to make, adequate provision for the contingent liabilities it has assumed hereunder.

9. Medical Center will provide NCRIC with the following:

a. a list of all Plan Participants, and any additions or deletions thereto;

b. copies of Medical Center's Agreement between Medical Center and Participants in the Attending Faculty Program who are Insured with NCRIC, and amendments, if any, as made from time to time, with each Plan Participant, which contract shall include an authorization by the Plan Participant in form and substance satisfactory to NCRIC to release to Medical Center the information set forth in Paragraph 10(a)(iii) below;

c. copies of, and any amendments to, the AFP Agreement; and

d. a review and summary of risk management activities undertaken pursuant to the Attending Faculty Program Agreement.

10. NCRIC and a Medical Center representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

a. At such meetings, NCRIC will provide Medical Center with the following:

i. for purposes of cross-reference and confirmation of participation or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

ii. the aggregate amount of losses reserved under the Plan, and the verification thereof by NCRIC's consulting actuary;

iii. with respect to any medical incident or professional liability claim reported to NCRIC by a Plan Participant under the Plan (hereinafter, "incident"), and subject to a Plan Participant's authorization to release same to Medical Center, the name of the physician, the date of the incident, the date said incident was reported to NCRIC, any complaint or suit filed in a court of law with respect to such claim; and any payments made on behalf of said Plan Participant by NCRIC; and

iv. a review of Medical Center risk management activities.

b. Annually, at such meeting taking place in the first quarter of each year, Medical Center will provide NCRIC with the statement of Medical Center's consulting actuary that adequate reserves have been made for the contingent liabilities Medical Center has assumed under this Agreement.

11. This Agreement shall remain in full force and effect as to any renewal, extension or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, or new issuances.

12. This Agreement shall remain in full force and effect until all claims applicable to the final Experience Period of the Plan are finally closed or upon payment of maximum premium amount required by paragraph 3 hereof applicable to the final Experience Period, whichever occurs first. For purposes of this Paragraph 12, any claim "closed" without payment made to, and a release having been signed by, the claimant shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the retrospective adjustment according to the Plan.

13. For purposes of clarification, and not to vary, alter or amend the terms hereof or of the Plan, attached hereto as Exhibit E and incorporated herein by reference is an example of the operation of the Plan.

14. All bookkeeping and record keeping shall be handled by NCRIC.

15. Upon ninety (90) days' written notice prior to the end of any Experience Period, to be effective after the last day of such Experience Period, the Plan may be discontinued by either party for cause, provided that such discontinuance shall not affect any obligation or liability accrued prior to the date of such discontinuance. For purposes of this Paragraph 15, "cause" shall mean any material breach of the terms of this Agreement, or any change in any applicable federal, state or local law which would render any of the terms of this Agreement unlawful.

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

If to NCRIC:

Mr. David K. Little
President
National Capital Underwriters, Inc.
Attorney-in-fact for
National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, D.C. 20007

If to Medical Center:

Mr. G. Patrick Kane, FACHE
President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, N.W.
Washington, D.C. 20037

The date of service of any such notice shall be the date that such notice is deposited with the U.S. Postal Service or the date of personal delivery, as applicable.

17. Medical Center hereby warrants and represents that it has made, and agrees to provide NCRIC with its auditor's or actuary's annual statement reflecting, adequate provision for the contingent liabilities it has assumed hereunder.

18. This Agreement constitutes the entire agreement between the parties and no modifications, amendments or additions thereto shall be binding unless in writing and executed by all the parties hereto.

19. This Agreement shall not be assignable without the prior written consent of the parties hereto.

20. The agreements, terms and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, if any.

21. This Agreement is made and executed in the District of Columbia, and shall be governed by the law of the District of Columbia.

IN WITNESS WHEREOF, the parties have caused their corporate names to be subscribed hereto by their duly authorized officers or attorneys-in-fact, and their corporate seal to be hereunto affixed effective the day and year first above written.

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

BY: _____
David K. Little, President

(Corporate Seal)

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST:

BY: _____

(Corporate Seal)

List of Exhibits

A	Retrospective Rating Plan
B	Attending Faculty Program Agreement
C	Retrospective Rating Plan Endorsement
D	List of Initial Plan Participants
E	Example of operation of the Plan

16d-000068

EXHIBIT A

THREE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center dated September 1, 1993, (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be three years, beginning on September 1, 1993 and ending on September 1, 1996. The Plan shall consist of three separate and distinct Experience Periods of:

Beginning 12:01 A.M. on	and Ending 12:01 A.M. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19% of the otherwise applicable premium for such coverage. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return premium (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =

{[[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor} + Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedule:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1996
September 1, 1994 to September 1, 1995	September 1, 1997
September 1, 1994 to September 1, 1996	September 1, 1998

Additional reconciliations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall not be deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the Reconciliation Date, Reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"Basic Premium" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by

multiplying the Subject Premium by the insurance charge factor set forth below:

Three(3) Year Subject Premium	Insurance Charge Factor
$ 1,539,000 - $ 2,565,999	20.7%
$ 2,566,000 - $ 3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"Deposit Premium" means the Subject Premium multiplied by eighty-one percent (81%). This percentage shall remain unchanged for the three year term of the Plan.

"Development Factor" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and shall remain unchanged for the three year term of the Plan and all reconciliations applicable thereto:

Year 1 Reconciliation -	88.5%
Year 2 Reconciliation -	87.5%
Year 3 Reconciliation -	90.5%
Year 4 Reconciliation -	96.0%
Year 5 Reconciliation -	100.0%
All Subsequent Reconciliations-	100.0%

"Discount Factor" means a factor of 86.33%. This factor shall remain unchanged for the three-year term of the plan.

"Experience Period" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the pro-rated period involved shall be deemed to be an Experience Period.

"Insurance Policy" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"Losses" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"Loss Limitation" - for the purpose of application of the

retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (i) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"Loss Reserves" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"Maximum Premium" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (115%) of the Subject Premium amount.

"Minimum Premium" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (75%) of the Subject Premium amount.

"Paid Losses" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid Losses are subject to Loss Limitation, defined above.

"Plan Participants" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"Subject Premium" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insureds were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall be determined by NCRIC's consulting actuary, but shall not exceed 83%, nor be less than 77%, of the undiscounted premium charged for coverage limits of $1 million each claim/$3 million aggregate.

CA Form 1

Superior Court of the District of Columbia
CIVIL DIVISION
500 Indiana Avenue, N.W., Room JM-170
Washington, D.C. 20001 Telephone: 879-1133

NCRIC, INC *Plaintiff*
vs.
Civil Action No. 00 [illegible]

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. *Defendant*

Received 10/5/2000

Serve: Nabil Asterbadi, Registered Agent
2440 M Street, N.W.
Washington, D.C. 20037

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have 60 days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Room JM 170 at 500 Indiana Avenue, N.W. between 9:00 a.m. and 4:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 Noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Clerk of the Court

Jay I. Wiedemayer, Esq.
Name of Plaintiff's Attorney

7475 Wisconsin Avenue, Suite 500
Address
Bethesda, MD 20814

301-951-0456
Telephone

By _____
Deputy Clerk

Date OCT 03 2000

PUEDE OBTENERSE COPIAS DE ESTE FORMULARIO EN ESPANOL EN EL TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA, 500 INDIANA AVENUE, N.W., SALA JM 170

YOU MAY OBTAIN A COPY OF THIS FORM IN SPANISH AT THE SUPERIOR COURT OF D.C., 500 INDIANA AVENUE, N.W., ROOM JM 170

Form CV(6)-456/Mar. 98

NOTE: SEE IMPORTANT INFORMATION ON BACK OF THIS FORM.

16d-000073

Superior Court of the District of Columbia
Civil Division

NCRIC, Inc. vs Columbia Hospital for Women C.A. No. 00ca007308

INITIAL ORDER

Pursuant to D.C. Code §11-906 and District of Columbia Superior Court Rule of Civil Procedure ("SCR Civ") 40-I, it is hereby **ORDERED** as follows.

(1) Effective this date, this case is assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the Summons, the Complaint, and this Initial Order, and any General Order issued by the judge to whom the case is assigned. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in SCR Civ 4(m).

(3) Within 20 days of service as described above, except as otherwise noted in SCR Civ 12, each defendant must respond to the Complaint by filing an Answer or other responsive pleading. As to any defendant who has failed to so respond, a default and judgement will be entered unless the time to respond has been extended as provided in SCR Civ 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an Initial Scheduling and Settlement Conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients prior to the Conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Civil Assignment Office (202) 879-1750 may continue the Conference once, with the consent of all parties, to either of the two succeeding Fridays. Requests must be made not less than five business days before the scheduling conference date. No other continuance of the Conference will be granted except upon motion for good cause shown.

October 03,2000 Chief Judge Eugene N. Hamilton

Case Assigned to: Calendar #8 (Judge Rafael Diaz)

Initial conference: @ 9:15am 01/12/01 Courtroom: 519, Main Bldg. 5th Floor
500 Indiana Ave., N.W.
Washington, D.C. 20001

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

OCT 24 2000

NCRIC, INC., Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar 8 -- Judge Diaz Next Court Event: Initial Conf., Jan. 1. 2001

CONSENT MOTION FOR ENLARGEMENT OF TIME TO ANSWER AND FILE COUNTERCLAIMS

Defendant Columbia Hospital for Women Medical Center, Inc., by and through its attorney, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., pursuant to District of Columbia Rule of Civil Procedure 6(b), moves this Court for an enlargement of time of ten (10) days following the prescribed date for filing to answer and file counterclaims in response to Plaintiff NCRIC, Inc.'s Complaint. As grounds therefore, Defendant states as follows:

1. On October 24, 2000, counsel for Plaintiff, Roy I. Neidermayer, agreed to an extension until and including November 6, 2000, for Defendant to file an answer and counterclaims.

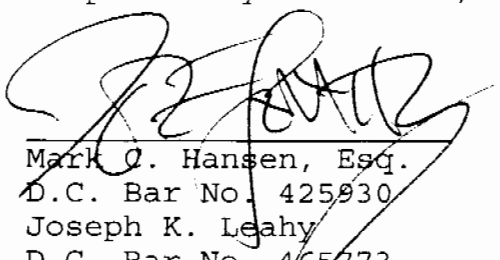
2. No prejudice will inure to Plaintiff upon the grant of the requested relief.

3. Civil Rule 6(b) permits an enlargement of time "for cause shown." Defendant's counsel requests additional time, in part (1) to develop the counterclaims Defendant desires to assert

in this action and (2) to accommodate counsel for Defendant, which office is moving locations at the present time.

WHEREFORE, cause having been shown, Defendant moves that the Motion for Enlargement of Time to Answer and File Counterclaims be granted.

Respectfully submitted,



Mark C. Hansen, Esq.
D.C. Bar No. 425930
Joseph K. Leahy
D.C. Bar No. 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1301 K St., N.W.
Suite 1000 West Tower
Washington, D.C. 20005
(202) 326-7900
FAX - (202) 326-7999

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

16d-000076

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Diaz
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
	)	
Defendant.	)	
	)	

ORDER

Defendant Columbia Hospital for Women Medical Center, Inc.'s motion for an enlargement of time of ten (10) days, until and including November 6, 2000, to answer and file counterclaims in response to Plaintiff NCRIC, Inc.'s Complaint is hereby GRANTED.

SO ORDERED.

_____
Judge Rafael Diaz

Dated: _____, 2000.

16d-000077

Copies to:

Mark C. Hansen, Esq.
Joseph K. Leahy
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
1301 K St., N.W.
Suite 1000 -- West Tower
Washington, D.C. 20005
(202) 326-7900
FAX (202) 326-7999
Counsel for Defendant
Columbia Hospital for Women
Medical Center, Inc.

Roy I. Neidermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
(301) 951-4456
FAX (301) 951-0585
Counsel for Plaintiff
NCRIC, Inc.

CERTIFICATE OF SERVICE

I, Jennifer Morris, hereby certify that on this 24th day of October, 2000, copies of Plaintiff Columbia Hospital for Women Medical Center Inc.'s Consent Motion for Enlargement of Time to Answer and File Counterclaims were served upon the following, by the following methods:

BY FIRST CLASS MAIL AND FAX (301) 951-0585

Roy I. Neidermayer, Esq.
7475 Wisconsin Avenue
Suite 500
Bethesda, MD 20814

BY HAND

Chambers of Judge Rafael Diaz
1600 H. Carl Moultrie I Courthouse
500 Indiana Ave., N.W.,
Washington, D.C. 20001

Jennifer Morris

10/30/00

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Diaz
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant.	)	

ORDER

Defendant Columbia Hospital for Women Medical Center, Inc.'s motion for an enlargement of time of ten (10) days, until and including November 6, 2000, to answer and file counterclaims in response to Plaintiff NCRIC, Inc.'s Complaint is hereby GRANTED.

SO ORDERED.

Rafael Diaz

Judge Rafael Diaz

Dated: 10/30/00, ~~2000~~.

16d-000080

Copies to:

Mark C. Hansen, Esq.
Joseph K. Leahy
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
1301 K St., N.W.
Suite 1000 -- West Tower
Washington, D.C. 20005
(202) 326-7900
FAX (202) 326-7999
Counsel for Defendant
Columbia Hospital for Women
Medical Center, Inc.

Roy I. Neidermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
(301) 951-4456
FAX (301) 951-0585
Counsel for Plaintiff
NCRIC, Inc.

COPY

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

November 6, 2000

BY HAND DELIVERY

Civil Division Clerk's Office
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room JM170
Washington, D.C. 20001

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Madam/Sir:

Enclosed please find an original and one copy of Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc.'s Answer and Counterclaims in the above-captioned matter. Also enclosed is the $20 fee.

Please have the additional copy date-stamped and returned with the courier.

Thank you for your attention to this matter. If you have any questions, please call Joseph Leahy at (202) 326-7924.

Sincerely,

Sylena L. Slaughter

Sylena L. Slaughter
Assistant to Joseph K. Leahy

Enclosures

16d-000082

COPY

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

November 6, 2000

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Roy I. Neidermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Mr. Neidermayer:

Enclosed please find Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc.'s Answer and Counterclaims in the above-captioned action.

If you have any questions, please call Joseph Leahy at (202) 326-7924.

Sincerely,

Sylvia L. Slaughter

Sylvia L. Slaughter
Assistant to Joseph K. Leahy

Enclosure

16d-000083

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

Nov 6 9 18 PM '00

ADMINISTRATIVE DIVISION

NCRIC, INC., Plaintiff,	
v.	Civil Action No. 00-0007308
	Calendar 8 -- Judge Diaz
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., 2425 L Street N.W. Washington, D.C. 20037,	Next Court Event: Initial Conf., Jan. 1, 2001
Defendant.	

RECEIVED
Clerk's Office

NOV 07 2000

Superior Court of the District of Columbia

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.'S ANSWER AND COUNTERCLAIMS

COMES NOW Defendant, Columbia Hospital for Women Medical Center, Inc. ("Medical Center"), by and through its attorneys, Mark C. Hansen, Esquire, Steven F. Benz, Esquire, Joseph K. Leahy, Esquire, and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., and respectfully answers the Complaint in the above-captioned matter as follows:

FIRST DEFENSE

The Complaint fails to state a cause of action upon which relief may be granted.

SECOND DEFENSE

Answering specifically the numbered paragraphs of the Complaint, Medical Center states as follows:

Parties and Jurisdiction

1. To the extent that the allegations in Paragraph 1 constitute legal conclusions, no response is required. Medical Center presently lacks sufficient information to admit or deny the remaining allegations set forth in Paragraph 1.

2. Medical Center admits that it is a health care facility located at 2425 L Street N.W., Washington, D.C. 20037. The remaining allegations contained in Paragraph 2 call for a legal conclusion to which no response is required.

3. The allegations set forth in Paragraph 3 call for a legal conclusion to which no response is required.

4. To the extent that the allegations in Paragraph 4 call for a legal conclusion, no response is required. Medical Center admits that it entered into an agreement with the National Capital Reciprocal Insurance Company, which, upon information and belief, became NCRIC (referred to hereafter collectively as "NCRIC") in July 1999; however, Medical Center denies that the allegations in Sentence 1 of Paragraph 4 accurately describe the scope of that agreement. Medical Center admits that the pages attached to the Complaint as Exhibit A are a copy of a portion of an agreement between Medical Center and NCRIC, but denies that Exhibit A constitutes the entire agreement between Medical Center and NCRIC.

5. The allegations set forth in Paragraph 5 constitute legal conclusions to which no responsive pleading is required, and accordingly Medical Center denies these allegations.

6. To the extent that the allegations set forth in Paragraph 6 constitute a legal conclusion, no response is necessary, and Medical Center denies these allegations. Medical Center lacks sufficient information to admit or deny the allegation in Paragraph 6 that NCRIC provided insurance coverage, the effect of which is to deny said allegation and demand strict proof thereof.

7. Medical Center denies the allegations set forth in Paragraph 7.

8. Medical Center denies the allegations set forth in Paragraph 8.

9. Medical Center admits that NCRIC demanded payment from Medical Center in the amount stated in Paragraph 8, and denies the remaining allegations set forth in Paragraph 9. Medical Center admits that NCRIC demands judgment against Medical Center in the amount of $1, 286, 525.00, plus interest and costs, but denies that NCRIC is entitled to any such relief.

THIRD DEFENSE

Medical Center denies all allegations in the Complaint not specifically admitted, and demands strict proof thereof.

FOURTH DEFENSE

Medical Center fully performed all of its duties and obligations under the alleged agreement between it and NCRIC.

FIFTH DEFENSE

NCRIC's claim is barred as a result of NCRIC's failure to satisfy conditions precedent, including, but not limited to, failing to perform reconciliations properly, and failing to calculate and inform Medical Center of the correct amount of premium due.

SIXTH DEFENSE

NCRIC's claim is barred by the doctrines of estoppel, waiver and/or unclean hands.

SEVENTH DEFENSE

The alleged agreement between Medical Center and NCRIC is unenforceable, in whole or in part, due to NCRIC's material breach of the express and/or implied terms thereof.

EIGHTH DEFENSE

The alleged agreement between Medical Center and NCRIC is unenforceable, in whole or in part, due to modification, novation, and/or accord and satisfaction.

NINTH DEFENSE

The alleged agreement between Medical Center and NCRIC is void, in whole or in part, because Medical Center renewed and/or amended it while under duress caused by NCRIC.

TENTH DEFENSE

Medical Center reserves the right to assert any affirmative defenses that may be revealed during the course of discovery.

MEDICAL CENTER'S COUNTERCLAIMS AGAINST NCRIC

Comes now Defendant/Counter-Plaintiff Medical Center, by counsel, and respectfully states and alleges as follows for its counterclaims against Plaintiff/Counter-Defendant NCRIC:

10. Medical Center incorporates by reference the allegations contained in paragraphs 1 through 9, as though set forth here in full.

Parties and Jurisdiction

11. Medical Center, a preeminent health care facility with internationally renowned specialties in obstetrics, gynecology, and neonatology, is a registered District of Columbia not-for-profit corporation that has been providing health care services in the District of Columbia for about 134 years.

12. NCRIC is, upon information and belief, a corporation that provides malpractice insurance to physicians in the District of Columbia. Upon information and belief, NCRIC is the successor in interest to National Capital National Capital Reciprocal Insurance Company (referred to collectively herein as "NCRIC").

13. This court has jurisdiction over this action pursuant to § 11-921 of the District of Columbia Code.

16d-000087

FACTUAL ALLEGATIONS IN SUPPORT OF COUNTERCLAIMS

Background to the Plan

14. In 1993, and at all relevant times thereafter prior to September 2000, NCRIC provided medical malpractice liability insurance ("MMLI") to nearly all of the physicians associated with Medical Center. Most of these physicians were OB/GYN practitioners.

15. In 1993, and at all relevant times thereafter, most of the physicians associated with Medical Center (otherwise known as "Attending Faculty") were independent contractors who had patient admitting privileges at several hospitals, including hospitals in nearby Maryland and Virginia. Medical Center relied on these independent physicians for patient referrals. As a result, Medical Center competed, and still competes, with other hospitals throughout the District of Columbia metropolitan area for physicians as well as for patient admissions.

16. In 1993, and at all relevant times thereafter, the average MMLI premium for OB/GYN physicians in the District of Columbia was about two or three times as high as the average MMLI premium for such physicians in nearby Virginia and Maryland.

17. In about 1993, and at all relevant times thereafter, at least one competitor hospital in the District of Columbia had in place an agreement with NCRIC, under which it provided a discount on MMLI premiums for that hospital's physicians.

18. Without a program to discount the cost of MMLI premiums for its Attending Faculty, Medical Center faced the prospect of losing associated physicians to hospitals in the District of Columbia that had such discount programs, as well as to hospitals in Maryland and Virginia, where MMLI premiums were lower.

16d-000088

19. For Medical Center, the loss of physicians necessarily would mean the loss of referrals and its key source of income: paying patients. In order to remain economically viable, Medical Center needed to maintain its volume of paying patients.

NCRIC's Proposal and Representations to Medical Center

20. In about 1993, NCRIC proposed to Medical Center a plan to reduce MMLI premiums for its Attending Faculty. NCRIC pressured Medical Center to accept this proposal. The proposal helped NCRIC, which dominated the District of Columbia MMLI market, keep its customers away from Virginia and Maryland, where it faced competition from other providers.

21. At about this time, Medical Center informed NCRIC that it required a discount program in order to retain its Attending Faculty. Upon information and belief, NCRIC knew that losing physicians to other hospitals in the District of Columbia metropolitan area would leave Medical Center, which already was in poor financial condition, in grave fiscal distress.

22. Under the proposed discount plan, each member of the Attending Faculty would receive what amounted to a 15% discount on the premium of the standard MMLI policy.

23. In exchange for this discount, Medical Center would agree to pay, with certain limitations, the difference between (1) the total amount of discounted premium paid by the Attending Faculty for a specified amount of MMLI coverage and (2) NCRIC's cost (including administrative costs and a profit for NCRIC) of providing that coverage. Under this proposal, Medical Center also would receive a refund of any premium paid by the Attending Faculty for the specified amount of MMLI coverage that exceeded NCRIC's cost of providing that coverage.

24. In order to induce Medical Center to agree to the proposed discount program, NCRIC, upon information and belief, represented to Medical Center that this proposal would cost

Medical Center almost nothing, because the Deposit Premium would cover most, if not all, of actual cost of providing the specified amount of MMLI coverage to the Attending Faculty. NCRIC, however, refused to provide Medical Center with sufficient data to perform an adequate analysis of the actual cost of the proposed discount program.

25. The proposed discount program allowed NCRIC to charge Medical Center for predicted expenditures ("incurred losses"), not just actual payments ("actual losses"), on MMLI claims. Medical Center objected to this aspect of the proposal. NCRIC, however, refused to offer a discount program under which it would charge solely for actual losses.

26. In about October 1993, Medical Center agreed to the discount program, and entered into an agreement with NCRIC entitled "Retrospective Rating Plan Agreement" (the "Plan"), which NCRIC drafted. A copy of the Plan is attached hereto as Exhibit 1.

Premium Calculations Under the Plan

27. Under the Plan, if NCRIC's incurred cost of providing MMLI to the Attending Faculty (known as the "Retro Premium") exceeded the total amount of discounted premium paid by the Attending Faculty to NCRIC (known as the "Deposit Premium") for a specified amount of MMLI coverage, then Medical Center was liable to NCRIC for the difference between the Retro Premium and the Deposit Premium (known as the "Additional Premium"), as limited by a set Maximum Premium. However, if the Retro Premium was less than the total Deposit Premium, the Plan entitled Medical Center to the difference between the two (known as the "Return Premium"), as limited by a set Minimum Premium.

28. Under the Plan, the Retro Premium was calculated by applying a complicated, backward-looking formula ("retro formula") that was devised by NCRIC, and for which NCRIC

16d-000090

provided all the data. NCRIC refused to allow Medical Center to audit this data, including the total amount of reserve funds ("Loss Reserves") that NCRIC claimed to maintain in order to pay medical malpractice claims and related litigation expenses under the Plan. The Retro Premium turned in large part on information that Medical Center could not independently verify.

29. Upon information and belief, NCRIC represented, as an inducement for Medical Center to enter into the Plan, that: (1) all premium amounts, including the Retro Premium, would be calculated exactly as set forth in the Plan; (2) the Retro Premium would fairly represent the incurred cost of providing the specified amount of MMLI coverage to the Attending Faculty, including the cost of maintaining Loss Reserves therefor; (3) the Loss Reserves would be calculated in accordance with generally-accepted standards in the insurance industry; and (4) the incurred cost of the Plan, as embodied by the Retro Premium, would closely approximate the actual cost of providing the specified amount of MMLI coverage to the Attending Faculty.

30. Medical Center entered into the Plan in reliance upon the foregoing representations by NCRIC, communicated its reliance to NCRIC, and has been damaged by such reliance.

NCRIC's Obligations Under the Plan

31. Under the Plan, NCRIC was responsible for all bookkeeping under the Plan, for administration of the Plan on behalf of Medical Center, and for all reconciliations of the Plan.

32. Reconciliations required NCRIC to: (1) apply the retro formula properly to the Plan years being reconciled, by using the proper multipliers and definitions, and accurate data; (2) calculate the accurate Deposit, Retro, and Additional or Return Premium; and (3) apply the Minimum or Maximum Premium, if applicable, as stated in the Plan.

33. The Plan required NCRIC to perform a reconciliation, effective on a specified date (the "Reconciliation Date"), after the third year of the Plan, and each year thereafter. For the first reconciliation, only the first year of the Plan was to be reconciled; in each subsequent reconciliation, all of the previous unclosed years of the Plan, plus one additional year, were reconciled. Reconciliations were to continue, even after the Plan ended, until all medical malpractice claims covered by the Plan were closed as defined under the Plan.

34. The Plan required NCRIC to notify Medical Center in writing, within 60 days of each Reconciliation Date, of the amount of Additional or Return Premium due, and pay any Return Premium, and the investment return thereon, due within 30 days of this notice.

35. The Plan required NCRIC to set its Loss Reserves according to the insurance industry standard; to provide Medical Center with verification by an independent actuary that Loss Reserves were maintained as such; and to provide Medical Center with certain data regarding the accrued Loss Reserves on a specified, regular basis. Further, the Plan allowed only a certain percentage of the Loss Reserves be considered when calculating the Retro Premium.

36. As a result of the foregoing, Medical Center reasonably and in good faith trusted NCRIC to administer the Plan on its behalf; to properly and honestly perform all reconciliations; and to accurately calculate all premiums, including Additional and/or Return Premium. Upon information and belief, Medical Center communicated this trust and reliance to NCRIC.

NCRIC's Negligent and Improper Administration of the Plan

37. Upon information and belief, NCRIC did not provide Medical Center with reports and actuary certifications concerning the Loss Reserves as required by the Plan. Although

Medical Center repeatedly requested such reports and certifications, NCRIC at first refused to provide them, and later, upon information and belief, provided them irregularly if at all.

38. Upon information and belief, NCRIC also failed to maintain Loss Reserves for the Plan in accordance with the industry standard. Upon information and belief, beginning in about 1997, NCRIC either knowingly or due to lack of reasonable care failed to adequately adjust its loss reserves downward in response to Medical Center's positive loss experience under the Plan. As a result, NCRIC maintained higher Loss Reserves than were reasonably necessary to cover malpractice claims under the Plan, and improperly raised the incurred cost of the Plan.

39. Further, NCRIC either knowingly or due to lack of reasonable care considered a greater percentage of its Loss Reserves when calculating the Retro Premium that it was allowed to consider under the Plan. As a result, NCRIC improperly raised the incurred cost of the Plan.

40. Moreover, upon information and belief, NCRIC either knowingly or due to lack of reasonable care (a) added extra years of the Plan to its reconciliations, thereby reconciling too many years of the Plan; and/or (b) treated unclosed years as closed, thereby reconciling too few years of the Plan. In each instance, NCRIC improperly raised the incurred cost of the Plan.

41. In addition, for each Reconciliation Date, NCRIC performed the reconciliation incorrectly, in part as set forth in Paragraphs 49, 50, 53 and 54, below. As a result, the amount of Additional or Return Premium calculated by NCRIC in each reconciliation was incorrect.

42. Because Medical Center trusted and relied on NCRIC to administer the Plan, to perform reconciliations properly and honestly, and to accurately calculate all premiums, Medical Center was unaware that, for each reconciliation NCRIC performed, the amount of Additional or Return Premium calculated by NCRIC was incorrect. As a result, after each reconciliation

16d-000093

NCRIC performed, Medical Center was unable to demand the correct amount it was owed by, or pay the correct amount it owed to, NCRIC.

43. Upon information and belief, at all times relevant to this action, NCRIC knew of Medical Center's financial situation and reasonably should have known that Medical Center would have demanded payment of any Return Premium due under the Plan.

Amendments to and Renewals of the Plan

1996 Amendments and Renewal

44. In January 1996, Medical Center faced a severe financial crisis. At this time, if Medical Center lost Attending Faculty or patients, it risked becoming insolvent.

45. At about this time, some members of the Attending Faculty moved their practices to nearby Virginia or Maryland, where MMLI premiums were lower; other Attending Faculty threatened to move unless the discount on MMLI premiums increased. Increasing the discount on MMLI premiums for Attending Faculty was crucial to retaining its associated physicians.

46. In January 1996, Medical Center and NCRIC agreed in correspondence, attached hereto as Exhibit 2, to amend to the Plan. This amendment increased the discount for Attending Faculty to what amounted to 30% off of the standard MMLI premium. This amendment was included in all future versions of the retro formula, which were drafted by NCRIC; one such version is shown at pages 3 through 6 of Exhibit 4, attached hereto. The amendment went into effect in January 1996. It applied only prospectively, to Discount Premium paid after that date. It did not apply to Deposit Premium already collected by NCRIC.

47. This new 30% discount for the Attending Faculty meant that, beginning in January 1996, NCRIC would receive less Deposit Premium. The Plan was subsequently amended to

reflect this reduction in Discount Premium. The amendment, attached hereto as Exhibit 3, was drafted by NCRIC and went into effect in January 1996. Like the 30% discount, this amendment applied only prospectively, to the years of the Plan where NCRIC received less Deposit Premium due to the new, larger discount. The amendment did not apply to past years, for which NCRIC had received more Deposit Premium, due to the old, smaller discount.

48. It later was determined that the amendment described in the previous Paragraph did not accurately reflect the reduction in Deposit Premium resulting from the 30% discount. The amendment was corrected to accurately reflect the Deposit Premium resulting from the new discount. All future versions of the retro formula, which were drafted by NCRIC, listed this corrected Deposit Premium; one such version appears at pages 3 through 6 of Exhibit 4.

49. Although NCRIC agreed to correct the amended Deposit Premium, it knew that Medical Center trusted and relied on it as described above, and therefore, it knew that Medical Center would not be aware if the corrected Deposit Premium was not applied. NCRIC did not apply the corrected Deposit Premium in any reconciliations of the Plan.

50. As a result of NCRIC's refusal to apply the corrected Deposit Premium, each time it performed a reconciliation and notified Medical Center that Additional or Return Premium was due, that amount was incorrect. Further, after each reconciliation, due to Medical Center's trust and reliance on NCRIC as described above, Medical Center was unaware of NCRIC's misrepresentation and/or miscalculation. Accordingly, Medical Center was unable to demand the correct amount it was owed by, or pay the correct amount it owed to, NCRIC.

51. The Plan was initially set to expire in September 1996, at which time NCRIC had not performed any reconciliations under the Plan.

52. In 1996, the parties agreed to amend the Plan to reduce the Minimum Premium for all years of the Plan. Since no reconciliations had been performed yet, the new Minimum Premium was in effect for all reconciliations under the Plan. This amendment was included in all future versions of the retro formula, which were drafted by NCRIC; one such version is shown at pages 3 through 6 of Exhibit 4, attached hereto.

53. Although NCRIC agreed to lower the Minimum Premium, NCRIC knew that Medical Center trusted and relied on NCRIC's representations as stated above, and would not be aware if the new Minimum Premium was not applied. NCRIC did not apply the new Minimum Premium to all years of the Plan in any reconciliations of the Plan.

54. As a result of NCRIC's refusal to apply the new Minimum Premium, each time it performed a reconciliation and notified Medical Center that Additional or Return Premium was due, that amount was incorrect. Further, after each reconciliation, due to Medical Center's trust and reliance on NCRIC as described above, Medical Center was unaware of NCRIC's misrepresentation and/or miscalculation. Accordingly, Medical Center was unable to demand the correct amount it was owed by, or pay the correct amount it owed to, NCRIC.

55. On information and belief, the Plan as amended was renewed by the parties through September 1, 1997.

January 1998 Renewal

56. By late 1997, Medical Center was in the midst of a financial crisis. It was engaged in litigation with the Bank of Tokyo-Mitsubishi, Ltd. over the letter of credit upon which Medical Center relied for operating funds. At this time, Medical Center was in desperate need of such

funds, and needed to renew the Plan to ensure that it did not lose Attending Faculty, the patients they referred, and the resulting income.

57. NCRIC was aware of Medical Center's financial crisis. After the fall 1997 reconciliation NCRIC presented Medical Center with a bill for $1.7 million in Additional Premium, along with an ultimatum: pay up immediately or the Plan would not be renewed. This bill was miscalculated to grossly overstate the amount of Additional Premium due.

58. Upon information and belief, NCRIC knew or should have known that this bill was incorrect, and that due to its trust and reliance on NCRIC, Medical Center would not discover that it had been billed in error. Upon information and belief, NCRIC intended to take advantage of Medical Center's trust and reliance, and its difficult financial situation, in violation of the Plan, in order to obtain security for future Additional Premium that might become due.

59. Medical Center had no reasonable alternative but to pay NCRIC because there was no time to find other, discounted MMLI for the Attending Faculty before the Plan's renewal date. If Medical Center did not agree to pay immediately, the Plan would end and the Attending Faculty's MMLI premiums would skyrocket. Termination of the Plan would cause a large percentage of Medical Center's Attending Faculty to transfer to competing hospitals. As a result of having fewer Attending Faculty and patients, Medical Center would lose significant revenue.

60. Medical Center could not afford to pay $1.7 million, but agreed to pay $1 million. Medical Center made these payments in four installments between January and March of 1998.

61. In January 1998, the Plan was renewed again for one year, effective September 1997. This amendment, attached hereto as Exhibit 4, was drafted by NCRIC.

62. Prior to NCRIC's wrongful demand for payment of $1.7 million, Medical Center had just enough cash on hand to cover its operating expenses. As a direct result of overpaying NCRIC, in early 1998 Medical Center exhausted its cash on hand and became insolvent.

63. In February 1998, Medical Center filed for bankruptcy, and remained in bankruptcy until early 1999. During this time, Medical Center incurred additional expenses as a result of its bankruptcy, including several hundred thousand dollars per month in legal fees.

September 1998 Renewal

64. In the summer of 1998, as a result of NCRIC's wrongful demand for payment, Medical Center determined that it could no longer afford to participate in the Plan. Medical Center began to search for low-cost MMLI for the Attending Faculty. Medical Center expected that, by finding lower-cost MMLI, it could retain its current Attending Faculty and attract new physicians, thereby increasing its revenues and improving its financial situation.

65. In about August 1998, Medical Center received a proposal from Medical Inter-Insurance Exchange ("MIIX"), a highly-rated national insurance company, to provide MMLI for the Attending Faculty. The premium for MIIX's standard OB/GYN MMLI policy was lower than the premium for NCRIC's standard OB/GYN MMLI policy as discounted by the Plan.

66. The MIIX proposal was a better deal than the Plan for members of the Attending Faculty because, unlike NCRIC, MIIX guaranteed that it would not raise its premiums for two years. The MIIX proposal also was better for Medical Center because MIIX did not require that Medical Center accept liability for any additional premium.

67. In about August 1998, Medical Center notified the Attending Faculty of the MIIX proposal. Soon thereafter, NCRIC became aware of the MIIX proposal.

68. Upon hearing of the MIIX proposal, NCRIC initiated a disinformation campaign to kill the proposal by making untrue statements about Medical Center, its Board of Directors, MIIX, and the MIIX proposal.

69. In late August of 1998, NCRIC called a meeting of the Attending Faculty. At this meeting, representatives of NCRIC made false and malicious statements, including but not limited to the following: (1) that MIIX would not remain in the District of Columbia insurance market; (2) that MIIX would not stand by its guarantee not to raise premiums for two years; (3) that MIIX was an unreliable insurance company; (4) that MIIX planned to raise premiums once it cornered the District of Columbia MMLI market; (5) that the MIIX proposal was cronyism which would benefit members of the Medical Center Board of Directors rather than the Attending Faculty; (6) that Medical Center had lied to the Attending Faculty by stating that it could not afford to continue the Plan; and (7) that lawyers with whom NCRIC contracted to defend physicians against medical malpractice claims would not work with MIIX.

70. At this meeting, NCRIC's representatives also urged members of the Attending Faculty to disassociate themselves from Medical Center if the Plan was not renewed.

71. In a direct and foreseeable response to NCRIC's campaign to kill the MIIX deal, including the statements set forth in Paragraphs 69 and 70, approximately 20-30% of Attending Faculty members informed Medical Center that they would not purchase MMLI from MIIX. Many members of the Attending Faculty also threatened to cease their association with Medical Center if the Plan was not renewed. Among those who threatened to leave were several groups of physicians which admitted a large volume of patients to Medical Center.

72. At about this time, upon information and belief, NCRIC also presented Medical Center with a bill, demanding immediate payment for approximately $1 million in Additional Premium for the fall 1998 reconciliation. This bill grossly miscalculated and overstated the amount of Additional Premium due under the Plan.

73. Upon information and belief, NCRIC knew or should have known that this bill was incorrect, and that due to its trust and reliance, Medical Center would not discover that it had been billed in error. Upon information and belief, NCRIC overbilled Medical Center for Additional Premium, in violation of the Plan, in a wrongful attempt to gain leverage over Medical Center and force it to renew the Plan.

74. As a direct and foreseeable result of the foregoing, Medical Center had no reasonable alternative but to reject the MIIX offer and renew the NCRIC Plan. Medical Center was forced to accept liability for potential Additional Premium for the period beginning September 1, 1998, which it would not otherwise have accepted.

75. In about October 1998, the Plan was renewed for one year, through September 1999. This amendment, attached hereto as Exhibit 5, was drafted by NCRIC. Shortly thereafter, upon information and belief, NCRIC, its goal accomplished, dropped its demand that Medical Center pay an additional $1 million.

Medical Entity Policy

76. During late 1998, Medical Center decided to purchase a MMLI policy for the Columbia Physicians Group ("CPG"), physicians who practiced in Medical Center's ambulatory clinic. Although most CPG physicians were covered by their own individual MMLI policies at all times, Medical Center offered them additional MMLI when they worked in the clinic.

77. Medical Center purchased the CPG Policy from NCRIC (the "Policy"). This one-year policy, effective December 1, 1998, was renewed on December 1, 1999.

78. Medical Center complied with all of its obligations under the Policy.

1999 Renewals

79. In 1999, Medical Center searched for, but did not locate, lower-cost MMLI for its Attending Faculty. Accordingly, the Plan was renewed for one year, effective September 1999. This amendment, attached hereto as Exhibit 6, was drafted by NCRIC.

Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

80. After the 2000 renewal, Medical Center formed a committee of the Attending Faculty to search for lower-cost MMLI. The committee was composed of unbiased and well-respected members of the Attending Faculty, including at least one member of NCRIC's Board of Directors. The committee notified NCRIC of its goal.

81. This committee obtained a proposal from The Medical Protective Company ("MedPro"), a well-respected national insurance company. The premium for MedPro's standard OB/GYN MMLI policy was below the discounted price of NCRIC's standard OB/GYN MMLI policy. Morever, under the MedPro proposal Medical Center would not be required to accept liability for any additional premium.

82. The committee informed Medical Center's Board of Directors that it had found an acceptable substitute MMLI policy for the Attending Faculty.

83. At about this time, Medical Center requested that NCRIC propose a discount program based on actual rather than incurred losses. NCRIC refused to make such a proposal unless Medical Center first settled the existing Plan.

84. Negotiations to settle the Plan commenced and continued throughout the summer of 2000, until the parties reached an agreement to settle. The settlement was contingent on Medical Center's Board of Directors approving the Plan.

85. On June 27, 2000, Medical Center's Board of Directors decline to approve the settlement plan. Medical Center informed NCRIC of this development immediately.

86. On June 30, 2000 in retaliation for the Board's refusal to agree to the settlement, NCRIC, without justification, canceled the Policy. After initially providing Medical Center with insufficient notice in violation of District of Columbia insurance regulations, NCRIC notified Medical Center that cancellation of the Policy was effective on September 1, 2000. NCRIC also informed Medical Center that the Plan would be terminated on that date.

87. Despite the foregoing, throughout the summer Medical Center continued to negotiate in good faith towards a settlement of the existing Plan that would meet the approval of its Board of Directors. The parties reached another settlement in August 2000.

88. NCRIC, however, reneged on the settlement in late August 2000.

89. In further retaliation against Medical Center, on or about the effective date of the Policy's cancellation, representatives of NCRIC made untrue and malicious statements regarding Medical Center and the ambulatory clinic to members of the Attending Faculty and CPG. These statements included but were not limited to: (1) that the Policy had expired; (2) that CPG physicians who also were members of the Attending Faculty were not covered by NCRIC's MMLI policy while practicing at the clinic; (3) that Medical Center's self-insurance trust was insufficiently funded to insure the CPG; (4) that Medical Center's ambulatory clinic was a dangerous place to work.

16d-000102

90. These statements caused a panic amount CPG physicians. As a result, some CPG physicians did not show up for work; others quit the clinic altogether. Shifts went uncovered, and the few physicians who were willing to work at the clinic worked extra shifts. Due to the lack of doctors, some clinic patients who required care were turned away.

91. As a result of the foregoing, Medical Center's reputation in the community, and among its patients, staff and associated physicians, was harmed. Staff members began to circulate rumors that Medical Center, which recently had improved its fiscal position, would close. Physicians ceased their association with Medical Center and/or CPG; staff members quit.

92. In further retaliation against Medical Center, NCRIC, without justification, informed CPG physicians who held individual NCRIC MMLI policies that they were not covered by these policies when practicing at Medical Center's ambulatory clinic. Upon information and belief, there was no proper underwriting justification for this exclusion.

93. Due to NCRIC's wrongful refusal to provide MMLI coverage for individual physicians practicing at Medical Center's ambulatory clinic, many physicians quit the clinic. As a result, Medical Center has had, and continues to have, difficulty staffing the clinic.

94. As a result of the termination of the Plan, upon information and belief, NCRIC and its representatives urged members of the Attending Faculty to move their practices from Medical Center to the competitor hospitals that had in place discount programs with NCRIC.

95. As a result of the termination of the Plan, the Attending Faculty were required to decide, on short notice, whether to: (1) remain with NCRIC and move their practices to a competitor hospital with a discount program, as NCRIC urged; (2) switch to Med Pro, the new MMLI provider for Medical Center; or (3) remain at Medical Center and pay the undiscounted

NCRIC MMLI premium. But for Attending Faculty for whom NCRIC was presently defending MMLI claims, this was no choice at all: for all practical purposes, they could not leave NCRIC.

96. Of those faculty who could choose to leave, about 12-17 physicians -- at least one-fourth of the active membership of the Attending Faculty -- left Medical Center. Among those leaving were some physicians who admitted a large volume of patients to Medical Center.

97. The departure of these Attending Faculty had an immediate effect on Medical Center's bottom line. The hospital, which was about to break even for the first time in years, lost revenue and remained unprofitable.

98. The hospital's poor financial condition had an adverse effect on morale at Medical Center. Rumors circulated among the staff that Medical Center would close. More physicians ceased their association with Medical Center; more staff members and nurses quit. Members of the administration, including senior executives, left their posts. Many of the remaining physicians spoke openly about leaving, thereby causing morale to deteriorate further.

99. Word of Medical Center's poor financial condition, and rumors of its imminent demise, reached the greater community. Local media repeatedly contacted members of the Medical Center's Board of Directors to ask when Medical Center would close its doors.

100. As a result of Medical Center's difficult fiscal situation, which continues, and the public rumors that it will close, Medical Center has had and continues to have difficulty recruiting the new physicians and staff it needs to improve its financial situation.

101. On September 1, 2000, NCRIC informed Medical Center that the current amount of Additional Premium due was as a result of the fall 2000 reconciliation was $1,285,525.00.

This reconciliation was, upon information and belief, knowingly grossly miscalculated and overstated by NCRIC in retaliation for Medical Center's refusal to settle the Plan.

102. In fact, no Additional Premium was due under the Plan, and Medical Center was due Return Premium. Medical Center was not immediately aware of NCRIC's deception, and did not immediately contest the amount of Additional Premium stated by NCRIC, or demand payment of the amount of Return Premium that actually was due.

103. On October 1, 2000, NCRIC presented Medical Center with a bill for $1,285,525.00. Upon information and belief, this amount knowingly stated that Additional Premium was due when in fact Return Premium was due.

COUNT ONE

Breach of Contract

104. Medical Center incorporates by reference the allegations in paragraphs 1 through 103, as if set forth fully herein.

105. The amended and renewed Plan, as described above, constitutes a valid and binding contract between Medical Center and NCRIC.

106. Medical Center has performed each obligation and condition of the Plan, except those which it was prevented from performing or those which it was excused from performing or those which were waived by NCRIC's misconduct.

107. Under the terms of the Plan, NCRIC was required to perform certain obligations, including those obligations set forth in Paragraphs 31 through 36, above.

108. NCRIC materially breached the Plan by failing to perform its obligations under the Plan, including those breaches described in Paragraphs 37 through 42, above.

16d-000105

109. As a result of NCRIC's failure to perform its obligations under the Plan, NCRIC caused Medical Center damages including the overpayment of Additional Premium, thereby causing Medical Center to become insolvent.

110. As a direct and proximate result of the foregoing, Medical Center has injured in its business and property.

COUNT TWO

Breach of Implied Covenant of Good Faith and Fair Dealing

111. Medical Center incorporates by reference the allegations in paragraphs 1 through 110, as if set forth fully herein.

112. The amended and renewed Plan, as described above, constitutes a valid and binding contract between Medical Center and NCRIC.

113. Medical Center has performed each obligation and condition of the Plan, except those which it was prevented from performing or those which it was excused from performing or those which were waived by NCRIC's misconduct.

114. By law, the Plan includes an implied duty of good faith and fair dealing.

115. NCRIC has breach the Plan by acting unfairly and in bad faith, including acting as described in Paragraphs 37 through 42, 49, 50, 53, 54, 57, 58, 72 through 74, 101, 102, and 104 above.

116. As a result of NCRIC's failure to perform its obligations under the Plan, NCRIC caused Medical Center damages including the overpayment of Additional Premium, thereby causing Medical Center to become insolvent.

117. As a direct and proximate result of the foregoing, Medical Center has injured in its business and property.

COUNT THREE

Breach of Fiduciary Duty

118. Medical Center incorporates by reference the allegations made in paragraphs 1 through 117, as if set forth fully herein.

119. At all times mentioned herein, a fiduciary relationship existed between NCRIC and Medical Center by virtue of (a) NCRIC's responsibility, stated in the Plan, to perform all bookkeeping on behalf of Medical Center under the Plan; (b) Medical Center's trust and reliance on NCRIC to administer the Plan, of which NCRIC was fully aware; (c) Medical Center's reliance on NCRIC to properly and honestly perform reconciliations and accurately calculate Additional or Return Premium, of which NCRIC was fully aware; and (d) Medical Center's dependence on NCRIC for certain information necessary to perform retro calculations under the Plan, of which NCRIC was fully aware.

120. NCRIC has, by its actions alleged above, including those actions set forth in Paragraphs 37 through 42, 49, 50, 53, 54, 57, 58, 72 through 74, 101, 102 and 104, breached its fiduciary duties to Medical Center.

121. NCRIC breached its fiduciary duties to Medical Center, upon information and belief, with the intent to defraud and/or deceive Medical Center.

122. As a direct and proximate result of the foregoing, Medical Center has been injured in its business and property.

16d-000107

COUNT FOUR

Tortious Interference with Business Relations

123. Medical Center incorporates the allegations made in paragraphs 1 through 122 as if fully set forth herein.

124. During the period up to and including August 2000, Medical Center had valid business relationships with certain physicians who were associated with Medical Center and an expectancy that such physicians would refer patients to Medical Center.

125. NCRIC knew about these valid business relationships and expectancy.

126. NCRIC intentionally and maliciously interfered with these relationships and expectancy (a) by or through its agents, making wrongful and/or untrue, unprivileged statements, including those statements set forth in Paragraphs 69, 70 and 89, regarding Medical Center, its Board of Directors, and MIIX; and (b) by urging said physicians, wrongfully and without privilege, to move their practices from Medical Center to its competitor.

127. As a direct and proximate result of NCRIC's wrongful interference, a number of its physicians terminated their association with at Medical Center, and ceased referring patients to Medical Center.

128. NCRIC has been and is being injured by NCRIC's malfeasance due to loss of revenue resulting from loss of patient referrals.

COUNT FIVE

Tortious Interference with Prospective Business Advantage

129. Medical Center incorporates the allegations made in paragraphs 1 through 128 as if fully set forth herein.

16d-000108

130. Medical Center had a reasonable business expectancy in the patients referred by its associated physicians, and reasonably expected to continue the association with its physicians and the resulting patient referrals.

131. NCRIC was aware of this business expectancy, as described above.

132. Despite its knowledge, NCRIC deliberately and intentionally or recklessly acted to interfere with and prevent Medical Center from realizing the aforementioned business expectancies by engaging in the tortious and wrongful conduct described above.

133. NCRIC's foregoing actions constitute an intentional and tortious interference with Medical Center's reasonable business expectancies.

134. As a result of their foregoing actions, NCRIC has proximately caused Medical Center damages in the form of substantial economic loss, including loss of revenue resulting from loss of Attending Faculty and patient referrals.

COUNT SIX

Negligence

135. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 134, as if fully set forth herein.

136. At all times relevant to this Complaint, NCRIC had a duty of care in relation to Medical Center, by virtue of its contract with Medical Center and its relationship with Medical Center, including its position as bookkeeper for and administrator of the Plan.

137. NCRIC breached its duty of care and was negligent by miscalculating the amounts of Additional or Return Premium due, as described above.

138. NCRIC 's negligence proximately caused Medical Center damage by causing it to overpay Additional Premium and fail to demand Return Premium it was due, and further, by causing Medical Center to become insolvent.

COUNT SEVEN

Actual and/or Constructive Fraud

139. Medical Center incorporates by reference paragraphs 1 through 138, as though fully set forth herein.

140. As set forth above, NCRIC was in a fiduciary and/or confidential position with regard to Medical Center, due to NCRIC's role as administrator of the Plan and its duty to perform all bookkeeping and reconciliations under the Plan.

141. Due to this fiduciary and/or confidential relationship between NCRIC and Medical Center, as set forth above, Medical Center trusted NCRIC's administration of the Plan and relied on NCRIC to correctly and honestly perform each reconciliation and accurately calculate any Additional or Return Premium due.

142. As set forth above, NCRIC and/or its agents made false representations to Medical Center, including that (1) the Loss Reserves under the Plan maintained in accordance with the industry standard and (2) that after the performance of each reconciliation, a certain amount of Additional or Return Premium was due. NCRIC also concealed from plaintiffs material facts which amounted to a misrepresentation by refusing to provide information concerning Loss Reserves as provided for by the Plan, among other things.

143. The false representations and/or concealments set forth above were material with regard to the amount of Additional or Return Premium due under the Plan. If not for such false

16d-000110

representations and/or concealments, Medical Center would have paid the correct amount of Additional Premium and/or would have demanded the correct amount of Return Premium.

144. NCRIC intended that Medical Center rely upon its false representations and/or concealments, and pay NCRIC for amounts that it was not properly owed under the Plan.

145. As set forth above, Medical Center reasonably relied upon the false representations and/or concealments made by NCRIC, including by paying incorrect amounts of premium. As set forth above, Medical Center's reliance was reasonable, and known to NCRIC, because NCRIC was required to perform all bookkeeping under the Plan and because NCRIC refused to provide Medical Center access to data necessary to independently verify NCRIC's bookkeeping.

146. Medical Center has been directly and proximately damaged by NCRIC's false representations and concealments by, among other things, overpaying premium, which in turn proximately and directly led Medical Center to become insolvent.

COUNT EIGHT

Negligent Misrepresentation

147. Medical Center incorporates by reference paragraphs 1 through 146, as though fully set forth herein.

148. As set forth above, NCRIC and/or its agents made false representations to Medical Center, including that: (1) the Loss Reserves under the Plan maintained in accordance with the industry standard and (2) after the performance of each reconciliation, a certain amount of Additional or Return Premium was due. Moreover, as set forth above in Paragraphs 37 and 38, NCRIC concealed from plaintiffs material facts that amounted to a misrepresentation.

16d-000111

149. NCRIC negligently made these false representations because it failed to ensure that it maintain Loss Reserves in accord with the industry standard, among other things.

150. The false representations and/or concealments set forth above were material with regard to the amount of Additional or Return Premium due under the Plan. If not for such false representations and/or concealments, Medical Center would have paid the correct amount of Additional Premium and/or would have demanded the correct amount of Return Premium.

151. NCRIC intended that Medical Center rely upon its false representations and/or concealments, and pay NCRIC for amounts that it was not properly owed under the Plan.

152. As set forth above, Medical Center reasonably relied upon the false representations and/or concealments made by NCRIC, including by paying incorrect amounts of premium. As set forth above, Medical Center's reliance was reasonable, and known to NCRIC, because NCRIC was required to perform all bookkeeping under the Plan and because NCRIC refused to provide Medical Center access to data necessary to independently verify NCRIC's bookkeeping.

153. Medical Center has been directly and proximately damaged by NCRIC's negligent actions by, among other things, overpaying premium, which in turn proximately and directly led Medical Center to become insolvent.

COUNT NINE

Defamation and Libel

154. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 153, as if fully set forth herein.

155. NCRIC and its agents made numerous false and defamatory statements including those statements set forth in Paragraphs 69 and 89.

16d-000112

156. The foregoing false and defamatory statements were published to physicians who were associated with Medical Center.

157. NCRIC's foregoing false and defamatory statements about Medical Center were made upon information and belief with knowledge of their falsity or reckless indifference or negligence as to their truth or falsity.

158. As a result of its foregoing false and defamatory statements, NCRIC has directly and proximately caused Medical Center damages in the form of harm to its reputation and substantial economic loss.

COUNT TEN

Trade Libel/Commercial Disparagement/Injurious Falsehood

159. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 158, as if fully set forth herein.

160. NCRIC made and false and misleading representations of fact which disparaged Medical Center's performance as a hospital. These statements included those statements set forth in Paragraphs 70 and 90.

161. NCRIC made the foregoing false representations for the purpose of disparaging the quality of Medical Center's services as a health care facility.

162. NCRIC made the foregoing false representations intentionally and with full knowledge that these statements would case doubt upon the quality of Medical Center's services as a health care facility.

163. As a result of the foregoing false representations, NCRIC has proximately caused Medical Center damages in the form of substantial economic loss.

16d-000113

164. NCRIC's false representations of fact regarding the quality of Medical Center's services as a health care facility violate the common law of commercial disparagement and trade libel and injurious falsehood.

COUNT ELEVEN

Conversion

165. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 164, as if fully set forth herein.

166. Medical Center made payments to NCRIC, described above in Paragraph 60.

167. If and to the extent that such payments were for Additional Premium actually owed by Medical Center, NCRIC interfered with Medical Center's property to the exclusion and in defiance of Medical Center's rights to the property by not returning Medical Center's payments when and to the extent that NCRIC subsequently owed Medical Center Return Premium.

168. As a result of the conversion of its property by NCRIC, Medical Center has been injured in an amount to be proved at trial.

Relief Requested

WHEREFORE, Medical Center asks that the Court award Medical Center its actual damages; punitive damages, as a result of NCRIC's malfeasance, fraud and bad faith; costs, including reasonable attorney's fees; and such further relief as the Court may deem just and equitable.

16d-000114

Demand for Jury Trial

Medical Center requests a trial by jury.

Dated: November 6, 2000.

Respectfully submitted,

Joseph K. Leahy /sls

Mark C. Hansen
D.C. Bar No. 425930
Steven F. Benz
D.C. Bar No. 428026
Joseph K. Leahy
D.C. Bar No. 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000115

CERTIFICATE OF SERVICE

I, Sylena Slaughter, hereby certify that on this 6th day of November, 2000, a copy of Columbia Hospital for Women Medical Center's Answer and Counterclaims was served upon the following party first class mail, postage prepaid:

Roy I. Neidermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena L. Slaughter

EXHIBIT 1

RETROSPECTIVE RATING PLAN AGREEMENT

This Retrospective Rating Plan Agreement ("Agreement") is made and entered into effective the first day of September, 1993, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

WHEREAS, NCRIC offers medical professional liability insurance to physicians duly licensed as such by the District of Columbia Government ("physicians") on a claims-made basis, for which an annual premium is assessed and paid; and

WHEREAS, Medical Center operates and conducts a not-for-profit hospital in the District of Columbia which has on its medical staff duly licensed physicians who are insured with NCRIC; and

WHEREAS, certain of these physicians desire to secure a reduction or discount on their insurance premiums on a preferred risk basis through the establishment of and participation in an Attending Faculty Program ("AFP"), which shall be designed to reduce the risks involved in the delivery of medical care to patients as set forth in the Attending Faculty Program Agreement entered into between the physicians and Medical Center; and

WHEREAS, NCRIC is willing to provide such a reduction or discount on said insurance premiums to those physicians who agree to participate in the AFP on condition that Medical Center agrees to be financially responsible for certain premium amounts as hereinafter provided; and

WHEREAS, as a mechanism for reducing its own exposure for professional liability, Medical Center is willing to assume such responsibility;

NOW, THEREFORE, the parties hereto agree as follows:

1. NCRIC has established a three-year Retrospective Rating Plan, a copy of which is attached hereto as Exhibit A (the "Plan") and incorporated herein by reference. NCRIC makes available the benefits of the Plan to its physician insureds who are parties to the AFP Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and who are issued a Retrospective Rating Plan Endorsement, a copy of which is attached hereto as Exhibit C. With the exception of the Plan Participants

listed on Exhibit D, attached hereto and incorporated herein by this reference, the effective date of any Plan Participant's participation, or termination of participation, in the Plan shall be the date on which NCRIC receives notice thereof from Medical Center.

2. NCRIC agrees to issue Retrospective Rating Plan Endorsements to its physician insureds who otherwise qualify in accordance with the standard underwriting practices of NCRIC and who are members of the AFP.

3. As an inducement to NCRIC to cause it to issue the Retrospective Rating Plan Endorsements to its physician insureds who are members of the AFP, Medical Center agrees to be solely responsible for, and to pay, any Additional Premium due in accordance with the terms of the Plan.

4. Medical Center shall correspondingly be entitled to receive Return Premium, if any, and investment return thereon, if any, in accordance with the terms of the Plan.

5. Notice of any Additional Premium due from Medical Center, or any Return Premium due to Medical Center, shall be provided to Medical Center within 60 days following the close of the Reconciliation Period, and payment due, whether to Medical Center or from Medical Center, shall be due and payable within 30 days of receipt of said notice.

6. Medical Center's obligations hereunder are primary, and not secondary, and NCRIC shall have no right to seek recourse or payment of any Additional Premium due pursuant to the Plan from any Plan Participant. In the event Medical Center fails to make any payment for which it is responsible hereunder when due, the Company shall have the right to recover reasonable attorneys fees incurred in recovering such payment from Medical Center.

7. NCRIC hereby represents and warrants that any claims made against Plan Participants will be processed, including the setting of loss reserves, in the normal and ordinary course of the Company's business, without consideration of the insured's status as a Plan Participant.

8. Medical Center hereby represents and warrants that it has made, and will continue to make, adequate provision for the contingent liabilities it has assumed hereunder.

9. Medical Center will provide NCRIC with the following:

   a. a list of all Plan Participants, and any additions or deletions thereto;

16d-000119

b. copies of Medical Center's Agreement between Medical Center and Participants in the Attending Faculty Program who are Insured with NCRIC, and amendments, if any, as made from time to time, with each Plan Participant, which contract shall include an authorization by the Plan Participant in form and substance satisfactory to NCRIC to release to Medical Center the information set forth in Paragraph 10(a)(iii) below;

c. copies of, and any amendments to, the AFP Agreement; and

d. a review and summary of risk management activities undertaken pursuant to the Attending Faculty Program Agreement.

10. NCRIC and a Medical Center representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

a. At such meetings, NCRIC will provide Medical Center with the following:

i. for purposes of cross-reference and confirmation of participation or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

ii. the aggregate amount of losses reserved under the Plan, and the verification thereof by NCRIC's consulting actuary;

iii. with respect to any medical incident or professional liability claim reported to NCRIC by a Plan Participant under the Plan (hereinafter, "incident"), and subject to a Plan Participant's authorization to release same to Medical Center, the name of the physician, the date of the incident, the date said incident was reported to NCRIC, any complaint or suit filed in a court of law with respect to such claim; and any payments made on behalf of said Plan Participant by NCRIC; and

iv. a review of Medical Center risk management activities.

b. Annually, at such meeting taking place in the first quarter of each year, Medical Center will provide NCRIC with the statement of Medical Center's consulting actuary that adequate reserves have been made for the contingent liabilities Medical Center has assumed under this Agreement.

11. This Agreement shall remain in full force and effect as to any renewal, extension or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, or new issuances.

12. This Agreement shall remain in full force and effect until all claims applicable to the final Experience Period of the Plan are finally closed or upon payment of maximum premium amount required by paragraph 3 hereof applicable to the final Experience Period, whichever occurs first. For purposes of this Paragraph 12, any claim "closed" without payment made to, and a release having been signed by, the claimant shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the retrospective adjustment according to the Plan.

13. For purposes of clarification, and not to vary, alter or amend the terms hereof or of the Plan, attached hereto as Exhibit B and incorporated herein by reference is an example of the operation of the Plan.

14. All bookkeeping and record keeping shall be handled by NCRIC.

15. Upon ninety (90) days' written notice prior to the end of any Experience Period, to be effective after the last day of such Experience Period, the Plan may be discontinued by either party for cause, provided that such discontinuance shall not affect any obligation or liability accrued prior to the date of such discontinuance. For purposes of this Paragraph 15, "cause" shall mean any material breach of the terms of this Agreement, or any change in any applicable federal, state or local law which would render any of the terms of this Agreement unlawful.

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

If to NCRIC:

Mr. David K. Little
President
National Capital Underwriters, Inc.
Attorney-in-fact for
National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, D.C. 20007

If to Medical Center:

Mr. G. Patrick Kane, FACHE
President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, N.W.
Washington, D.C. 20037

The date of service of any such notice shall be the date that such notice is deposited with the U.S. Postal Service or the date of personal delivery, as applicable.

17. Medical Center hereby warrants and represents that it has made, and agrees to provide NCRIC with its auditor's or actuary's annual statement reflecting, adequate provision for the contingent liabilities it has assumed hereunder.

18. This Agreement constitutes the entire agreement between the parties and no modifications, amendments or additions thereto shall be binding unless in writing and executed by all the parties hereto.

19. This Agreement shall not be assignable without the prior written consent of the parties hereto.

20. The agreements, terms and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, if any.

21. This Agreement is made and executed in the District of Columbia, and shall be governed by the law of the District of Columbia.

IN WITNESS WHEREOF, the parties have caused their corporate names to be subscribed hereto by their duly authorized officers or attorneys-in-fact, and their corporate seal to be hereunto affixed effective the day and year first above written.

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

BY: _____
David K. Little, President

(Corporate Seal)

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST:

BY: _____

(Corporate Seal)

List of Exhibits

A Retrospective Rating Plan

B Attending Faculty Program Agreement

C Retrospective Rating Plan Endorsement

D List of Initial Plan Participants

E Example of operation of the Plan

EXHIBIT A

THREE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center dated September 1, 1993, (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be three years, beginning on September 1, 1993 and ending on September 1, 1996. The Plan shall consist of three separate and distinct Experience Periods of:

Beginning 12:01 A.M. on	and Ending 12:01 A.M. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19% of the otherwise applicable premium for such coverage. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return premium (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =

{[[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor} + Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedule:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1996
September 1, 1994 to September 1, 1995	September 1, 1997
September 1, 1994 to September 1, 1996	September 1, 1998

Additional reconciliations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall not be deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the Reconciliation Date, Reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"Basic Premium" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by

multiplying the Subject Premium by the insurance charge factor set forth below:

Three(3) Year Subject Premium	Insurance Charge Factor
$ 1,539,000 - $ 2,565,999	20.7%
$ 2,566,000 - $ 3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"Deposit Premium" means the Subject Premium multiplied by eighty-one percent (81%). This percentage shall remain unchanged for the three year term of the Plan.

"Development Factor" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and shall remain unchanged for the three year term of the Plan and all reconciliations applicable thereto:

Year 1 Reconciliation	-	88.5%
Year 2 Reconciliation	-	87.5%
Year 3 Reconciliation	-	90.5%
Year 4 Reconciliation	-	96.0%
Year 5 Reconciliation	-	100.0%
All Subsequent Reconciliations	-	100.0%

"Discount Factor" means a factor of 86.33%. This factor shall remain unchanged for the three-year term of the plan.

"Experience Period" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the pro-rated period involved shall be deemed to be an Experience Period.

"Insurance Policy" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"Losses" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"Loss Limitation" - for the purpose of application of the

retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (i) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"Loss Reserves" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"Maximum Premium" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (115%) of the Subject Premium amount.

"Minimum Premium" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (75%) of the Subject Premium amount.

"Paid Losses" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid Losses are subject to Loss Limitation, defined above.

"Plan Participants" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"Subject Premium" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insureds were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall be determined by NCRIC's consulting actuary, but shall not exceed 83%, nor be less than 77%, of the undiscounted premium charged for coverage limits of $1 million each claim/$3 million aggregate.

RETROSPECTIVE RATING PLAN
PREMIUM ADJUSTMENT ENDORSEMENT

Policy Number:

Effective Date:

This endorsement forms a part of the Policy issued by the National Capital Reciprocal Insurance Company (the "Company") and takes effect as of the effective hour and date of said policy unless another effective date is stated herein.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

1. The premium for Coverage A stated in the declarations is a provisional premium and is contingent upon participation by the named insured in a retrospective rating plan. Upon the Company's receipt of notice of the termination of the participation of the named insured in the retrospective rating plan the premium for Coverage A will be adjusted to 100% of the Company's otherwise applicable premium then in effect.

2. All other premiums listed in the declarations and any additional premiums resulting from any policy endorsements are not affected as a result of the named insured's participation in a retrospective rating plan.

This endorsement shall not be binding unless countersigned by a duly authorized Company representative; provided, however, that if this endorsement takes effect as of the effective date of the policy and, at issue of said policy, forms a part thereof, countersignature on the declarations of said policy by a duly authorized Company representative shall constitute valid countersignature of this endorsement.

Countersigned by: _____

Authorized Company Representative

NCRIC-51
(1/93)

Please read the entire policy, including endorsements, carefully.

EXAMPLE OF PLAN OPERATION

COLUMBIA GROUP RETRO RATING PLAN — $500,000 LIMIT
60 OB'GYN'S
$2.0 MILLION LOSSES PER YEAR

MINIMUM PREMIUM - 75% OF SUBJECT PREMIUM
MAXIMUM PREMIUM -115% OF SUBJECT PREMIUM
DEPOSIT PREMIUM - 81% OF SUBJECT PREMIUM

LOADING 17.54%

DISCOUNT FACTOR - 85.33%

	1/1/93	1/1/94	COMBINED	1/1/95	COMBINED
SUBJECT PREMIUM	$3,000,000	$3,300,000	$6,300,000	$3,630,000	$9,930,000
DEPOSIT PREMIUM	$2,430,000	$2,673,000	$5,103,000	$2,940,300	$8,043,300
MAX PREMIUM	$3,450,000	$3,795,000	$7,245,000	$4,174,500	$11,419,500
MIN PREMIUM	$2,250,000	$2,475,000	$4,725,000	$2,722,500	$7,447,500
BASIC PREMIUM	$526,200	$578,820	$1,105,020	$636,702	$1,741,722

	1/1/96
LOSSES PAID	$0
LOSSES RESERVED	$2,000,000
DEVELOPMENT FACTOR	.885
DEVELOPED LOSSES	$1,770,000
DISCOUNTED LOSSES	$1,528,041
RETRO PREMIUM	$2,054,241
SUBJECT TO MIN/MAX	$2,250,000
ADJ(RET) PREMIUM	($180,000)
TOTAL PREM TO DATE	$2,250,000

	1/1/97		
LOSSES PAID	$1,000,000	$0	
LOSSES RESERVED	$1,000,000	$2,000,000	
DEVELOPMENT FACTOR	.875	.885	
DEVELOPED LOSSES	$1,875,000	$1,770,000	
DISCOUNTED LOSSES	$1,618,688	$1,528,041	
RETRO PREMIUM	$2,144,888	$2,106,861	$4,251,749
SUBJECT TO MIN/MAX			$4,725,000
ADJ(RET) PREMIUM			($198,000)
TOTAL PREM TO DATE			$4,725,000

	1/1/98				
LOSSES PAID	$1,500,000	$1,000,000		$0	
LOSSES RESERVED	$500,000	$1,000,000		$2,000,000	
DEVELOPMENT FACTOR	.905	.875		.885	
DEVELOPED LOSSES	$1,952,500	$1,875,000		$1,770,000	
DISCOUNTED LOSSES	$1,685,593	$1,618,688		$1,528,041	
RETRO PREMIUM	$2,211,793	$2,197,508		$2,164,743	$6,574,044
SUBJECT TO MIN/MAX					$7,447,500
ADJ(RET) PREMIUM					($217,800)
TOTAL PREM TO DATE					$7,447,500

1/1/99

LOSSES PAID	$2,000,000	$1,500,000	$1,000,000	
LOSSES RESERVED	$0	$500,000	$1,000,000	
DEVELOPMENT FACTOR	.960	.905	.875	
DEVELOPED LOSSES	$2,000,000	$1,952,500	$1,875,000	
DISCOUNTED LOSSES	$1,726,600	$1,685,593	$1,618,688	
RETRO PREMIUM	$2,252,800	$2,264,413	$2,255,390	$6,772,603
SUBJECT TO MIN/MAI				$7,447,500
ADD(RET) PREMIUM				$0
TOTAL PREM TO DATE				$7,447,500

1/1/00

LOSSES PAID	$2,000,000	$2,000,000	$2,000,000	
LOSSES RESERVED	$0	$0	$0	
DEVELOPMENT FACTOR	1	.960	.905	
DEVELOPED LOSSES	$2,000,000	$2,000,000	$2,000,000	
DISCOUNTED LOSSES	$1,726,600	$1,726,600	$1,726,600	
RETRO PREMIUM	$2,252,800	$2,305,420	$2,363,302	$6,921,522
SUBJECT TO MIN/MAI				$7,447,500
ADD(RET) PREMIUM				$0
TOTAL PREM TO DATE				$7,447,500

EXHIBIT 2

January 17, 1996

Stephen Fargis
Vice President
NCRIC
2170 Wisconsin Ave.
Washington, DC 20007

Dear Steve,

This letter will confirm that Columbia Hospital for Women Medical Center is obligating itself to an increase from 15 to 30 percent for participating members of the Faculty of Columbia Hospital for Women.

As we discussed, this enhanced plan will require carefully monitoring. Dr. Nabil Asterbadi is presenting his plan for monitoring to the Performance Improvement Committee of the Board of Directors on Thursday, January 18. I will forward that plan to you as soon as it is improved. Also, individual members of the faculty will have to sign new agreements reflecting their willingness to adhere to the protocols. As agreements are signed, I will forward names to you. Also as we discussed, the timing of this could present a problem with the due date of the premium notices. Please let me know as soon as possible whether the one-month delay which we discussed is feasible.

This plan will be in effect from January through September 1996, at which time we will review performance with you.

Thanks, Steve. Have a good day.

Sincerely,

Susan M. Hansen
President and CEO

16d-000133

EXHIBIT 3

RETROSPECTIVE RATING PLAN
AMENDMENT A.

PURPOSE

This amendment adjusts the credit as described in Exhibit A. 7. Definitions, "Deposit Premium" in the Agreement between National Capital Reciprocal Insurance Company ("NCRIC") and Medical Center.

By signature, the Agreement is changed to read as follows:

"Deposit Premium" means the Subject Premium multiplied by sixty-two percent (62%). This percentage shall remain unchanged for the remaining term of this Agreement from said forth date of January 1, 1996 and does not adjust the Agreement prior to this date.

Stephen D. Fagin — 1/22/96
Authorized Company Representative — Date

[signature] — 1/31/96
Authorized Medical Center Representative — Date

EXHIBIT 4

ADDENDUM TO
RETROSPECTIVE RATING PLAN AGREEMENT

This Addendum amends the Retrospective Rating Plan Agreement ("Agreement") and Exhibit A, attached, made and entered into effective the first day of September 1,1993 by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

This Addendum extends the Agreement and Exhibit A from September 1, 1996 to September 1, 1998. For purposes of Modifications, only language amended in the Agreement is noted below and for purposes of Plan calculations in the Agreement, a full Exhibit A, with modifications is included.

Modifications to the Agreement are amended as follows:

Page 2, Item 8:

8. Medical Center hereby represents and warrants that it has made, and will continue to make financial security to NCRIC, in accordance with permitted statutory accounting practices as prescribed under the D.C. Insurance Code, or otherwise as acceptable by the D.C. Insurance Administration, for the contingent liabilities it has assumed hereunder.

Page 3, Item 10:

10. NCRIC and a Medical Center representative will meet semi-annually to review the status of the operation of the Retrospective Rating Plan.

Page 4, Item 10.b.:

b. Annually, Medical Center will provide NCRIC with financial security in that is in accordance with permitted statutory accounting practices as prescribed under the D.C. Insurance Code, or otherwise that is acceptable by the D.C. Insurance Administration, for the contingent liabilities Medical Center has assumed under this Agreement. This amount will be adjusted accordingly to the outstanding retrospective premium due.

Page 4, Item 11:

11. This Agreement shall remain in full force and effect as to any renewal, extension, reporting endorsement or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants by NCRIC during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, reporting endorsements or new issuances. All renewals, extension, reporting endorsements or new issuances represent coverage contracts solely between NCRIC and physicians.

16d-000137

Page 4 and Page 5, Item 16:

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

If to NCRIC: Mr. Ray Pate
President and CEO
National Capital Underwriters, Inc.
Attorney-in-fact for National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, DC 20007

If to Medical Center: President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, NW
Washington, DC 20037

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST: _____

BY: _____

(Corporate Seal)

R. Ray Pate, Jr.
President and CEO

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST: _____

BY: _____

(Corporate Seal)

President and CEO

Print Name Gerald P. Beaulieu

Print Title Interim President & CEO

MODIFICATIONS TO

EXHIBIT A

FIVE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center first entered into on September 1, 1993 and added to by this plan through September 1, 1998 (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be five years, beginning on September 1, 1993 and ending on September 1, 1998. The Plan shall consist of five separate and distinct Experience Periods of:

Beginning 12:01 a.m. on	and Ending 12:01 a.m. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996
September 1, 1996	September 1, 1997
September 1, 1997	September 1, 1998

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 33% of the otherwise applicable premium for such coverage for the last three periods ending 1996, 1997 and 1998 respectively. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) = {[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor}+Basic Premium.

16d-000139

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedules:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1995
September 1, 1994 to September 1, 1995	September 1, 1996
September 1, 1995 to September 1, 1996	September 1, 1997
September 1, 1996 to September 1, 1997	September 1, 1998
September 1, 1997 to September 1, 1998	September 1, 1999

Reconciliation calculations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall be not deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the end of an Experience Period, reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

16d-000140

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"**Basic Premium**" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by multiplying the Subject Premium by the insurance charge factor set forth below:

Five (5) Year Subject Premium	Insurance Charge Factor
$1,539,000 - $2,565,999	20.7%
$2,566,000 - $3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"**Deposit Premium**" means the Subject Premium multiplied by sixty-seven (67%). This percentage shall remain unchanged for the three year term of the Plan, unless both parties agree to a change and amend this Agreement hereunder.

"**Development Factor**" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and all reconciliations applicable thereto, unless NCRIC claims trending, as actuarially noted, indicates otherwise development at which time applicable development factors of NCRIC will apply.

Year 1 Reconciliation	-	55.0%
Year 2 Reconciliation	-	65.0%
Year 3 Reconciliation	-	80.0%
Year 4 Reconciliation	-	105.0%
Year 5 Reconciliation	-	105.0%
All Subsequent Reconciliations	-	100.0%

"**Discount Factor**" means the factor currently used by NCRIC at the time of the reconciliation. At the time of this Agreement 86.33% will apply.

"**Experience Period**" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the prorated period involved shall be deemed to be an Experience Period.

16d-000141

"**Insurance Policy**" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"**Losses**" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"**Loss Limitation**" - for the purpose of application of the retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (I) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"**Loss Reserves**" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"**Maximum Premium**" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (133%) of the Subject Premium amount.

"**Minimum Premium**" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (60%) of the Subject Premium amount.

"**Paid Losses**" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid losses are subject to Loss Limitation, defined above.

"**Plan Participants**" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"**Subject Premium**" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insured were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall not exceed 85%, nor be less than 70% of the undiscounted premium charged for coverage limits of $1 million each claim/ $3 million aggregate.

16d-000142

EXHIBIT 5

ADDENDUM B TO
RETROSPECTIVE RATING PLAN AGREEMENT

This Addendum amends the Retrospective Rating Plan Agreement ("Agreement") and Exhibit A, attached, made and entered into effective the first day of September 1, 1993 and Addendum amending Agreement January 1, 1997, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("CHWMC").

This Addendum extends the Agreement, Addendum and Exhibit A from September 1, 1998 to September 1, 1999. For purposes of Modifications, only language amended in the Agreement is noted below and for purposes of Plan calculations in the Agreement, a full Exhibit A, with modifications is included.

Page 3, Item 10:
10. NCRIC, a Medical Center representative and a Physicians Claims Committee representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

A. At such meetings, NCRIC will provide the following:

(I) for purposes of cross-reference and confirmation of participating or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

(II) a loss run detailing the following information:

Date of Loss
Date Claim Made
Claimant's Name
Location of Claim (hospital, office)"
Brief Description of Claim
Status (Claim/Suit)
Total Indemnity Reserve (in the aggregate only)
Total Expense Reserve (in the aggregate only)

(III) a review of Medical Center risk management activities and risk management issues presented by the claims.

16d-000144

Page 5, Item 18.:

18. This Agreement shall not be assignable under any circumstances, whether in connection with the bankruptcy cases in which CHWMC are currently debtors or otherwise, by any party hereto without the express written consent of other parties, provided that the obligations of NCRIC hereunder shall be assigned to any admitted insurer which is a successor to NCRIC by reason of conversion, reorganization or merger approved by the District of Columbia Commissioner of Insurance. Notwithstanding the foregoing, CHWMC will assume and assign to the reorganized merged entity under its plan of reorganization, this Agreement. This agreement shall terminate (i) upon the conversion of the CHWMC case to Chapter 7 case, or (ii) if greater than 50% of Plan Participants resign their affiliation with CHWMC.

16d-000145

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

_____ BY: _____

(Corporate Seal)

R. Ray Pate, Jr.
President and CEO

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST: _____ BY: _____

(Corporate Seal)

Gerald Beaulieu
Acting President and CEO

MODIFICATIONS TO

EXHIBIT A

SIX YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the CHWMC's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center first entered into on September 1, 1993 and subsequently amended January 1, 1997, and added to by this plan through September 1, 1999 (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be six years, beginning on September 1, 1993 and ending on September 1, 1999. The Plan shall consist of six separate and distinct Experience Periods of:

Beginning 12:01 a.m. on	and Ending 12:01 a.m. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996
September 1, 1996	September 1, 1997
September 1, 1997	September 1, 1998
September 1, 1998	September 1, 1999

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19%of the otherwise applicable premium for such coverage in the first two years of the Plan and 33% of the otherwise applicable premium for such coverage in the remaining years of the Plan. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return (if any), shall be solely that of CHWMC.

16d-000147

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) = {[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor}+Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedules:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1995
September 1, 1994 to September 1, 1995	September 1, 1996
September 1, 1995 to September 1, 1996	September 1, 1997
September 1, 1996 to September 1, 1997	September 1, 1998
September 1, 1997 to September 1, 1998	September 1, 1999
September 1, 1998 to September 1, 1999	September 1, 2000

Reconciliation calculations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall be not deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the end of an Experience Period, reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") CHWMC under the terms of the Plan will be presented to CHWMC. Any amounts due either to or from CHWMC shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

16d-000148

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"Basic Premium" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by multiplying the Subject Premium by the insurance charge factor set forth below:

Six (6) Year "Subject" Premium	Insurance Charge Factor
$1,539,000 - $2,565,999	20.7%
$2,566,000 - $3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"Deposit Premium" means the Subject Premium multiplied by sixty-seven (67%). This percentage shall remain unchanged for the one year term of the Plan, unless both parties agree to a change and amend this Agreement hereunder.

"Development Factor" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and all reconciliations applicable thereto, unless NCRIC claims trending, as actuarially noted, indicates otherwise development at which time applicable development factors of NCRIC will apply.

Year 1 Reconciliation	-	55.0%
Year 2 Reconciliation	-	65.0%
Year 3 Reconciliation	-	80.0%
Year 4 Reconciliation	-	105.0%
Year 5 Reconciliation	-	105.0%
All Subsequent Reconciliations	-	100.0%

"Discount Factor" means the factor currently used by NCRIC at the time of the reconciliation. At the time of this Agreement 86.33% will apply.

16d-000149

"**Experience Period**" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the prorated period involved shall be deemed to be an Experience Period.

"**Insurance Policy**" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"**Losses**" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"**Loss Limitation**" - for the purpose of application of the retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (I) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"**Loss Reserves**" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"**Maximum Premium**" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and thirty three percent (133%) of the Subject Premium amount.

"**Minimum Premium**" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to sixty percent (60%) of the Subject Premium amount.

"**Paid Losses**" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid losses are subject to Loss Limitation, defined above.

"**Plan Participants**" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

16d-000150

"**Subject Premium**" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insured were not Plan Participants. For the second and third **Experience Periods**, the **Subject Premium** shall not exceed 85%, nor be less than 70% of the undiscounted premium charged for coverage limits of $1 million each claim/ $3 million aggregate.

EXHIBIT 6

ADDENDUM B-1999 TO
RETROSPECTIVE RATING PLAN AGREEMENT

This addendum amends the Retrospective Rating Plan Agreement ("Agreement") and Exhibit A, made and entered into effective the first day of September 1, 1993 and Addendums of January 1, 1997 and September 1, 1998, by and between NCRIC, Inc. (formerly National Capital Reciprocal Insurance Company), 1115 30th Street, NW, Washington, D.C. 20007 and Columbia Hospital for Women Medical Center, 2425 L Street, NW, Washington, D.C. 20037.

This Addendum extends the Agreement, and Exhibit A, made and entered into effective the first day of September 1, 1993, and Addendums of January 1, 1997 and of September 1, 1998 for the period of September 1, 1999 to September 1, 2000. For purposes of modifications a full Exhibit A noting the addition of this new year to paragraphs 2 (Plan Term) and paragraph 5, (Reconciliations) is attached and by signature below such amended changes are accepted.

Modifications to Exhibit A:

Page 4, Paragraph 2:
2. Plan Term, add to:

Beginning 12:01 a.m. on	and Ending 12:01 a.m. on
September 1, 1999	September 1, 2000

Page 5, Paragraph 5:
5. Reconciliations, add to:

Experience Period	First Reconciliation Date
September 1. 1999 to September 1, 2000	September 1, 2001

NCRIC, Inc.

By: _____
Stephen S. Fargis
Senior Vice President and Chief Operating Officer

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER

BY: Larry Wilson 8/27/99
Larry Wilson
President and Chief Executive Officer

Exhibit A.1.

Per "Development Factor", page 6 of Exhibit A of the Agreement, the following factors will be used at the periods indicated for reviews during the annual Program period:

Months	Factor	
12	0.55	(unchanged)
15	0.58	
18	0.60	
21	0.63	
24	0.65	(unchanged)
27	0.69	
30	0.73	
33	0.76	
36	0.80	(unchanged)
39	0.86	
42	0.93	
45	0.99	
48+	1.05	(unchanged)

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 0007308-00 Calendar #8 Judge Rafael Diaz Next event: Initial Conference 1/12/01

STIPULATION FOR ENLARGEMENT OF TIME FOR PLAINTIFF TO FILE MOTION OR RESPONSIVE PLEADING TO COUNTERCLAIMS OF DEFENDANT

NCRIC, INC., plaintiff, and Columbia Hospital for Women Medical Center, Inc. by their respective undersigned counsel stipulate as follows:

Plaintiff shall have up to and including December 11, 2000 within which to file its responses to defendant's Counterclaims.

Roy Niedermayer, Esq. DC Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006
Telephone: 202*329-7900

Attorneys for Defendant

RECEIVED
NOV 29 2000
By

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
DEC 01 2000
Superior Court of the
District of Columbia

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Diaz
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Court Event: Initial Conf., Jan. 1, 2001
	)	
Defendant.	)	

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 27th day of November, 2000, I served on opposing counsel, by First Class Mail, a copy of Defendant's Objections and Responses to Plaintiff's First Request for Admissions, Defendant's Objections and Responses to Plaintiff's First Set of Document Requests, and Defendant's Objections and Responses to Plaintiff's First Set of Interrogatories, and that I will retain the original of these documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: November 28, 2000

Respectfully submitted,

Joseph K. Leahy,
D.C. Bar No. 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

RECEIVED
DEC 06 2000
KELLOGG, HUBER, HANSEN
TODD & EVANS, P.L.L.C.

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

November 29, 2000

RECEIVED

DEC 0 6 2000

KELLOGG, HUBER, HANSEN
TODD & EVANS, P.L.L.C.

BY FIRST-CLASS MAIL

Clerk of the Court
Civil Division Clerk's Office
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room JM170
Washington, D.C. 20001

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Sir or Madam:

Enclosed with this letter is an original and a courtesy copy for chambers of Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc.'s Certificate Regarding Discovery. Please accept both papers for filing in the above-captioned matter.

Also enclosed with this letter is an additional copy of the Certificate for my records. I ask that you date-stamp and return this copy to me in the enclosed, self-addressed, stamped envelope.

Thank you for your assistance. If you have any questions or concerns, please feel free to contact me at (202)326-7924.

Sincerely yours,

Joseph K. Leahy

Enclosures

12/17/03

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 0007308-00 Calendar #8 Judge Rafael Diaz Next event: Initial Conference 1/12/01

MOTION FOR MORE DEFINITE STATEMENT OF ALLEGATIONS OF FRAUD AND MISREPRESENTATION AND MOTION TO STRIKE INSUFFICIENT DEFENSE

NCRIC, INC., plaintiff, by counsel, moves this Court pursuant to SCR 12 (e) and SCR 9 (b) for an order requiring the defendant to provide plaintiff with a more definite statement of the following so that plaintiff may answer the complaint fully: the amounts of compensatory and punitive damages claimed by defendants for each Count of the complaint in order that plaintiff may answer or move to dismiss punitive damages where such relief is not permitted by law.

Plaintiff also moves this Court pursuant to SCR 12 (f) to strike defendant's Tenth Defense as legally insufficient.

The specific grounds of the Motion are set forth in the accompanying Memorandum of Points and Authorities.

Roy Niedermayer, Esq. DC. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

1. MOTION FOR MORE DEFINITE STATEMENT.

a. The Prayer for Relief Is Ambiguous and Does Not Permit Plaintiff to Frame a Response.

Defendant attaches a single prayer for relief addressing and seeking relief under each of its alleged Counts and legal theories for relief. The relief sought is compensatory and punitive monetary damages, although no amount is stated. Moreover, the prayer is vague and indefinite as to whether the defendant is seeking punitive damages for each Count or only some of the legal theories pleaded in each Count. Plaintiff cannot file an appropriate response by motion or reply until it knows whether the claim is for punitive damages for every Count, or such damages are limited to specific Counts. Depending upon for which Counts the punitive damages are sought, plaintiff may file a motion to dismiss or a reply denying defendant's entitlement to such relief on the facts.

2. MOTION TO STRIKE .

a. Defendant's Tenth Defense is Not a Legally Sufficient Defense.

Defendant's denominated Tenth Defense is simply a statement "reserv[ing]" a "right" to supplement and amend its answer by adding affirmative defenses at a later date. There is no such procedural right in the Rules independent of the requirements of SCR 15 and defendant's statement cannot create one. Defendant has the opportunity and procedure provided by SCR 15 to address later supplementation and amendment of its answer by

following the procedure of the Rule. But as stated, the Tenth Defense is neither a legal nor a factual defense to the complaint. As such it is legally insufficient and should be stricken.

Roy Niedermayer, Esq. DC. Bar #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2000, a copy of the foregoing NCRIC's Motion for More Definite Statement of Allegations of Fraud and Misrepresentation and Motion to Strike Insufficient Defense, was sent first class mail, postage prepaid to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. DC. Bar #180380

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN	)	Judge Rafael Diaz
MEDICAL CENTER, INC.	)	Next event: Initial Conference 1/12/01
	)	
Defendant.	)	

ORDER FOR MORE DEFINITE STATEMENT AND TO STRIKE LEGALLY INSUFFICIENT DEFENSE

This matter came before the Court on plaintiff's Motions for More Definite Statement of Allegations of Fraud and Misrepresentation and Motion to Strike Insufficient Defense, and the Court having reviewed the Motions and any opposition thereto, it is this _____ day of _____, 2000/2001

ORDERED that the plaintiff's Motion for More Definite Statement of Allegations of Fraud and Misrepresentation be and the same is hereby GRANTED; and defendant shall provide a more definite statement of the prayers for relief by specifying for each Counterclaim Count whether compensatory, punitive, or both types of damages are claimed within _____ days of the entry of this Order, and plaintiff shall file any responsive pleading or motion within 15 days of the day on which defendant files its statement; and it is further

ORDERED that the plaintiff's Motion to Strike Insufficient Defense be and the same is hereby GRANTED; and defendant's Tenth Defense is stricken.

Rafael Diaz, Superior Court Judge

cc:

Roy Niedermayer, Esq. DC.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

12/1/00

THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Rafael Diaz
	)	Next event: Initial Conference 1/12/01
	)	
Defendant.	)	

MOTION TO DISMISS COUNTERCLAIMS

NCRIC, Inc., plaintiff, by Roy Niedermayer, its attorney, moves this Court pursuant to SRC 12 and 12-I to dismiss Counterclaim Counts 3, 4, 5, 6, 7, 8, 9 and 10, in whole or in part, and to dismiss defendant's claims for punitive damages and attorneys' fees, for the reasons as more fully set forth in the accompanying Memorandum of Points and Authorities.

Roy Niedermayer, Esq. DC Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for NCRIC, Inc.

THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Rafael Diaz
	)	Next event: Initial Conference 1/12/01
	)	
Defendant.	)	

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS COUNTERCLAIMS

STATEMENT OF THE CASE

This action arises between the parties because of a material breach of contract by Columbia Hospital for Women Medical Center, Inc. ("Hospital") for failure to pay over $1,000,000 in insurance premiums due NCRIC, Inc. ("NCRIC") for professional liability insurance coverage already provided to physicians performing services at Hospital's facilities. NCRIC provided coverage for medical negligence and the Hospital owed the premiums in accordance with an October 1993 Retrospective Rating Policy Agreement, as amended, (the "RRR Agreement") which Hospital admits in paragraph 26 of its Counterclaims is the document governing the relationship between the parties. A close and accurate reading of Hospital's Counterclaim Counts 1-3, 7-8, and 11 reveal they are substantially grounded upon NCRIC's breaches of the RRR Agreement. The relief sought by Hospital is an accounting for monies claimed owed as a result of overpayments by

Hospital or failures to obtain refunds from NCRIC, punitive damages, and attorneys' fees. The remaining Counterclaim Counts involved allegedly tortious conduct based on statements made by the NCRIC during the course of its contractual relationship with Hospital.

The heart of the dispute between the parties is centered on the RRR Agreement, a copy of which with amendments is attached by Hospital to its Counterclaims as Exhibits 1 and 3-6. The existence and terms of the RRR Agreement form the essential core of each one of Hospital's Counterclaim Counts. Thus, the RRR Agreement provides the focus from which analysis of the legal validity of the Counterclaims must begin.

ARGUMENT

I. **COUNT 3 MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM BECAUSE THERE IS NO FIDUCIARY RELATIONSHIP BETWEEN THE PARTIES.**

In Count 3, Hospital claims the breach of fiduciary duty existing between itself and NCRIC of undefined origin. The basis for this fiduciary duty, however, cannot be any traditional relationship of trust and confidence giving rise to a fiduciary relationship such as attorney-client, *Connelly v. Swick & Shapiro, P.C.*, 749 A.2d 1264 (D.C. 2000); conservator, executor, personal representative, trustee-beneficiary, *In re Estate of Harris*, 715 A.2d 116 (D.C. 1998; *In re Estate of Cerreia*, 719 A.2d 1234 (D.C. 1998); a partnership arrangement, *Marmac Investment Co. v. Wolpe*, 759 A.2d 620 (D.C. 2000); a doctor-patient relationship, *Hoopes v. Hamargreen*, 725 P.2d 238 (Nev. 1986); spousal relationship, *Higgs v. Higgs*, 472 A.2d 875 (D.C. 1984); parent-child or guardian-ward, corporate officer/director, majority stockholder-minority stockholder, *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462 (1997), or any other identified legal relationship of trust and

confidence where one party has a superior authoritative position or control over another because of incompetence, disability, or similar reason. The reason is that none of these are the relationship between the parties here.

Despite being couched as a breach of some fiduciary duty, the Hospital's claims are derived from the RRR Agreement between the parties and this fact cannot be disguised. E.g., *Goodman v. Wood*, 259 A.2d 594 (D.C. 1969). The entire relationship between the parties is based upon and arises out of the RRR Agreement between them. Hospital says so itself in its allegations by describing the specific source of this fiduciary duty (and other actions of NCRIC alleged in other Counterclaim Counts) as existing "by virtue of" NCRIC's contract duties under the RRR Agreement.[1/] See Counterclaim ¶ 119. Thus, NCRIC's obligations and the rights of Hospital, if any, come from and are controlled by the RRR Agreement.

Yet, the RRR Agreement language does not create a fiduciary relationship or even speak of one in this arm's length transaction between competent, sophisticated, and knowledgeable parties. Mutual obligations and duties do not themselves create a fiduciary duty between the NCRIC and Hospital, (or *vice versa*) nor does any special expertise in NCRIC as claimed by Hospital create that relationship. In this regard, Hospital's fiduciary duty claim is not based on applicable law, since in every contract there may be special skill or knowledge required for performance on the part of one of the parties. But this does not create a fiduciary relationship. The relationship remains simply contractual. For example,

---

[1/] Actually, the fact that Hospital incorporates by reference each of the prior paragraphs into subsequent Counterclaim Counts underscores each claim is derived from the RRR Agreement. See Counterclaim ¶¶ 111, 118, 123, 129, 135, 139, 147, 154, 159, and 165.

owners of land enter into development/construction contracts with general contractors who possess the requisite special expertise and experience in construction. This is the reason construction contracts are entered into with general contractors. This does not create a fiduciary relationship between the parties, nor make defective construction a breach of fiduciary duty. .

The contractual nature here is underscored by the allegations of County 3 itself. Hospital incorporates by reference the allegations of its paragraphs 31-36 into this Counterclaim Count. These paragraphs are a recitation of NCRIC's contractual duties. Compare paragraphs 31-36 of the Counterclaims with (i) paragraphs 1, 7, 14, and Exhibit A ¶¶ 3-6 of Counterclaim Exhibit 1, (ii) Addendum Exhibit A ¶¶ 3-6 of Counterclaim Exhibit 4 and (iii) Addendum B Exhibit A ¶¶ 3-6 of Counterclaim Exhibit 5. The obligations regarding bookkeeping, calculation of premiums owed or to be refunded, accounting reconciliations, notices to the Hospital and similar items are the very RRR Agreement duties of NCRIC. The specific allegations in paragraph 120 as the basis for the violations of fiduciary duties are the reporting, calculation of premiums, additional premiums or refund premiums (paragraphs 38-41, 49-57, 72-102), and similar items. These are all clearly contractual not fiduciary duties.

Because a fiduciary duty cannot be manufactured out of a simple contractual relationship arising from an arm's-length contract between parties equal in competence and knowledge, Count 3 must be dismissed.

II. COUNTS 4 AND 5 FAIL TO STATE CLAIMS FOR INTERFERENCE BECAUSE THE ALLEGATIONS ARE LEGALLY DEFICIENT AND THE ALLEGED INTERFERENCE CANNOT BE BASED UPON STATEMENTS OF OPINION.

Hospital's Count 4 fails to allege an essential element of a cause of action for interference with contract: the existence of a contract between the Hospital and the doctors "associated with" the Hospital with which contract NCRIC could interfere[2/]. *Paul v. Howard University*, 754 A.2d 297 (D.C. 2000). Hospital does alleges a valid business "relationship" with certain (but apparently not all) doctors. But this inexact and amorphous concept does not rise to the required level of a contract and the necessary element for this legal theory. The Hospital's careful use of the language of "relationship" and "association" itself reveals the failure of this element. The Hospital describes the doctors as "associated" with the Hospital not as contract employees or independent contractors with specific agreements.

Further, the Hospital's pleading speaks in terms of "expectancy" rather than concrete contract obligation or right. A fair reading of the plain allegations and applying common sense and experience reveals the Hospital "hopes" (or has an "expectancy" as it characterizes it in Counterclaim Count 5) the doctors will refer patients to the Hospital. The use of the term "expectancy" is important in context for what it does not say or denote – a contract right in the Hospital and a contract duty of the doctors. The hope the doctors will refer patients is not a contractual duty or agreement to do so. Indeed, such an

---

[2/] Although Hospital describes Count 4 as interference with "business relations", this has been deemed to mean interference with contract. This seems to be what Hospital intends as shown by a comparison with Count 5 which alleges interference with prospective business relations. Apparently, these two counts are intended to allege different legal theories of recovery. *Bennett Enters. v. Domino's Pizza, Inc.*, 45 F.3d 493 (D.D.C. 1995).

agreement to steer patients might even violate other ethical or legal requirements fo the doctors.

Likewise, NCRIC's knowledge of a relationship (assuming it had such knowledge as to specific doctors) not constituting a contract is insufficient to meet the second element of the cause of action for interference with contract.

In addition, Count 4 fails on the fourth element of the cause of action: intent. *Id.* The Hospital does allege intentional conduct to interfere generally but enumerates the specific acts exhibiting the intent in ¶ 69, 70 and 89. To allege a cause of action, the intentional conduct necessary must be egregious involving libel, slander, physical coercion, fraud, misrepresentation or disparagement. *Genetic Sys. Corp. v. Abbott Labs*, 691 F.Supp. 407 (D.D.C. 1988). There is no allegation of physical coercion in the Counterclaims. The intentional acts are solely oral statements made by NCRIC which are not actionable as libel because they are not alleged to be written nor actionable as slander, fraud, misrepresentation or disparagement.

In ¶ 69, statements (1)-(4) and (7) are only about a third company MIIX, not the Hospital. Statement (5) addresses actions of members of the Board of Directors acting seemingly on a personal basis for personal reasons ("cronyism") in their individual capacities, not the Hospital itself. Only statement (6) deals with the Hospital and could conceivably effect the "relationship" of the Hospital and doctors in a direct way. But that statement is privileged. NCRIC provides insurance coverage to the associated physicians. The physicians are NCRIC's insureds. Communications between an insurer and insured on a topic of common concern to both, such as continuation of insurance coverage under the RRR Agreement and possible loss of coverage, have a qualified privilege. *Turner v.*

Welliver, 411 N.W.2d 298 (1987); see also, *Annot.,* 85 A.L.R. 3d 1161 (1978). In fact, NCRIC may have had a duty to make this communications for the protection of its then insured and this would provide a privilege to it. *Columbia First Bank v. Ferguson*, 664 A.2d 650 (1995).

Similarly, the implied statements in ¶ 70 do not constitute the wrongful conduct necessary to sustain an interference claim. Aside from the lack of any contract or the privileged nature of the statements, a reasonable reading of the allegations are that NCRIC was telling its doctors-insureds not to practice where they lacked professional liability coverage, again a matter of common interest to both NCRIC and the doctors.

The statements in ¶ 89 are not defamatory either so as to qualify them as the intentional conduct. Statement numbers (1) and (2) are statements of law, e.g., the current legal status of the Plan and cannot be either defamatory or constitute fraud or misrepresentations. *Hembry v. Parreco*, 81 A.2d 77 (D.C. Mun. App. 1951). NCRIC's statements in (3) and (4) are opinions which cannot be slanderous or form the basis for fraud, misrepresentation, or disparagement. *Dicken v. Shepherd*, 22 Md. 399 (1864)(Inability to pay is not slanderous). Indeed, the Hospital's own recitation of its financial condition and difficulties at ¶¶ 56-57 and 60 support the truth some of the statements in ¶ 89.

For all these reasons, Based on this, Count 4 must fail legally and be dismissed.

III. COUNT 6 MUST BE DISMISSED BECAUSE THE ALLEGED DUTY OF CARE ARISES FROM CONTRACT, NOT TORT.

In Count VI, Hospital alleges in paragraph 136 that "the duty owed by NCRIC arises

by ***virtue of its contract*** with [Hospital]". (Emphasis added). The gravamen of the breaches and negligence in Counterclaim Count 6 is the miscalculation in the amount of premium due to NCRIC or to be refunded to Hospital. These are clearly contractual duties. See (i) paragraphs 1, 7, 14, and Exhibit A ¶¶ 3-6 of Counterclaim Exhibit 1, (ii) Addendum Exhibit A ¶¶ 3-6 of Counterclaim Exhibit 4 and (iii) Addendum B Exhibit A ¶¶ 3-6 of Counterclaim Exhibit 5. There is no allegation of an independent duty or identification of a source of an independent duty owed by NCRIC to Hospital outside the RRR Agreement. Therefore, there is no tort claim in negligence alleged since the existence of a separate duty imposed by law and derived from a source other than the RRR Agreement is a necessary element of a claim for negligence. Hospital has failed to allege or identify the source or nature of the duty owed to Hospital independent of the RRR Agreement as a necessary element and its Counterclaim Count 6 must be dismissed..

IV. COUNTS 7 AND 8 MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM BECAUSE CONTRACTUAL PROMISES CANNOT BE THE BASIS FOR A CLAIM OF FRAUD OR NEGLIGENT MISREPRESENTATION.

The simple fact is that the allegations of Counterclaim Counts 7 and 8 are based wholly upon the existence of a breach of the contractual promises of NCRIC in the RRR Agreement related to calculation of additional or return premiums due Hospital. See Counterclaim paragraph 40. These contractual promises are, as all contract promises are when made, wholly prospective in nature since they address what NCRIC will or must do in the future under the RRR Agreement. The promises are not facts, material or otherwise. Failure to perform future speaking contractual promises, customarily called breach of

contract, does not constitute fraud. *Baker v. Baker*, 54 App.D.C. 214, 296 F. 961 (1924); *Ortel v. Upper Ashburton Realty Co., Inc.*, 171 Md. 678, 190 A. 239, 242 (1937); 12 *Williston on Contracts*, §1496, Fraud and Misrepresentation at 370 (19). On this basis, Counts 7 and 8 must be dismissed.

V. COUNTS 8, 9 AND 10 MUST BE DISMISSED IN WHOLE OR IN PART AS BARRED BY THE STATUTE OF LIMITATIONS.

In Counts 8, 9 and 10, Hospital relies in whole or part on the statements described in paragraphs 69 and 70 of the Counterclaims as well as other statements made before November 6, 1999 during the course of NCRIC's performance of the RRR Agreement since its inception in October 1993.[3/]

In Counterclaim Count 9, Hospital asserts these statements as actionable defamatory slander made by NCRIC. This Counterclaim Count specifies that the statements in paragraphs 69-70 were made in August 1998. The applicable statute of limitations in the District of Columbia for defamation actions is one (1) year. D.C. Code § 12-301(4) (1995). That statutory period expired at the latest on September 30, 1999. Hospital's claim based on August 1998 statements is therefore barred by the one-year statute. Similarly, any claim for libel or slander based on an oral or written statement made before November 6, 1999, the date the statute was tolled by Hospital's filing of it

---

[3/] Such statements are alleged to involve matters of Loss Reserves, reconciliations, and amounts of premium due to and from Hospital. See Counterclaim paragraph 148. Under the RRR Agreement, these matters were addressed annually during the RRR Agreement term including after the close of particular annual accounting periods. See, e.g., ¶ 5 of Exhibit A to Counterclaim Exhibit 1. By implication, Hospital must therefore be asserting that at least some of the statements about these topics were made prior to November 6, 1999.

Counterclaims, is similarly time-barred by the one-year statute. On the face of Hospital's own allegations in Counterclaim Count 9 based on pre-November 6, 1999 statements, these claims are also time-barred and must be dismissed.

Similarly, Hospital asserts claims denominated Trade Libel/Commercial Disparagement/Injurious Falsehood in Counterclaim Count 10. Because the factual bases for these causes of action are of the same nature as the defamation claim of Counterclaim Count 9, and are dependent on the same facts, *Thomas v. New World Communications*, 681 F.Supp 55, 72-72 (D.D.C. 1988); are intertwined factually with the Count 9 statements (and are in fact incorporated by reference into Counterclaim Count 10), *Rendall-Speranza v. Nassim*, 942 F. Supp. 621 (D.D.C. 1996), *rev'd on other grounds*, 107 F.3d 913 (D.C. Cir. 1997)(affirming statute of limitations) ; and rely on the nature of the same underlying statements in paragraphs 69-70 and pre-November 6, 1999 statements, *de la Croix de Lafayette v. de la Croix de Lafayette*, 117 WLR 2133 (Sup. Ct. 1989), the one-year statute of limitation also applies to this Count. Thus, claims based on paragraphs 69-70 and pre-November 6, 1999 statements are time-barred and must be dismissed.

Finally, the one-year statute of limitations also applies to Hospital's Counterclaim Count 8 claim in Negligent Misrepresentation because then underlying facts and nature of this claim is essentially the same as the defamation claims. See *Foretich v. Glamour*, 741 F.Supp. 247 (D.D.C. 1990). Under the same analysis as above, these claims must be dismissed to the extent they are based on paragraphs 69-70 and pre-November 6, 1999.

VI. COUNT 10 MUST BE DISMISSED AS BARRED BY NCRIC'S QUALIFIED PRIVILEGE.

Hospital bases its claims in Count 10 sounding in slander on the statements alleged in paragraph 89. Again, these statements involve opinions of NCRIC. See p. 7, *supra*. Not only can these statements not form the basis for a claim of defamation, the expiration of the policy or coverage items are matters involving opinions or statements of law. As such they cannot form the basis for defamation. *Hembry v. Parreco*, 81 A.2d 77 (D.C. Mun. App. 1951). Similarly, the opinion that the ambulatory clinic was a "dangerous place to work" is again no more than that: an opinion. In the context of statements to physicians, who are more medically knowledgeable and have a better opportunity to evaluate the medical danger of the clinic than does NCRIC, not actionable. Finally, the statement concerning the funding of the self-insurance trust is no more than an opinion of NCRIC which is, again, not defamatory. See, pp. 7, *supra*.

VII. CLAIMS FOR PUNITIVE DAMAGES IN COUNTS 1-3, 6, 8, AND 11 MUST BE DISMISSED AS NOT PERMITTED BY LAW OR LACKING ANY ALLEGATION OF MALICE.

In its prayer for relief, Hospital has made a general request for punitive damages. Since Hospital has not differentiated for which Counts it is or is not seeking punitive damages, NCRIC must assume Hospital is seeking exemplary damages for each of the claims alleged and the prayer is applicable to each of its Counterclaim Counts. Hospital, however, has failed to allege the legal element of malice necessary for recovery of punitive damages in any these Counts. Counts 1, 2, and 3 are claims based on the RRR Agreement, i.e., contract claims. Counts 6 (Negligence), 8 (Negligent Misrepresentation),

and 11 (Conversion) arise from tort. There are no specific allegations of "fraud, recklessness, wantonness, oppressiveness, willful disregard of the [Hospital's] rights, or other circumstances tending to aggravate the injury," *Dyer v. William S. Bergman & Assoc., Inc.*, 657 A.2d 1132, n.10 (D.C. 1995) or their equivalent in any of these Counterclaim Counts. Even though Count 11 alleges an intentional tort, there are no independent factual allegations separate from the tort itself which would entitle Hospital to punitive damages. *Id.*

Moreover, punitive damages are not recoverable in at least Counts 1 and 2, and probably Count 3, anyway to the extent based on contract, for the wholly separate reasons that exemplary damages are not permitted as a matter of law for breach of contract. *Id.*.

IX. CLAIMS FOR ATTORNEY'S FEES MUST BE DISMISSED AS NOT PERMITTED BY LAW.

Hospital claims a recovery of attorney's fees incurred in this action as part of its prayer. Under the American Rule, Hospital is not entitled to any recovery of legal fees absent the applicability of special exceptions or a contractual agreement for payment. See, *e.g.*, *Concord Enterprises, Inc., v. Binder*, 710 A.2d 219 (D.C. 1998). Exhibits 1 to the Counterclaims is the contract between the parties. It does not provide for the recovery of attorney's fees. There is no exception (*e.g.*, derivative or representative action, common fund, class action, etc.) to the American Rule for the types of tort claims alleged by Hospital. Hospital's prayer for this type of relief must be dismissed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2000, a copy of the foregoing NCRIC's Motion to Dismiss Counterclaims, was sent first class mail, postage prepaid to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. DC. Bar #180380

12/17/03

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 0007308-00 Calendar #8 Judge Rafael Diaz Next event: Initial Conference 1/12/01

MOTION FOR MORE DEFINITE STATEMENT OF ALLEGATIONS OF FRAUD AND MISREPRESENTATION AND MOTION TO STRIKE INSUFFICIENT DEFENSE

NCRIC, INC., plaintiff, by counsel, moves this Court pursuant to SCR 12 (e) and SCR 9 (b) for an order requiring the defendant to provide plaintiff with a more definite statement of the following so that plaintiff may answer the complaint fully: the amounts of compensatory and punitive damages claimed by defendants for each Count of the complaint in order that plaintiff may answer or move to dismiss punitive damages where such relief is not permitted by law.

Plaintiff also moves this Court pursuant to SCR 12 (f) to strike defendant's Tenth Defense as legally insufficient.

The specific grounds of the Motion are set forth in the accompanying Memorandum of Points and Authorities.

Roy Niedermayer, Esq. DC. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

16d-000177

MEMORANDUM OF POINTS AND AUTHORITIES

1. MOTION FOR MORE DEFINITE STATEMENT.

a. The Prayer for Relief Is Ambiguous and Does Not Permit Plaintiff to Frame a Response.

Defendant attaches a single prayer for relief addressing and seeking relief under each of its alleged Counts and legal theories for relief. The relief sought is compensatory and punitive monetary damages, although no amount is stated. Moreover, the prayer is vague and indefinite as to whether the defendant is seeking punitive damages for each Count or only some of the legal theories pleaded in each Count. Plaintiff cannot file an appropriate response by motion or reply until it knows whether the claim is for punitive damages for every Count, or such damages are limited to specific Counts. Depending upon for which Counts the punitive damages are sought, plaintiff may file a motion to dismiss or a reply denying defendant's entitlement to such relief on the facts.

2. MOTION TO STRIKE .

a. Defendant's Tenth Defense is Not a Legally Sufficient Defense.

Defendant's denominated Tenth Defense is simply a statement "reserv[ing]" a "right" to supplement and amend its answer by adding affirmative defenses at a later date. There is no such procedural right in the Rules independent of the requirements of SCR 15 and defendant's statement cannot create one. Defendant has the opportunity and procedure provided by SCR 15 to address later supplementation and amendment of its answer by

following the procedure of the Rule. But as stated, the Tenth Defense is neither a legal nor a factual defense to the complaint. As such it is legally insufficient and should be stricken.

Roy Niedermayer, Esq. DC. Bar #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2000, a copy of the foregoing NCRIC's Motion for More Definite Statement of Allegations of Fraud and Misrepresentation and Motion to Strike Insufficient Defense, was sent first class mail, postage prepaid to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. DC. Bar #180380

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN	)	Judge Rafael Diaz
MEDICAL CENTER, INC.	)	Next event: Initial Conference 1/12/01
	)	
Defendant.	)	

ORDER FOR MORE DEFINITE STATEMENT AND TO STRIKE LEGALLY INSUFFICIENT DEFENSE

This matter came before the Court on plaintiff's Motions for More Definite Statement of Allegations of Fraud and Misrepresentation and Motion to Strike Insufficient Defense, and the Court having reviewed the Motions and any opposition thereto, it is this _____ day of _____, 2000/2001

ORDERED that the plaintiff's Motion for More Definite Statement of Allegations of Fraud and Misrepresentation be and the same is hereby GRANTED; and defendant shall provide a more definite statement of the prayers for relief by specifying for each Counterclaim Count whether compensatory, punitive, or both types of damages are claimed within _____ days of the entry of this Order, and plaintiff shall file any responsive pleading or motion within 15 days of the day on which defendant files its statement; and it is further

ORDERED that the plaintiff's Motion to Strike Insufficient Defense be and the same is hereby GRANTED; and defendant's Tenth Defense is stricken.

Rafael Diaz, Superior Court Judge

cc:

Roy Niedermayer, Esq. DC.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

12/6/00

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Rafael Diaz
	)	Next event: Initial Conference 1/12/01
	)	
Defendant.	)	

REPLY OF PLAINTIFF TO COUNTERCLAIMS 1 AND 2 OF DEFENDANT

NCRIC, INC. ("NCRIC"), counterdefendant, by counsel, replies to the counterclaims of Columbia Hospital for Women Medical Center, Inc., counterplaintiff, as follows:

FIRST DEFENSE

The counterclaims fail to state claims against NCRIC upon which relief may be granted.

SECOND DEFENSE

For answers to the specific allegations of the counterclaims:

1. The allegations of paragraph 10 constitute the legal assertions of defendant to factual allegations of NCRIC's complaint and do not require a response.

2. NCRIC admits the factual allegation that defendant has been providing health care services in the District of Columbia, but is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations of paragraph 11.

3. NCRIC admits the material factual allegations of paragraph 12, except it

states that it provides professional liability insurance to physicians in jurisdictions in addition to the District of Columbia.

4. NCRIC admits the material factual allegations of paragraphs 13, 26, 48, 55, 61, 77, 84-85, and 166.

5. NCRIC admits it provided professional liability insurance to certain physicians at defendant, but is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations of paragraph 14.

6. NCRIC is without knowledge or information sufficient to form a belief as to the truth of the factual allegations of paragraphs 15-16, 19, 44-45, 56, 63, 65-66, 74, 82, 87, 90-91, 96-100, 124, and 130.

7. NCRIC denies each and every material factual allegation of paragraphs 17-18, 20, 22-24, 30, 35-43, 49-51, 53-54, 58, 62, 64, 68, 70-73, 78, 83, 88-89, 92-95, 102-103, 106-110, 113-117, 119-122, 125-128, 131-134, 137-138, 140-146, 148-153, 155-158, 160-164, and 167-168.

8. NCRIC admits the material factual allegations of the first sentence of paragraph 21 insofar at it refers to physicians associated with the defendant, but NCRIC is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations of paragraph 21.

9. NCRIC admits the material factual allegations of the first sentence of paragraph 25, but denies each and every remaining material factual allegation of paragraph 25.

10. The allegations of paragraph 27 constitute the defendant's characterization of the terms and obligations of the contract between the parties and are therefore legal

conclusions which do not require a response.

11. The allegations of paragraph 28 constitute the defendant's characterization of the terms and obligations of the contract between the parties and are therefore legal conclusions which do not require a response. To the extent any response is necessary, NCRIC refers to and relies on the terms of the written contract between the parties and denies the allegations to the extent they deviate or misstate those terms. NCRIC denies each and every remaining material factual allegation of paragraph 28.

12. NCRIC denies each and every material factual allegation of paragraph 29, except it admits the factual allegations of subpart (1).

13. NCRIC admits the material factual allegations for "all reconciliations of the Plan," but denies each and every remaining material factual allegations of paragraph 31.

14. The allegations of paragraphs 32-33 constitute the defendant's characterization of the terms and obligations of the contract between the parties and are therefore legal conclusions which do not require a response. To the extent any response is necessary, NCRIC refers to and relies on the terms of the written contract between the parties and denies the allegations to the extent they deviate or misstate those terms.

15. NCRIC denies the material factual allegation "pay any return premium, and the investment return thereon," but admits the remaining material factual allegations of paragraph 34 regarding time deadlines.

16. NCRIC admits each and every material factual allegation of paragraph 46, except it denies each and every material factual allegation of the fifth and sixth sentences of paragraph 46.

17. NCRIC admits the material factual allegations of paragraph 47, except it

denies it was to receive "less deposit premium."

18. NCRIC admits the material factual allegations of the first and third sentences of paragraph 52, except that it denies the minimum premium was to apply to all years of the Plan. NCRIC denies each and every material factual allegation of the second sentence of paragraph 52.

19. NCRIC denies each and every material factual allegation of paragraph 57, except it is without information or knowledge sufficient to form a belief as to the truth of the material factual allegations of the first sentence of paragraph 57.

20. NCRIC is without knowledge or information sufficient to form a belief as to the truth of the material factual allegations of paragraph 59, except it denies each and every material factual allegation of the second sentence of paragraph 59.

21. NCRIC admits defendant paid $1 million in four (4) installments between January and March, 1998, but is without knowledge or information sufficient to form a belief as to the truth of the remaining material factual allegations of paragraph 60.

22. NCRIC admits it became aware of the MIIX Proposal about August 1998, but is without knowledge or information sufficient to form a belief as to the truth of the remaining material factual allegations of paragraph 67.

23. NCRIC admits attendance at a meeting in August, 1998, with physicians from defendant, but denies each and every remaining material factual allegation of paragraph 69.

24. NCRIC admits the material factual allegations of the first and second sentences of paragraph 75, but denies each and every remaining material factual allegation of paragraph 75.

25. NCRIC admits the material factual allegations of the first sentence of paragraph 76. NCRIC it is without information or knowledge sufficient to form a belief as to the truth of the factual allegations of the second sentence of paragraph 76.

26. NCRIC is without information or knowledge sufficient to form a belief as to the truth of the factual allegations of the first sentence of paragraph 79. NCRIC admits the renewal in September, 1999, but denies the causal relationship between allegations of the first and second sentences of paragraph 79. NCRIC admits the material factual allegations of the last sentence of paragraph 79.

27. NCRIC is without information or knowledge sufficient to form a belief as to the truth of the factual allegations of paragraph 80.

28. NCRIC admits the material factual allegations of the first sentence of paragraph 81, before the final adjective clause. NCRIC is without information or knowledge sufficient to form a belief as to the truth of the material factual allegations of the second sentence of paragraph 81.

29. NCRIC admits it notified defendant of cancellation of the policy effective September 1, 2000, but denies each and every remaining material factual allegation of paragraph 86.

30. NCRIC denies each and every material factual allegation of paragraph 101, except it admits it informed defendant on September 1, 2000 that an additional premium of $1,285,525 was due.

31. For its answer to paragraphs 104, 111, 118, 123, 129, 135, 139, 147, 154, 159 and 165, NCRIC incorporates herein by reference its replies to the specific paragraphs referred in each of the foregoing paragraphs mentioned in this sentence.

32. NCRIC admits the material factual allegations of paragraphs 105 and 112, except it denies that the contract between plaintiff and defendant is as characterized by defendant previously in the counterclaims.

33. NCRIC admits it had contractual duties to defendant, but denies each and every remaining material factual allegation of paragraph 136.

THIRD DEFENSE

Defendant is estopped or, in the alternative, has waived its counterclaims by reason of its actions, including an accord and satisfaction, renegotiation of its contract, agreement to new and modified contract terms, and similar actions.

FOURTH DEFENSE

Defendant's counterclaims are barred by reasons of its failure to mitigate its damages.

FIFTH DEFENSE

Defendant's counterclaims are barred by reason of its unclean hands.

SIXTH DEFENSE

Defendant's counterclaims are barred by reason of its own fraud and illegal conduct.

Roy I. Niedermayer, Esq. DC. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2000, a copy of the foregoing NCRIC's Reply of Plaintiff to Counterclaims 1 and 2 of Defendant, was sent first class mail, postage prepaid to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. DC. Bar #180380

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 00-007308 Calendar #8 Judge Rafael Diaz Next Event: Initial Conf. 1/12/01

CERTIFICATE

I HEREBY CERTIFY, prior to filing the plaintiff's Motions for More Definite Statement and to Strike, and Motion to Dismiss, I consulted with counsel for defendant by telephone on November 24 and 27, 2000 in an effort to obtain consent to the Motions before filing them pursuant to SCR 12-I.

Roy I. Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

12/17/03

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Rafael Diaz
	)	Next event: Initial Conference 1/12/01
	)	
Defendant.	)	

REPLY OF PLAINTIFF TO COUNTERCLAIMS 1 AND 2 OF DEFENDANT

NCRIC, INC. ("NCRIC"), counterdefendant, by counsel, replies to the counterclaims of Columbia Hospital for Women Medical Center, Inc., counterplaintiff, as follows:

FIRST DEFENSE

The counterclaims fail to state claims against NCRIC upon which relief may be granted.

SECOND DEFENSE

For answers to the specific allegations of the counterclaims:

1. The allegations of paragraph 10 constitute the legal assertions of defendant to factual allegations of NCRIC's complaint and do not require a response.

2. NCRIC admits the factual allegation that defendant has been providing health care services in the District of Columbia, but is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations of paragraph 11.

3. NCRIC admits the material factual allegations of paragraph 12, except it

states that it provides professional liability insurance to physicians in jurisdictions in addition to the District of Columbia.

4. NCRIC admits the material factual allegations of paragraphs 13, 26, 48, 55, 61, 77, 84-85, and 166.

5. NCRIC admits it provided professional liability insurance to certain physicians at defendant, but is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations of paragraph 14.

6. NCRIC is without knowledge or information sufficient to form a belief as to the truth of the factual allegations of paragraphs 15-16, 19, 44-45, 56, 63, 65-66, 74, 82, 87, 90-91, 96-100, 124, and 130.

7. NCRIC denies each and every material factual allegation of paragraphs 17-18, 20, 22-24, 30, 35-43, 49-51, 53-54, 58, 62, 64, 68, 70-73, 78, 83, 88-89, 92-95, 102-103, 106-110, 113-117, 119-122, 125-128, 131-134, 137-138, 140-146, 148-153, 155-158, 160-164, and 167-168.

8. NCRIC admits the material factual allegations of the first sentence of paragraph 21 insofar at it refers to physicians associated with the defendant, but NCRIC is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations of paragraph 21.

9. NCRIC admits the material factual allegations of the first sentence of paragraph 25, but denies each and every remaining material factual allegation of paragraph 25.

10. The allegations of paragraph 27 constitute the defendant's characterization of the terms and obligations of the contract between the parties and are therefore legal

conclusions which do not require a response.

11. The allegations of paragraph 28 constitute the defendant's characterization of the terms and obligations of the contract between the parties and are therefore legal conclusions which do not require a response. To the extent any response is necessary, NCRIC refers to and relies on the terms of the written contract between the parties and denies the allegations to the extent they deviate or misstate those terms. NCRIC denies each and every remaining material factual allegation of paragraph 28.

12. NCRIC denies each and every material factual allegation of paragraph 29, except it admits the factual allegations of subpart (1).

13. NCRIC admits the material factual allegations for "all reconciliations of the Plan," but denies each and every remaining material factual allegations of paragraph 31.

14. The allegations of paragraphs 32-33 constitute the defendant's characterization of the terms and obligations of the contract between the parties and are therefore legal conclusions which do not require a response. To the extent any response is necessary, NCRIC refers to and relies on the terms of the written contract between the parties and denies the allegations to the extent they deviate or misstate those terms.

15. NCRIC denies the material factual allegation "pay any return premium, and the investment return thereon," but admits the remaining material factual allegations of paragraph 34 regarding time deadlines.

16. NCRIC admits each and every material factual allegation of paragraph 46, except it denies each and every material factual allegation of the fifth and sixth sentences of paragraph 46.

17. NCRIC admits the material factual allegations of paragraph 47, except it

denies it was to receive "less deposit premium."

18. NCRIC admits the material factual allegations of the first and third sentences of paragraph 52, except that it denies the minimum premium was to apply to all years of the Plan. NCRIC denies each and every material factual allegation of the second sentence of paragraph 52.

19. NCRIC denies each and every material factual allegation of paragraph 57, except it is without information or knowledge sufficient to form a belief as to the truth of the material factual allegations of the first sentence of paragraph 57.

20. NCRIC is without knowledge or information sufficient to form a belief as to the truth of the material factual allegations of paragraph 59, except it denies each and every material factual allegation of the second sentence of paragraph 59.

21. NCRIC admits defendant paid $1 million in four (4) installments between January and March, 1998, but is without knowledge or information sufficient to form a belief as to the truth of the remaining material factual allegations of paragraph 60.

22. NCRIC admits it became aware of the MIIX Proposal about August 1998, but is without knowledge or information sufficient to form a belief as to the truth of the remaining material factual allegations of paragraph 67.

23. NCRIC admits attendance at a meeting in August, 1998, with physicians from defendant, but denies each and every remaining material factual allegation of paragraph 69.

24. NCRIC admits the material factual allegations of the first and second sentences of paragraph 75, but denies each and every remaining material factual allegation of paragraph 75.

25. NCRIC admits the material factual allegations of the first sentence of paragraph 76. NCRIC it is without information or knowledge sufficient to form a belief as to the truth of the factual allegations of the second sentence of paragraph 76.

26. NCRIC is without information or knowledge sufficient to form a belief as to the truth of the factual allegations of the first sentence of paragraph 79. NCRIC admits the renewal in September, 1999, but denies the causal relationship between allegations of the first and second sentences of paragraph 79. NCRIC admits the material factual allegations of the last sentence of paragraph 79.

27. NCRIC is without information or knowledge sufficient to form a belief as to the truth of the factual allegations of paragraph 80.

28. NCRIC admits the material factual allegations of the first sentence of paragraph 81, before the final adjective clause. NCRIC is without information or knowledge sufficient to form a belief as to the truth of the material factual allegations of the second sentence of paragraph 81.

29. NCRIC admits it notified defendant of cancellation of the policy effective September 1, 2000, but denies each and every remaining material factual allegation of paragraph 86.

30. NCRIC denies each and every material factual allegation of paragraph 101, except it admits it informed defendant on September 1, 2000 that an additional premium of $1,285,525 was due.

31. For its answer to paragraphs 104, 111, 118, 123, 129, 135, 139, 147, 154, 159 and 165, NCRIC incorporates herein by reference its replies to the specific paragraphs referred in each of the foregoing paragraphs mentioned in this sentence.

32. NCRIC admits the material factual allegations of paragraphs 105 and 112, except it denies that the contract between plaintiff and defendant is as characterized by defendant previously in the counterclaims.

33. NCRIC admits it had contractual duties to defendant, but denies each and every remaining material factual allegation of paragraph 136.

THIRD DEFENSE

Defendant is estopped or, in the alternative, has waived its counterclaims by reason of its actions, including an accord and satisfaction, renegotiation of its contract, agreement to new and modified contract terms, and similar actions.

FOURTH DEFENSE

Defendant's counterclaims are barred by reasons of its failure to mitigate its damages.

FIFTH DEFENSE

Defendant's counterclaims are barred by reason of its unclean hands.

SIXTH DEFENSE

Defendant's counterclaims are barred by reason of its own fraud and illegal conduct.

Roy I. Niedermayer, Esq. DC. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2000, a copy of the foregoing NCRIC's Reply of Plaintiff to Counterclaims 1 and 2 of Defendant, was sent first class mail, postage prepaid to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. DC. Bar #180380

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 00-007308 Calendar #8 Judge Rafael Diaz Next Event: Initial Conf. 1/12/01

CERTIFICATE

I HEREBY CERTIFY, prior to filing the plaintiff's Motions for More Definite Statement and to Strike, and Motion to Dismiss, I consulted with counsel for defendant by telephone on November 24 and 27, 2000 in an effort to obtain consent to the Motions before filing them pursuant to SCR 12-I.

Roy I. Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

RECEIVED
Civil Clerk's Office
DEC 18 2000
Superior Court of the
District of Columbia

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff /Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Diaz
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Court Event: Initial Conf., Jan. 1, 2001
	)	
Defendant/Counter-Plaintiff	)	

CONSENT MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO COUNTER-DEFENDANT'S MOTIONS

Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc. ("Medical Center"), by and through its attorneys, Mark C. Hansen, Esq., Steven F, Benz, Esq., Joseph K. Leahy, Esq., and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., pursuant to District of Columbia Rules of Civil Procedure 12-I(e) and 6(b), moves this Court for an enlargement of time of ten (10) days to file points and authorities in opposition to Plaintiff/ Counter-Defendant NCRIC, Inc.'s ("NCRIC") Motion to Dismiss Counterclaims, Motion for a More Definite Statement of Allegations of Fraud and Misrepresentation and Motion to Strike Insufficient Defense. Since these motions were served on counsel for Medical Center, by first class mail, on December 11, 2000, the prescribed date for Medical Center to file its opposition is December 29, 2000. See D.C.R. Civ. Pro. 12-I (e) (providing ten days, or a period of time set by the court, for filing and serving opposing points and authorities); D.C.R. Civ. Pro. 6(a) (providing that, for prescribed time periods of less than eleven days, weekends and holidays are excluded from computation of time); D.C.R. Civ. Pro. 6(e) (providing three days, in addition to the prescribed period, to respond to papers served by mail). Hence, the requested enlargement would extend the date for filing Medical Center's opposition to January 8, 2001.

As grounds for this enlargement, Medical Center states as follows:

1. On December 14, 2000, counsel for NCRIC, Roy I. Neidermayer, agreed to the requested extension of ten (10) days, up to and including January 8, 2001.

2. No prejudice will inure to NCRIC upon the grant of the requested relief.

3. Civil Rule 6(b) permits an enlargement of time "for cause shown." Medical Center submits, as cause for the requested enlargement of time, that: (a) NCRIC has filed three motions simultaneously, including a dispositive motion; (b) counsel for Medical Center, Joseph K. Leahy, will be out of the office during part of the prescribed period to respond to NCRIC's motions, due to the Christmas holiday; and (c) counsel for Medical Center also must spend part of his time during the prescribed period responding to a dispositive motion filed in another case.

WHEREFORE, cause having been shown, Medical Center moves that the Consent Motion for Enlargement of Time to Respond to Defendant's Motions be granted.

DATED: December 18, 2000

Respectfully submitted,

Mark C. Hansen
D.C. Bar No. 425930
Steven F. Benz
D.C. Bar No. 428026
Joseph K. Leahy
D.C. Bar No. 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000199

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Diaz
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff	)	

ORDER

Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc.'s consent motion for an enlargement of time of ten (10) days, until January 8, 2001, to file points and authorities in opposition to Counter-Defendant NCRIC, Inc.'s ("NCRIC") Motion to Dismiss Counterclaims, Motion for a More Definite Statement of Allegations of Fraud and Misrepresentation and Motion to Strike Insufficient Defense, is hereby GRANTED.

SO ORDERED.

_____
Judge Rafael Diaz

Dated: _____, 200_.

16d-000200

Copies to:

Mark C. Hansen
Steven F. Benz
Joseph K. Leahy
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Roy I. Neidermayer, Esq.
7475 Wisconsin Avenue
Suite 500
Bethesda, MD 20814

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

16d-000201

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Diaz
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff	)	

ORDER

Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc.'s consent motion for an enlargement of time of ten (10) days, until January 8, 2001, to file points and authorities in opposition to Counter-Defendant NCRIC, Inc.'s ("NCRIC") Motion to Dismiss Counterclaims, Motion for a More Definite Statement of Allegations of Fraud and Misrepresentation and Motion to Strike Insufficient Defense, is hereby GRANTED.

SO ORDERED.

Rafael Diaz

Judge Rafael Diaz

Dated: 12/23, 2000

DOCKETED JAN 12 2001

MAILED JAN 12 2001

16d-000202

Copies to:

Mark C. Hansen
Steven F. Benz
Joseph K. Leahy
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Roy I. Neidermayer, Esq.
7475 Wisconsin Avenue
Suite 500
Bethesda, MD 20814

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

16d-000203

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda K. Davis
	)	Next event: Initial Conf. 1/12/01
	)	
Defendant.	)	

PRAECIPE

Plaintiff, NCRIC, Inc., and Defendant, Columbia Hospital for Women Medical Center, Inc. by their counsel, each hereby consent to the filing by plaintiff of an Amended Complaint (tab 1) and by defendant of an Amended Answer and Counterclaims (tab 2) in the forms attached hereto pursuant to SCR 15(a), which pleadings shall be deemed filed and served upon the filing of this Praecipe.

This agreement shall not be construed as a waiver by either party of any defense to procedural defects in the opposing party's original pleading or response.

DATED: January 3, 2001

Roy Niedermayer / JKL Permission

Roy Niedermayer, D.C. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 0007308-00
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next event: Initial Conference 1/12/01
	)
Defendant.	)

AMENDED COMPLAINT FOR DAMAGES

NCRIC, Inc., Plaintiff, by counsel, sues Columbia Hospital for Women Medical Center, Inc. as follows:

1. NCRIC, Inc. ("NCRIC") is a corporation in the business of providing liability insurance and doing business in the District of Columbia. It is the successor in interest to National Capital Reciprocal Insurance Company.

2. Columbia Hospital for Women Medical Center, Inc. ("Hospital") is a medical hospital with its principal place of business in the District of Columbia.

3. This Court has jurisdiction pursuant to D.C. Code § 11-921.

4. NCRIC and Hospital are parties to Retrospective Rating Plan Agreement for insurance (the "Agreement") by which NCRIC provided medical doctors at the Hospital with certain insurance against liability resulting from described events, including professional negligence in consideration for which Hospital agreed to pay certain premiums. A copy of the Agreement is attached hereto as Exhibit A.

5. Pursuant to the terms of the Agreement, Hospital owed NCRIC payment of additional insurance premiums based on the Agreement.

6. NCRIC performed all its obligations pursuant to the Agreement by providing the agreed insurance coverage.

7. Hospital breached the Agreement by failing to pay NCRIC the additional premiums due under the Agreement.

8. Hospital owes NCRIC the sum of $1,943,530 or such amount as is currently due from defendant to plaintiff after calendar quarterly recalculations of premium pursuant to the contract between the parties.

9. Despite written demand for payment therefore, and compliance with all its other obligations under the Agreement, Hospital has failed and refused to pay NCRIC the amount owed.

WHEREFORE, NCRIC demands judgment against Hospital in the amount One Million Nine Hundred Forty-three Thousand Five Hundred Thirty Dollars ($1,943,530) or such amount as is currently due from defendant to plaintiff after calendar quarterly recalculations of premium pursuant to the contract between the parties, interest, and costs incurred herein.

Roy Niedermayer / JK by permission

Roy Niedermayer, Esq. DC Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for NCRIC

RETROSPECTIVE RATING PLAN AGREEMENT

This Retrospective Rating Plan Agreement ("Agreement") is made and entered into effective the first day of September, 1993, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

WHEREAS, NCRIC offers medical professional liability insurance to physicians duly licensed as such by the District of Columbia Government ("physicians") on a claims-made basis, for which an annual premium is assessed and paid; and

WHEREAS, Medical Center operates and conducts a not-for-profit hospital in the District of Columbia which has on its medical staff duly licensed physicians who are insured with NCRIC; and

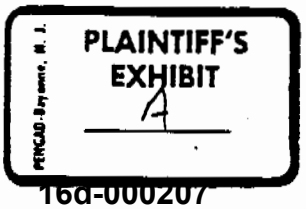
WHEREAS, certain of these physicians desire to secure a reduction or discount on their insurance premiums on a preferred risk basis through the establishment of and participation in an Attending Faculty Program ("AFP"), which shall be designed to reduce the risks involved in the delivery of medical care to patients as set forth in the Attending Faculty Program Agreement entered into between the physicians and Medical Center; and

WHEREAS, NCRIC is willing to provide such a reduction or discount on said insurance premiums to those physicians who agree to participate in the AFP on condition that Medical Center agrees to be financially responsible for certain premium amounts as hereinafter provided; and

WHEREAS, as a mechanism for reducing its own exposure for professional liability, Medical Center is willing to assume such responsibility;

NOW, THEREFORE, the parties hereto agree as follows:

1. NCRIC has established a three-year Retrospective Rating Plan, a copy of which is attached hereto as Exhibit A (the "Plan") and incorporated herein by reference. NCRIC makes available the benefits of the Plan to its physician insureds who are parties to the AFP Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and who are issued a Retrospective Rating Plan Endorsement, a copy of which is attached hereto as Exhibit C. With the exception of the Plan Participants



listed on Exhibit D, attached hereto and incorporated herein by this reference, the effective date of any Plan Participant's participation, or termination of participation, in the Plan shall be the date on which NCRIC receives notice thereof from Medical Center.

2. NCRIC agrees to issue Retrospective Rating Plan Endorsements to its physician insureds who otherwise qualify in accordance with the standard underwriting practices of NCRIC and who are members of the AFP.

3. As an inducement to NCRIC to cause it to issue the Retrospective Rating Plan Endorsements to its physician insureds who are members of the AFP, Medical Center agrees to be solely responsible for, and to pay, any Additional Premium due in accordance with the terms of the Plan.

4. Medical Center shall correspondingly be entitled to receive Return Premium, if any, and investment return thereon, if any, in accordance with the terms of the Plan.

5. Notice of any Additional Premium due from Medical Center, or any Return Premium due to Medical Center, shall be provided to Medical Center within 60 days following the close of the Reconciliation Period, and payment due, whether to Medical Center or from Medical Center, shall be due and payable within 30 days of receipt of said notice.

6. Medical Center's obligations hereunder are primary, and not secondary, and NCRIC shall have no right to seek recourse or payment of any Additional Premium due pursuant to the Plan from any Plan Participant. In the event Medical Center fails to make any payment for which it is responsible hereunder when due, the Company shall have the right to recover reasonable attorneys fees incurred in recovering such payment from Medical Center.

7. NCRIC hereby represents and warrants that any claims made against Plan Participants will be processed, including the setting of loss reserves, in the normal and ordinary course of the Company's business, without consideration of the insured's status as a Plan Participant.

8. Medical Center hereby represents and warrants that it has made, and will continue to make, adequate provision for the contingent liabilities it has assumed hereunder.

9. Medical Center will provide NCRIC with the following:

a. a list of all Plan Participants, and any additions or deletions thereto;

b. copies of Medical Center's Agreement between Medical Center and Participants in the Attending Faculty Program who are Insured with NCRIC, and amendments, if any, as made from time to time, with each Plan Participant, which contract shall include an authorization by the Plan Participant in form and substance satisfactory to NCRIC to release to Medical Center the information set forth in Paragraph 10(a)(iii) below;

c. copies of, and any amendments to, the AFP Agreement; and

d. a review and summary of risk management activities undertaken pursuant to the Attending Faculty Program Agreement.

10. NCRIC and a Medical Center representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

a. At such meetings, NCRIC will provide Medical Center with the following:

i. for purposes of cross-reference and confirmation of participation or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

ii. the aggregate amount of losses reserved under the Plan, and the verification thereof by NCRIC's consulting actuary;

iii. with respect to any medical incident or professional liability claim reported to NCRIC by a Plan Participant under the Plan (hereinafter, "incident"), and subject to a Plan Participant's authorization to release same to Medical Center, the name of the physician, the date of the incident, the date said incident was reported to NCRIC, any complaint or suit filed in a court of law with respect to such claim; and any payments made on behalf of said Plan Participant by NCRIC; and

iv. a review of Medical Center risk management activities.

b. Annually, at such meeting taking place in the first quarter of each year, Medical Center will provide NCRIC with the statement of Medical Center's consulting actuary that adequate reserves have been made for the contingent liabilities Medical Center has assumed under this Agreement.

11. This Agreement shall remain in full force and effect as to any renewal, extension or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, or new issuances.

12. This Agreement shall remain in full force and effect until all claims applicable to the final Experience Period of the Plan are finally closed or upon payment of maximum premium amount required by paragraph 3 hereof applicable to the final Experience Period, whichever occurs first. For purposes of this Paragraph 12, any claim "closed" without payment made to, and a release having been signed by, the claimant shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the retrospective adjustment according to the Plan.

13. For purposes of clarification, and not to vary, alter or amend the terms hereof or of the Plan, attached hereto as Exhibit E and incorporated herein by reference is an example of the operation of the Plan.

14. All bookkeeping and record keeping shall be handled by NCRIC.

15. Upon ninety (90) days' written notice prior to the end of any Experience Period, to be effective after the last day of such Experience Period, the Plan may be discontinued by either party for cause, provided that such discontinuance shall not affect any obligation or liability accrued prior to the date of such discontinuance. For purposes of this Paragraph 15, "cause" shall mean any material breach of the terms of this Agreement, or any change in any applicable federal, state or local law which would render any of the terms of this Agreement unlawful.

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

If to NCRIC:

Mr. David K. Little
President
National Capital Underwriters, Inc.
Attorney-in-fact for
National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, D.C. 20007

If to Medical Center:

Mr. G. Patrick Kane, FACHE
President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, N.W.
Washington, D.C. 20037

The date of service of any such notice shall be the date that such notice is deposited with the U.S. Postal Service or the date of personal delivery, as applicable.

17. Medical Center hereby warrants and represents that it has made, and agrees to provide NCRIC with its auditor's or actuary's annual statement reflecting, adequate provision for the contingent liabilities it has assumed hereunder.

18. This Agreement constitutes the entire agreement between the parties and no modifications, amendments or additions thereto shall be binding unless in writing and executed by all the parties hereto.

19. This Agreement shall not be assignable without the prior written consent of the parties hereto.

20. The agreements, terms and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, if any.

21. This Agreement is made and executed in the District of Columbia, and shall be governed by the law of the District of Columbia.

16d-000211

IN WITNESS WHEREOF, the parties have caused their corporate names to be subscribed hereto by their duly authorized officers or attorneys-in-fact, and their corporate seal to be hereunto affixed effective the day and year first above written.

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

BY: _____
David K. Little, President

(Corporate Seal)

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST:

BY: _____

(Corporate Seal)

List of Exhibits

A Retrospective Rating Plan

B Attending Faculty Program Agreement

C Retrospective Rating Plan Endorsement

D List of Initial Plan Participants

E Example of operation of the Plan

16d-000213

EXHIBIT A

THREE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center dated September 1, 1993, (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be three years, beginning on September 1, 1993 and ending on September 1, 1996. The Plan shall consist of three separate and distinct Experience Periods of:

Beginning 12:01 A.M. on	and Ending 12:01 A.M. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19% of the otherwise applicable premium for such coverage. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return premium (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =

{[[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor} + Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

EXHIBIT A

THREE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center dated September 1, 1993, (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be three years, beginning on September 1, 1993 and ending on September 1, 1996. The Plan shall consist of three separate and distinct Experience Periods of:

Beginning 12:01 A.M. on	and Ending 12:01 A.M. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19% of the otherwise applicable premium for such coverage. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return premium (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =

{[[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor} + Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedule:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1996
September 1, 1994 to September 1, 1995	September 1, 1997
September 1, 1994 to September 1, 1996	September 1, 1998

Additional reconciliations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall not be deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the Reconciliation Date, Reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"Basic Premium" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by

multiplying the Subject Premium by the insurance charge factor set forth below:

Three(3) Year Subject Premium	Insurance Charge Factor
$ 1,539,000 - $ 2,565,999	20.7%
$ 2,566,000 - $ 3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"Deposit Premium" means the Subject Premium multiplied by eighty-one percent (81%). This percentage shall remain unchanged for the three year term of the Plan.

"Development Factor" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and shall remain unchanged for the three year term of the Plan and all reconciliations applicable thereto:

Year 1 Reconciliation	-	88.5%
Year 2 Reconciliation	-	87.5%
Year 3 Reconciliation	-	90.5%
Year 4 Reconciliation	-	96.0%
Year 5 Reconciliation	-	100.0%
All Subsequent Reconciliations	-	100.0%

"Discount Factor" means a factor of 86.33%. This factor shall remain unchanged for the three-year term of the plan.

"Experience Period" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the pro-rated period involved shall be deemed to be an Experience Period.

"Insurance Policy" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"Losses" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"Loss Limitation" - for the purpose of application of the

retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (i) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"Loss Reserves" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"Maximum Premium" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (115%) of the Subject Premium amount.

"Minimum Premium" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (75%) of the Subject Premium amount.

"Paid Losses" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid Losses are subject to Loss Limitation, defined above.

"Plan Participants" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"Subject Premium" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insureds were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall be determined by NCRIC's consulting actuary, but shall not exceed 83%, nor be less than 77%, of the undiscounted premium charged for coverage limits of $1 million each claim/$3 million aggregate.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Court Event: Initial Conf., Jan. 1, 2001
	)	
Defendant.	)	

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.'S
AMENDED ANSWER AND COUNTERCLAIMS

COMES NOW Defendant, Columbia Hospital for Women Medical Center, Inc. ("Medical Center"), by and through its attorneys, Mark C. Hansen, Esquire, Steven F. Benz, Esquire, Joseph K. Leahy, Esquire, and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., and respectfully answers the Amended Complaint in the above-captioned matter as follows:

FIRST DEFENSE

The Complaint fails to state a cause of action upon which relief may be granted.

SECOND DEFENSE

Answering specifically the numbered paragraphs of the Amended Complaint, Medical Center states as follows:

Parties and Jurisdiction

1. To the extent that the allegations in Paragraph 1 constitute legal conclusions, no response is required. Medical Center presently lacks sufficient information to admit or deny the remaining allegations set forth in Paragraph 1.

2. Medical Center admits that it is a health care facility located at 2425 L Street N.W., Washington, D.C. 20037. The remaining allegations contained in Paragraph 2 call for a legal conclusion to which no response is required.

3. The allegations set forth in Paragraph 3 call for a legal conclusion to which no response is required.

4. To the extent that the allegations in Paragraph 4 call for a legal conclusion, no response is required. Medical Center admits that it entered into an agreement with the National Capital Reciprocal Insurance Company, which, upon information and belief, became NCRIC (referred to hereafter collectively as "NCRIC") in July 1999; however, Medical Center denies that the allegations in Sentence 1 of Paragraph 4 accurately describe the scope of that agreement. Medical Center admits that the pages attached to the Amended Complaint as Exhibit A are a copy of a portion of an agreement between Medical Center and NCRIC, but denies that Exhibit A constitutes the entire agreement between Medical Center and NCRIC.

5. The allegations set forth in Paragraph 5 constitute legal conclusions to which no responsive pleading is required, and accordingly Medical Center denies these allegations.

6. To the extent that the allegations set forth in Paragraph 6 constitute a legal conclusion, no response is necessary, and Medical Center denies these allegations. Medical Center lacks sufficient information to admit or deny the allegation in Paragraph 6 that NCRIC provided insurance coverage, the effect of which is to deny said allegation and demand strict proof thereof.

7. Medical Center denies the allegations set forth in Paragraph 7.

8. Medical Center denies the allegations set forth in Paragraph 8.

16d-000220

9. Medical Center admits that NCRIC demanded payment from Medical Center in the amount stated in Paragraph 8, and denies the remaining allegations set forth in Paragraph 9. Medical Center admits that NCRIC demands judgment against Medical Center in the prayer for relief in the Amended Complaint, but denies that NCRIC is entitled to any such relief.

THIRD DEFENSE

Medical Center denies all allegations in the Amended Complaint not specifically admitted, and demands strict proof thereof.

FOURTH DEFENSE

Medical Center fully performed all of its duties and obligations under the alleged agreement between it and NCRIC.

FIFTH DEFENSE

NCRIC's claim is barred as a result of NCRIC's failure to satisfy conditions precedent, including, but not limited to, failing to perform reconciliations properly, and failing to calculate and inform Medical Center of the correct amount of premium due.

SIXTH DEFENSE

NCRIC's claim is barred by the doctrines of estoppel, waiver and/or unclean hands.

SEVENTH DEFENSE

The alleged agreement between Medical Center and NCRIC is unenforceable, in whole or in part, due to NCRIC's material breach of the express and/or implied terms thereof.

EIGHTH DEFENSE

The alleged agreement between Medical Center and NCRIC is unenforceable, in whole or in part, due to modification, novation, and/or accord and satisfaction.

NINTH DEFENSE

The alleged agreement between Medical Center and NCRIC is void, in whole or in part, because Medical Center renewed and/or amended it while under duress caused by NCRIC.

TENTH DEFENSE

Medical Center reserves the right to assert any affirmative defenses that may be revealed during the course of discovery.

MEDICAL CENTER'S COUNTERCLAIMS AGAINST NCRIC

Comes now Defendant/Counter-Plaintiff Medical Center, by counsel, and respectfully states and alleges as follows for its counterclaims against Plaintiff/Counter-Defendant NCRIC:

10. Medical Center incorporates by reference the allegations contained in paragraphs 1 through 9, as though set forth here in full.

Parties and Jurisdiction

11. Medical Center, a preeminent health care facility with internationally renowned specialties in obstetrics, gynecology, and neonatology, is a registered District of Columbia not-for-profit corporation that has been providing health care services in the District of Columbia for about 134 years.

12. NCRIC is, upon information and belief, a corporation that provides malpractice insurance to physicians in the District of Columbia. Upon information and belief, NCRIC is the successor in interest to National Capital Reciprocal Insurance Company (referred to collectively herein as "NCRIC").

13. This court has jurisdiction over this action pursuant to § 11-921 of the District of Columbia Code.

16d-000222

FACTUAL ALLEGATIONS IN SUPPORT OF COUNTERCLAIMS

Background to the Plan

14. In 1993, and at all relevant times thereafter prior to September 2000, NCRIC provided medical malpractice liability insurance ("MMLI") to nearly all of the physicians associated with Medical Center. Most of these physicians were OB/GYN practitioners.

15. In 1993, and at all relevant times thereafter, most of the physicians associated with Medical Center (otherwise known as "Attending Faculty") were independent contractors who had patient admitting privileges at several hospitals, including hospitals in nearby Maryland and Virginia. Medical Center relied on these independent physicians for patient referrals. As a result, Medical Center competed, and still competes, with other hospitals throughout the District of Columbia metropolitan area for physicians as well as for patient admissions.

16. In 1993, and at all relevant times thereafter, the average MMLI premium for OB/GYN physicians in the District of Columbia was about two or three times as high as the average MMLI premium for such physicians in nearby Virginia and Maryland.

17. In about 1993, and at all relevant times thereafter, at least one competitor hospital in the District of Columbia had in place an agreement with NCRIC, under which it provided a discount on MMLI premiums for that hospital's physicians.

18. Without a program to discount the cost of MMLI premiums for its Attending Faculty, Medical Center faced the prospect of losing associated physicians to hospitals in the District of Columbia that had such discount programs, as well as to hospitals in Maryland and Virginia, where MMLI premiums were lower.

16d-000223

19. For Medical Center, the loss of physicians necessarily would mean the loss of referrals and its key source of income: paying patients. In order to remain economically viable, Medical Center needed to maintain its volume of paying patients.

NCRIC's Proposal and Representations to Medical Center

20. In about 1993, NCRIC proposed to Medical Center a plan to reduce MMLI premiums for its Attending Faculty. NCRIC pressured Medical Center to accept this proposal. The proposal helped NCRIC, which dominated the District of Columbia MMLI market, keep its customers away from Virginia and Maryland, where it faced competition from other providers.

21. At about this time, Medical Center informed NCRIC that it required a discount program in order to retain its Attending Faculty. Upon information and belief, NCRIC knew that losing physicians to other hospitals in the District of Columbia metropolitan area would leave Medical Center, which already was in poor financial condition, in grave fiscal distress.

22. Under the proposed discount plan, each member of the Attending Faculty would receive what amounted to a 15% discount on the premium of the standard MMLI policy.

23. In exchange for this discount, Medical Center would agree to pay, with certain limitations, the difference between (1) the total amount of discounted premium paid by the Attending Faculty for a specified amount of MMLI coverage and (2) NCRIC's cost (including administrative costs and a profit for NCRIC) of providing that coverage. Under this proposal, Medical Center also would receive a refund of any premium paid by the Attending Faculty for the specified amount of MMLI coverage that exceeded NCRIC's cost of providing that coverage.

24. In order to induce Medical Center to agree to the proposed discount program, NCRIC, upon information and belief, represented to Medical Center that this proposal would cost

16d-000224

Medical Center almost nothing, because the Deposit Premium would cover most, if not all, of actual cost of providing the specified amount of MMLI coverage to the Attending Faculty. NCRIC, however, refused to provide Medical Center with sufficient data to perform an adequate analysis of the actual cost of the proposed discount program.

25. The proposed discount program allowed NCRIC to charge Medical Center for predicted expenditures ("incurred losses"), not just actual payments ("actual losses"), on MMLI claims. Medical Center objected to this aspect of the proposal. NCRIC, however, refused to offer a discount program under which it would charge solely for actual losses.

26. In about October 1993, Medical Center agreed to the discount program, and entered into an agreement with NCRIC entitled "Retrospective Rating Plan Agreement" (the "Plan"), which NCRIC drafted. A copy of the Plan is attached hereto as Exhibit 1.

Premium Calculations Under the Plan

27. Under the Plan, if NCRIC's incurred cost of providing MMLI to the Attending Faculty (known as the "Retro Premium") exceeded the total amount of discounted premium paid by the Attending Faculty to NCRIC (known as the "Deposit Premium") for a specified amount of MMLI coverage, then Medical Center was liable to NCRIC for the difference between the Retro Premium and the Deposit Premium (known as the "Additional Premium"), as limited by a set Maximum Premium. However, if the Retro Premium was less than the total Deposit Premium, the Plan entitled Medical Center to the difference between the two (known as the "Return Premium"), as limited by a set Minimum Premium.

28. Under the Plan, the Retro Premium was calculated by applying a complicated, backward-looking formula ("retro formula") that was devised by NCRIC, and for which NCRIC

16d-000225

provided all the data. NCRIC refused to allow Medical Center to audit this data, including the total amount of reserve funds ("Loss Reserves") that NCRIC claimed to maintain in order to pay medical malpractice claims and related litigation expenses under the Plan. The Retro Premium turned in large part on information that Medical Center could not independently verify.

29. Upon information and belief, NCRIC represented, as an inducement for Medical Center to enter into the Plan, that: (1) all premium amounts, including the Retro Premium, would be calculated exactly as set forth in the Plan; (2) the Retro Premium would fairly represent the incurred cost of providing the specified amount of MMLI coverage to the Attending Faculty, including the cost of maintaining Loss Reserves therefor; (3) the Loss Reserves would be calculated in accordance with generally-accepted standards in the insurance industry; and (4) the incurred cost of the Plan, as embodied by the Retro Premium, would closely approximate the actual cost of providing the specified amount of MMLI coverage to the Attending Faculty.

30. Medical Center entered into the Plan in reliance upon the foregoing representations by NCRIC, communicated its reliance to NCRIC, and has been damaged by such reliance.

NCRIC's Obligations Under the Plan

31. Under the Plan, NCRIC was responsible for all bookkeeping under the Plan, for administration of the Plan on behalf of Medical Center, and for all reconciliations of the Plan.

32. Reconciliations required NCRIC to: (1) apply the retro formula properly to the Plan years being reconciled, by using the proper multipliers and definitions, and accurate data; (2) calculate the accurate Deposit, Retro, and Additional or Return Premium; and (3) apply the Minimum or Maximum Premium, if applicable, as stated in the Plan.

33. The Plan required NCRIC to perform a reconciliation, effective on a specified date (the "Reconciliation Date"), after the third year of the Plan, and each year thereafter. For the first reconciliation, only the first year of the Plan was to be reconciled; in each subsequent reconciliation, all of the previous unclosed years of the Plan, plus one additional year, were reconciled. Reconciliations were to continue, even after the Plan ended, until all medical malpractice claims covered by the Plan were closed as defined under the Plan.

34. The Plan required NCRIC to notify Medical Center in writing, within 60 days of each Reconciliation Date, of the amount of Additional or Return Premium due, and pay any Return Premium, and the investment return thereon, due within 30 days of this notice.

35. The Plan required NCRIC to set its Loss Reserves according to the insurance industry standard; to provide Medical Center with verification by an independent actuary that Loss Reserves were maintained as such; and to provide Medical Center with certain data regarding the accrued Loss Reserves on a specified, regular basis. Further, the Plan allowed only a certain percentage of the Loss Reserves be considered when calculating the Retro Premium.

36. As a result of the foregoing, Medical Center reasonably and in good faith trusted NCRIC to administer the Plan on its behalf; to properly and honestly perform all reconciliations; and to accurately calculate all premiums, including Additional and/or Return Premium. Upon information and belief, Medical Center communicated this trust and reliance to NCRIC.

NCRIC's Negligent and Improper Administration of the Plan

37. Upon information and belief, NCRIC did not provide Medical Center with reports and actuary certifications concerning the Loss Reserves as required by the Plan. Although

16d-000227

Medical Center repeatedly requested such reports and certifications, NCRIC at first refused to provide them, and later, upon information and belief, provided them irregularly if at all.

38. Upon information and belief, NCRIC also failed to maintain Loss Reserves for the Plan in accordance with the industry standard. Upon information and belief, beginning in about 1997, NCRIC either knowingly or due to lack of reasonable care failed to adequately adjust its loss reserves downward in response to Medical Center's positive loss experience under the Plan. As a result, NCRIC maintained higher Loss Reserves than were reasonably necessary to cover malpractice claims under the Plan, and improperly raised the incurred cost of the Plan.

39. Further, NCRIC either knowingly or due to lack of reasonable care considered a greater percentage of its Loss Reserves when calculating the Retro Premium that it was allowed to consider under the Plan. As a result, NCRIC improperly raised the incurred cost of the Plan.

40. Moreover, upon information and belief, NCRIC either knowingly or due to lack of reasonable care (a) added extra years of the Plan to its reconciliations, thereby reconciling too many years of the Plan; and/or (b) treated unclosed years as closed, thereby reconciling too few years of the Plan. In each instance, NCRIC improperly raised the incurred cost of the Plan.

41. In addition, for each Reconciliation Date, NCRIC performed the reconciliation incorrectly, in part as set forth in Paragraphs 49, 50, 53 and 54, below. As a result, the amount of Additional or Return Premium calculated by NCRIC in each reconciliation was incorrect.

42. Because Medical Center trusted and relied on NCRIC to administer the Plan, to perform reconciliations properly and honestly, and to accurately calculate all premiums, Medical Center was unaware that, for each reconciliation NCRIC performed, the amount of Additional or Return Premium calculated by NCRIC was incorrect. As a result, after each reconciliation

NCRIC performed, Medical Center was unable to demand the correct amount it was owed by, or pay the correct amount it owed to, NCRIC.

43. Upon information and belief, at all times relevant to this action, NCRIC knew of Medical Center's financial situation and reasonably should have known that Medical Center would have demanded payment of any Return Premium due under the Plan.

Amendments to and Renewals of the Plan

1996 Amendments and Renewal

44. In January 1996, Medical Center faced a severe financial crisis. At this time, if Medical Center lost Attending Faculty or patients, it risked becoming insolvent.

45. At about this time, some members of the Attending Faculty moved their practices to nearby Virginia or Maryland, where MMLI premiums were lower; other Attending Faculty threatened to move unless the discount on MMLI premiums increased. Increasing the discount on MMLI premiums for Attending Faculty was crucial to retaining its associated physicians.

46. In January 1996, Medical Center and NCRIC agreed in correspondence, attached hereto as Exhibit 2, to amend to the Plan. This amendment increased the discount for Attending Faculty to what amounted to 30% off of the standard MMLI premium. This amendment was included in all future versions of the retro formula, which were drafted by NCRIC; one such version is shown at pages 3 through 6 of Exhibit 4, attached hereto. The amendment went into effect in January 1996. It applied only prospectively, to Discount Premium paid after that date. It did not apply to Deposit Premium already collected by NCRIC.

47. This new 30% discount for the Attending Faculty meant that, beginning in January 1996, NCRIC would receive less Deposit Premium. The Plan was subsequently amended to

reflect this reduction in Discount Premium. The amendment, attached hereto as Exhibit 3, was drafted by NCRIC and went into effect in January 1996. Like the 30% discount, this amendment applied only prospectively, to the years of the Plan where NCRIC received less Deposit Premium due to the new, larger discount. The amendment did not apply to past years, for which NCRIC had received more Deposit Premium, due to the old, smaller discount.

48. It later was determined that the amendment described in the previous Paragraph did not accurately reflect the reduction in Deposit Premium resulting from the 30% discount. The amendment was corrected to accurately reflect the Deposit Premium resulting from the new discount. All future versions of the retro formula, which were drafted by NCRIC, listed this corrected Deposit Premium; one such version appears at pages 3 through 6 of Exhibit 4.

49. Although NCRIC agreed to correct the amended Deposit Premium, it knew that Medical Center trusted and relied on it as described above, and therefore, it knew that Medical Center would not be aware if the corrected Deposit Premium was not applied. NCRIC did not apply the corrected Deposit Premium in any reconciliations of the Plan.

50. As a result of NCRIC's refusal to apply the corrected Deposit Premium, each time it performed a reconciliation and notified Medical Center that Additional or Return Premium was due, that amount was incorrect. Further, after each reconciliation, due to Medical Center's trust and reliance on NCRIC as described above, Medical Center was unaware of NCRIC's misrepresentation and/or miscalculation. Accordingly, Medical Center was unable to demand the correct amount it was owed by, or pay the correct amount it owed to, NCRIC.

51. The Plan was initially set to expire in September 1996, at which time NCRIC had not performed any reconciliations under the Plan.

52. In 1996, the parties agreed to amend the Plan to reduce the Minimum Premium for all years of the Plan. Since no reconciliations had been performed yet, the new Minimum Premium was in effect for all reconciliations under the Plan. This amendment was included in all future versions of the retro formula, which were drafted by NCRIC; one such version is shown at pages 3 through 6 of Exhibit 4, attached hereto.

53. Although NCRIC agreed to lower the Minimum Premium, NCRIC knew that Medical Center trusted and relied on NCRIC's representations as stated above, and would not be aware if the new Minimum Premium was not applied. NCRIC did not apply the new Minimum Premium to all years of the Plan in any reconciliations of the Plan.

54. As a result of NCRIC's refusal to apply the new Minimum Premium, each time it performed a reconciliation and notified Medical Center that Additional or Return Premium was due, that amount was incorrect. Further, after each reconciliation, due to Medical Center's trust and reliance on NCRIC as described above, Medical Center was unaware of NCRIC's misrepresentation and/or miscalculation. Accordingly, Medical Center was unable to demand the correct amount it was owed by, or pay the correct amount it owed to, NCRIC.

55. On information and belief, the Plan as amended was renewed by the parties through September 1, 1997.

January 1998 Renewal

56. By late 1997, Medical Center was in the midst of a financial crisis. It was engaged in litigation with the Bank of Tokyo-Mitsubishi, Ltd. over the letter of credit upon which Medical Center relied for operating funds. At this time, Medical Center was in desperate need of such

funds, and needed to renew the Plan to ensure that it did not lose Attending Faculty, the patients they referred, and the resulting income.

57. NCRIC was aware of Medical Center's financial crisis. After the fall 1997 reconciliation NCRIC presented Medical Center with a bill for $1.7 million in Additional Premium, along with an ultimatum: pay up immediately or the Plan would not be renewed. This bill was miscalculated to grossly overstate the amount of Additional Premium due.

58. Upon information and belief, NCRIC knew or should have known that this bill was incorrect, and that due to its trust and reliance on NCRIC, Medical Center would not discover that it had been billed in error. Upon information and belief, NCRIC intended to take advantage of Medical Center's trust and reliance, and its difficult financial situation, in violation of the Plan, in order to obtain security for future Additional Premium that might become due.

59. Medical Center had no reasonable alternative but to pay NCRIC because there was no time to find other, discounted MMLI for the Attending Faculty before the Plan's renewal date. If Medical Center did not agree to pay immediately, the Plan would end and the Attending Faculty's MMLI premiums would skyrocket. Termination of the Plan would cause a large percentage of Medical Center's Attending Faculty to transfer to competing hospitals. As a result of having fewer Attending Faculty and patients, Medical Center would lose significant revenue.

60. Medical Center could not afford to pay $1.7 million, but agreed to pay $1 million. Medical Center made these payments in four installments between January and March of 1998.

61. In January 1998, the Plan was renewed again for one year, effective September 1997. This amendment, attached hereto as Exhibit 4, was drafted by NCRIC.

62. Prior to NCRIC's wrongful demand for payment of $1.7 million, Medical Center had just enough cash on hand to cover its operating expenses. As a direct result of overpaying NCRIC, in early 1998 Medical Center exhausted its cash on hand and became insolvent.

63. In February 1998, Medical Center filed for bankruptcy, and remained in bankruptcy until early 1999. During this time, Medical Center incurred additional expenses as a result of its bankruptcy, including several hundred thousand dollars per month in legal fees.

September 1998 Renewal

64. In the summer of 1998, as a result of NCRIC's wrongful demand for payment, Medical Center determined that it could no longer afford to participate in the Plan. Medical Center began to search for low-cost MMLI for the Attending Faculty. Medical Center expected that, by finding lower-cost MMLI, it could retain its current Attending Faculty and attract new physicians, thereby increasing its revenues and improving its financial situation.

65. In about August 1998, Medical Center received a proposal from Medical Inter-Insurance Exchange ("MIIX"), a highly-rated national insurance company, to provide MMLI for the Attending Faculty. The premium for MIIX's standard OB/GYN MMLI policy was lower than the premium for NCRIC's standard OB/GYN MMLI policy as discounted by the Plan.

66. The MIIX proposal was a better deal than the Plan for members of the Attending Faculty because, unlike NCRIC, MIIX guaranteed that it would not raise its premiums for two years. The MIIX proposal also was better for Medical Center because MIIX did not require that Medical Center accept liability for any additional premium.

67. In about August 1998, Medical Center notified the Attending Faculty of the MIIX proposal. Soon thereafter, NCRIC became aware of the MIIX proposal.

16d-000233

68. Upon hearing of the MIIX proposal, NCRIC initiated a disinformation campaign to kill the proposal by making untrue statements about Medical Center, its Board of Directors, MIIX, and the MIIX proposal.

69. In late August of 1998, NCRIC called a meeting of the Attending Faculty. At this meeting, representatives of NCRIC made false and malicious statements, including but not limited to the following: (1) that MIIX would not remain in the District of Columbia insurance market; (2) that MIIX would not stand by its guarantee not to raise premiums for two years; (3) that MIIX was an unreliable insurance company; (4) that MIIX planned to raise premiums once it cornered the District of Columbia MMLI market; (5) that the MIIX proposal was cronyism which would benefit members of the Medical Center Board of Directors rather than the Attending Faculty; (6) that Medical Center had lied to the Attending Faculty by stating that it could not afford to continue the Plan; and (7) that lawyers with whom NCRIC contracted to defend physicians against medical malpractice claims would not work with MIIX.

70. At this meeting, NCRIC's representatives also urged members of the Attending Faculty to disassociate themselves from Medical Center if the Plan was not renewed.

71. In a direct and foreseeable response to NCRIC's campaign to kill the MIIX deal, including the statements set forth in Paragraphs 69 and 70, approximately 20-30% of Attending Faculty members informed Medical Center that they would not purchase MMLI from MIIX. Many members of the Attending Faculty also threatened to cease their association with Medical Center if the Plan was not renewed. Among those who threatened to leave were several groups of physicians which admitted a large volume of patients to Medical Center.

72. At about this time, upon information and belief, NCRIC also presented Medical Center with a bill, demanding immediate payment for approximately $1 million in Additional Premium for the fall 1998 reconciliation. This bill grossly miscalculated and overstated the amount of Additional Premium due under the Plan.

73. Upon information and belief, NCRIC knew or should have known that this bill was incorrect, and that due to its trust and reliance, Medical Center would not discover that it had been billed in error. Upon information and belief, NCRIC overbilled Medical Center for Additional Premium, in violation of the Plan, in a wrongful attempt to gain leverage over Medical Center and force it to renew the Plan.

74. As a direct and foreseeable result of the foregoing, Medical Center had no reasonable alternative but to reject the MIIX offer and renew the NCRIC Plan. Medical Center was forced to accept liability for potential Additional Premium for the period beginning September 1, 1998, which it would not otherwise have accepted.

75. In about October 1998, the Plan was renewed for one year, through September 1999. This amendment, attached hereto as Exhibit 5, was drafted by NCRIC. Shortly thereafter, upon information and belief, NCRIC, its goal accomplished, dropped its demand that Medical Center pay an additional $1 million.

Medical Entity Policy

76. During late 1998, Medical Center decided to purchase a MMLI policy for the Columbia Physicians Group ("CPG"), physicians who practiced in Medical Center's ambulatory clinic. Although most CPG physicians were covered by their own individual MMLI policies at all times, Medical Center offered them additional MMLI when they worked in the clinic.

16d-000235

77. Medical Center purchased the CPG Policy from NCRIC (the "Policy"). This one-year policy, effective December 1, 1998, was renewed on December 1, 1999.

78. Medical Center complied with all of its obligations under the Policy.

1999 Renewals

79. In 1999, Medical Center searched for, but did not locate, lower-cost MMLI for its Attending Faculty. Accordingly, the Plan was renewed for one year, effective September 1999. This amendment, attached hereto as Exhibit 6, was drafted by NCRIC.

Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

80. After the 2000 renewal, Medical Center formed a committee of the Attending Faculty to search for lower-cost MMLI. The committee was composed of unbiased and well-respected members of the Attending Faculty, including at least one member of NCRIC's Board of Directors. The committee notified NCRIC of its goal.

81. This committee obtained a proposal from The Medical Protective Company ("MedPro"), a well-respected national insurance company. The premium for MedPro's standard OB/GYN MMLI policy was below the discounted price of NCRIC's standard OB/GYN MMLI policy. Morever, under the MedPro proposal Medical Center would not be required to accept liability for any additional premium.

82. The committee informed Medical Center's Board of Directors that it had found an acceptable substitute MMLI policy for the Attending Faculty.

83. At about this time, Medical Center requested that NCRIC propose a discount program based on actual rather than incurred losses. NCRIC refused to make such a proposal unless Medical Center first settled the existing Plan.

16d-000236

84. Negotiations to settle the Plan commenced and continued throughout the summer of 2000, until the parties reached an agreement to settle. The settlement was contingent on Medical Center's Board of Directors approving the Plan.

85. On June 27, 2000, Medical Center's Board of Directors decline to approve the settlement plan. Medical Center informed NCRIC of this development immediately.

86. On June 30, 2000 in retaliation for the Board's refusal to agree to the settlement, NCRIC, without justification, canceled the Policy. After initially providing Medical Center with insufficient notice in violation of District of Columbia insurance regulations, NCRIC notified Medical Center that cancellation of the Policy was effective on September 1, 2000. NCRIC also informed Medical Center that the Plan would be terminated on that date.

87. Despite the foregoing, throughout the summer Medical Center continued to negotiate in good faith towards a settlement of the existing Plan that would meet the approval of its Board of Directors. The parties reached another settlement in August 2000.

88. NCRIC, however, reneged on the settlement in late August 2000.

89. In further retaliation against Medical Center, on or about the effective date of the Policy's cancellation, representatives of NCRIC made untrue and malicious statements regarding Medical Center and the ambulatory clinic to members of the Attending Faculty and CPG. These statements included but were not limited to: (1) that the Policy had expired; (2) that CPG physicians who also were members of the Attending Faculty were not covered by NCRIC's MMLI policy while practicing at the clinic; (3) that Medical Center's self-insurance trust was insufficiently funded to insure the CPG; (4) that Medical Center's ambulatory clinic was a dangerous place to work.

16d-000237

90. These statements caused a panic among CPG physicians. As a result, some CPG physicians did not show up for work; others quit the clinic altogether. Shifts went uncovered, and the few physicians who were willing to work at the clinic worked extra shifts. Due to the lack of doctors, some clinic patients who required care were turned away.

91. As a result of the foregoing, Medical Center's reputation in the community, and among its patients, staff and associated physicians, was harmed. Staff members began to circulate rumors that Medical Center, which recently had improved its fiscal position, would close. Physicians ceased their association with Medical Center and/or CPG; staff members quit.

92. In further retaliation against Medical Center, NCRIC, without justification, informed CPG physicians who held individual NCRIC MMLI policies that they were not covered by these policies when practicing at Medical Center's ambulatory clinic. Upon information and belief, there was no proper underwriting justification for this exclusion.

93. Due to NCRIC's wrongful refusal to provide MMLI coverage for individual physicians practicing at Medical Center's ambulatory clinic, many physicians quit the clinic. As a result, Medical Center has had, and continues to have, difficulty staffing the clinic.

94. As a result of the termination of the Plan, upon information and belief, NCRIC and its representatives urged members of the Attending Faculty to move their practices from Medical Center to the competitor hospitals that had in place discount programs with NCRIC.

95. As a result of the termination of the Plan, the Attending Faculty were required to decide, on short notice, whether to: (1) remain with NCRIC and move their practices to a competitor hospital with a discount program, as NCRIC urged; (2) switch to Med Pro, the new MMLI provider for Medical Center; or (3) remain at Medical Center and pay the undiscounted

16d-000238

NCRIC MMLI premium. But for Attending Faculty for whom NCRIC was presently defending MMLI claims, this was no choice at all: for all practical purposes, they could not leave NCRIC.

96. Of those faculty who could choose to leave, about 12-17 physicians -- at least one-fourth of the active membership of the Attending Faculty -- left Medical Center. Among those leaving were some physicians who admitted a large volume of patients to Medical Center.

97. The departure of these Attending Faculty had an immediate effect on Medical Center's bottom line. The hospital, which was about to break even for the first time in years, lost revenue and remained unprofitable.

98. The hospital's poor financial condition had an adverse effect on morale at Medical Center. Rumors circulated among the staff that Medical Center would close. More physicians ceased their association with Medical Center; more staff members and nurses quit. Members of the administration, including senior executives, left their posts. Many of the remaining physicians spoke openly about leaving, thereby causing morale to deteriorate further.

99. Word of Medical Center's poor financial condition, and rumors of its imminent demise, reached the greater community. Local media repeatedly contacted members of the Medical Center's Board of Directors to ask when Medical Center would close its doors.

100. As a result of Medical Center's difficult fiscal situation, which continues, and the public rumors that it will close, Medical Center has had and continues to have difficulty recruiting the new physicians and staff it needs to improve its financial situation.

101. On September 1, 2000, NCRIC informed Medical Center that the current amount of Additional Premium due as a result of the fall 2000 reconciliation was $1,285,525.00. This

16d-000239

reconciliation was, upon information and belief, knowingly grossly miscalculated and overstated by NCRIC in retaliation for Medical Center's refusal to settle the Plan.

102. In fact, no Additional Premium was due under the Plan, and Medical Center was due Return Premium. Medical Center was not immediately aware of NCRIC's deception, and did not immediately contest the amount of Additional Premium stated by NCRIC, or demand payment of the amount of Return Premium that actually was due.

103. On October 1, 2000, NCRIC presented Medical Center with a bill for $1,285,525.00. Upon information and belief, this amount knowingly stated that Additional Premium was due when in fact Return Premium was due.

COUNT ONE

Breach of Contract

104. Medical Center incorporates by reference the allegations in paragraphs 1 through 103, as if set forth fully herein.

105. The amended and renewed Plan, as described above, constitutes a valid and binding contract between Medical Center and NCRIC.

106. Medical Center has performed each obligation and condition of the Plan, except those which it was prevented from performing or those which it was excused from performing or those which were waived by NCRIC's misconduct.

107. Under the terms of the Plan, NCRIC was required to perform certain obligations, including those obligations set forth in Paragraphs 31 through 36, above.

108. NCRIC materially breached the Plan by failing to perform its obligations under the Plan, including those breaches described in Paragraphs 37 through 42, above.

16d-000240

109. As a result of NCRIC's failure to perform its obligations under the Plan, NCRIC caused Medical Center damages including the overpayment of Additional Premium, thereby causing Medical Center to become insolvent.

110. As a direct and proximate result of the foregoing, Medical Center has been injured in its business and property.

COUNT TWO

Breach of Implied Covenant of Good Faith and Fair Dealing

111. Medical Center incorporates by reference the allegations in paragraphs 1 through 110, as if set forth fully herein.

112. The amended and renewed Plan, as described above, constitutes a valid and binding contract between Medical Center and NCRIC.

113. Medical Center has performed each obligation and condition of the Plan, except those which it was prevented from performing or those which it was excused from performing or those which were waived by NCRIC's misconduct.

114. By law, the Plan includes an implied duty of good faith and fair dealing.

115. NCRIC has breach the Plan by acting unfairly and in bad faith, including acting as described in Paragraphs 37 through 42, 49, 50, 53, 54, 57, 58, 72 through 74, 101, 102, and 104 above.

116. As a result of NCRIC's failure to perform its obligations under the Plan, NCRIC caused Medical Center damages including the overpayment of Additional Premium, thereby causing Medical Center to become insolvent.

117. As a direct and proximate result of the foregoing, Medical Center has been injured in its business and property.

COUNT THREE

Breach of Fiduciary Duty

118. Medical Center incorporates by reference the allegations made in paragraphs 1 through 117, as if set forth fully herein.

119. At all times mentioned herein, a fiduciary relationship existed between NCRIC and Medical Center by virtue of (a) NCRIC's responsibility, stated in the Plan, to perform all bookkeeping on behalf of Medical Center under the Plan; (b) Medical Center's trust and reliance on NCRIC to administer the Plan, of which NCRIC was fully aware; (c) Medical Center's reliance on NCRIC to properly and honestly perform reconciliations and accurately calculate Additional or Return Premium, of which NCRIC was fully aware; and (d) Medical Center's dependence on NCRIC for certain information necessary to perform retro calculations under the Plan, of which NCRIC was fully aware.

120. NCRIC has, by its actions alleged above, including those actions set forth in Paragraphs 37 through 42, 49, 50, 53, 54, 57, 58, 72 through 74, 101, 102 and 104, breached its fiduciary duties to Medical Center.

121. NCRIC breached its fiduciary duties to Medical Center, upon information and belief, with the intent to defraud and/or deceive Medical Center.

122. As a direct and proximate result of the foregoing, Medical Center has been injured in its business and property.

COUNT FOUR

Tortious Interference with Business Relations

123. Medical Center incorporates the allegations made in paragraphs 1 through 122 as if fully set forth herein.

124. During the period up to and including August 2000, Medical Center had valid business relationships with certain physicians who were associated with Medical Center and an expectancy that such physicians would refer patients to Medical Center.

125. NCRIC knew about these valid business relationships and expectancy.

126. NCRIC intentionally and maliciously interfered with these relationships and expectancy (a) by or through its agents, making wrongful and/or untrue, unprivileged statements, including those statements set forth in Paragraphs 69, 70 and 89, regarding Medical Center, its Board of Directors, and MIIX; and (b) by urging said physicians, wrongfully and without privilege, to move their practices from Medical Center to its competitor.

127. As a direct and proximate result of NCRIC's wrongful interference, a number of its physicians terminated their association with Medical Center, and ceased referring patients to Medical Center.

128. NCRIC has been and is being injured by NCRIC's malfeasance due to loss of revenue resulting from loss of patient referrals.

COUNT FIVE

Tortious Interference with Prospective Business Advantage

129. Medical Center incorporates the allegations made in paragraphs 1 through 128 as if fully set forth herein.

16d-000243

130. Medical Center had a reasonable business expectancy in the patients referred by its associated physicians, and reasonably expected to continue the association with its physicians and the resulting patient referrals.

131. NCRIC was aware of this business expectancy, as described above.

132. Despite its knowledge, NCRIC deliberately and intentionally or recklessly acted to interfere with and prevent Medical Center from realizing the aforementioned business expectancies by engaging in the tortious and wrongful conduct described above.

133. NCRIC's foregoing actions constitute an intentional and tortious interference with Medical Center's reasonable business expectancies.

134. As a result of their foregoing actions, NCRIC has proximately caused Medical Center damages in the form of substantial economic loss, including loss of revenue resulting from loss of Attending Faculty and patient referrals.

COUNT SIX

Negligence

135. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 134, as if fully set forth herein.

136. At all times relevant to this claim, NCRIC had a duty of care in relation to Medical Center, by virtue of its contract with Medical Center and its relationship with Medical Center, including its position as bookkeeper for and administrator of the Plan.

137. NCRIC breached its duty of care and was negligent by miscalculating the amounts of Additional or Return Premium due, as described above.

16d-000244

138. NCRIC 's negligence proximately caused Medical Center damage by causing it to overpay Additional Premium and fail to demand Return Premium it was due, and further, by causing Medical Center to become insolvent.

COUNT SEVEN

Actual and/or Constructive Fraud

139. Medical Center incorporates by reference paragraphs 1 through 138, as though fully set forth herein.

140. As set forth above, NCRIC was in a fiduciary and/or confidential position with regard to Medical Center, due to NCRIC's role as administrator of the Plan and its duty to perform all bookkeeping and reconciliations under the Plan.

141. Due to this fiduciary and/or confidential relationship between NCRIC and Medical Center, as set forth above, Medical Center trusted NCRIC's administration of the Plan and relied on NCRIC to correctly and honestly perform each reconciliation and accurately calculate any Additional or Return Premium due.

142. As set forth above, NCRIC and/or its agents made false representations to Medical Center, including that (1) the Loss Reserves under the Plan were maintained in accordance with the industry standard and (2) that after the performance of each reconciliation, a certain amount of Additional or Return Premium was due. NCRIC also concealed from plaintiffs material facts which amounted to a misrepresentation by refusing to provide information concerning Loss Reserves as provided for by the Plan, among other things.

143. The false representations and/or concealments set forth above were material with regard to the amount of Additional or Return Premium due under the Plan. If not for such false

16d-000245

representations and/or concealments, Medical Center would have paid the correct amount of Additional Premium and/or would have demanded the correct amount of Return Premium.

144. NCRIC intended that Medical Center rely upon its false representations and/or concealments, and pay NCRIC for amounts that it was not properly owed under the Plan.

145. As set forth above, Medical Center reasonably relied upon the false representations and/or concealments made by NCRIC, including by paying incorrect amounts of premium. As set forth above, Medical Center's reliance was reasonable, and known to NCRIC, because NCRIC was required to perform all bookkeeping under the Plan and because NCRIC refused to provide Medical Center access to data necessary to independently verify NCRIC's bookkeeping.

146. Medical Center has been directly and proximately damaged by NCRIC's false representations and concealments by, among other things, overpaying premium, which in turn proximately and directly led Medical Center to become insolvent.

COUNT EIGHT

Negligent Misrepresentation

147. Medical Center incorporates by reference paragraphs 1 through 146, as though fully set forth herein.

148. As set forth above, NCRIC and/or its agents made false representations to Medical Center, including that: (1) the Loss Reserves under the Plan were maintained in accordance with the industry standard and (2) after the performance of each reconciliation, a certain amount of Additional or Return Premium was due. Moreover, as set forth above in Paragraphs 37 and 38, NCRIC concealed from plaintiffs material facts that amounted to a misrepresentation.

16d-000246

149. NCRIC negligently made these false representations because it failed to ensure that it maintain Loss Reserves in accord with the industry standard, among other things.

150. The false representations and/or concealments set forth above were material with regard to the amount of Additional or Return Premium due under the Plan. If not for such false representations and/or concealments, Medical Center would have paid the correct amount of Additional Premium and/or would have demanded the correct amount of Return Premium.

151. NCRIC intended that Medical Center rely upon its false representations and/or concealments, and pay NCRIC for amounts that it was not properly owed under the Plan.

152. As set forth above, Medical Center reasonably relied upon the false representations and/or concealments made by NCRIC, including by paying incorrect amounts of premium. As set forth above, Medical Center's reliance was reasonable, and known to NCRIC, because NCRIC was required to perform all bookkeeping under the Plan and because NCRIC refused to provide Medical Center access to data necessary to independently verify NCRIC's bookkeeping.

153. Medical Center has been directly and proximately damaged by NCRIC's negligent actions by, among other things, overpaying premium, which in turn proximately and directly led Medical Center to become insolvent.

COUNT NINE

Defamation and Libel

154. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 153, as if fully set forth herein.

155. NCRIC and its agents made numerous false and defamatory statements including those statements set forth in Paragraphs 69 and 89.

16d-000247

156. The foregoing false and defamatory statements were published to physicians who were associated with Medical Center.

157. NCRIC's foregoing false and defamatory statements about Medical Center were made upon information and belief with knowledge of their falsity or reckless indifference or negligence as to their truth or falsity.

158. As a result of its foregoing false and defamatory statements, NCRIC has directly and proximately caused Medical Center damages in the form of harm to its reputation and substantial economic loss.

COUNT TEN

Trade Libel/Commercial Disparagement/Injurious Falsehood

159. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 158, as if fully set forth herein.

160. NCRIC made and false and misleading representations of fact which disparaged Medical Center's performance as a hospital. These statements included those statements set forth in Paragraphs 70 and 90.

161. NCRIC made the foregoing false representations for the purpose of disparaging the quality of Medical Center's services as a health care facility.

162. NCRIC made the foregoing false representations intentionally and with full knowledge that these statements would cast doubt upon the quality of Medical Center's services as a health care facility.

163. As a result of the foregoing false representations, NCRIC has proximately caused Medical Center damages in the form of substantial economic loss.

16d-000248

164. NCRIC's false representations of fact regarding the quality of Medical Center's services as a health care facility violate the common law of commercial disparagement and trade libel and injurious falsehood.

COUNT ELEVEN

Conversion

165. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 164, as if fully set forth herein.

166. Medical Center made payments to NCRIC, described above in Paragraph 60.

167. If and to the extent that such payments were for Additional Premium actually owed by Medical Center, NCRIC interfered with Medical Center's property to the exclusion and in defiance of Medical Center's rights to the property by not returning Medical Center's payments when and to the extent that NCRIC subsequently owed Medical Center Return Premium.

168. As a result of the conversion of its property by NCRIC, Medical Center has been injured in an amount to be proved at trial.

Relief Requested

WHEREFORE, Medical Center asks that the Court award Medical Center its actual damages; punitive damages, as a result of NCRIC's malfeasance, fraud and bad faith; costs, including reasonable attorney's fees; and such further relief as the Court may deem just and equitable.

16d-000249

Demand for Jury Trial

Medical Center requests a trial by jury.

Dated: January 3, 2001.

Respectfully submitted,

Mark C. Hansen
D.C. Bar No. 425930
Steven F. Benz
D.C. Bar No. 428026
Joseph K. Leahy
D.C. Bar No. 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-000250

CERTIFICATE OF SERVICE

I, Sylena Slaughter, hereby certify that on this 3rd day of January, 2001, a copy of the parties' joint Praecipe, and the attached Columbia Hospital for Women Medical Center's Amended Answer and Counterclaims, was served upon the following party first class mail, postage prepaid:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena Slaughter/JKC
Sylena L. Slaughter

RECEIVED
Civil Clerk's Office
JAN 0 5 2001
of the
Washington, D.C.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
Plaintiff,	)
v.	) Civil Action No. 0007308-00
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next event: Initial Conference 1/12/01
Defendant.	)

AMENDED COMPLAINT FOR DAMAGES

NCRIC, Inc., Plaintiff, by counsel, sues Columbia Hospital for Women Medical Center, Inc. as follows:

1. NCRIC, Inc. ("NCRIC") is a corporation in the business of providing liability insurance and doing business in the District of Columbia. It is the successor in interest to National Capital Reciprocal Insurance Company.

2. Columbia Hospital for Women Medical Center, Inc. ("Hospital") is a medical hospital with its principal place of business in the District of Columbia.

3. This Court has jurisdiction pursuant to D.C. Code § 11-921.

4. NCRIC and Hospital are parties to Retrospective Rating Plan Agreement for insurance (the "Agreement") by which NCRIC provided medical doctors at the Hospital with certain insurance against liability resulting from described events, including professional negligence in consideration for which Hospital agreed to pay certain premiums. A copy of the Agreement is attached hereto as Exhibit A.

5. Pursuant to the terms of the Agreement, Hospital owed NCRIC payment of additional insurance premiums based on the Agreement.

6. NCRIC performed all its obligations pursuant to the Agreement by providing the agreed insurance coverage.

7. Hospital breached the Agreement by failing to pay NCRIC the additional premiums due under the Agreement.

8. Hospital owes NCRIC the sum of $1,943,530 or such amount as is currently due from defendant to plaintiff after calendar quarterly recalculations of premium pursuant to the contract between the parties.

9. Despite written demand for payment therefore, and compliance with all its other obligations under the Agreement, Hospital has failed and refused to pay NCRIC the amount owed.

WHEREFORE, NCRIC demands judgment against Hospital in the amount One Million Nine Hundred Forty-three Thousand Five Hundred Thirty Dollars ($1,943,530) or such amount as is currently due from defendant to plaintiff after calendar quarterly recalculations of premium pursuant to the contract between the parties, interest, and costs incurred herein.

Roy Niedermayer / JKL by permission

Roy Niedermayer, Esq. DC Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for NCRIC

RETROSPECTIVE RATING PLAN AGREEMENT

This Retrospective Rating Plan Agreement ("Agreement") is made and entered into effective the first day of September, 1993, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

WHEREAS, NCRIC offers medical professional liability insurance to physicians duly licensed as such by the District of Columbia Government ("physicians") on a claims-made basis, for which an annual premium is assessed and paid; and

WHEREAS, Medical Center operates and conducts a not-for-profit hospital in the District of Columbia which has on its medical staff duly licensed physicians who are insured with NCRIC; and

WHEREAS, certain of these physicians desire to secure a reduction or discount on their insurance premiums on a preferred risk basis through the establishment of and participation in an Attending Faculty Program ("AFP"), which shall be designed to reduce the risks involved in the delivery of medical care to patients as set forth in the Attending Faculty Program Agreement entered into between the physicians and Medical Center; and

WHEREAS, NCRIC is willing to provide such a reduction or discount on said insurance premiums to those physicians who agree to participate in the AFP on condition that Medical Center agrees to be financially responsible for certain premium amounts as hereinafter provided; and

WHEREAS, as a mechanism for reducing its own exposure for professional liability, Medical Center is willing to assume such responsibility;

NOW, THEREFORE, the parties hereto agree as follows:

1. NCRIC has established a three-year Retrospective Rating Plan, a copy of which is attached hereto as Exhibit A (the "Plan") and incorporated herein by reference. NCRIC makes available the benefits of the Plan to its physician insureds who are parties to the AFP Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and who are issued a Retrospective Rating Plan Endorsement, a copy of which is attached hereto as Exhibit C. With the exception of the Plan Participants

PLAINTIFF'S EXHIBIT 4
16d-000254

listed on Exhibit D, attached hereto and incorporated herein by this reference, the effective date of any Plan Participant's participation, or termination of participation, in the Plan shall be the date on which NCRIC receives notice thereof from Medical Center.

2. NCRIC agrees to issue Retrospective Rating Plan Endorsements to its physician insureds who otherwise qualify in accordance with the standard underwriting practices of NCRIC and who are members of the AFP.

3. As an inducement to NCRIC to cause it to issue the Retrospective Rating Plan Endorsements to its physician insureds who are members of the AFP, Medical Center agrees to be solely responsible for, and to pay, any Additional Premium due in accordance with the terms of the Plan.

4. Medical Center shall correspondingly be entitled to receive Return Premium, if any, and investment return thereon, if any, in accordance with the terms of the Plan.

5. Notice of any Additional Premium due from Medical Center, or any Return Premium due to Medical Center, shall be provided to Medical Center within 60 days following the close of the Reconciliation Period, and payment due, whether to Medical Center or from Medical Center, shall be due and payable within 30 days of receipt of said notice.

6. Medical Center's obligations hereunder are primary, and not secondary, and NCRIC shall have no right to seek recourse or payment of any Additional Premium due pursuant to the Plan from any Plan Participant. In the event Medical Center fails to make any payment for which it is responsible hereunder when due, the Company shall have the right to recover reasonable attorneys fees incurred in recovering such payment from Medical Center.

7. NCRIC hereby represents and warrants that any claims made against Plan Participants will be processed, including the setting of loss reserves, in the normal and ordinary course of the Company's business, without consideration of the insured's status as a Plan Participant.

8. Medical Center hereby represents and warrants that it has made, and will continue to make, adequate provision for the contingent liabilities it has assumed hereunder.

9. Medical Center will provide NCRIC with the following:

a. a list of all Plan Participants, and any additions or deletions thereto;

16d-000255

b. copies of Medical Center's Agreement between Medical Center and Participants in the Attending Faculty Program who are Insured with NCRIC, and amendments, if any, as made from time to time, with each Plan Participant, which contract shall include an authorization by the Plan Participant in form and substance satisfactory to NCRIC to release to Medical Center the information set forth in Paragraph 10(a)(iii) below;

c. copies of, and any amendments to, the AFP Agreement; and

d. a review and summary of risk management activities undertaken pursuant to the Attending Faculty Program Agreement.

10. NCRIC and a Medical Center representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

a. At such meetings, NCRIC will provide Medical Center with the following:

i. for purposes of cross-reference and confirmation of participation or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

ii. the aggregate amount of losses reserved under the Plan, and the verification thereof by NCRIC's consulting actuary;

iii. with respect to any medical incident or professional liability claim reported to NCRIC by a Plan Participant under the Plan (hereinafter, "incident"), and subject to a Plan Participant's authorization to release same to Medical Center, the name of the physician, the date of the incident, the date said incident was reported to NCRIC, any complaint or suit filed in a court of law with respect to such claim; and any payments made on behalf of said Plan Participant by NCRIC; and

iv. a review of Medical Center risk management activities.

b. Annually, at such meeting taking place in the first quarter of each year, Medical Center will provide NCRIC with the statement of Medical Center's consulting actuary that adequate reserves have been made for the contingent liabilities Medical Center has assumed under this Agreement.

11. This Agreement shall remain in full force and effect as to any renewal, extension or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, or new issuances.

12. This Agreement shall remain in full force and effect until all claims applicable to the final Experience Period of the Plan are finally closed or upon payment of maximum premium amount required by paragraph 3 hereof applicable to the final Experience Period, whichever occurs first. For purposes of this Paragraph 12, any claim "closed" without payment made to, and a release having been signed by, the claimant shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the retrospective adjustment according to the Plan.

13. For purposes of clarification, and not to vary, alter or amend the terms hereof or of the Plan, attached hereto as Exhibit E and incorporated herein by reference is an example of the operation of the Plan.

14. All bookkeeping and record keeping shall be handled by NCRIC.

15. Upon ninety (90) days' written notice prior to the end of any Experience Period, to be effective after the last day of such Experience Period, the Plan may be discontinued by either party for cause, provided that such discontinuance shall not affect any obligation or liability accrued prior to the date of such discontinuance. For purposes of this Paragraph 15, "cause" shall mean any material breach of the terms of this Agreement, or any change in any applicable federal, state or local law which would render any of the terms of this Agreement unlawful.

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

16d-000257

If to NCRIC: Mr. David K. Little
President
National Capital Underwriters, Inc.
Attorney-in-fact for
National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, D.C. 20007

If to Medical Center: Mr. G. Patrick Kane, FACHE
President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, N.W.
Washington, D.C. 20037

The date of service of any such notice shall be the date that such notice is deposited with the U.S. Postal Service or the date of personal delivery, as applicable.

17. Medical Center hereby warrants and represents that it has made, and agrees to provide NCRIC with its auditor's or actuary's annual statement reflecting, adequate provision for the contingent liabilities it has assumed hereunder.

18. This Agreement constitutes the entire agreement between the parties and no modifications, amendments or additions thereto shall be binding unless in writing and executed by all the parties hereto.

19. This Agreement shall not be assignable without the prior written consent of the parties hereto.

20. The agreements, terms and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, if any.

21. This Agreement is made and executed in the District of Columbia, and shall be governed by the law of the District of Columbia.

16d-000258

IN WITNESS WHEREOF, the parties have caused their corporate names to be subscribed hereto by their duly authorized officers or attorneys-in-fact, and their corporate seal to be hereunto affixed effective the day and year first above written.

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

BY: _____
David K. Little, President

(Corporate Seal)

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST:

BY: _____

(Corporate Seal)

List of Exhibits

A	Retrospective Rating Plan
B	Attending Faculty Program Agreement
C	Retrospective Rating Plan Endorsement
D	List of Initial Plan Participants
E	Example of operation of the Plan

EXHIBIT A

THREE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center dated September 1, 1993, (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be three years, beginning on September 1, 1993 and ending on September 1, 1996. The Plan shall consist of three separate and distinct Experience Periods of:

Beginning 12:01 A.M. on	and Ending 12:01 A.M. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19% of the otherwise applicable premium for such coverage. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return premium (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =

{[[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor} + Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

EXHIBIT A

THREE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center dated September 1, 1993, (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be three years, beginning on September 1, 1993 and ending on September 1, 1996. The Plan shall consist of three separate and distinct Experience Periods of:

Beginning 12:01 A.M. on	and Ending 12:01 A.M. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19% of the otherwise applicable premium for such coverage. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return premium (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =

{[[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor} + Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedule:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1996
September 1, 1994 to September 1, 1995	September 1, 1997
September 1, 1994 to September 1, 1996	September 1, 1998

Additional reconciliations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall not be deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the Reconciliation Date, Reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"Basic Premium" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by

multiplying the Subject Premium by the insurance charge factor set forth below:

Three(3) Year Subject Premium	Insurance Charge Factor
$ 1,539,000 - $ 2,565,999	20.7%
$ 2,566,000 - $ 3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"Deposit Premium" means the Subject Premium multiplied by eighty-one percent (81%). This percentage shall remain unchanged for the three year term of the Plan.

"Development Factor" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and shall remain unchanged for the three year term of the Plan and all reconciliations applicable thereto:

Year 1 Reconciliation	-	88.5%
Year 2 Reconciliation	-	87.5%
Year 3 Reconciliation	-	90.5%
Year 4 Reconciliation	-	96.0%
Year 5 Reconciliation	-	100.0%
All Subsequent Reconciliations	-	100.0%

"Discount Factor" means a factor of 86.33%. This factor shall remain unchanged for the three-year term of the plan.

"Experience Period" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the pro-rated period involved shall be deemed to be an Experience Period.

"Insurance Policy" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"Losses" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"Loss Limitation" - for the purpose of application of the

retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (i) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"Loss Reserves" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"Maximum Premium" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (115%) of the Subject Premium amount.

"Minimum Premium" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (75%) of the Subject Premium amount.

"Paid Losses" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid Losses are subject to Loss Limitation, defined above.

"Plan Participants" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"Subject Premium" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insureds were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall be determined by NCRIC's consulting actuary, but shall not exceed 83%, nor be less than 77%, of the undiscounted premium charged for coverage limits of $1 million each claim/$3 million aggregate.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Court Event: Initial Conf., Jan. 1, 2001
	)	
	)	
Defendant.	)	

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.'S AMENDED ANSWER AND COUNTERCLAIMS

COMES NOW Defendant, Columbia Hospital for Women Medical Center, Inc. ("Medical Center"), by and through its attorneys, Mark C. Hansen, Esquire, Steven F. Benz, Esquire, Joseph K. Leahy, Esquire, and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., and respectfully answers the Amended Complaint in the above-captioned matter as follows:

FIRST DEFENSE

The Complaint fails to state a cause of action upon which relief may be granted.

SECOND DEFENSE

Answering specifically the numbered paragraphs of the Amended Complaint, Medical Center states as follows:

Parties and Jurisdiction

1. To the extent that the allegations in Paragraph 1 constitute legal conclusions, no response is required. Medical Center presently lacks sufficient information to admit or deny the remaining allegations set forth in Paragraph 1.

2. Medical Center admits that it is a health care facility located at 2425 L Street N.W., Washington, D.C. 20037. The remaining allegations contained in Paragraph 2 call for a legal conclusion to which no response is required.

3. The allegations set forth in Paragraph 3 call for a legal conclusion to which no response is required.

4. To the extent that the allegations in Paragraph 4 call for a legal conclusion, no response is required. Medical Center admits that it entered into an agreement with the National Capital Reciprocal Insurance Company, which, upon information and belief, became NCRIC (referred to hereafter collectively as "NCRIC") in July 1999; however, Medical Center denies that the allegations in Sentence 1 of Paragraph 4 accurately describe the scope of that agreement. Medical Center admits that the pages attached to the Amended Complaint as Exhibit A are a copy of a portion of an agreement between Medical Center and NCRIC, but denies that Exhibit A constitutes the entire agreement between Medical Center and NCRIC.

5. The allegations set forth in Paragraph 5 constitute legal conclusions to which no responsive pleading is required, and accordingly Medical Center denies these allegations.

6. To the extent that the allegations set forth in Paragraph 6 constitute a legal conclusion, no response is necessary, and Medical Center denies these allegations. Medical Center lacks sufficient information to admit or deny the allegation in Paragraph 6 that NCRIC provided insurance coverage, the effect of which is to deny said allegation and demand strict proof thereof.

7. Medical Center denies the allegations set forth in Paragraph 7.

8. Medical Center denies the allegations set forth in Paragraph 8.

16d-000267

9. Medical Center admits that NCRIC demanded payment from Medical Center in the amount stated in Paragraph 8, and denies the remaining allegations set forth in Paragraph 9. Medical Center admits that NCRIC demands judgment against Medical Center in the prayer for relief in the Amended Complaint, but denies that NCRIC is entitled to any such relief.

THIRD DEFENSE

Medical Center denies all allegations in the Amended Complaint not specifically admitted, and demands strict proof thereof.

FOURTH DEFENSE

Medical Center fully performed all of its duties and obligations under the alleged agreement between it and NCRIC.

FIFTH DEFENSE

NCRIC's claim is barred as a result of NCRIC's failure to satisfy conditions precedent, including, but not limited to, failing to perform reconciliations properly, and failing to calculate and inform Medical Center of the correct amount of premium due.

SIXTH DEFENSE

NCRIC's claim is barred by the doctrines of estoppel, waiver and/or unclean hands.

SEVENTH DEFENSE

The alleged agreement between Medical Center and NCRIC is unenforceable, in whole or in part, due to NCRIC's material breach of the express and/or implied terms thereof.

EIGHTH DEFENSE

The alleged agreement between Medical Center and NCRIC is unenforceable, in whole or in part, due to modification, novation, and/or accord and satisfaction.

NINTH DEFENSE

The alleged agreement between Medical Center and NCRIC is void, in whole or in part, because Medical Center renewed and/or amended it while under duress caused by NCRIC.

TENTH DEFENSE

Medical Center reserves the right to assert any affirmative defenses that may be revealed during the course of discovery.

MEDICAL CENTER'S COUNTERCLAIMS AGAINST NCRIC

Comes now Defendant/Counter-Plaintiff Medical Center, by counsel, and respectfully states and alleges as follows for its counterclaims against Plaintiff/Counter-Defendant NCRIC:

10. Medical Center incorporates by reference the allegations contained in paragraphs 1 through 9, as though set forth here in full.

Parties and Jurisdiction

11. Medical Center, a preeminent health care facility with internationally renowned specialties in obstetrics, gynecology, and neonatology, is a registered District of Columbia not-for-profit corporation that has been providing health care services in the District of Columbia for about 134 years.

12. NCRIC is, upon information and belief, a corporation that provides malpractice insurance to physicians in the District of Columbia. Upon information and belief, NCRIC is the successor in interest to National Capital Reciprocal Insurance Company (referred to collectively herein as "NCRIC").

13. This court has jurisdiction over this action pursuant to § 11-921 of the District of Columbia Code.

16d-000269

FACTUAL ALLEGATIONS IN SUPPORT OF COUNTERCLAIMS

Background to the Plan

14. In 1993, and at all relevant times thereafter prior to September 2000, NCRIC provided medical malpractice liability insurance ("MMLI") to nearly all of the physicians associated with Medical Center. Most of these physicians were OB/GYN practitioners.

15. In 1993, and at all relevant times thereafter, most of the physicians associated with Medical Center (otherwise known as "Attending Faculty") were independent contractors who had patient admitting privileges at several hospitals, including hospitals in nearby Maryland and Virginia. Medical Center relied on these independent physicians for patient referrals. As a result, Medical Center competed, and still competes, with other hospitals throughout the District of Columbia metropolitan area for physicians as well as for patient admissions.

16. In 1993, and at all relevant times thereafter, the average MMLI premium for OB/GYN physicians in the District of Columbia was about two or three times as high as the average MMLI premium for such physicians in nearby Virginia and Maryland.

17. In about 1993, and at all relevant times thereafter, at least one competitor hospital in the District of Columbia had in place an agreement with NCRIC, under which it provided a discount on MMLI premiums for that hospital's physicians.

18. Without a program to discount the cost of MMLI premiums for its Attending Faculty, Medical Center faced the prospect of losing associated physicians to hospitals in the District of Columbia that had such discount programs, as well as to hospitals in Maryland and Virginia, where MMLI premiums were lower.

16d-000270

19. For Medical Center, the loss of physicians necessarily would mean the loss of referrals and its key source of income: paying patients. In order to remain economically viable, Medical Center needed to maintain its volume of paying patients.

NCRIC's Proposal and Representations to Medical Center

20. In about 1993, NCRIC proposed to Medical Center a plan to reduce MMLI premiums for its Attending Faculty. NCRIC pressured Medical Center to accept this proposal. The proposal helped NCRIC, which dominated the District of Columbia MMLI market, keep its customers away from Virginia and Maryland, where it faced competition from other providers.

21. At about this time, Medical Center informed NCRIC that it required a discount program in order to retain its Attending Faculty. Upon information and belief, NCRIC knew that losing physicians to other hospitals in the District of Columbia metropolitan area would leave Medical Center, which already was in poor financial condition, in grave fiscal distress.

22. Under the proposed discount plan, each member of the Attending Faculty would receive what amounted to a 15% discount on the premium of the standard MMLI policy.

23. In exchange for this discount, Medical Center would agree to pay, with certain limitations, the difference between (1) the total amount of discounted premium paid by the Attending Faculty for a specified amount of MMLI coverage and (2) NCRIC's cost (including administrative costs and a profit for NCRIC) of providing that coverage. Under this proposal, Medical Center also would receive a refund of any premium paid by the Attending Faculty for the specified amount of MMLI coverage that exceeded NCRIC's cost of providing that coverage.

24. In order to induce Medical Center to agree to the proposed discount program, NCRIC, upon information and belief, represented to Medical Center that this proposal would cost

Medical Center almost nothing, because the Deposit Premium would cover most, if not all, of actual cost of providing the specified amount of MMLI coverage to the Attending Faculty. NCRIC, however, refused to provide Medical Center with sufficient data to perform an adequate analysis of the actual cost of the proposed discount program.

25. The proposed discount program allowed NCRIC to charge Medical Center for predicted expenditures ("incurred losses"), not just actual payments ("actual losses"), on MMLI claims. Medical Center objected to this aspect of the proposal. NCRIC, however, refused to offer a discount program under which it would charge solely for actual losses.

26. In about October 1993, Medical Center agreed to the discount program, and entered into an agreement with NCRIC entitled "Retrospective Rating Plan Agreement" (the "Plan"), which NCRIC drafted. A copy of the Plan is attached hereto as Exhibit 1.

Premium Calculations Under the Plan

27. Under the Plan, if NCRIC's incurred cost of providing MMLI to the Attending Faculty (known as the "Retro Premium") exceeded the total amount of discounted premium paid by the Attending Faculty to NCRIC (known as the "Deposit Premium") for a specified amount of MMLI coverage, then Medical Center was liable to NCRIC for the difference between the Retro Premium and the Deposit Premium (known as the "Additional Premium"), as limited by a set Maximum Premium. However, if the Retro Premium was less than the total Deposit Premium, the Plan entitled Medical Center to the difference between the two (known as the "Return Premium"), as limited by a set Minimum Premium.

28. Under the Plan, the Retro Premium was calculated by applying a complicated, backward-looking formula ("retro formula") that was devised by NCRIC, and for which NCRIC

16d-000272

provided all the data. NCRIC refused to allow Medical Center to audit this data, including the total amount of reserve funds ("Loss Reserves") that NCRIC claimed to maintain in order to pay medical malpractice claims and related litigation expenses under the Plan. The Retro Premium turned in large part on information that Medical Center could not independently verify.

29. Upon information and belief, NCRIC represented, as an inducement for Medical Center to enter into the Plan, that: (1) all premium amounts, including the Retro Premium, would be calculated exactly as set forth in the Plan; (2) the Retro Premium would fairly represent the incurred cost of providing the specified amount of MMLI coverage to the Attending Faculty, including the cost of maintaining Loss Reserves therefor; (3) the Loss Reserves would be calculated in accordance with generally-accepted standards in the insurance industry; and (4) the incurred cost of the Plan, as embodied by the Retro Premium, would closely approximate the actual cost of providing the specified amount of MMLI coverage to the Attending Faculty.

30. Medical Center entered into the Plan in reliance upon the foregoing representations by NCRIC, communicated its reliance to NCRIC, and has been damaged by such reliance.

NCRIC's Obligations Under the Plan

31. Under the Plan, NCRIC was responsible for all bookkeeping under the Plan, for administration of the Plan on behalf of Medical Center, and for all reconciliations of the Plan.

32. Reconciliations required NCRIC to: (1) apply the retro formula properly to the Plan years being reconciled, by using the proper multipliers and definitions, and accurate data; (2) calculate the accurate Deposit, Retro, and Additional or Return Premium; and (3) apply the Minimum or Maximum Premium, if applicable, as stated in the Plan.

33. The Plan required NCRIC to perform a reconciliation, effective on a specified date (the "Reconciliation Date"), after the third year of the Plan, and each year thereafter. For the first reconciliation, only the first year of the Plan was to be reconciled; in each subsequent reconciliation, all of the previous unclosed years of the Plan, plus one additional year, were reconciled. Reconciliations were to continue, even after the Plan ended, until all medical malpractice claims covered by the Plan were closed as defined under the Plan.

34. The Plan required NCRIC to notify Medical Center in writing, within 60 days of each Reconciliation Date, of the amount of Additional or Return Premium due, and pay any Return Premium, and the investment return thereon, due within 30 days of this notice.

35. The Plan required NCRIC to set its Loss Reserves according to the insurance industry standard; to provide Medical Center with verification by an independent actuary that Loss Reserves were maintained as such; and to provide Medical Center with certain data regarding the accrued Loss Reserves on a specified, regular basis. Further, the Plan allowed only a certain percentage of the Loss Reserves be considered when calculating the Retro Premium.

36. As a result of the foregoing, Medical Center reasonably and in good faith trusted NCRIC to administer the Plan on its behalf; to properly and honestly perform all reconciliations; and to accurately calculate all premiums, including Additional and/or Return Premium. Upon information and belief, Medical Center communicated this trust and reliance to NCRIC.

NCRIC's Negligent and Improper Administration of the Plan

37. Upon information and belief, NCRIC did not provide Medical Center with reports and actuary certifications concerning the Loss Reserves as required by the Plan. Although

16d-000274

Medical Center repeatedly requested such reports and certifications, NCRIC at first refused to provide them, and later, upon information and belief, provided them irregularly if at all.

38. Upon information and belief, NCRIC also failed to maintain Loss Reserves for the Plan in accordance with the industry standard. Upon information and belief, beginning in about 1997, NCRIC either knowingly or due to lack of reasonable care failed to adequately adjust its loss reserves downward in response to Medical Center's positive loss experience under the Plan. As a result, NCRIC maintained higher Loss Reserves than were reasonably necessary to cover malpractice claims under the Plan, and improperly raised the incurred cost of the Plan.

39. Further, NCRIC either knowingly or due to lack of reasonable care considered a greater percentage of its Loss Reserves when calculating the Retro Premium that it was allowed to consider under the Plan. As a result, NCRIC improperly raised the incurred cost of the Plan.

40. Moreover, upon information and belief, NCRIC either knowingly or due to lack of reasonable care (a) added extra years of the Plan to its reconciliations, thereby reconciling too many years of the Plan; and/or (b) treated unclosed years as closed, thereby reconciling too few years of the Plan. In each instance, NCRIC improperly raised the incurred cost of the Plan.

41. In addition, for each Reconciliation Date, NCRIC performed the reconciliation incorrectly, in part as set forth in Paragraphs 49, 50, 53 and 54, below. As a result, the amount of Additional or Return Premium calculated by NCRIC in each reconciliation was incorrect.

42. Because Medical Center trusted and relied on NCRIC to administer the Plan, to perform reconciliations properly and honestly, and to accurately calculate all premiums, Medical Center was unaware that, for each reconciliation NCRIC performed, the amount of Additional or Return Premium calculated by NCRIC was incorrect. As a result, after each reconciliation

NCRIC performed, Medical Center was unable to demand the correct amount it was owed by, or pay the correct amount it owed to, NCRIC.

43. Upon information and belief, at all times relevant to this action, NCRIC knew of Medical Center's financial situation and reasonably should have known that Medical Center would have demanded payment of any Return Premium due under the Plan.

Amendments to and Renewals of the Plan

1996 Amendments and Renewal

44. In January 1996, Medical Center faced a severe financial crisis. At this time, if Medical Center lost Attending Faculty or patients, it risked becoming insolvent.

45. At about this time, some members of the Attending Faculty moved their practices to nearby Virginia or Maryland, where MMLI premiums were lower; other Attending Faculty threatened to move unless the discount on MMLI premiums increased. Increasing the discount on MMLI premiums for Attending Faculty was crucial to retaining its associated physicians.

46. In January 1996, Medical Center and NCRIC agreed in correspondence, attached hereto as Exhibit 2, to amend to the Plan. This amendment increased the discount for Attending Faculty to what amounted to 30% off of the standard MMLI premium. This amendment was included in all future versions of the retro formula, which were drafted by NCRIC; one such version is shown at pages 3 through 6 of Exhibit 4, attached hereto. The amendment went into effect in January 1996. It applied only prospectively, to Discount Premium paid after that date. It did not apply to Deposit Premium already collected by NCRIC.

47. This new 30% discount for the Attending Faculty meant that, beginning in January 1996, NCRIC would receive less Deposit Premium. The Plan was subsequently amended to

reflect this reduction in Discount Premium. The amendment, attached hereto as Exhibit 3, was drafted by NCRIC and went into effect in January 1996. Like the 30% discount, this amendment applied only prospectively, to the years of the Plan where NCRIC received less Deposit Premium due to the new, larger discount. The amendment did not apply to past years, for which NCRIC had received more Deposit Premium, due to the old, smaller discount.

48. It later was determined that the amendment described in the previous Paragraph did not accurately reflect the reduction in Deposit Premium resulting from the 30% discount. The amendment was corrected to accurately reflect the Deposit Premium resulting from the new discount. All future versions of the retro formula, which were drafted by NCRIC, listed this corrected Deposit Premium; one such version appears at pages 3 through 6 of Exhibit 4.

49. Although NCRIC agreed to correct the amended Deposit Premium, it knew that Medical Center trusted and relied on it as described above, and therefore, it knew that Medical Center would not be aware if the corrected Deposit Premium was not applied. NCRIC did not apply the corrected Deposit Premium in any reconciliations of the Plan.

50. As a result of NCRIC's refusal to apply the corrected Deposit Premium, each time it performed a reconciliation and notified Medical Center that Additional or Return Premium was due, that amount was incorrect. Further, after each reconciliation, due to Medical Center's trust and reliance on NCRIC as described above, Medical Center was unaware of NCRIC's misrepresentation and/or miscalculation. Accordingly, Medical Center was unable to demand the correct amount it was owed by, or pay the correct amount it owed to, NCRIC.

51. The Plan was initially set to expire in September 1996, at which time NCRIC had not performed any reconciliations under the Plan.

52. In 1996, the parties agreed to amend the Plan to reduce the Minimum Premium for all years of the Plan. Since no reconciliations had been performed yet, the new Minimum Premium was in effect for all reconciliations under the Plan. This amendment was included in all future versions of the retro formula, which were drafted by NCRIC; one such version is shown at pages 3 through 6 of Exhibit 4, attached hereto.

53. Although NCRIC agreed to lower the Minimum Premium, NCRIC knew that Medical Center trusted and relied on NCRIC's representations as stated above, and would not be aware if the new Minimum Premium was not applied. NCRIC did not apply the new Minimum Premium to all years of the Plan in any reconciliations of the Plan.

54. As a result of NCRIC's refusal to apply the new Minimum Premium, each time it performed a reconciliation and notified Medical Center that Additional or Return Premium was due, that amount was incorrect. Further, after each reconciliation, due to Medical Center's trust and reliance on NCRIC as described above, Medical Center was unaware of NCRIC's misrepresentation and/or miscalculation. Accordingly, Medical Center was unable to demand the correct amount it was owed by, or pay the correct amount it owed to, NCRIC.

55. On information and belief, the Plan as amended was renewed by the parties through September 1, 1997.

January 1998 Renewal

56. By late 1997, Medical Center was in the midst of a financial crisis. It was engaged in litigation with the Bank of Tokyo-Mitsubishi, Ltd. over the letter of credit upon which Medical Center relied for operating funds. At this time, Medical Center was in desperate need of such

funds, and needed to renew the Plan to ensure that it did not lose Attending Faculty, the patients they referred, and the resulting income.

57. NCRIC was aware of Medical Center's financial crisis. After the fall 1997 reconciliation NCRIC presented Medical Center with a bill for $1.7 million in Additional Premium, along with an ultimatum: pay up immediately or the Plan would not be renewed. This bill was miscalculated to grossly overstate the amount of Additional Premium due.

58. Upon information and belief, NCRIC knew or should have known that this bill was incorrect, and that due to its trust and reliance on NCRIC, Medical Center would not discover that it had been billed in error. Upon information and belief, NCRIC intended to take advantage of Medical Center's trust and reliance, and its difficult financial situation, in violation of the Plan, in order to obtain security for future Additional Premium that might become due.

59. Medical Center had no reasonable alternative but to pay NCRIC because there was no time to find other, discounted MMLI for the Attending Faculty before the Plan's renewal date. If Medical Center did not agree to pay immediately, the Plan would end and the Attending Faculty's MMLI premiums would skyrocket. Termination of the Plan would cause a large percentage of Medical Center's Attending Faculty to transfer to competing hospitals. As a result of having fewer Attending Faculty and patients, Medical Center would lose significant revenue.

60. Medical Center could not afford to pay $1.7 million, but agreed to pay $1 million. Medical Center made these payments in four installments between January and March of 1998.

61. In January 1998, the Plan was renewed again for one year, effective September 1997. This amendment, attached hereto as Exhibit 4, was drafted by NCRIC.

62. Prior to NCRIC's wrongful demand for payment of $1.7 million, Medical Center had just enough cash on hand to cover its operating expenses. As a direct result of overpaying NCRIC, in early 1998 Medical Center exhausted its cash on hand and became insolvent.

63. In February 1998, Medical Center filed for bankruptcy, and remained in bankruptcy until early 1999. During this time, Medical Center incurred additional expenses as a result of its bankruptcy, including several hundred thousand dollars per month in legal fees.

September 1998 Renewal

64. In the summer of 1998, as a result of NCRIC's wrongful demand for payment, Medical Center determined that it could no longer afford to participate in the Plan. Medical Center began to search for low-cost MMLI for the Attending Faculty. Medical Center expected that, by finding lower-cost MMLI, it could retain its current Attending Faculty and attract new physicians, thereby increasing its revenues and improving its financial situation.

65. In about August 1998, Medical Center received a proposal from Medical Inter-Insurance Exchange ("MIIX"), a highly-rated national insurance company, to provide MMLI for the Attending Faculty. The premium for MIIX's standard OB/GYN MMLI policy was lower than the premium for NCRIC's standard OB/GYN MMLI policy as discounted by the Plan.

66. The MIIX proposal was a better deal than the Plan for members of the Attending Faculty because, unlike NCRIC, MIIX guaranteed that it would not raise its premiums for two years. The MIIX proposal also was better for Medical Center because MIIX did not require that Medical Center accept liability for any additional premium.

67. In about August 1998, Medical Center notified the Attending Faculty of the MIIX proposal. Soon thereafter, NCRIC became aware of the MIIX proposal.

68. Upon hearing of the MIIX proposal, NCRIC initiated a disinformation campaign to kill the proposal by making untrue statements about Medical Center, its Board of Directors, MIIX, and the MIIX proposal.

69. In late August of 1998, NCRIC called a meeting of the Attending Faculty. At this meeting, representatives of NCRIC made false and malicious statements, including but not limited to the following: (1) that MIIX would not remain in the District of Columbia insurance market; (2) that MIIX would not stand by its guarantee not to raise premiums for two years; (3) that MIIX was an unreliable insurance company; (4) that MIIX planned to raise premiums once it cornered the District of Columbia MMLI market; (5) that the MIIX proposal was cronyism which would benefit members of the Medical Center Board of Directors rather than the Attending Faculty; (6) that Medical Center had lied to the Attending Faculty by stating that it could not afford to continue the Plan; and (7) that lawyers with whom NCRIC contracted to defend physicians against medical malpractice claims would not work with MIIX.

70. At this meeting, NCRIC's representatives also urged members of the Attending Faculty to disassociate themselves from Medical Center if the Plan was not renewed.

71. In a direct and foreseeable response to NCRIC's campaign to kill the MIIX deal, including the statements set forth in Paragraphs 69 and 70, approximately 20-30% of Attending Faculty members informed Medical Center that they would not purchase MMLI from MIIX. Many members of the Attending Faculty also threatened to cease their association with Medical Center if the Plan was not renewed. Among those who threatened to leave were several groups of physicians which admitted a large volume of patients to Medical Center.

72. At about this time, upon information and belief, NCRIC also presented Medical Center with a bill, demanding immediate payment for approximately $1 million in Additional Premium for the fall 1998 reconciliation. This bill grossly miscalculated and overstated the amount of Additional Premium due under the Plan.

73. Upon information and belief, NCRIC knew or should have known that this bill was incorrect, and that due to its trust and reliance, Medical Center would not discover that it had been billed in error. Upon information and belief, NCRIC overbilled Medical Center for Additional Premium, in violation of the Plan, in a wrongful attempt to gain leverage over Medical Center and force it to renew the Plan.

74. As a direct and foreseeable result of the foregoing, Medical Center had no reasonable alternative but to reject the MIIX offer and renew the NCRIC Plan. Medical Center was forced to accept liability for potential Additional Premium for the period beginning September 1, 1998, which it would not otherwise have accepted.

75. In about October 1998, the Plan was renewed for one year, through September 1999. This amendment, attached hereto as Exhibit 5, was drafted by NCRIC. Shortly thereafter, upon information and belief, NCRIC, its goal accomplished, dropped its demand that Medical Center pay an additional $1 million.

Medical Entity Policy

76. During late 1998, Medical Center decided to purchase a MMLI policy for the Columbia Physicians Group ("CPG"), physicians who practiced in Medical Center's ambulatory clinic. Although most CPG physicians were covered by their own individual MMLI policies at all times, Medical Center offered them additional MMLI when they worked in the clinic.

16d-000282

77. Medical Center purchased the CPG Policy from NCRIC (the "Policy"). This one-year policy, effective December 1, 1998, was renewed on December 1, 1999.

78. Medical Center complied with all of its obligations under the Policy.

1999 Renewals

79. In 1999, Medical Center searched for, but did not locate, lower-cost MMLI for its Attending Faculty. Accordingly, the Plan was renewed for one year, effective September 1999. This amendment, attached hereto as Exhibit 6, was drafted by NCRIC.

Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

80. After the 2000 renewal, Medical Center formed a committee of the Attending Faculty to search for lower-cost MMLI. The committee was composed of unbiased and well-respected members of the Attending Faculty, including at least one member of NCRIC's Board of Directors. The committee notified NCRIC of its goal.

81. This committee obtained a proposal from The Medical Protective Company ("MedPro"), a well-respected national insurance company. The premium for MedPro's standard OB/GYN MMLI policy was below the discounted price of NCRIC's standard OB/GYN MMLI policy. Morever, under the MedPro proposal Medical Center would not be required to accept liability for any additional premium.

82. The committee informed Medical Center's Board of Directors that it had found an acceptable substitute MMLI policy for the Attending Faculty.

83. At about this time, Medical Center requested that NCRIC propose a discount program based on actual rather than incurred losses. NCRIC refused to make such a proposal unless Medical Center first settled the existing Plan.

16d-000283

84. Negotiations to settle the Plan commenced and continued throughout the summer of 2000, until the parties reached an agreement to settle. The settlement was contingent on Medical Center's Board of Directors approving the Plan.

85. On June 27, 2000, Medical Center's Board of Directors decline to approve the settlement plan. Medical Center informed NCRIC of this development immediately.

86. On June 30, 2000 in retaliation for the Board's refusal to agree to the settlement, NCRIC, without justification, canceled the Policy. After initially providing Medical Center with insufficient notice in violation of District of Columbia insurance regulations, NCRIC notified Medical Center that cancellation of the Policy was effective on September 1, 2000. NCRIC also informed Medical Center that the Plan would be terminated on that date.

87. Despite the foregoing, throughout the summer Medical Center continued to negotiate in good faith towards a settlement of the existing Plan that would meet the approval of its Board of Directors. The parties reached another settlement in August 2000.

88. NCRIC, however, reneged on the settlement in late August 2000.

89. In further retaliation against Medical Center, on or about the effective date of the Policy's cancellation, representatives of NCRIC made untrue and malicious statements regarding Medical Center and the ambulatory clinic to members of the Attending Faculty and CPG. These statements included but were not limited to: (1) that the Policy had expired; (2) that CPG physicians who also were members of the Attending Faculty were not covered by NCRIC's MMLI policy while practicing at the clinic; (3) that Medical Center's self-insurance trust was insufficiently funded to insure the CPG; (4) that Medical Center's ambulatory clinic was a dangerous place to work.

16d-000284

90. These statements caused a panic among CPG physicians. As a result, some CPG physicians did not show up for work; others quit the clinic altogether. Shifts went uncovered, and the few physicians who were willing to work at the clinic worked extra shifts. Due to the lack of doctors, some clinic patients who required care were turned away.

91. As a result of the foregoing, Medical Center's reputation in the community, and among its patients, staff and associated physicians, was harmed. Staff members began to circulate rumors that Medical Center, which recently had improved its fiscal position, would close. Physicians ceased their association with Medical Center and/or CPG; staff members quit.

92. In further retaliation against Medical Center, NCRIC, without justification, informed CPG physicians who held individual NCRIC MMLI policies that they were not covered by these policies when practicing at Medical Center's ambulatory clinic. Upon information and belief, there was no proper underwriting justification for this exclusion.

93. Due to NCRIC's wrongful refusal to provide MMLI coverage for individual physicians practicing at Medical Center's ambulatory clinic, many physicians quit the clinic. As a result, Medical Center has had, and continues to have, difficulty staffing the clinic.

94. As a result of the termination of the Plan, upon information and belief, NCRIC and its representatives urged members of the Attending Faculty to move their practices from Medical Center to the competitor hospitals that had in place discount programs with NCRIC.

95. As a result of the termination of the Plan, the Attending Faculty were required to decide, on short notice, whether to: (1) remain with NCRIC and move their practices to a competitor hospital with a discount program, as NCRIC urged; (2) switch to Med Pro, the new MMLI provider for Medical Center; or (3) remain at Medical Center and pay the undiscounted

16d-000285

NCRIC MMLI premium. But for Attending Faculty for whom NCRIC was presently defending MMLI claims, this was no choice at all: for all practical purposes, they could not leave NCRIC.

96. Of those faculty who could choose to leave, about 12-17 physicians -- at least one-fourth of the active membership of the Attending Faculty -- left Medical Center. Among those leaving were some physicians who admitted a large volume of patients to Medical Center.

97. The departure of these Attending Faculty had an immediate effect on Medical Center's bottom line. The hospital, which was about to break even for the first time in years, lost revenue and remained unprofitable.

98. The hospital's poor financial condition had an adverse effect on morale at Medical Center. Rumors circulated among the staff that Medical Center would close. More physicians ceased their association with Medical Center; more staff members and nurses quit. Members of the administration, including senior executives, left their posts. Many of the remaining physicians spoke openly about leaving, thereby causing morale to deteriorate further.

99. Word of Medical Center's poor financial condition, and rumors of its imminent demise, reached the greater community. Local media repeatedly contacted members of the Medical Center's Board of Directors to ask when Medical Center would close its doors.

100. As a result of Medical Center's difficult fiscal situation, which continues, and the public rumors that it will close, Medical Center has had and continues to have difficulty recruiting the new physicians and staff it needs to improve its financial situation.

101. On September 1, 2000, NCRIC informed Medical Center that the current amount of Additional Premium due as a result of the fall 2000 reconciliation was $1,285,525.00. This

reconciliation was, upon information and belief, knowingly grossly miscalculated and overstated by NCRIC in retaliation for Medical Center's refusal to settle the Plan.

102. In fact, no Additional Premium was due under the Plan, and Medical Center was due Return Premium. Medical Center was not immediately aware of NCRIC's deception, and did not immediately contest the amount of Additional Premium stated by NCRIC, or demand payment of the amount of Return Premium that actually was due.

103. On October 1, 2000, NCRIC presented Medical Center with a bill for $1,285,525.00. Upon information and belief, this amount knowingly stated that Additional Premium was due when in fact Return Premium was due.

COUNT ONE

Breach of Contract

104. Medical Center incorporates by reference the allegations in paragraphs 1 through 103, as if set forth fully herein.

105. The amended and renewed Plan, as described above, constitutes a valid and binding contract between Medical Center and NCRIC.

106. Medical Center has performed each obligation and condition of the Plan, except those which it was prevented from performing or those which it was excused from performing or those which were waived by NCRIC's misconduct.

107. Under the terms of the Plan, NCRIC was required to perform certain obligations, including those obligations set forth in Paragraphs 31 through 36, above.

108. NCRIC materially breached the Plan by failing to perform its obligations under the Plan, including those breaches described in Paragraphs 37 through 42, above.

16d-000287

109. As a result of NCRIC's failure to perform its obligations under the Plan, NCRIC caused Medical Center damages including the overpayment of Additional Premium, thereby causing Medical Center to become insolvent.

110. As a direct and proximate result of the foregoing, Medical Center has been injured in its business and property.

COUNT TWO

Breach of Implied Covenant of Good Faith and Fair Dealing

111. Medical Center incorporates by reference the allegations in paragraphs 1 through 110, as if set forth fully herein.

112. The amended and renewed Plan, as described above, constitutes a valid and binding contract between Medical Center and NCRIC.

113. Medical Center has performed each obligation and condition of the Plan, except those which it was prevented from performing or those which it was excused from performing or those which were waived by NCRIC's misconduct.

114. By law, the Plan includes an implied duty of good faith and fair dealing.

115. NCRIC has breach the Plan by acting unfairly and in bad faith, including acting as described in Paragraphs 37 through 42, 49, 50, 53, 54, 57, 58, 72 through 74, 101, 102, and 104 above.

116. As a result of NCRIC's failure to perform its obligations under the Plan, NCRIC caused Medical Center damages including the overpayment of Additional Premium, thereby causing Medical Center to become insolvent.

16d-000288

117. As a direct and proximate result of the foregoing, Medical Center has been injured in its business and property.

COUNT THREE

Breach of Fiduciary Duty

118. Medical Center incorporates by reference the allegations made in paragraphs 1 through 117, as if set forth fully herein.

119. At all times mentioned herein, a fiduciary relationship existed between NCRIC and Medical Center by virtue of (a) NCRIC's responsibility, stated in the Plan, to perform all bookkeeping on behalf of Medical Center under the Plan; (b) Medical Center's trust and reliance on NCRIC to administer the Plan, of which NCRIC was fully aware; (c) Medical Center's reliance on NCRIC to properly and honestly perform reconciliations and accurately calculate Additional or Return Premium, of which NCRIC was fully aware; and (d) Medical Center's dependence on NCRIC for certain information necessary to perform retro calculations under the Plan, of which NCRIC was fully aware.

120. NCRIC has, by its actions alleged above, including those actions set forth in Paragraphs 37 through 42, 49, 50, 53, 54, 57, 58, 72 through 74, 101, 102 and 104, breached its fiduciary duties to Medical Center.

121. NCRIC breached its fiduciary duties to Medical Center, upon information and belief, with the intent to defraud and/or deceive Medical Center.

122. As a direct and proximate result of the foregoing, Medical Center has been injured in its business and property.

COUNT FOUR

Tortious Interference with Business Relations

123. Medical Center incorporates the allegations made in paragraphs 1 through 122 as if fully set forth herein.

124. During the period up to and including August 2000, Medical Center had valid business relationships with certain physicians who were associated with Medical Center and an expectancy that such physicians would refer patients to Medical Center.

125. NCRIC knew about these valid business relationships and expectancy.

126. NCRIC intentionally and maliciously interfered with these relationships and expectancy (a) by or through its agents, making wrongful and/or untrue, unprivileged statements, including those statements set forth in Paragraphs 69, 70 and 89, regarding Medical Center, its Board of Directors, and MIIX; and (b) by urging said physicians, wrongfully and without privilege, to move their practices from Medical Center to its competitor.

127. As a direct and proximate result of NCRIC's wrongful interference, a number of its physicians terminated their association with Medical Center, and ceased referring patients to Medical Center.

128. NCRIC has been and is being injured by NCRIC's malfeasance due to loss of revenue resulting from loss of patient referrals.

COUNT FIVE

Tortious Interference with Prospective Business Advantage

129. Medical Center incorporates the allegations made in paragraphs 1 through 128 as if fully set forth herein.

16d-000290

130. Medical Center had a reasonable business expectancy in the patients referred by its associated physicians, and reasonably expected to continue the association with its physicians and the resulting patient referrals.

131. NCRIC was aware of this business expectancy, as described above.

132. Despite its knowledge, NCRIC deliberately and intentionally or recklessly acted to interfere with and prevent Medical Center from realizing the aforementioned business expectancies by engaging in the tortious and wrongful conduct described above.

133. NCRIC's foregoing actions constitute an intentional and tortious interference with Medical Center's reasonable business expectancies.

134. As a result of their foregoing actions, NCRIC has proximately caused Medical Center damages in the form of substantial economic loss, including loss of revenue resulting from loss of Attending Faculty and patient referrals.

COUNT SIX

Negligence

135. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 134, as if fully set forth herein.

136. At all times relevant to this claim, NCRIC had a duty of care in relation to Medical Center, by virtue of its contract with Medical Center and its relationship with Medical Center, including its position as bookkeeper for and administrator of the Plan.

137. NCRIC breached its duty of care and was negligent by miscalculating the amounts of Additional or Return Premium due, as described above.

16d-000291

138. NCRIC 's negligence proximately caused Medical Center damage by causing it to overpay Additional Premium and fail to demand Return Premium it was due, and further, by causing Medical Center to become insolvent.

COUNT SEVEN

Actual and/or Constructive Fraud

139. Medical Center incorporates by reference paragraphs 1 through 138, as though fully set forth herein.

140. As set forth above, NCRIC was in a fiduciary and/or confidential position with regard to Medical Center, due to NCRIC's role as administrator of the Plan and its duty to perform all bookkeeping and reconciliations under the Plan.

141. Due to this fiduciary and/or confidential relationship between NCRIC and Medical Center, as set forth above, Medical Center trusted NCRIC's administration of the Plan and relied on NCRIC to correctly and honestly perform each reconciliation and accurately calculate any Additional or Return Premium due.

142. As set forth above, NCRIC and/or its agents made false representations to Medical Center, including that (1) the Loss Reserves under the Plan were maintained in accordance with the industry standard and (2) that after the performance of each reconciliation, a certain amount of Additional or Return Premium was due. NCRIC also concealed from plaintiffs material facts which amounted to a misrepresentation by refusing to provide information concerning Loss Reserves as provided for by the Plan, among other things.

143. The false representations and/or concealments set forth above were material with regard to the amount of Additional or Return Premium due under the Plan. If not for such false

16d-000292

representations and/or concealments, Medical Center would have paid the correct amount of Additional Premium and/or would have demanded the correct amount of Return Premium.

144. NCRIC intended that Medical Center rely upon its false representations and/or concealments, and pay NCRIC for amounts that it was not properly owed under the Plan.

145. As set forth above, Medical Center reasonably relied upon the false representations and/or concealments made by NCRIC, including by paying incorrect amounts of premium. As set forth above, Medical Center's reliance was reasonable, and known to NCRIC, because NCRIC was required to perform all bookkeeping under the Plan and because NCRIC refused to provide Medical Center access to data necessary to independently verify NCRIC's bookkeeping.

146. Medical Center has been directly and proximately damaged by NCRIC's false representations and concealments by, among other things, overpaying premium, which in turn proximately and directly led Medical Center to become insolvent.

COUNT EIGHT

Negligent Misrepresentation

147. Medical Center incorporates by reference paragraphs 1 through 146, as though fully set forth herein.

148. As set forth above, NCRIC and/or its agents made false representations to Medical Center, including that: (1) the Loss Reserves under the Plan were maintained in accordance with the industry standard and (2) after the performance of each reconciliation, a certain amount of Additional or Return Premium was due. Moreover, as set forth above in Paragraphs 37 and 38, NCRIC concealed from plaintiffs material facts that amounted to a misrepresentation.

16d-000293

149. NCRIC negligently made these false representations because it failed to ensure that it maintain Loss Reserves in accord with the industry standard, among other things.

150. The false representations and/or concealments set forth above were material with regard to the amount of Additional or Return Premium due under the Plan. If not for such false representations and/or concealments, Medical Center would have paid the correct amount of Additional Premium and/or would have demanded the correct amount of Return Premium.

151. NCRIC intended that Medical Center rely upon its false representations and/or concealments, and pay NCRIC for amounts that it was not properly owed under the Plan.

152. As set forth above, Medical Center reasonably relied upon the false representations and/or concealments made by NCRIC, including by paying incorrect amounts of premium. As set forth above, Medical Center's reliance was reasonable, and known to NCRIC, because NCRIC was required to perform all bookkeeping under the Plan and because NCRIC refused to provide Medical Center access to data necessary to independently verify NCRIC's bookkeeping.

153. Medical Center has been directly and proximately damaged by NCRIC's negligent actions by, among other things, overpaying premium, which in turn proximately and directly led Medical Center to become insolvent.

COUNT NINE

Defamation and Libel

154. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 153, as if fully set forth herein.

155. NCRIC and its agents made numerous false and defamatory statements including those statements set forth in Paragraphs 69 and 89.

156. The foregoing false and defamatory statements were published to physicians who were associated with Medical Center.

157. NCRIC's foregoing false and defamatory statements about Medical Center were made upon information and belief with knowledge of their falsity or reckless indifference or negligence as to their truth or falsity.

158. As a result of its foregoing false and defamatory statements, NCRIC has directly and proximately caused Medical Center damages in the form of harm to its reputation and substantial economic loss.

COUNT TEN

Trade Libel/Commercial Disparagement/Injurious Falsehood

159. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 158, as if fully set forth herein.

160. NCRIC made and false and misleading representations of fact which disparaged Medical Center's performance as a hospital. These statements included those statements set forth in Paragraphs 70 and 90.

161. NCRIC made the foregoing false representations for the purpose of disparaging the quality of Medical Center's services as a health care facility.

162. NCRIC made the foregoing false representations intentionally and with full knowledge that these statements would cast doubt upon the quality of Medical Center's services as a health care facility.

163. As a result of the foregoing false representations, NCRIC has proximately caused Medical Center damages in the form of substantial economic loss.

16d-000295

164. NCRIC's false representations of fact regarding the quality of Medical Center's services as a health care facility violate the common law of commercial disparagement and trade libel and injurious falsehood.

COUNT ELEVEN

Conversion

165. Medical Center adopts and incorporates by reference the allegations made in paragraphs 1 through 164, as if fully set forth herein.

166. Medical Center made payments to NCRIC, described above in Paragraph 60.

167. If and to the extent that such payments were for Additional Premium actually owed by Medical Center, NCRIC interfered with Medical Center's property to the exclusion and in defiance of Medical Center's rights to the property by not returning Medical Center's payments when and to the extent that NCRIC subsequently owed Medical Center Return Premium.

168. As a result of the conversion of its property by NCRIC, Medical Center has been injured in an amount to be proved at trial.

Relief Requested

WHEREFORE, Medical Center asks that the Court award Medical Center its actual damages; punitive damages, as a result of NCRIC's malfeasance, fraud and bad faith; costs, including reasonable attorney's fees; and such further relief as the Court may deem just and equitable.

Demand for Jury Trial

Medical Center requests a trial by jury.

Dated: January 5, 2001.

Respectfully submitted,

Mark C. Hansen
D.C. Bar No. 425930
Steven F. Benz
D.C. Bar No. 428026
Joseph K. Leahy
D.C. Bar No. 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-000297

EXHIBIT 1

RETROSPECTIVE RATING PLAN AGREEMENT

This Retrospective Rating Plan Agreement ("Agreement") is made and entered into effective the first day of September, 1993, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

WHEREAS, NCRIC offers medical professional liability insurance to physicians duly licensed as such by the District of Columbia Government ("physicians") on a claims-made basis, for which an annual premium is assessed and paid; and

WHEREAS, Medical Center operates and conducts a not-for-profit hospital in the District of Columbia which has on its medical staff duly licensed physicians who are insured with NCRIC; and

WHEREAS, certain of these physicians desire to secure a reduction or discount on their insurance premiums on a preferred risk basis through the establishment of and participation in an Attending Faculty Program ("AFP"), which shall be designed to reduce the risks involved in the delivery of medical care to patients as set forth in the Attending Faculty Program Agreement entered into between the physicians and Medical Center; and

WHEREAS, NCRIC is willing to provide such a reduction or discount on said insurance premiums to those physicians who agree to participate in the AFP on condition that Medical Center agrees to be financially responsible for certain premium amounts as hereinafter provided; and

WHEREAS, as a mechanism for reducing its own exposure for professional liability, Medical Center is willing to assume such responsibility;

NOW, THEREFORE, the parties hereto agree as follows:

1. NCRIC has established a three-year Retrospective Rating Plan, a copy of which is attached hereto as Exhibit A (the "Plan") and incorporated herein by reference. NCRIC makes available the benefits of the Plan to its physician insureds who are parties to the AFP Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and who are issued a Retrospective Rating Plan Endorsement, a copy of which is attached hereto as Exhibit C. With the exception of the Plan Participants

listed on Exhibit B, attached hereto and incorporated herein by this reference, the effective date of any Plan Participant's participation or termination of participation in the Plan shall be the date on which NCRIC receives notice thereof from Medical Center.

2. NCRIC agrees to issue Retrospective Rating Plan Endorsements to its physician insureds who otherwise qualify in accordance with the standard underwriting practices of NCRIC and who are members of the AFP.

3. As an inducement to NCRIC to cause it to issue the Retrospective Rating Plan Endorsements to its physician insureds who are members of the AFP, Medical Center agrees to be solely responsible for, and to pay, any Additional Premium due in accordance with the terms of the Plan.

4. Medical Center shall correspondingly be entitled to receive Return Premium, if any, and investment return thereon, if any, in accordance with the terms of the Plan.

5. Notice of any Additional Premium due from Medical Center, or any Return Premium due to Medical Center, shall be provided to Medical Center within 60 days following the close of the Reconciliation Period, and payment due, whether to Medical Center or from Medical Center, shall be due and payable within 30 days of receipt of said notice.

6. Medical Center's obligations hereunder are primary, and not secondary, and NCRIC shall have no right to seek recourse or payment of any Additional Premium due pursuant to the Plan from any Plan Participant. In the event Medical Center fails to make any payment for which it is responsible hereunder when due, the Company shall have the right to recover reasonable attorneys fees incurred in recovering such payment from Medical Center.

7. NCRIC hereby represents and warrants that any claims made against Plan Participants will be processed, including the setting of loss reserves, in the normal and ordinary course of the Company's business, without consideration of the insured's status as a Plan Participant.

8. Medical Center hereby represents and warrants that it has made, and will continue to make, adequate provision for the contingent liabilities it has assumed hereunder.

9. Medical Center will provide NCRIC with the following:

a. a list of all Plan Participants, and any additions or deletions thereto;

16d-000300

b. copies of Medical Center's Agreement between Medical Center and Participants in the Attending Faculty Program who are Insured with NCRIC, and amendments, if any, as made from time to time, with each Plan Participant, which contract shall include an authorization by the Plan Participant in form and substance satisfactory to NCRIC to release to Medical Center the information set forth in Paragraph 10(a)(iii) below;

c. copies of, and any amendments to, the AFP Agreement; and

d. a review and summary of risk management activities undertaken pursuant to the Attending Faculty Program Agreement.

10. NCRIC and a Medical Center representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

a. At such meetings, NCRIC will provide Medical Center with the following:

i. for purposes of cross-reference and confirmation of participation or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

ii. the aggregate amount of losses reserved under the Plan, and the verification thereof by NCRIC's consulting actuary;

iii. with respect to any medical incident or professional liability claim reported to NCRIC by a Plan Participant under the Plan (hereinafter, "incident"), and subject to a Plan Participant's authorization to release same to Medical Center, the name of the physician, the date of the incident, the date said incident was reported to NCRIC, any complaint or suit filed in a court of law with respect to such claim; and any payments made on behalf of said Plan Participant by NCRIC; and

iv. a review of Medical Center risk management activities.

b. Annually, at such meeting taking place in the first quarter of each year, Medical Center will provide NORIC with the statement of Medical Center's consulting actuary that adequate reserves have been made for the contingent liabilities Medical Center has assumed under this Agreement.

11. This Agreement shall remain in full force and effect as to any renewal, extension or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, or new issuances.

12. This Agreement shall remain in full force and effect until all claims applicable to the final Experience Period of the Plan are finally closed or upon payment of maximum premium amount required by paragraph 3 hereof applicable to the final Experience Period, whichever occurs first. For purposes of this Paragraph 12, any claim "closed" without payment made to, and a release having been signed by, the claimant shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the retrospective adjustment according to the Plan.

13. For purposes of clarification, and not to vary, alter or amend the terms hereof or of the Plan, attached hereto as Exhibit B and incorporated herein by reference is an example of the operation of the Plan.

14. All bookkeeping and record keeping shall be handled by NORIC.

15. Upon ninety (90) days' written notice prior to the end of any Experience Period, to be effective after the last day of such Experience Period, the Plan may be discontinued by either party for cause, provided that such discontinuance shall not affect any obligation or liability accrued prior to the date of such discontinuance. For purposes of this Paragraph 15, "cause" shall mean any material breach of the terms of this Agreement, or any change in any applicable federal, state or local law which would render any of the terms of this Agreement unlawful.

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

16d-000302

If to NCRIC:

Mr. David A. Little
President
National Capital Underwriters, Inc.
Attorney-in-fact for
National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, D.C. 20007

If to Medical Center:

Mr. G. Patrick Kane, FACHE
President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, N.W.
Washington, D.C. 20037

The date of service of any such notice shall be the date that such notice is deposited with the U.S. Postal Service or the date of personal delivery, as applicable.

17. Medical Center hereby warrants and represents that it has made, and agrees to provide NCRIC with its auditor's or actuary's annual statement reflecting, adequate provision for the contingent liabilities it has assumed hereunder.

18. This Agreement constitutes the entire agreement between the parties and no modifications, amendments or additions thereto shall be binding unless in writing and executed by all the parties hereto.

19. This Agreement shall not be assignable without the prior written consent of the parties hereto.

20. The agreements, terms and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, if any.

21. This Agreement is made and executed in the District of Columbia, and shall be governed by the law of the District of Columbia.

corporate names to be subscribed hereto by their duly authorized officers or attorneys-in-fact, and their corporate seal to be hereunto affixed effective the day and year first above written.

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

BY: _____
David K. Little, President

(Corporate Seal)

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST:

BY: _____

(Corporate Seal)

List of Exhibits

A Retrospective Rating Plan

B Attending Faculty Program Agreement

C Retrospective Rating Plan Endorsement

D List of Initial Plan Participants

E Example of operation of the Plan

EXHIBIT A

THREE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center dated September 1, 1993, (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be three years, beginning on September 1, 1993 and ending on September 1, 1996. The Plan shall consist of three separate and distinct Experience Periods of:

Beginning 12:01 A.M. on	and Ending 12:01 A.M. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19% of the otherwise applicable premium for such coverage. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return premium (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =

{[[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor} + Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedule:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1996
September 1, 1994 to September 1, 1995	September 1, 1997
September 1, 1994 to September 1, 1996	September 1, 1998

Additional reconciliations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall not be deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the Reconciliation Date, Reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"Basic Premium" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by

multiplying the Subject Premium by the insurance charge factor set forth below:

Three(3) Year Subject Premium	Insurance Charge Factor
$ 1,539,000 - $ 2,565,999	20.7%
$ 2,566,000 - $ 3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"Deposit Premium" means the Subject Premium multiplied by eighty-one percent (81%). This percentage shall remain unchanged for the three year term of the Plan.

"Development Factor" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and shall remain unchanged for the three year term of the Plan and all reconciliations applicable thereto:

Year 1 Reconciliation	-	88.5%
Year 2 Reconciliation	-	87.5%
Year 3 Reconciliation	-	90.5%
Year 4 Reconciliation	-	96.0%
Year 5 Reconciliation	-	100.0%
All Subsequent Reconciliations	-	100.0%

"Discount Factor" means a factor of 86.33%. This factor shall remain unchanged for the three-year term of the plan.

"Experience Period" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the pro-rated period involved shall be deemed to be an Experience Period.

"Insurance Policy" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"Losses" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"Loss Limitation" - for the purpose of application of the

retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (i) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

'Loss Reserves' means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

'Maximum Premium' means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (115%) of the Subject Premium amount.

'Minimum Premium' means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (75%) of the Subject Premium amount.

'Paid Losses' means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid Losses are subject to Loss Limitation, defined above.

'Plan Participants' means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the APP.

'Subject Premium' means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insureds were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall be determined by NCRIC's consulting actuary, but shall not exceed 83%, nor be less than 77%, of the undiscounted premium charged for coverage limits of $1 million each claim/$3 million aggregate.

RETROSPECTIVE RATING
PREMIUM ADJUSTMENT ENDORSEMENT

Policy Number:

Effective Date:

This endorsement forms a part of the Policy issued by the National Capital Reciprocal Insurance Company (the "Company") and takes effect as of the effective hour and date of said policy unless another effective date is stated herein.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

1. The premium for Coverage A stated in the declarations is a provisional premium and is contingent upon participation by the named insured in a retrospective rating plan. Upon the Company's receipt of notice of the termination of the participation of the named insured in the retrospective rating plan the premium for Coverage A will be adjusted to 100% of the Company's otherwise applicable premium then in effect.

2. All other premiums listed in the declarations and any additional premiums resulting from any policy endorsements are not affected as a result of the named insured's participation in a retrospective rating plan.

This endorsement shall not be binding unless countersigned by a duly authorized Company representative; provided, however, that if this endorsement takes effect as of the effective date of the policy and, at issue of said policy, forms a part thereof, countersignature on the declarations of said policy by a duly authorized Company representative shall constitute valid countersignature of this endorsement.

Countersigned by:

Authorized Company Representative

NCRIC-51
(1/93)

Please read the entire policy, including endorsements, carefully.

COLUMBIA GROUP RETRO RATING PLAN — $500,000 LIMIT
60 OB/GYN'S
$2.0 MILLION LOSSES PER YEAR

MINIMUM PREMIUM - 75% OF SUBJECT PREMIUM
MAXIMUM PREMIUM -115% OF SUBJECT PREMIUM
DEPOSIT PREMIUM - 81% OF SUBJECT PREMIUM

LOADING 17.54%

DISCOUNT FACTOR - 86.33%

	1/1/93	1/1/94	COMBINED	1/1/95	COMBINED
SUBJECT PREMIUM	$3,000,000	$3,300,000	$6,300,000	$3,630,000	$9,930,000
DEPOSIT PREMIUM	$2,430,000	$2,673,000	$5,103,000	$2,940,300	$8,043,300
MAX PREMIUM	$3,450,000	$3,795,000	$7,245,000	$4,174,500	$11,419,500
MIN PREMIUM	$2,250,000	$2,475,000	$4,725,000	$2,722,500	$7,447,500
BASIC PREMIUM	$538,200	$578,620	$1,105,020	$636,702	$1,741,722

1/1/96

LOSSES PAID	$0
LOSSES RESERVED	$2,000,000
DEVELOPMENT FACTOR	.885
DEVELOPED LOSSES	$1,770,000
DISCOUNTED LOSSES	$1,528,041
RETRO PREMIUM	$2,054,241
SUBJECT TO MIN/MAX	$2,250,000
ADJ(RET) PREMIUM	($180,000)
TOTAL PREM TO DATE	$2,250,000

1/1/97

LOSSES PAID	$1,000,000	$0	
LOSSES RESERVED	$1,000,000	$2,000,000	
DEVELOPMENT FACTOR	.875	.885	
DEVELOPED LOSSES	$1,875,000	$1,770,000	
DISCOUNTED LOSSES	$1,618,688	$1,528,041	
RETRO PREMIUM	$2,144,888	$2,106,861	$4,251,749
SUBJECT TO MIN/MAX			$4,725,000
ADJ(RET) PREMIUM			($198,000)
TOTAL PREM TO DATE			$4,725,000

1/1/98

LOSSES PAID	$1,500,000	$1,000,000		$0	
LOSSES RESERVED	$500,000	$1,000,000		$2,000,000	
DEVELOPMENT FACTOR	.905	.875		.885	
DEVELOPED LOSSES	$1,952,500	$1,875,000		$1,770,000	
DISCOUNTED LOSSES	$1,685,593	$1,618,688		$1,528,041	
RETRO PREMIUM	$2,211,793	$2,197,508		$2,164,743	$6,574,044
SUBJECT TO MIN/MAX					$7,447,500
ADJ(RET) PREMIUM					($217,800)
TOTAL PREM TO DATE					$7,447,500

1/1/99

LOSSES PAID	$3,000,000	$1,500,000	$1,000,000	
LOSSES RESERVED	$0	$500,000	$1,000,000	
DEVELOPMENT FACTOR	.960	.905	.875	
DEVELOPED LOSSES	$3,000,000	$1,952,500	$1,875,000	
DISCOUNTED LOSSES	$1,726,600	$1,685,593	$1,618,688	
RETRO PREMIUM	$2,252,800	$2,264,413	$2,255,390	$6,772,603
SUBJECT TO MIN/MAX				$7,447,500
ADD(RET) PREMIUM				$0
TOTAL PREM TO DATE				$7,447,500

1/1/00

LOSSES PAID	$2,000,000	$2,000,000	$2,000,000	
LOSSES RESERVED	$0	$0	$0	
DEVELOPMENT FACTOR	1	.960	.905	
DEVELOPED LOSSES	$2,000,000	$2,000,000	$2,000,000	
DISCOUNTED LOSSES	$1,726,600	$1,726,600	$1,726,600	
RETRO PREMIUM	$2,252,800	$2,305,420	$2,363,302	$6,921,522
SUBJECT TO MIN/MAX				$7,447,500
ADD(RET) PREMIUM				$0
TOTAL PREM TO DATE				$7,447,500

EXHIBIT 2

January 17, 1996

Stephen Fargis
Vice President
NCRIC
2170 Wisconsin Ave.
Washington, DC 20007

Dear Steve,

This letter will confirm that Columbia Hospital for Women Medical Center is obligating itself to an increase from 15 to 30 percent for participating members of the Faculty of Columbia Hospital for Women.

As we discussed, this enhanced plan will require carefully monitoring. Dr. Nabil Asterbadi is presenting his plan for monitoring to the Performance Improvement Committee of the Board of Directors on Thursday, January 18. I will forward that plan to you as soon as it is improved. Also, individual members of the faculty will have to sign new agreements reflecting their willingness to adhere to the protocols. As agreements are signed, I will forward names to you. Also as we discussed, the timing of this could present a problem with the due date of the premium notices. Please let me know as soon as possible whether the one-month delay which we discussed is feasible.

This plan will be in effect from January through September 1996, at which time we will review performance with you.

Thanks, Steve. Have a good day.

Sincerely,

Susan M. Hansen
President and CEO

EXHIBIT 3

RETROSPECTIVE RATING PLAN
AMENDMENT A.

PURPOSE

This amendment adjusts the credit as described in Exhibit A. 7. Definitions. "Deposit Premium" in the Agreement between National Capital Reciprocal Insurance Company ("NCRIC") and Medical Center.

By signature, the Agreement is changed to read as follows:

"Deposit Premium" means the Subject Premium multiplied by sixty-two percent (62%). This percentage shall remain unchanged for the remaining term of this Agreement from said forth date of January 1, 1996 and does not adjust the Agreement prior to this date.

Authorized Company Representative — Date: 1/22/96

Authorized Medical Center Representative — Date: 1/31/96

EXHIBIT 4

ADDENDUM TO
RETROSPECTIVE RATING PLAN AGREEMENT

This Addendum amends the Retrospective Rating Plan Agreement ("Agreement") and Exhibit A, attached, made and entered into effective the first day of September 1,1993 by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

This Addendum extends the Agreement and Exhibit A from September 1, 1996 to September 1, 1998. For purposes of Modifications, only language amended in the Agreement is noted below and for purposes of Plan calculations in the Agreement, a full Exhibit A, with modifications is included.

Modifications to the Agreement are amended as follows:

Page 2, Item 8:

8. Medical Center hereby represents and warrants that it has made, and will continue to make financial security to NCRIC, in accordance with permitted statutory accounting practices as prescribed under the D.C. Insurance Code, or otherwise as acceptable by the D.C. Insurance Administration, for the contingent liabilities it has assumed hereunder.

Page 3, Item 10:

10. NCRIC and a Medical Center representative will meet semi-annually to review the status of the operation of the Retrospective Rating Plan.

Page 4, Item 10.b.:

b. Annually, Medical Center will provide NCRIC with financial security in that is in accordance with permitted statutory accounting practices as prescribed under the D.C. Insurance Code, or otherwise that is acceptable by the D.C. Insurance Administration, for the contingent liabilities Medical Center has assumed under this Agreement. This amount will be adjusted accordingly to the outstanding retrospective premium due.

Page 4, Item 11:

11. This Agreement shall remain in full force and effect as to any renewal, extension, reporting endorsement or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants by NCRIC during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, reporting endorsements or new issuances. All renewals, extension, reporting endorsements or new issuances represent coverage contracts solely between NCRIC and physicians.

16d-000318

Page 4 and Page 5, Item 16

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

If to NCRIC: Mr. Ray Pate
President and CEO
National Capital Underwriters, Inc.
Attorney-in-fact for National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, DC 20007

If to Medical Center: President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, NW
Washington, DC 20037

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST: _____

BY: _____

(Corporate Seal)

R. Ray Pate, Jr.
President and CEO

ATTEST: _____

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

BY: _____

(Corporate Seal)

President and CEO

Print Name Gerald P. Beaulieu

Print Title Interim President & CEO

MODIFICATIONS TO

EXHIBIT A

FIVE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center first entered into on September 1, 1993 and added to by this plan through September 1, 1998 (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be five years, beginning on September 1, 1993 and ending on September 1, 1998. The Plan shall consist of five separate and distinct Experience Periods of:

Beginning 12:01 a.m. on	and Ending 12:01 a.m. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996
September 1, 1996	September 1, 1997
September 1, 1997	September 1, 1998

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 33% of the otherwise applicable premium for such coverage for the last three periods ending 1996, 1997 and 1998 respectively. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =
{[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor}+Basic Premium.

16d-000320

Note. The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedules:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1995
September 1, 1994 to September 1, 1995	September 1, 1996
September 1, 1995 to September 1, 1996	September 1, 1997
September 1, 1996 to September 1, 1997	September 1, 1998
September 1, 1997 to September 1, 1998	September 1, 1999

Reconciliation calculations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall be not deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the end of an Experience Period, reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

16d-000321

7. Definitions. As used herein, the following terms shall have the meanings indicated.

"**Basic Premium**" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by multiplying the Subject Premium by the insurance charge factor set forth below:

Five (5) Year Subject Premium	Insurance Charge Factor
$1,539,000 - $2,565,999	20.7%
$2,566,000 - $3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"**Deposit Premium**" means the Subject Premium multiplied by sixty-seven (67%). This percentage shall remain unchanged for the three year term of the Plan, unless both parties agree to a change and amend this Agreement hereunder.

"**Development Factor**" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and all reconciliations applicable thereto, unless NCRIC claims trending, as actuarially noted, indicates otherwise development at which time applicable development factors of NCRIC will apply.

Year 1 Reconciliation	-	55.0%
Year 2 Reconciliation	-	65.0%
Year 3 Reconciliation	-	80.0%
Year 4 Reconciliation	-	105.0%
Year 5 Reconciliation	-	105.0%
All Subsequent Reconciliations	-	100.0%

"**Discount Factor**" means the factor currently used by NCRIC at the time of the reconciliation. At the time of this Agreement 86.33% will apply.

"**Experience Period**" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the prorated period involved shall be deemed to be an Experience Period.

16d-000322

"**Insurance Policy**" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"**Losses**" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"**Loss Limitation**" - for the purpose of application of the retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (i) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"**Loss Reserves**" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"**Maximum Premium**" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (133%) of the Subject Premium amount.

"**Minimum Premium**" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (60%) of the Subject Premium amount.

"**Paid Losses**" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid losses are subject to Loss Limitation, defined above.

"**Plan Participants**" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"**Subject Premium**" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insured were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall not exceed 85%, nor be less than 70% of the undiscounted premium charged for coverage limits of $1 million each claim/ $3 million aggregate.

16d-000323

EXHIBIT 5

ADDENDUM B TO
RETROSPECTIVE RATING PLAN AGREEMENT

This Addendum amends the Retrospective Rating Plan Agreement ("Agreement") and Exhibit A, attached, made and entered into effective the first day of September 1, 1993 and Addendum amending Agreement January 1, 1997, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("CHWMC").

This Addendum extends the Agreement, Addendum and Exhibit A from September 1, 1998 to September 1, 1999. For purposes of Modifications, only language amended in the Agreement is noted below and for purposes of Plan calculations in the Agreement, a full Exhibit A, with modifications is included.

Page 3, Item 10:

10. NCRIC, a Medical Center representative and a Physicians Claims Committee representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

A. At such meetings, NCRIC will provide the following:

(I) for purposes of cross-reference and confirmation of participating or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

(II) a loss run detailing the following information:

Date of Loss
Date Claim Made
Claimant's Name
Location of Claim (hospital, office)"
Brief Description of Claim
Status (Claim/Suit)
Total Indemnity Reserve (in the aggregate only)
Total Expense Reserve (in the aggregate only)

(III) a review of Medical Center risk management activities and risk management issues presented by the claims.

16d-000325

Page 5, Item 18.:

18. This Agreement shall not be assignable under any circumstances, whether in connection with the bankruptcy cases in which CHWMC are currently debtors or otherwise, by any party hereto without the express written consent of other parties, provided that the obligations of NCRIC hereunder shall be assigned to any admitted insurer which is a successor to NCRIC by reason of conversion, reorganization or merger approved by the District of Columbia Commissioner of Insurance. Notwithstanding the foregoing, CHWMC will assume and assign to the reorganized merged entity under its plan of reorganization, this Agreement. This agreement shall terminate (i) upon the conversion of the CHWMC case to Chapter 7 case, or (ii) if greater than 50% of Plan Participants resign their affiliation with CHWMC.

16d-000326

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

_____ BY: _____

(Corporate Seal)

R. Ray Pate, Jr.
President and CEO

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST: _____ BY: _____

(Corporate Seal)

Gerald Beaulieu
Acting President and CEO

MODIFICATIONS TO

EXHIBIT A

SIX YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the CHWMC's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center first entered into on September 1, 1993 and subsequently amended January 1, 1997, and added to by this plan through September 1, 1999 (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be six years, beginning on September 1, 1993 and ending on September 1, 1999. The Plan shall consist of six separate and distinct Experience Periods of:

Beginning 12:01 a.m. on	and Ending 12:01 a.m. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996
September 1, 1996	September 1, 1997
September 1, 1997	September 1, 1998
September 1, 1998	September 1, 1999

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19%of the otherwise applicable premium for such coverage in the first two years of the Plan and 33% of the otherwise applicable premium for such coverage in the remaining years of the Plan. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return (if any), shall be solely that of CHWMC.

16d-000328

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) = {[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor}+Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedules:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1995
September 1, 1994 to September 1, 1995	September 1, 1996
September 1, 1995 to September 1, 1996	September 1, 1997
September 1, 1996 to September 1, 1997	September 1, 1998
September 1, 1997 to September 1, 1998	September 1, 1999
September 1, 1998 to September 1, 1999	September 1, 2000

Reconciliation calculations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall be not deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the end of an Experience Period, reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") CHWMC under the terms of the Plan will be presented to CHWMC. Any amounts due either to or from CHWMC shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

16d-000329

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"Basic Premium" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by multiplying the Subject Premium by the insurance charge factor set forth below:

Six (6) Year "Subject" Premium	Insurance Charge Factor
$1,539,000 - $2,565,999	20.7%
$2,566,000 - $3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"Deposit Premium" means the Subject Premium multiplied by sixty-seven (67%). This percentage shall remain unchanged for the one year term of the Plan, unless both parties agree to a change and amend this Agreement hereunder.

"Development Factor" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and all reconciliations applicable thereto, unless NCRIC claims trending, as actuarially noted, indicates otherwise development at which time applicable development factors of NCRIC will apply.

Year 1 Reconciliation	-	55.0%
Year 2 Reconciliation	-	65.0%
Year 3 Reconciliation	-	80.0%
Year 4 Reconciliation	-	105.0%
Year 5 Reconciliation	-	105.0%
All Subsequent Reconciliations	-	100.0%

"Discount Factor" means the factor currently used by NCRIC at the time of the reconciliation. At the time of this Agreement 86.33% will apply.

16d-000330

"Experience Period" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the prorated period involved shall be deemed to be an Experience Period.

"Insurance Policy" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"Losses" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"Loss Limitation" - for the purpose of application of the retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (I) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"Loss Reserves" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"Maximum Premium" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and thirty three percent (133%) of the Subject Premium amount.

"Minimum Premium" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to sixty percent (60%) of the Subject Premium amount.

"Paid Losses" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid losses are subject to Loss Limitation, defined above.

"Plan Participants" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"**Subject Premium**" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insured were not Plan Participants. For the second and third **Experience Periods**, the **Subject Premium** shall not exceed 85%, nor be less than 70% of the undiscounted premium charged for coverage limits of $1 million each claim/ $3 million aggregate.

EXHIBIT 6

ADDENDUM B-1999 TO
RETROSPECTIVE RATING PLAN AGREEMENT

This addendum amends the Retrospective Rating Plan Agreement ("Agreement") and Exhibit A, made and entered into effective the first day of September 1, 1993 and Addendums of January 1, 1997 and September 1, 1998, by and between NCRIC, Inc. (formerly National Capital Reciprocal Insurance Company), 1115 30th Street, NW, Washington, D.C. 20007 and Columbia Hospital for Women Medical Center, 2425 L Street, NW, Washington, D.C. 20037.

This Addendum extends the Agreement, and Exhibit A, made and entered into effective the first day of September 1, 1993, and Addendums of January 1, 1997 and of September 1, 1998 for the period of September 1, 1999 to September 1, 2000. For purposes of modifications a full Exhibit A noting the addition of this new year to paragraphs 2 (Plan Term) and paragraph 5, (Reconciliations) is attached and by signature below such amended changes are accepted.

Modifications to Exhibit A:

Page 4, Paragraph 2:
2. Plan Term, add to:

Beginning 12:01 a.m. on	and Ending 12:01 a.m. on
September 1, 1999	September 1, 2000

Page 5, Paragraph 5:
5. Reconciliations, add to:

Experience Period	First Reconciliation Date
September 1, 1999 to September 1, 2000	September 1, 2001

NCRIC, Inc.

By: _____
Stephen S. Fargis
Senior Vice President and Chief Operating Officer

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER

BY: _____ 8/27/99
Larry Wilson
President and Chief Executive Officer

Exhibit A.1.

Per "Development Factor", page 6 of Exhibit A of the Agreement, the following factors will be used at the periods indicated for reviews during the annual Program period:

Months	Factor	
12	0.55	(unchanged)
15	0.58	
18	0.60	
21	0.63	
24	0.65	(unchanged)
27	0.69	
30	0.73	
33	0.76	
36	0.80	(unchanged)
39	0.86	
42	0.93	
45	0.99	
48+	1.05	(unchanged)

CERTIFICATE OF SERVICE

I, Sylena Slaughter, hereby certify that on the 5th day of January, 2001, a copy of the parties' joint Praecipe, and the attached Columbia Hospital for Women Medical Center's Amended Answer and Counterclaims, was served upon the following party first class mail, postage prepaid:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena L. Slaughter

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 0007308-00 Calendar #8 Judge Linda K. Davis Next event: Initial Conf. 1/12/01

PRAECIPE

Plaintiff, NCRIC, Inc., and Defendant, Columbia Hospital for Women Medical Center, Inc. by their counsel, each hereby consent to the filing by plaintiff of an Amended Complaint (tab 1) and by defendant of an Amended Answer and Counterclaims (tab 2) in the forms attached hereto pursuant to SCR 15(a), which pleadings shall be deemed filed and served upon the filing of this Praecipe.

This agreement shall not be construed as a waiver by either party of any defense to procedural defects in the opposing party's original pleading or response.

DATED: January 5, 2001

Roy Niedermayer, D.C. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff /Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Court Event: Initial Conf., Jan. 12, 2001
	)	
Defendant/Counter-Plaintiff	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO COUNTER-DEFENDANT'S MOTION TO DISMISS COUNTERCLAIMS, MOTION FOR A MORE DEFINITE STATEMENT, AND MOTION TO STRIKE

Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc. ("Medical Center"), by and through its attorneys, Mark C. Hansen, Esq., Steven F, Benz, Esq., Joseph K. Leahy, Esq., and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby opposes Plaintiff /Counter-Defendant NCRIC, Inc.'s ("NCRIC") Motion to Dismiss Counterclaims, Motion for a More Definite Statement of Allegations of Fraud and Misrepresentation and Motion to Strike Insufficient Defense. Medical Center asks this Court to deny NCRIC's motion as moot.

Factual Background

NCRIC filed a civil complaint on October 3, 2000. Medical Center answered and filed counterclaims on November 7, 2000. NCRIC filed three motions on December 11, 2000. By a consent motion, the time for Medical Center to file its opposition was extended to January 8, 2001. On January 3, 2001, by consent of the parties, NCRIC filed an Amended Complaint and

Medical Center filed an Amended Answer and Counterclaims.[1] On a January 8, 2001, counsel for Medical Center informed counsel for NCRIC that pending motions directed to the pleadings had been mooted by the amended pleadings. In response, counsel for NCRIC stated that its three pending motions would be renewed and directed to the amended Answer and Counterclaims.

Argument

Amended pleadings supercede the original pleadings and render them of no legal effect. El-Hadad v. Embassy of United Arab Emirates, 69 F. Supp.2d 69, 72 n.1 (D.D.C. 1999), rev'd in part on other grounds, 216 F.3d 29, 342 U.S. App. D.C. 138 (D.C.Cir. 2000); Dortch v. Washington Metro. Area Transit Auth., 45 F. Supp 2d 5, 7 n.1 (D.D. C. 1999); accord Austin v. Ford Models, Inc., 149 F.3d 148, 155 (2d Cir. 1998); Duda v. Board of Educ., 133 F.3d 1054, 1057 (7th Cir. 1998); Murray v. Archambo, 132 F.3d 609, 612 (10th Cir. 1998); King v. Dogan, 31 F.3d 344, 346 (5th Cir. 1994); see also 61A Am. Jur. 2d Pleading § 754 (1999); 61B Am. Jur. 2d Pleading § 838 (1999). Ordinarily, any pending motion to dismiss the original pleading will be denied as moot. See, e.g., O'Hayre v. Board of Educ., 109 F. Supp.2d 1284, 1287 (D. Colo. 2000); Garcia v. Akwesasne Housing Auth., 105 F.Supp.2d 12, 14 (N.D.N.Y. 2000); Rosenblatt v. Ernst & Young Intern., Ltd., 87 F.Supp.2d 1048, 1055 (S.D. Cal. 2000); Short v. Ultramar Diamond Shamrock, 46 F. Supp.2d 1199, 1199 (D. Kan. 1999). This rule applies to an amended answer and counterclaims, as to any other pleading. See, e.g., Riad v. 520 South Michigan Ave. Assocs. Ltd., 78 F. Supp.2d 748, 754 n.1 (N.D.Ill. 1999); Central Ill. Pub. Serv. Co. v. Industrial Oil Tank & Line Cleaning Serv., 730 F. Supp. 1498, 1502 (W.D. Mo. 1990).

[1] The amended pleadings were initially filed together with a joint Praecipe on January 3, 2001. Each amended pleading was filed again on January 5, 2001, in order that the $20.00 feel for filing counterclaims could be paid. The exact effective filing date of the amended pleadings is irrelevant for the purposes of NCRIC's motion.

Conclusion

Medical Center therefore requests that NCRIC's motions be denied as moot.

DATED: January 8, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-000340

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
	)	
Defendant/Counter-Plaintiff	)	

ORDER

Counter-Defendant NCRIC, Inc.'s Motion to Dismiss Counterclaims, Motion for a More Definite Statement of Allegations of Fraud and Misrepresentation and Motion to Strike Insufficient Defense, are all hereby DENIED AS MOOT.

SO ORDERED.

_____
Judge Linda K. Davis

Dated: _____, 2001.

Copies to:

Mark C. Hansen
Steven F. Benz
Joseph K. Leahy
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

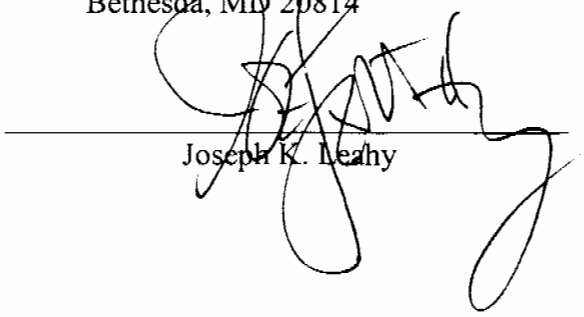
Roy I. Neidermayer, Esq.
7475 Wisconsin Avenue
Suite 500
Bethesda, MD 20814

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 8th day of January, 2001 a copy of Medical Center's Memorandum of Points and Authorities in Opposition to Counter-Defendant's Motion to Dismiss Counterclaims, Motion for a More Definite Statement and Motion to Strike was served upon the following by first class mail:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814



Joseph K. Leahy

1/12/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 0007308-00 Calendar #8 Judge Rafael Diaz Next event: Initial Conference 1/12/01

REPLY OF PLAINTIFF TO AMENDED COUNTERCLAIMS 1 AND 2 OF DEFENDANT

NCRIC, INC. ("NCRIC"), counterdefendant, by counsel, replies to the counterclaims of Columbia Hospital for Women Medical Center, Inc., counterplaintiff, as follows:

FIRST DEFENSE

The counterclaims fail to state claims against NCRIC upon which relief may be granted.

SECOND DEFENSE

For answers to the specific allegations of the counterclaims:

1. The allegations of paragraph 10 constitute the legal assertions of defendant to factual allegations of NCRIC's complaint and do not require a response.

2. NCRIC admits the factual allegation that defendant has been providing health care services in the District of Columbia, but is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations of paragraph 11.

3. NCRIC admits the material factual allegations of paragraph 12, except it

states that it provides professional liability insurance to physicians in jurisdictions in addition to the District of Columbia.

4. NCRIC admits the material factual allegations of paragraphs 13, 26, 55, 77, 84-85, and 166.

5. NCRIC admits it provided professional liability insurance to certain physicians at defendant, but is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations of paragraph 14.

6. NCRIC is without knowledge or information sufficient to form a belief as to the truth of the factual allegations of paragraphs 15-16, 19, 44-45, 56, 63, 65-66, 74, 82, 87, 90-91, 96-100, 124, and 130.

7. NCRIC denies each and every material factual allegation of paragraphs 17-18, 20, 22-24, 30, 35-43, 48-51, 53-54, 58, 62, 64, 68, 70-73, 78, 83, 88-89, 92-95, 102-103, 106-110, 113-117, 119-122, 125-128, 131-134, 137-138, 140-146, 148-153, 155-158, 160-164, and 167-168.

8. NCRIC admits the material factual allegations of the first sentence of paragraph 21 insofar at it refers to physicians associated with the defendant, but NCRIC is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations of paragraph 21.

9. NCRIC admits the material factual allegations of the first sentence of paragraph 25, but denies each and every remaining material factual allegation of paragraph 25.

10. The allegations of paragraph 27 constitute the defendant's characterization of the terms and obligations of the contract between the parties and are therefore legal

conclusions which do not require a response.

11. The allegations of paragraph 28 constitute the defendant's characterization of the terms and obligations of the contract between the parties and are therefore legal conclusions which do not require a response. To the extent any response is necessary, NCRIC refers to and relies on the terms of the written contract between the parties and denies the allegations to the extent they deviate or misstate those terms. NCRIC denies each and every remaining material factual allegation of paragraph 28.

12. NCRIC denies each and every material factual allegation of paragraph 29, except it admits the factual allegations of subpart (1).

13. NCRIC admits the material factual allegations for "all reconciliations of the Plan," but denies each and every remaining material factual allegations of paragraph 31.

14. The allegations of paragraphs 32-33 constitute the defendant's characterization of the terms and obligations of the contract between the parties and are therefore legal conclusions which do not require a response. To the extent any response is necessary, NCRIC refers to and relies on the terms of the written contract between the parties and denies the allegations to the extent they deviate or misstate those terms.

15. NCRIC denies the material factual allegation "pay any return premium, and the investment return thereon," but admits the remaining material factual allegations of paragraph 34 regarding time deadlines.

16. NCRIC admits each and every material factual allegation of paragraph 46, except it denies each and every material factual allegation of the fifth and sixth sentences of paragraph 46.

17. NCRIC admits the material factual allegations of paragraph 47, except it

denies it was to receive "less deposit premium."

18. NCRIC admits the material factual allegations of the first and third sentences of paragraph 52, except that it denies the minimum premium was to apply to all years of the Plan. NCRIC denies each and every material factual allegation of the second sentence of paragraph 52.

19. NCRIC denies each and every material factual allegation of paragraph 57, except it is without information or knowledge sufficient to form a belief as to the truth of the material factual allegations of the first sentence of paragraph 57.

20. NCRIC is without knowledge or information sufficient to form a belief as to the truth of the material factual allegations of paragraph 59, except it denies each and every material factual allegation of the second sentence of paragraph 59.

21. NCRIC admits defendant paid $1 million in four (4) installments between January and March, 1998, but is without knowledge or information sufficient to form a belief as to the truth of the remaining material factual allegations of paragraph 60.

22. NCRIC admits the material factual allegations of paragraph 61 except it denies the attached exhibit accurately reflects the agreement of the parties.

23. NCRIC admits it became aware of the MIIX Proposal about August 1998, but is without knowledge or information sufficient to form a belief as to the truth of the remaining material factual allegations of paragraph 67.

24. NCRIC admits attendance at a meeting in August, 1998, with physicians from defendant, but denies each and every remaining material factual allegation of paragraph 69.

25. NCRIC admits the material factual allegations of the first and second

sentences of paragraph 75, but denies each and every remaining material factual allegation of paragraph 75 and denies the attached exhibit accurately reflects the agreement of the parties.

26. NCRIC admits the material factual allegations of the first sentence of paragraph 76. NCRIC it is without information or knowledge sufficient to form a belief as to the truth of the factual allegations of the second sentence of paragraph 76.

27. NCRIC is without information or knowledge sufficient to form a belief as to the truth of the factual allegations of the first sentence of paragraph 79. NCRIC admits the renewal in September, 1999, but denies the causal relationship between allegations of the first and second sentences of paragraph 79. NCRIC admits the material factual allegations of the last sentence of paragraph 79.

28. NCRIC is without information or knowledge sufficient to form a belief as to the truth of the factual allegations of paragraph 80.

29. NCRIC admits the material factual allegations of the first sentence of paragraph 81, before the final adjective clause. NCRIC is without information or knowledge sufficient to form a belief as to the truth of the material factual allegations of the second sentence of paragraph 81.

30. NCRIC admits it notified defendant of cancellation of the policy effective September 1, 2000, but denies each and every remaining material factual allegation of paragraph 86.

31. NCRIC denies each and every material factual allegation of paragraph 101, except it admits it informed defendant on September 1, 2000 that an additional premium of $1,285,525 was due.

32. For its answer to paragraphs 104, 111, 118, 123, 129, 135, 139, 147, 154, 159 and 165, NCRIC incorporates herein by reference its replies to the specific paragraphs referred in each of the foregoing paragraphs mentioned in this sentence.

33. NCRIC admits the material factual allegations of paragraphs 105 and 112, except it denies that the contract between plaintiff and defendant is as characterized by defendant previously in the counterclaims.

34. NCRIC admits it had contractual duties to defendant, but denies each and every remaining material factual allegation of paragraph 136.

THIRD DEFENSE

Defendant is estopped or, in the alternative, has waived its counterclaims by reason of its actions, including an accord and satisfaction, renegotiation of its contract, agreement to new and modified contract terms, and similar actions.

FOURTH DEFENSE

Defendant's counterclaims are barred by reasons of its failure to mitigate its damages.

FIFTH DEFENSE

Defendant's counterclaims are barred by reason of its unclean hands.

SIXTH DEFENSE

Defendant's counterclaims are barred by reason of its own fraud and illegal conduct.

Roy I. Niedermayer, Esq. DC. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 12, 2001, a copy of the foregoing NCRIC's Reply of Plaintiff to Amended Counterclaims 1 and 2 of Defendant, was hand delivered to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. DC. Bar #180380

1/16/01

THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 0007308-00 Calendar #8 Judge Linda Kay Davis Next event: Discovery request deadline

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS COUNTERCLAIM COUNTS 4 AND 5

In addition to any other legal deficiencies, Counts 4 and 5 are repetitive and duplicative of each other if Count 4 does not allege a interference with contract theory. Defendant apparently attempts a metaphysical differentiation between interference with "current"business relationships and "future "business relationships. But each of these falls within the concept of expectancies because the damage allegedly incurred is for patients which Hospital has not yet had referred to it by doctors, but which it "expects" to have referred. The gravamen of the cause of action is not current or past patients, but future ones. Therefore, there is no difference between so-called interference with current versus future non-contractual relationships. Indeed, defendant itself alleges them to be expectancies, relationships and damages derived from future events which have not yet

RECEIVED
JAN 19 2001
By

occurred or been suffered. Expectancies are, by definition, all in the future and relate to future contracts. Consequently, if Counts 4 and 5 refer to current and future expectancies, they allege the same cause of action and one or the other must be dismissed.

Roy J. Niedermayer, Esq. DC. Bar #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 16, 2001, a copy of the foregoing NCRIC's Renewed Motion to Dismiss Counterclaims, was mailed, first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy J. Niedermayer, Esq. DC. Bar #180380

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Deadline for Discovery Requests, March 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NCRIC'S MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO STRIKE

Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc. ("Hospital"), by and through its attorneys, Mark C. Hansen, Esq., Steven F. Benz, Esq., Joseph K. Leahy, Esq., and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby opposes Plaintiff/Counter-Defendant NCRIC, Inc.'s ("NCRIC") Motion for More Definite Statement of Allegations of Fraud and Misrepresentations and Motion to Strike Insufficient Defense ["Motion"] and sets forth the following points and authorities.

ARGUMENT

I. NCRIC Cannot Meet the High Standard for Obtaining a More Definite Statement

NCRIC demands a more definite statement of Columbia's counterclaims, pursuant to District of Columbia Superior Court Rules 12(e) and 9(b). This type of motion is highly disfavored. See 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1377, at 510-11 (Supp. 2000); see, e.g., Blizzard v. Dalton, 876 F. Supp. 95, 100 (E.D. Va. 1995). "Motions for a more definite statement should only be granted if the [opposing party] cannot frame a response to the [pleading]." Blizzard, 876 F. Supp. at 100.

In the present case, no more definite statement is required. Columbia's pleading has far surpassed the requirement of the rules, a short and plain statement showing it is entitled to relief. See D.C. Sup. Ct. R. 8. Indeed, Columbia offers a careful, detailed presentation of NCRIC's wrongdoing, and carefully delineates each claim being stated.

NCRIC has two complaints about the specificity of Columbia's pleading. First, it notes that Columbia failed to not state an amount of compensatory or punitive damages. Motion at 1. However, NCRIC offers no legal authority, neither case law nor rules, in support of its position. Plus, as Columbia alleged in its pleading, much of the factual information regarding compensatory damages still remains in NCRIC's possession and will be learned only through discovery.

Second, NCRIC complains that it "cannot file an appropriate response [to Columbia's pleading] . . . until it knows whether the claim is for punitive damages for every Count." Id. Here, NCRIC's argument is flatly contradicted by its own actions. In separate papers, NCRIC recently moved to dismiss Columbia's prayer for punitive damages, assuming that Columbia had pleaded punitive damages with regard to *each and every* complaint. Apparently, NCRIC either found Columbia's pleading to be adequate or was able to remedy any perceived confusion by making said assumption. Accordingly, this motion must be denied. See Blizzard, 876 F. Supp. at 95 (concluding, when the movant filed a separate motion in response to the pleading, that the pleading met the specificity requirement set by the rules).

Finally, Columbia notes that its request for punitive damages is not unclear. The pleading requests "punitive damages as a result of NCRIC's malfeasance, fraud and bad faith." Here, Columbia has requested punitive damages for *each and every* count (but only for each such

count) that is based, at least in part, on allegations to the effect of "malfeasance, fraud and bad faith."

II. NCRIC Has Not Shown Any Prejudice That Requires That the Defense Be Struck

NCRIC also moves to strike Columbia's Tenth Defense. "Motions to strike a defense as insufficient are not favored by the courts because of their dilatory character. Thus, even when technically appropriate and well-founded, they often are not granted in the absence of a showing of prejudice to the moving party." 5A Wright & Miller, supra, § 1381, at 1. A showing of prejudice, among other things, is required for a motion to strike to be successful.

Here, NCRIC offers no support for its claim that Columbia has stated an insufficient defense. Here, Columbia has simply stated its rights, pursuant Superior Court Rule 15. Further, any defenses may be pleaded in a responsive pleading, not simply affirmative ones.

Moreover, NCRIC has made no showing of prejudice. Indeed, NCRIC essentially admits that it will suffer *no* prejudice from the existence of this defense, even if the defense is insufficient, because Columbia has simply stated its rights under the Rules. See Motion at 2 (explaining that Columbia has available a "procedure provided by SCR 15 to address later supplementation and amendment of its answer by following the procedure of the Rule").

CONCLUSION

Accordingly, Columbia respectfully requests that this Court deny both NCRIC's motion to strike and its motion for a more definite statement, each in its entirety.

DATED: January 26, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:

DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000357

CERTIFICATE OF SERVICE

I, Sylena L. Slaughter, hereby certify that on this 26th day of January, 2001, a copy of Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center Inc.'s Memorandum of Points and Authorities in Opposition to NCRIC's Motion for More Definite Statement and Motion to Strike was served upon the following by first class mail, postage prepaid:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena L. Slaughter

16d-000358

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 -- Judge Davis Next Event: Deadline for Discovery Requests, March 12, 2001

SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIMS

Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by and through its attorneys, Mark C. Hansen, Esq., Steven F. Benz, Esq., Joseph K. Leahy, Esq., and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby opposes Plaintiff/Counter-Defendant NCRIC, Inc.'s ("NCRIC") Motion To Dismiss Counterclaims. Columbia respectfully asks this Court to deny NCRIC's motion in its entirety, or alternatively, to grant Columbia leave to file an amended pleading.

PRELIMINARY STATEMENT

Factual Background

At the center of this case is a long-term relationship between NCRIC, an insurance company, and Columbia, a non-profit hospital for women. The parties entered into an agreement ("Retro Plan") for the benefit of third parties, Columbia's physicians ("Attending Faculty"). Pursuant to the Retro Plan, NCRIC and Columbia were supposed to split up the risk of lowering the physicians' malpractice insurance premiums. NCRIC, the party with superior knowledge and skill regarding all things insurance, wrote the Retro Plan and agreed to serve as its bookkeeper

and administrator. Due to NCRIC's superior knowledge and skill, and because NCRIC refused to allow Columbia to audit its books, Columbia placed its trust in NCRIC to administer the Retro Plan in Columbia's best interest. NCRIC purported to act in accordance with that trust, but proceeded to the advantage Columbia's trust by incorrectly calculating the money that Columbia owed it. Eventually Columbia determined that the Retro Plan was too expensive, and opted out; NCRIC retaliated by encouraging the Attending Faculty to leave Columbia. NCRIC then sued Columbia, in bad faith, for amounts that it knew were not due under the Retro Plan. Columbia countersued, and NCRIC moved to dismiss with the present motion.

Preliminary Statement

This is not simply a suit for breach of contract, as NCRIC would have the Court believe. While NCRIC's claim is contractual, Columbia's counterclaims are based in tort and contract. In addition to pleading NCRIC's failure comply with the terms of the contract, Columbia alleges that NCRIC's perfidious self-dealing and misconduct in administering the plan, independent of its breach of contract, resulted in harm to Columbia, which had placed trust and reliance in NCRIC.

As a result of NCRIC's independent duties to administer the Retro Plan on behalf of Columbia, NCRIC had a fiduciary to Columbia. Accordingly, NCRIC's motion to dismiss Count Three (Breach of Fiduciary Duty) for lack of such an obligation should be denied. (Point I, infra). NCRIC's motion to dismiss Count Six (Negligence) should also be denied. Columbia has properly pled a claim for negligence, in light of NCRIC's negligence in administering the Retro Plan. (Point III, infra).

Columbia has also properly pled Count Seven (Fraud) based on intentionally false statements by NCRIC to Columbia related to performance of its duties under the Retro Plan.

(Point IV, infra). NCRIC's statements of fact to the Attending Faculty, made with wrongful intent, harmed Columbia's reputation and meet the elements for a claim for defamation. (Point II.B, infra). These false statements were neither privileged nor opinions. (Point VI, infra).

NCRIC's motion to dismiss Columbia's remaining counts is similarly defective. NCRIC erroneously characterizes Columbia's claims for tortious interference with business relations as claims for interference with contract. (Point II.A, infra). NCRIC's arguments that Count Eight (Misrepresentation) and Ten (Injurious Falsehood) are barred by the statute of limitations are meritless because the former is not factually intertwined with the defamation claim, and because the interest protected by both torts is sufficiently different from the interest protected by defamation that a different limitations period must apply. (Point V.B &A, infra).

Finally, Columbia has properly asked for punitive damages in its prayer for relief (Point VII, infra) and for attorneys' fees (Point VIII, infra), based upon NCRIC's perfidious and contumacious conduct. For the foregoing reasons, the Court should deny NCRIC's motion.

ARGUMENT

Standard of Review

NCRIC moves to dismiss the counterclaims for failure to state a claim upon which relief can be granted. Such motions are "generally viewed with disfavor and rarely granted." Stewart v. District of Columbia Armory Bd., 863 F.2d 1013, 1017 (D.C. Cir. 1988) (quoting Doe v. United States, 753 F.2d 1092, 1102 (D.C. Cir. 1985)). A motion to dismiss may be granted "only if it is clear that no relief could be granted under *any* set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (emphasis added).

16d-000361

On a motion to dismiss, the Court must operate "within the factual universe described by" the pleader. Al-Ibrahim v. Edde, 897 F. Supp. 620, 622 (D.D.C. 1995). The allegations "must be taken as true and construed in the light most favorable to the [pleader] and, if these allegations are sufficient, the case must not be dismissed even if the court doubts that the [pleader] will ultimately prevail." Fingerhut v. Children's Nat'l. Med. Ctr., 738 A.2d 799, 803 (D.C. 1999).

I. Count Three States a Claim for Breach of Fiduciary Duty Due to NCRIC's Superior Skill and Knowledge, and Columbia's Long-standing Trust in NCRIC

A claim for breach of fiduciary duty has two elements: (1) existence of a fiduciary duty and (2) breach of that duty.[1] See Shapiro, Lifschitz & Schram, P.C. v. Hazard, 24 F. Supp. 2d 66, 75 (D.D.C. 1998). NCRIC does not dispute that Columbia has satisfied the second element.[2] NCRIC argues simply "there is no fiduciary relationship between the parties." Motion at 3. This argument, for which NCRIC offers no authority on point, is without merit.

Contrary to NCRIC's assertion, the fiduciary duty NCRIC owed to Columbia was not "of undefined origin," id. at 3. Rather, Columbia has pleaded a general fiduciary duty under the common law. A fiduciary relationship exists whenever "there is a confidence reposed on one side and the resulting superiority and influence on the other." Cafritz v. Corporation Audit Co., 60 F. Supp. 627, 631 (D.D.C. 1945) aff'd in part, rev'd in part, 156 F.2d 839 (D.C. Cir. 1946); accord Greenspan v. Allstate Ins. Co., 937 F. Supp. 288, 294-95 (S.D.N.Y. 1996) ("A fiduciary relationship arises when one has reposed trust or confidence in the integrity or fidelity of another

---

[1] Two additional elements, (3) proximate cause and (4) actual loss or damage must be proved in some cases where compensatory damages are sought. See Shapiro, Lifschitz, 24 F. Supp. 2d at 75. Columbia has alleged facts which satisfy these two elements. See Counterclaims ¶¶ 42, 50, 54, 72, 74.

[2] Columbia has alleged numerous instances of misconduct, malfeasance or bad faith by NCRIC, see, e.g., Counterclaims ¶¶ 41, 53, 58, 69, 70, each of which would constitute a breach of fiduciary duty.

16d-000362

who thereby gains influence or assumes control and responsibility."). Accordingly, a fiduciary is one who "is under a duty to act for . . . the benefit of another upon matters within the scope of the relation." Church of Scientology, Int'l. v. Eli Lilly & Co., 848 F. Supp. 1018, 1028 (D.D.C. 1994) (quoting Restatement of Torts (Second) § 874 cmt. a (1977)) .

Here, Columbia pleaded the existence of a fiduciary duty as follows:

> a fiduciary relationship existed between NCRIC and [Columbia] by virtue of (a) NCRIC's responsibility, stated in the Plan, to perform all bookkeeping on behalf of [Columbia] under the Plan; (b) [Columbia's] trust and reliance on NCRIC to administer the Plan, of which NCRIC was fully aware; (c) [Columbia's] reliance on NCRIC to properly and honestly perform reconciliations and accurately calculate Additional or Return Premium, of which NCRIC was fully aware; and (d) [Columbia's] dependence on NCRIC for certain information necessary to perform retro calculations under the Plan, of which NCRIC was fully aware.

Counterclaims ¶ 119. Columbia also alleged that NCRIC accepted and benefitted from Columbia's trust, and purported to act in accord with it. See, e.g., ¶¶ 42, 43, 49, 50, 53, 54, 119; ¶ 118 (incorporating all other factual allegations into claim). Hence, Columbia has alleged that confidence was "reposed [by Columbia] and the resulting superiority and influence [of NCRIC]," thereby establishing a fiduciary relationship. See Cafritz, 60 F. Supp. at 631; Church of Scientology, 848 F. Supp. at 1028.

Despite Columbia's careful pleading, NCRIC argues, without any support, that Columbia failed to plead a fiduciary duty. First, NCRIC suggests that Columbia was required to allege a "*traditional* . . . fiduciary relationship" or some "other *identified* legal relationship of trust." Motion at 3-4. NCRIC offers no support for this claim, nor does the law offer any.[3]

---

[3] The cases NCRIC cites as examples of "traditional . . . fiduciary duties," while colorful, offer no suggestion that the *only* fiduciary duties are those NCRIC lists. Moreover, there is no requirement that the fiduciary have gained its "superior authoritative position" because of the incompetence or disability of one party. Motion at 4. All that is required is for one party to have superior knowledge or skill compared to the other.

16d-000363

The law does not recognize solely "traditional" fiduciary duties. To the contrary, courts historically have "refrained from defining . . . fiduciary relations in such a manner that other and perhaps new instances might be excluded," in order to allow the fiduciary concept to extend "to every possible case in which a fiduciary relation exists as a fact." Cafritz, 60 F. Supp. at 631; see also Church of Scientology, 848 F. Supp. at 1028 (a fiduciary relationship exists "in all cases in which influence has been acquired and betrayed," including both "technical fiduciary relations" and "informal relations" (internal quotations omitted)). Fiduciary duties are not limited to those previously "identified" by other cases, either. See, e.g., Church of Scientology, 848 F. Supp. at 1028 (holding that fiduciary duty may exist where the court knew of no case that had recognized fiduciary duty in that situation). Rather, whether a fiduciary duty exists depends *entirely* on the facts of the particular case. See id. (explaining that the existence of a fiduciary duty "is a fact-intensive question, involving a searching inquiry into the nature of the relationship, the promises made, the type of services or advice given and the legitimate expectations of the parties").

Yet, the fiduciary duty here is not exotic or even unusual. Columbia has alleged that NCRIC undertook to provide a yearly accounting (a "reconciliation") of the monies owed under the plan for Columbia's benefit; that Columbia did not have access to the data necessary to check NCRIC's accounting; that Columbia trusted NCRIC's accounting over a period of about 7 years; and that as a result of NCRIC's miscalculations, NCRIC held funds that belonged to Columbia. See Counterclaims ¶¶ 31-43, 49-50. On these facts, the situation at hand is similar to one "traditional" fiduciary relationship that NCRIC fails to mention: accountant/client. See, e.g., Cafritz, 60 F. Supp. at 631 (holding that an accountant owed its client a fiduciary duty).

16d-000364

NCRIC insists, however, that Columbia's claims were merely "couched" as a breach of fiduciary duty. Motion at 4. NCRIC argues that the parties' relationship was governed by the Retro Plan, and that all its duties flowed from the Plan, and therefore, Columbia's only claim is for breach of the Plan. Here, NCRIC takes liberties with the facts[4] and misapprehends the law.

First, there is no requirement, as NCRIC asserts, that a fiduciary duty must be entirely separable from a contractual duty. Rather, it is well established that a fiduciary duty can arise out a contract; that a breach of the contract alone can constitute a breach of the fiduciary duty; and that the contractual and fiduciary duties may be overlapping. See, e.g., GLM Corp. v. Klein, 665 F. Supp. 283, 286 (S.D.N.Y. 1987). Simply put, so long as a relationship of trust and confidence has been established, a breach of a contractual term may amount to a breach of fiduciary duty. See, e.g., Lavin v. Kaufman, Greenhut, Lebowitz & Forman, 640 N.Y.S.2d 57, 58 (N.Y. App. Div. 1996); Mandelblatt v. Devon Stores, 132 A.D.2d 162, 167-68 (N.Y. App. Div. 1987).[5]

Moreover, the facts show that the duty NCRIC owed Columbia *was* separate from NCRIC's contractual duties. For instance, in addition to NCRIC's contractual bookkeeping duty,

---

[4] NCRIC skews the facts by stating that the Retro Plan was arms-length transaction between equals. See Motion at 4, 5. The counterclaims offer no support for this proposition. In fact, since all favorable inferences must be drawn on behalf of Columbia, the proper inference is that the parties were *far* from equals. Cf., e.g., Counterclaims ¶¶ 14-28 (NCRIC proposed and drafted the Retro Plan, which employed a complicated formula devised by NCRIC; NCRIC pressured Columbia to accept the Plan; NCRIC provided all the data for the Plan; Columbia had no access to the data; NCRIC performed all the bookkeeping; NCRIC was a insurance company, while Columbia was a struggling hospital).

[5] NCRIC cites exactly one case, and it is not on point. See Motion at 4 (citing Goodman v. Woods, 259 A.2d 594 (D.C. 1969)). In Goodman, defendant, a broker, represented one party to a real estate transaction and explicitly disclaimed liability or agency to plaintiff, the other party. Also, there was no long-term relationship of trust between the broker and the plaintiff. For these reasons, the Goodman court held that there was no fiduciary duty between the broker, which could only represent one party to a transaction, and the plaintiff. See 259 A.2d at 596. Here, the facts are starkly different: NCRIC and Columbia were jointly engaged in a contract to benefit the Attending Faculty, and NCRIC did not explicitly exclaim any duty to Columbia. Further, NCRIC undertook to perform a service that required special skills and information, and NCRIC knew that Columbia trusted it to perform that job accurately and in good faith.

NCRIC represented that it would perform reconciliations *correctly*. See Counterclaims ¶ 29. This duty is not explicitly mentioned in the Retro Plan, which does not explicitly govern the *substance* of NCRIC's bookkeeping duty (other than the normal obligation of good faith). In addition, the counterclaims allude to NCRIC's duties to keep Columbia informed and to act in Columbia's best interest. See Counterclaims ¶¶ 31, 34-35. These duties, too, do not arise from the Retro Plan text, but rather, from the combination of (1) the duties NCRIC assumed under the plan and (2) the trust and confidence that Columbia placed in NCRIC and NCRIC acted upon.[6]

By pleading a long-term relationship of trust, and NCRIC's superior knowledge and skill, Columbia alleged a fiduciary relationship. Thus, NCRIC owed Columbia a separate duty.

II. Counts Four and Five State Two Independent Theories of Recovery for Tortious Interference With Business Relations, and Have Adequately Alleged the Wrongful Intent Element Necessary to Prove Tortious Interference

The elements of the tort of interference with *business relations*[7] are:

> (1) the existence of a valid *business relationship* or expectancy, (2) knowledge of the relationship or expectancy on the part of the interferer, (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage.

Bennett Enters. v. Domino's Pizza Inc., 45 F.3d 493, 499 (D.C. Cir. 1995) (emphasis added) (citing, inter alia, Alfred A. Altimont, Inc. v. Chatelain, Samperton & Nolan, 374 A.2d 284 (D.C.

---

[6] In this respect, NCRIC's bookkeeping duty is like the obligations that a professional (e.g., accountant), owes his clients. Though a contract may govern the relationship, duties exist beyond those stated in the contract. Of course, the contract itself need not say that the relationship is of a fiduciary nature.

[7] This tort is known by a variety of names, including: "interference with economic advantage" and "interference with prospective advantage," "interference with prospective business relations."

16d-000366

1977)).[8] Columbia pleaded all of these elements, see Counterclaims at 25-26 (tortious interference counts), and they are well-supported by the underlying allegations, see, e.g., id. ¶¶ 65, 67, 69-71. NCRIC challenges Columbia's claim(s) on two grounds.[9]

A. Neither Count Four nor Five Pleads Interference with *Contract;* No Contract Need Exist for Interference with Business Relations

NCRIC argues that count four "fails to allege an essential element of . . . interference with contract: existence of a contract between [Columbia] and the [Attending Faculty]." Motion at 6. The problem with this argument is that Columbia did not plead "interference with contract."

Counterclaims four and five were styled and pleaded as tortious interference with *business relations,* not interference with *contract.* See Counterclaims at 25 ("COUNT FOUR Tortious Interference with Business Relations"); id. at 26 ("COUNT FIVE Tortious Interference with Prospective Business Relations"). These are two separate torts in the District of Columbia, with different elements. See, e.g., Paul v. Howard Univ., 754 A.2d 297, 308-09 (D.C. 2000); Bennett, 45 F.3d at 499; Kaempfer v. Brown, 109 B.R. 527, 530, 532 (D.D.C. 1990). A key difference between these two interference torts is that the former *does not require proof of an existing contract.* All that is required for interference with business relations (however identified) is the "existence of a valid business relationship or expectancy." Bennett, 45 F.3d at 499; Sheppard, 59 F. Supp. 2d at 33-34; Transamerica Leasing, Inc., 21 F. Supp. 2d at 55; Bell, 966 F. Supp. at 31;

---

[8] The elements of this claim are well settled. See, e.g., Okusami v. Psychiatric Inst. of Washington, Inc., 959 F.2d 1062, 1066 (D.C. Cir. 1992); Sheppard v. Dickstein, Shapiro, Morin & Oshinsky, 59 F. Supp. 2d 27, 33-34 (D.D.C. 1999); Bell v. Ivory, 966 F. Supp. 23, 31 (D.D.C. 1997); aff'd, No. 97-7116, 1998 U.S. App. LEXIS 10626 (D.C. Cir. May 13, 1998)); Canady v. Providence Hosp., 942 F. Supp. 11, 18 (D.D.C. 1996).

[9] It is not clear whether NCRIC moves to dismiss both counterclaims four and five. The heading to NCRIC's argument appears to challenge both counterclaims. However, NCRIC's later argues that "one count or the other should be dismissed." Supplemental Memorandum in Support of Motion to Dismiss Counterclaim Counts 4 and 5 ["Supplemental Memorandum"] at 2; see also Motion, at 6 n.2.

16d-000367

Canady, 942 F. Supp. at 18; Genetic Sys. Corp. v. Abbott Labs., 691 F. Supp. 407, 422-23 (D.D.C. 1988); accord Kaempfer, 109 B.R. at 532. This is the black-letter law. See Restatement (Second) of Torts § 766B (1977); see, e.g., Democratic State Comm. v. Bebchick, 706 A.2d 569, 573 (D.C. 1998); Carr v. Brown, 395 A.2d 79, 84 (D.C. 1978); International City Mgmt. Assoc. Ret. Corp. v. Watkins, 726 F. Supp. 1, 6 (D.D.C. 1989). Indeed, NCRIC, see Motion at 6, and the only cases it cites, see Paul, 754 A.2d at 308-09; Bennett, 45 F.3d at 499, all recognize the existence of two separate torts.[10]

Despite the clear intent of Columbia's pleading, NCRIC argues that Columbia did not mean what it plead. Here, NCRIC argues that either counterclaim four or five *must* be dismissed, because one or the other *must* be an inadequate claim for interference with contract, or else the claims would be redundant. See Supplemental Memorandum at 2. NCRIC offers no legal support for this claim, and there is none. Columbia's counterclaims four and five allege two different theories -- interference with *existing* "business relations" and with *future* "reasonable business expectanc[ies]" -- for recovery under the same tort. There is nothing improper about this when the elements of the tort explicitly offer alternative theories of relief, as tortious interference with business relations does, see Bennett, 45 F.3d at 499 (requiring existence of "valid business relationship" *or* "expectancy").

B. Counts Four and Five Plead the Necessary Level of Intent for Interference

---

[10] NCRIC's assertion that interference with "business relations" has been deemed to mean interference with "contract," Motion at 6 n.2, should be rejected, as it is entirely unsupported in NCRIC's memoranda. Further, the cases seem to suggest the opposite. See, e.g., Mercer Mgmt. Consulting, Inc. v. Wilde, 920 F. Supp. 219, ___ (D.D.C. 1996) (describing elements of interference with "business relationship," not including contract); Alfred A. Altimont, Inc. v. Chatelain, Samperton & Nolan, 374 A.2d 284, 289 (D.C. 1977) (equating interference with business expectancies and business relations). Even if another name were more common, Columbia's clear intent to plead two, non-contractual interference torts is sufficiently clear to withstand NCRIC's challenge.

Next, NCRIC argues that Columbia has not pleaded the appropriate level of intent required to establish tortious interference. See Motion at 7. This argument ignores the facts pleaded in the complaint and fails to allow Columbia all permissible inferences.

NCRIC argues that the intent required for interference "must be egregious involving libel, slander, physical coercion, fraud, misrepresentation or disparagement." Motion at 7 (citing Genetic Systems, 691 F. Supp at 422 (explaining that the must "egregious, *for example,* it must involve libel, slander, physical coercion, fraud, misrepresentation, or disparagement") (emphasis added). Here, by selective deletion, NCRIC mischaracterizes the law to suggest that only six categories of conduct satisfy the intent for tortious interference. NCRIC then argues that none of these categories apply in this case. NCRIC is wrong about the law: any type of malicious intent or egregious behavior will do. See Sheppard, 59 F. Supp. 2d at 34 (explaining that, under Genetic Systems, the requisite intent for tortious interference is met by "egregious conduct, *such as* libel, slander, physical coercion, and fraud") (emphasis added). NCRIC also is wrong on the facts, because Columbia pleaded malicious intent and egregious conduct by NCRIC.

When Columbia is given all permissible inferences, its pleadings alleges that: NCRIC acted with malicious intent when it was responsible for false statements about Columbia, its board of directors, and its business with another insurer, see Counterclaims ¶¶ 69-70; and when NCRIC was responsible for false statements about Columbia's ambulatory clinic. See Counterclaims ¶¶ 86-92. NCRIC's conduct was egregious when it retaliated against Columbia, first by canceling the Medical Entity insurance policy and then by refusing to cover CPG physicians at the ambulatory clinic under their individual policies. NCRIC also acted egregiously by fraudulently performing reconciliations, then bringing a lawsuit against Columbia in bad faith -- knowing

Columbia was destitute and owed nothing. See Counterclaims ¶¶ 101-03. Thus, NCRIC's analysis regarding whether certain statements were defamatory is irrelevant.[11]

III. Count Six States a Claim for Negligence by Alleging the Existence of an Independent Duty of Care, Separate and Apart From Performance of the Contract

The existence of a contract does not preclude the existence of concurrent, independent duties based upon and interwoven with those flowing from the contract. Negligent performance of a contract may give rise to a claim sounding in tort as well as one for breach of contract. See William Prosser, The Law of Torts, § 92 (4th ed. 1971); Restatement (Second) of Torts §§ 323, 324A (1965); Ajax Hardware Mfg. Corp. v. Industrial Plants Corp., 569 F.2d 181, 185 (2d Cir. 1977). "Where a person contracts to do certain work, he is charged with the common law duty of exercising reasonable care and skill in the performance of the work required to be done by the contract. It is the breach of the duty imposed by law and not of the contract obligation which constitutes the tort." William Wrigley Jr. Co. v. Waters, 890 F.2d 594, 602 (2nd Cir. 1989). Such duties, if breached, give rise to claims that are concurrent to, and independent of, any contract claim, even if the same conduct constituted a breach of both duties. See, e.g., Ramsey Air Meds, L.L.C. v. Cutter Aviation, Inc., 6 P.3d, 315, 319-20 (Ariz. Ct. App. 2000).

Like any other entity that contracts to perform services, NCRIC had a duty of due care in performing as Columbia's bookkeeper, and as administrator of the Retro Plan on Columbia's behalf. NCRIC breached this duty to Columbia by failing to show due care when calculating loss

---

[11] NCRIC's analysis of these statements is unconvincing: it interprets the statements in its own favor, rather than giving all permissible inferences to Columbia. Yet, for example, statements about Columbia's board could reflect on Columbia. Morever, NCRIC apparently assumes that the statements must defame *Columbia* to be actionable as tortious interference. But, for example, NCRIC's slanderous statements about the MIIX could have interfered with Columbia's business relationship with MIIX or with the Attending Faculty. Finally, NCRIC's statements are not opinions or privileged. See also infra Point VI.

16d-000370

reserves, by performing reconciliations improperly, and by miscalculating premiums. Each of these failures damaged Columbia. See Counterclaims at 26; see also ¶¶ 38-42. Accordingly, Columbia pleaded all the necessary elements of a negligence claim.

NCRIC disagrees. It argues that the "gravamen" of Columbia's negligence claim "is the miscalculation in the amount of premium due to NCRIC," which "clearly" lies in contract. Further, NCRIC posits, there "is no allegation of an independent duty . . . outside of" the Retro Plan. Motion at 9. NCRIC offers no authority whatsoever for this proposition.

That the duty to be performed is listed in the contract is not an indication that the duty is solely contractual. To the contrary, where, as here, see Counterclaims Exhibit A ¶ 14 (NCRIC is to perform "all bookkeeping") the duty is described generally and the breach claimed is not a breach of an explicit contract provision, the duty arises in tort. One way to determine whether the claim lies in tort or contract is to look at its "fundamental nature" and ask whether the duty would exist "under the circumstances even in the absence of a contract." Ramsey Air Meds, 6 P.3d at 320-21. Here, regardless of whether NCRIC and Columbia were parties to a contract -- indeed, if Columbia and a third party had entered the contract, and NCRIC was solely its bookkeeper -- NCRIC would owe Columbia a duty of due care in its bookkeeping.

In fact, the gravamen of Claim Six is *not* breach of contract. It alleges a different theory of the wrong. Unlike the contract claim, Claim Six does not request the benefit of the bargain -- the money NCRIC owed Columbia under the Retro Plan. Rather, Claim Six requests *damages* for NCRIC's failure to properly calculate the money NCRIC owed it under the Retro Plan.

IV. Counts Seven and Eight State Claims for Fraud and Misrepresentation By Alleging That NCRIC Engaged in Misrepresentations of Fact Concerning Its Performance of Its Duties Under the Contract and What It Owed Under the Contract

16d-000371

NCRIC contends that Columbia failed to plead misrepresentation because it alleged that NCRIC made only "contractual promises." See Motion at 9-10. This statement is plain wrong.

According to NCRIC, "all of the allegations of" counts seven and eight "are based wholly upon the existence of a breach of the contractual promises of NCRIC" in the Retro Plan. Motion at 9. This argument misreads the pleadings. Columbia incorporated *all* of its allegations into the fraud and misrepresentation claims, see Counterclaims ¶¶ 139, 147. Any of the allegations that constitute a misrepresentation of fact will support the elements alleged in counts seven and eight. Among these allegations is that NCRIC, as bookkeeper under the Retro Plan, knowingly misrepresented the amount of the loss reserves and the amount that was due to it from Columbia. In fact, these allegations are explicitly alluded to in counts seven and eight. See id. ¶¶ 142, 146 (NCRIC misrepresented how loss reserves were maintained, the amounts of premium due).

Simply put, NCRIC's misleading contractual promises, though troubling, are not the bases for Columbia's fraud and misrepresentation claims. Rather, these are premised on actions and misrepresentations after the parties entered into the Retro Plan. In short, while the gravamen of Columbia's contract claim is that NCRIC's *failed to pay* Columbia the amounts that it was due under the Retro Plan, the gravamen of Columbia's fraud and misrepresentation claim is that NCRIC *misrepresented* (or concealed) the amounts that it had failed to pay Columbia.

16d-000372

V. Counts Eight and Ten Are Not Barred By the Statute of Limitations

NCRIC urges that, in the District of Columbia, the one-year statute of limitations for libel bars counterclaims eight, nine and ten. For counts eight and ten, this is completely incorrect.[12]

A. Count Ten for Injurious Falsehood Is Not Barred Because the Applicable Limitations Period is the Limitations Period for Tortious Interference

NCRIC argues that the Trade Libel/Commercial Disparagements/Injurious Falsehood ("Injurious Falsehood") claim is "intertwined" with the defamation claim. See Motion at 11 (citing, inter alia, Foretich v. Glamour, 741 F. Supp. 247, 251 (D.D.C. 1990)). Thus, NCRIC urges, the Injurious Falsehood claim is barred by the statute of limitations for defamation. Motion at 11. This rule may make sense in the cases that NCRIC cites, which all involved torts like intentional infliction of emotional distress or false light, -- *i.e.*, torts that base recovery on harm to a *person's* reputation. Those torts are closely related to defamation and libel.

The injurious falsehood tort is entirely different: it protects disparagement of *commercial*, rather than personal, reputations. See Truck Ins. Exchange v. Bennett, 61 Cal. Rptr. 2d 497, 503 (Cal. Ct. App. 1997); accord Kollenberg v. Ramirez, 339 N.W.2d 176, 178 (Mich. Ct. App. 1983) (citing Prosser & Keeton, Torts (4th ed.) § 128, at 915 (19__)). Accordingly, many jurisdictions apply the statute for tortious interference or injury to property, rather than the statute of limitations for defamation, claims for injurious falsehood. See, e.g., Pro Golf Mfg., Inc. v. Tribune Review Newspaper Co., 2000 PA Super 273 (Pa. Super. Ct. 2000); Guess, Inc. v. Jeff Hamilton, Inc., 176 Cal. App.3d 473 (Cal. Ct. App. 1986); Kollenberg, 339 N.W.2d 176; Shelby

---

[12] Moreover, claim nine, which is based in part on statements made in August and September 2000, see Counterclaims ¶ 155 (citing ¶ 89), is not barred, at least "to the extent" it is "based on paragraphs 69-70 and pre-November 6, 1999." Motion at 11.

v. Taylor, 290 S.E.2d 767 (N.C. Ct. App. 1982); Vaccaro Constr. Co. v. A.J. DePace, Inc., 349 A.2d 570 (N.J. Super. Ct. Law Div. 1975). This court should follow these jurisdictions because the interests protected by injurious falsehood are similar to those protected by interference torts.

B. Count Eight, the Negligent Misrepresentation Claim, Is Not Barred Because It Is Not Even Remotely "Intertwined" With Counts Nine and/or Ten

In the District of Columbia, the statute of limitations applicable to fraud and negligent misrepresentation claims is three years from the time the fraud is or should be discovered. See Clouser v. Temporaries, Inc., 730 F. Supp. 1127, 1131 (D.D.C. 1989) (citing D.C. Code § 12-301(8) (1981)); Filloramo v. Johnston, Lemon & Co., 700 F. Supp. 572, 574 (D.D.C. 1988) (same). In this case, NCRIC claims that the one-year statute of limitations for defamation applies to the negligent misrepresentation claim. This argument is completely meritless.

According to NCRIC, "the underlying facts and nature" of Columbia's negligent misrepresentation claim "is essentially the same as the defamation claim." Motion at 11 (citing, inter alia, Foretich, 741 F. Supp. at 251). This assertion baldly misrepresents the allegations.

Columbia's negligent misrepresentation counterclaim states, in full:

> 147. Medical Center incorporates by reference paragraphs 1 through 146, as though set forth fully herein..
>
> 148. As set forth above, NCRIC and/or its agents made false representations to Medical Center, including that: (1) the Loss Reserves under the Plan were maintained in accordance with the industry standard and (2) after the performance of each reconciliation, a certain amount of Additional or Return Premium was due. Moreover, as set forth above in Paragraphs 37 and 38, NCRIC concealed from plaintiffs material facts that amounted to a misrepresentation.
>
> 149. NCRIC negligently made these false representations because it failed to ensure that it maintain Loss Reserves in accord with the industry standard, among other things.

150. The false representations and/or concealments set forth above were material with regard to the amount of Additional or Return Premium due under the Plan. If not for such false representations and/or concealments, Medical Center would have paid the correct amount of Additional Premium and/or would have demanded the correct amount of Return Premium.

151. NCRIC intended that Medical Center rely upon its false representations and/or concealments, and pay NCRIC for amounts that it was not properly owed under the Plan.

152. As set forth above, Medical Center reasonably relied upon the false representations and/or concealments made by NCRIC, including by paying incorrect amounts of premium. As set forth above, Medical Center's reliance was reasonable, and known to NCRIC, because NCRIC was required to perform all bookkeeping under the Plan and because NCRIC refused to provide Medical Center access to data necessary to independently verify NCRIC's bookkeeping.

153. Medical Center has been directly and proximately damaged by NCRIC's negligent actions by, among other things, overpaying premium, which in turn proximately and directly led Medical Center to become insolvent.

There is no suggestion *whatsoever* in this passage that the negligent misrepresentation claim is based on anything *even remotely similar* to the underlying facts of the defamation claims. The defamation and trade libel claims are based on false statements that were first made at a meeting in August 1998. These statements all impugned either Columbia, its board of directors, its financial health, or a potential insurer. See Counterclaims ¶¶ 69-70, 154-164. None of these statements related *in any way* to promises NCRIC made during the formation of the Retro Plan, to NCRIC's calculation of loss reserves, to NCRIC's calculations of premium under the plan, or to the premium owed by one party to another. These concepts form the *entire* basis for the

negligent misrepresentation claim. See id. ¶¶ 38, 38, 147-153.[13] Moreover, the negligent misrepresentation claim plainly involves statements made by NCRIC *to Columbia*, see id. ¶ 147-153, whereas the defamation claims deal only with statements of NCRIC *to physicians*, see id. ¶ 156.[14]

Since counterclaim eight is not in any way related to the defamation claims, NCRIC's meritless argument must be rejected. Accord Motion at 11 (stating that counterclaim eight should be dismissed "to the extent" it is "based on paragraphs 69-70 and pre-November 6, 1999").

VI. Counts Four, Five and Ten Properly Plead Defamation Because NCRIC Enjoys No Qualified Privilege with Its Insureds Under the Circumstances of this Case

A. None of NCRIC's Statements Are Protected by a Qualified Privilege

NCRIC argues that several of the defamatory, false, injurious statements it was responsible for uttering are protected by a "qualified privilege" between insurers and insureds. Specifically, NCRIC alleges that the sixth statement in paragraph 69 of the counterclaims is privileged and cannot be the subject of a defamation claim. See Motion at 7 (Columbia "lied to the Attending Faculty by stating that it could not afford to continue" the Retro Plan). Apparently, NCRIC also argues that all of the statements alleged in paragraph 89 of the counterclaims are

---

[13] NCRIC's statement that the defamatory statement Columbia alleges "involve matters of Loss Reserves, reconciliations, and amounts of premium due to and from" Columbia, see Motion at 10 n.3 is unintelligible. It is possible that NCRIC construes paragraph 148 of the Counterclaims to incorporate every false statement made in paragraphs 1-147. This reading of the Counterclaims is neither plausible nor reasonable. As stated above, the Counterclaims clarify which false statements form the basis for each claim by describing to whom the statements for each were made (i.e., either to Columbia or to its physicians), and by listing or referencing the key statements.

[14] The only connections between the two claims are (1) they mention "false statements"; (2) they relate to the Retro Plan; and (3) they incorporate all of the prior counts by reference. However, the false statements to which each claim refers are so distinctive that they cannot reasonably be mistaken for each other. And, neither of the latter "connections" are sufficient to render the "underlying facts" of the two claims "similar." If they were, *every* claim brought with a defamation claim would be subject to the 1-year limitations period.

16d-000376

privileged. See Motion at 12 (various statements concerning Columbia's ambulatory clinic). Here, NCRIC misunderstands the legal principal it attempts to employ.

A *qualified* privilege does attach "to particular communications between and insured and insured." 560 Am. Jur. 2d Libel and Slander § 325 (1995). A qualified privilege must be based at least on a common interest between the insurer and insured, if not a duty to speak. Even assuming that a qualified privilege exists in the District of Columbia and protects communications between NCRIC and its insureds in some instances, it does not exist on the facts of this case.

A qualified privilege must be made in good faith, on a topic of mutual interest between the parties, limited in its scope to this purpose, on a proper occasion and made and published in a proper manner to proper parties only. See Hahn v. Kotten, 331 N.E.2d 713, 718-19 (Ohio 1975). Since the privilege is qualified, it vanishes if abused. See id. Unprotected statements include those made in bad faith, see International Adm'rs., Inc. v. Life Ins. Co., 753 F.2d 1373, 1380-81 (7th Cir. 1985), those made to harm another rather than benefit the parties to the privilege, see, e.g., Nasr v. Connecticut Gen. Life Ins. Co., 632 F. Supp. 1024, 1027-28 (N.D. Ill. 1986), or those made with falsity and malice, see Hahn, 331 N.E.2d at 718.

Due to the aforementioned qualifications, the privilege affords no protection to NCRIC. Columbia has alleged that all of NCRIC's statements were known to be false when made, *i.e.*, in bad faith. See Counterclaims ¶¶ 69, 121 126, 155-57, 160-62. Moreover, NCRIC made the statements to retaliate against Columbia. See id. ¶¶ 69-71, 89, 92. The privilege does not protect such statements, even if they are on a topic of mutual interest to the insurer and insured. But moreover, when all permissible inferences are granted to Columbia, NCRIC's statements were not on a topic of mutual interest to the insured. Rather, the statements were attacks on Columbia, for

the purpose of retaining the Attending Faculty as insureds and causing them to leave Columbia -- not for the Attending Faculty's benefit. NCRIC had no good reason to attempt to steer its insureds away from Columbia to another hospital, except to benefit itself and harm Columbia.

B. None of NCRIC's Statements Are Non-actionable Statements of Opinion

1. NCRIC's "Opinions" Concerning Facts are Actionable

NCRIC argues that two of false, injurious statements it uttered are not actionable because they are statements of "opinion." Specifically, NCRIC alleges that the third and fourth statements in paragraph 89 of the counterclaims are opinions. See Motion at 7 (Columbia's "self-insurance trust was insufficiently funded to insure" the clinic, and the clinic "was a dangerous place to work"). Even if they are opinions, neither warrants protection from liability.

On a motion to dismiss in a defamation action, the court must determine whether a statement is capable of bearing a defamatory meaning. See Guilford Transp. Indus. Inc. v. Wilner, 760 A.2d 580, 594 (D.C. 2000) (citing Restatement (Second) of Torts § 614 (1)(1977)). In reaching its conclusion, the court must construe the words "as the average or common mind would naturally understand [them]." Id. at 594 (citing 8 S. Speiser, C. Krause & A. Gans, The American Law of Torts § 29:37 (1991)) (alteration in original). Columbia has alleged that the statements attributable to NCRIC defamed Columbia. See Counterclaims ¶¶ 69, 89, 155-58.

NCRIC offers no support for its claim that statements of opinion are not actionable defamation. Indeed, the law is quite the contrary: "statements of opinion can be actionable if they imply a provably false fact, or rely upon stated facts that are provably false." Moldea v. New York Times Co., 22 F.3d 310, 313, 306 U.S. App. D.C. 1, 10 (D.C. Cir 1994); accord Washington v. Smith, 80 F.3d 555, 556, 317 U.S. App. D.C. 79, 80 (D.C. Cir. 1996) (a statement

of opinion is actionable "if it has an explicit or implicit factual foundation and is therefore objectively verifiable"); Restatement (Second) of Torts § 566 (1977) (an opinion is actionable if it "implies the allegation of undisclosed defamatory facts as the basis for the opinion"). Another, way of stating this distinction is that statements of opinion which purport to convey information, *i.e.*, "deductive opinions," are actionable, whereas purely "evaluative opinions" expressing a value judgment, are not. See Ollman v. Evans, 750 F.2d 970, 978-79 n.14 (D.C. Cir. 1984); 50 Am. Jur. 2d Libel and Slander § 162 (1995) (If a statement can reasonably be understood by the ordinary person as implying undisclosed defamatory facts, the question of whether it is a statement of fact or an opinion will be submitted to the jury). Federal courts in this jurisdiction have employed four factors to ascertain whether, under the "totality of circumstances," a statement is an non-actionable opinion. These factors are: (1) "the specific language used"; (2) "whether the statement is verifiable"; (3) "the general context of the statement"; and (4) "the broader context in which the statement appeared." Ollman, at 97_. Finally, even an evaluative opinion may be actionable if the publisher "was misstating [its] own state of mind or if a reasonable and fair-minded person could not have entertained the derogatory opinion on the basis of the opinion upon which [the publisher] relied." McConnell v. Howard Univ., 621 F. Supp. 327, 332 (D.D.C. 1985) (citing Prosser & Keaton, Torts § 113A, at 814 (5th ed. 1984)).

Here, when Medical Center is granted all permissible inferences, NCRIC's statements were, in fact, defamatory. First, the statement that a hospital clinic is a dangerous place to work, in the context of a warning from a malpractice insurer to its insureds, is a very serious charge. The statement alleged is not specific, but it clearly suggests that NCRIC possessed underlying knowledge of facts which would be damaging to Columbia. Further, the physicians had reason to

believe that NCRIC had such information, because NCRIC had records for all claims against its physicians who practiced at the clinic. Yet, as Columbia has alleged, the statement was false.

The second statement, that Columbia had insufficient funds to cover the clinic's liabilities, made by an insurer with whom Columbia had agreed to share liabilities to insureds, is advisory, not evaluative. Here, NCRIC implied that it knew, perhaps from an official accounting as part of the Retro Plan, that the trust fund was insolvent.[15] NCRIC attempts to argue these statements actually might be true -- but of course, NCRIC cannot contradict the counterclaims, nor can it deny Columbia the inference that each statement is false.

2. NCRIC's Misrepresentations Did Not Constitute Legal Opinions

NCRIC argues that it cannot be held liable for the statements in paragraph 89 of the counterclaims (assuming, as it must, that the statements are false) because "misrepresentations as to matters of law do not ordinarily support an action for damages."[16] Yet, the statements NCRIC made were not about "matters of law." They were statements of fact: that an insurance policy had expired, that certain doctors were not covered by the policy, and that the trust fund had sufficient funds. These statements related to a contract, but not every statement about a contract

---

[15] NCRIC cites an ancient case, Dicken v. Shepherd, 22 Md. 399 (Md. 1864), for the proposition that the latter statement was not defamatory. But this case is inapposite, see id. at __ (holding that malice was not present upon a finding of the truth of the statement); see id. at __ (holding that a statement that plaintiff would never pay off a bill was an allegation of insolvency). A charge of insolvency is slander *per se*.

[16] The case NCRIC cites for this rule shows that this principal applies to actions for fraud and misrepresentation, see Hembry v. Parreco, 81 A.2d 77, 79 (D.C. 1951); NCRIC cites no case applying this rule to defamation. Moreover, Columbia would fall within a long-established exception to this rule "[w]here one has, or professes to have, a superior knowledge of the law, and particularly if there is a relationship of confidence between the parties, a misrepresentation of law may be actionable." See Dixon v. Dodd, 80 A.2d 282, 284 (D.C. 1951). Here, without a doubt, NCRIC's agents were purporting to offer expertise about the policy it wrote.

is a statement of law. Here, NCRIC was reporting on events that flowed from the contract, rather than interpreting the contract using legal principals, and thus, NCRIC's statement were facts.

VII. The Prayer for Punitive Damages ShouldNot Be Dismissed Because Columbia Pleaded Bad Faith for All the Claims For Which It Requested Punitive Damages

NCRIC moves to dismiss Counts One, Two, Three, Six, Eight and Eleven insofar as Columbia seeks punitive damages therefore.[17] Columbia has only requested punitive damages for those claims which are founded upon a claim of bad faith, all of which warrant punitive damages.

NCRIC argues that "malice" is a prerequisite to the recovery of punitive damages, and further, that Columbia has failed to allege malice. Both statements are inaccurate. Although malice can support the recovery of punitive damages, numerous other types of misconduct also will suffice. See Jemison v. National Baptist Convention, USA, Inc., 720 A.2d 275, 286 n.10 (D.C. 1998) (enumerating "fraud, ill will, recklessness, wantonness, oppressiveness, willful disregard of the [other party's] rights, or other circumstances tending to aggravate the injury" as factors that support punitive damages); Wagman v. Lee, 457 A.2d 401, 405 (D.C. 1983) (same).

Here, Columbia alleged that NCRIC entered into a fiduciary relationship with Columbia, but acted with malfeasance, fraud and bad faith throughout the latter part of the relationship. See Counterclaims ¶¶ 69, 111-22, 126, 155-57, 160-62. Further, after the relationship terminated, NCRIC engaged in retaliation against Columbia. Id. ¶¶ 69-71, 89, 92. When Columbia is granted all permissible inferences, these allegations are more than adequate to satisfy the standard for punitive damages, however it is stated. See, e.g., Purcell v. Automatic Gas Distribs., 673 P.2d

---

[17] In a separate motion for a more definite statement, NCRIC requests that Columbia clarify for what counts it requests punitive damages. NCRIC's argument here flatly contradicts its argument in that motion, that it cannot frame a motion to dismiss without clarification.

16d-000381

1246, 1250 (Mont. 1983) (holding that abuse of trust by a fiduciary who performed accounting for the beneficiary supported a finding of constructive fraud and the award of punitive damages). Here, NCRIC's bad faith was particularly egregious, when coupled with its refusal to allow Columbia to audit its calculations under the Retro Plan, thereby eliminating any chance that Columbia could discover the harm. See Counterclaims at 27-30.

NCRIC's second argument is that punitive damages are not available for the claims "based on contract." A breach of contract will support an award of punitive damages if the contractual breach "'merges with and assumes the character of a willful tort.'" Sere v. Group Hosp., 443 A.2d 33, 37 (D.C. 1982) (quoting Brown v. Coates, 102 U.S.App.D.C. 300, 303, 253 F.2d 36, 39 (1970)). This is especially true when a fiduciary breaches a contract with its beneficiary, due to the public policy in favor of protecting those who place their trust in others. See Brown, 102 U.S.App.D.C. 300, 253 F.2d 36, 40 (holding that breach of contract by a fiduciary "warrant[ed] the imposition of punitive damages"). Indeed, according to Brown and its progeny, breaching a contract in the context of a fiduciary relationship is sufficiently tort-like that it warrants recovery of punitive damages independently of any actual tort. See, e.g., Wagman v. Lee, 457 A.2d 401, 404 (D.C. 1983) (applying rule to escrow/depositor relationship).

NCRIC also is wrong to suggest that counts two and three cannot support exemplary damages. Count two sounds in contract but has a tort-like claim as its gravamen: bad faith. Of course, count three lies in tort, not contract. See Washington Med. Center v. Holle, 573 A.2d 1269, 1284 n. 24 (D.C. 1990) (explaining that a fiduciary duty "claim sounds in tort regardless of its contractual underpinnings" (internal quotations omitted)). It is without doubt that punitive damages may be warranted for a breach of fiduciary duty. See Wagman, 457 A.2d at 405.

16d-000382

Finally, it is well-recognized that punitive damages are available for conversion, see, e.g., Siegman v. Equitable Trust Co., 297 A.2d 758, 761 (Md. 1972), when the underlying claim involves the appropriate level of intent, *e.g.*, fraud or willful disregard for the other party's rights.

XIII. Columbia's Request for Attorneys' Fees Is Proper, Due to NCRIC's Bad Faith Filing of This Lawsuit

Finally, NCRIC posits that Columbia's request for attorneys' fees should be dismissed. Here, NCRIC correctly states the rule, but misses an obvious exception.

As NCRIC explains, pursuant to the "American Rule," attorneys' fees generally are not recoverable by the prevailing party to litigation, absent a recognized exception. Motion at 13. However, NCRIC fails to mention one such exception: bad faith in bringing or maintaining a lawsuit. See Goffe v. Pickard, 588 A.2d 265, 271 (D.C. 1991); accord David O. Dalo and D-Developers, Inc. v. Kivitz, 596 A.2d 35, 37 (D.C. 1991); Auxier v. Kraisel, 466 A.2d 416, 420-21 (D.C. 1983); General Fed'n. of Women's Clubs v. Iron Gate Inn, Inc., 537 A.2d 1123, 1128-29 (D.C. 1988); Cahn v. Antioch Univ., 482 A.2d 120, 133 (D.C. 1984); Trilon Plaza Co. v. Allstate Leasing Corp., 399 A.2d 34, 36 (D.C. 1979). The benchmark for bad faith in the District of Columbia is whether the conduct in bringing the lawsuit was "in bad faith, [vexatious], [wanton], or . . . oppressive." Trilon Plaza Co., 399 A.2d at 37 (quoting 6 Moore's Federal Practice & Procedure § 54, 77(2), at 1709 (2d ed. 1976)) (alterations in original); accord Goffe, 588 A.2d at 271 (defendant was liable for attorney's fees when conduct was vexatious and designed to avoid responsibility to the plaintiffs in bad faith) .

NCRIC's conduct clearly qualifies for the bad faith exception. NCRIC billed Columbia for premiums under the Retro Plan, and then brought a lawsuit to collect those premiums, while

knowing that the premiums resulted from an improper calculations under the Retro Plan. See ¶¶ 56-58. This conduct constitutes bad faith. Thus, Columbia's prayer for attorney's fees is a proper and should not be dismissed (or struck).

CONCLUSION

DATED: January 26, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000384

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff	)	

ORDER

Counter-Defendant NCRIC, Inc.'s ("NCRIC") Motion to Dismiss Counterclaims is hereby DENIED.

SO ORDERED.

_____
Judge Linda K. Davis

Dated: _____, 2001.

16d-000385

Copies to:

Mark C. Hansen
Steven F. Benz
Joseph K. Leahy
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue
Suite 500
Bethesda, MD 20814

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Sylena L. Slaughter, hereby certify that on this 26th day of January, 2001, a copy of Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center Inc.'s Supplemental Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Dismiss Counterclaims was served upon the following by first class mail, postage prepaid:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena L. Slaughter

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Clerk's Office
FEB 02 2001
Superior Court
District of Columbia

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Deadline, Mar. 12, 2001
	)	
	)	
Defendant/Counter-Plaintiff.	)	

MOTION TO STRIKE DEFENSE AND
SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

Defendant/Counter-Plaintiff, Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by and through its attorneys, Mark C. Hansen, Esquire, Steven F. Benz, Esquire, Joseph K. Leahy, Esquire, and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., moves this Court, pursuant to District of Columbia Superior Court Rules 8(c), 9(b), and 12(f), to strike the Sixth Defense in Plaintiff/Counter-Defendant NCRIC Inc.'s ("NCRIC") Reply of Plaintiff to Amended Counterclaims 1 and 2 of Defendant ["Reply"], and sets forth the following points and authorities in support of said motion.

ARGUMENT

I. NCRIC Failed to Plead Its Affirmative Defense of Fraud with Particularity

In all pleadings filed with this court, including answers, averments of fraud or misrepresentation must assert "the circumstances constituting fraud . . .with particularity." D.C. Sup. Ct. R. 9(b); see 5 Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1274, at 455-56 & n.6 (1990) (Rule 9(b) applies to affirmative defenses). Pursuant to this rule,

the circumstances of fraud that must be pleaded include, at a minimum, the "who, what, where and when of the alleged fraud." NAL II, Ltd. v. Tonkin, 705 F. Supp. 522, 526 (D. Kan. 1989) (internal quotation marks omitted); accord In re Northern Telecom Ltd. Secs. Litig., 42 F. Supp. 2d 234, 240 (S.D.N.Y. 1998); 5 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1297, at 590. Further, under Rule 8(c), "[a]n affirmative defense must sufficiently apprise the opposing party of the nature of the defense, providing the opposing party with adequate notice of the relevant elements of the defense." D.S. America (East), Inc. v. Chromagrafx Imaging Sys., Inc., 873 F. Supp. 786, 797 (E.D.N.Y. 1995); see, e.g., Shechter v. Comptroller of New York, 79 F.3d 265 (2d Cir. 1996) (rejecting defenses that were stated without any specificity). Simply put, "[p]leading fraud without more as an affirmative defense does not meet the particularity requirements of Rule 9(b)," Telectronics Proprietary, Ltd. v. Medtronic, Inc., 687 F. Supp. 832, 841 (S.D.N.Y. 1988) -- or even under the less stringent requirements of Rule 8(c), see D.S. America (East), 873 F. Supp. at 797.

In its Reply, NCRIC pleads, as its Sixth Defense, that "Defendant's counterclaims are barred by reason of its own fraud and illegal conduct." Here, at a minimum, NCRIC failed to meet the minimum requirement of Rule 9(b) that it "must specify what was said, by whom, when and where it was said, and why it was untrue." In re Northern Telecom, 42 F. Supp. 2d at 240; see also Telectronics Proprietary, 687 F. Supp. at 841 ("By itself, the word 'fraud' provides neither the Court nor the opposing party with sufficient notice of the claim raised by this defense."). Further, this defense is insufficient under Rule 8(c) because it "provide[s] no information other than the name of the legal theory on which [it] is based." Servpro Indus., Inc. v. Schmidt, 905 F. Supp. 475, 482, 483 (N.D. Ill. 1995). Since NCRIC merely stated the legal theory of its defense, rather than stating the circumstances of how the purported fraud was

16d-000389

carried out, and therefore failed to meet the requirements of Rule 9(b) and Rule 8(c), this Court should strike the defense. See, e.g., Lafayette Corp. v. Bank of Boston Int'l South, 723 F. Supp. 1461, 1467 (S.D. Fla. 1989) (striking defense where the circumstances of misrepresentation were pleaded "without any particulars"); Telectronics Proprietary, 687 F. Supp. at 841, 847 (striking defense of fraud under Rule 9(b)); Intel Corp. v. Hyundai Elecs. of America, Inc., 692 F. Supp. 1113, 1117 (N.D. Cal. 1987) (striking defense of fraud under Rule 9(b)); D.S. America (East), 873 F. Supp. at 797 (striking defenses for lack of particularity under Rule 8(c)); Servpro Indus., 905 F. Supp. at 483 (striking defenses under Rules 8(c) and 9(b)).

II. Columbia Will Be Prejudiced Due To NCRIC's Lack of Particularity

Rule 9(b) requires that fraud be pleaded with particularity for several reasons: in order to give the defending party notice of specific allegations of fraud, so that it may refute them; to protect the defending party's reputation; and to discourage baseless fraud claims made with the hope of using discovery as a fishing expedition. See Kula v. J.K. Schofield & Co., 668 F. Supp. 1126, 1134 (N.D. Ill. 1987); see also Servpro Indus., 905 F. Supp. at 483. Here, all three reasons are implicated. Because NCRIC's Amended Reply offers no basis whatsoever for its defense of fraud, Columbia is unable to respond, protect its reputation, or prevent burdensome fishing expeditions under the guise of discovery. Because NCRIC failed to give Columbia "fair notice" of the fraud alleged, its Sixth Defense must be stricken. Servpro Indus., 905 F. Supp. at 483.

Courts applying Rule 9(b) typically have not required that the moving party make a showing of prejudice, as Rule 12(f) requires before a court will strike an insufficient defense. See, e.g., id. (striking defenses based on lack of "fair notice"). However, Columbia has met Rule 12(f)'s standard for striking an insufficient defense, in any event. Columbia will be prejudiced in this action if NCRIC's defense is allowed because, due to Columbia's lack of knowledge about

the alleged basis for the fraud, it will have difficulty obtaining discovery relating to and refuting the allegation. As a result, if NCRIC attempts to prove the defense at trial, Columbia will be unable to rebut NCRIC's proof. Second, as a non-profit community hospital that depends upon its good reputation to recruit and retain physicians, Columbia will be prejudiced by a continuing allegation of some unspecified fraud that it cannot refute due to the lack of specifics.

CONCLUSION

For the foregoing reasons, Columbia respectfully asks this Court to strike the Sixth Defense in NCRIC's Reply of Plaintiff to Amended Counterclaims 1 and 2 of Defendant, pursuant to District of Columbia Superior Court Rules 8 (c), 9(b) and 12(f).

DATED: February 1, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, upon consideration of the points and authorities submitted, Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc.'s ("Columbia") motion, pursuant to District of Columbia Superior Court Rules 8(c), 9(b), and 12(f), to strike the Sixth Defense in Plaintiff/Counter-Defendant NCRIC Inc.'s ("NCRIC") Reply of Plaintiff to Amended Counterclaims 1 and 2 of Defendant, is hereby GRANTED.

DATED: _____, 2001

SO ORDERED,

_____

Judge Linda K. Davis

Copies to:

Mark C. Hansen
Steven F. Benz
Joseph K. Leahy
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue
Suite 500
Bethesda, MD 20814

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 1st day of February, 2001, a copy of Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center Inc.'s Motion to Strike Defense and Supporting Memorandum of Points and Authorities was served upon the following by first class mail, postage prepaid:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Deadline, Mar. 12, 2001
	)	
	)	
Defendant/Counter-Plaintiff.	)	

CERTIFICATE

I, Joseph K. Leahy, hereby certify that I attempted to contact counsel for Plaintiff/ Counter-Defendant NCRIC, Inc. ("NCRIC") by telephone on Feburary 1, 2001 in an effort to determine whether NCRIC would consent to Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center Inc.'s Motion to Strike Defense and Supporting Memorandum of Points and Authorities ["Motion to Strike"]; however, I was unable to reach counsel. I further certify that I left a message requesting that counsel contact me today if NCRIC would consent to the relief Columbia sought. Having not heard back from counsel, I have concluded that NCRIC will not consent to the Motion to Strike.

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next event: Discovery request deadline
	)	
Defendant.	)	

REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

NCRIC, Inc., plaintiff, by Roy Niedermayer, its attorney, replies to defendant's Opposition to the Motion to Dismiss with the following summary observations:

1. Sufficiency of Allegations. Plaintiff's Motion challenges whether defendant's counterclaims make sufficient allegations under its legal theories as pleaded, not whether such legal theories exist theoretically.

2. Breach of Fiduciary Duty Claims. Defendant's fiduciary duty and negligence theories convert every service contract into a fiduciary relationship where there is an allegation the other party was engaged because of his skills or expertise – the very reason the parties no doubt entered into the contract, i.e., obtaining the knowledge and skills of the other party. If there were no "trust and confidence" in plaintiff's knowledge, there would have been no contract to begin with. All breaches of contract are not, therefore, breaches of fiduciary duty.

3. One Year Statute of Limitations for Defamation. Defendant never addresses the bar of the one year statute of limitations precluding the defamation claims for

RECEIVED
FEB 0 [illegible] 2001
By 16d-000396

statements made in August 1998. See counterclaim paragraph 69.

4. Punitive Damages. Defendant has laid out its claims for breach of fiduciary duties separately from its count for breaches of contract. Compare Counts 1-2 with 3. Therefore, punitive damages are not proper in the contract counts. Yet, defendant then uses the claims of breach of fiduciary duty not contained in the separate contract counts as the basis for punitive damages in the contract claims of Counts 1 and 2. Even if defendant has properly pleaded for punitive damages for breaches of fiduciary duty, it should not be allowed to use the same actions as the basis for punitive damages for breach of contract and it is not proper to do so.

5. Attorneys' Fees Claim. An award of attorneys' fees is not properly pleaded in the pending counterclaims. Defendant's claim is for attorneys' fees incurred because of plaintiff's filing of this lawsuit. If the theory for recovery is SCR 11, then this is not compensatory damages which can be pleaded in the counterclaim, but relief to be granted after the case concludes. If the theory for recovery is like a claim for abuse of process or malicious prosecution, then the attorneys' fees claim is premature because it cannot be brought in the same action complained of as the tort, but must be brought in an action subsequent to the resolution of first action, not contemporaneously. See, *e.g.*, *Morowitz*

v. Marvel, 423 A.2d 196 (1980)(Termination of prior action in defendant's favor is necessary element of cause of action for recovery of damages in malicious prosecution/abuse of process cases).

Roy J. Niedermayer, Esq. D.C. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for NCRIC, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 6, 2001, a copy of the foregoing NCRIC's Renewed Motion to Dismiss Counterclaims, was mailed, first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy J. Niedermayer, Esq. D.C. Bar #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 6, 2001, a copy of the foregoing NCRIC's Renewed Motion to Dismiss Counterclaims, was mailed, first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy L. Niedermayer, Esq. D.C. Bar #180380

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda K. Davis
	)	Next event: Discovery Deadline, 3/12/01
Defendant.	)	

JOINT PRAECIPE

Plaintiff, NCRIC, Inc., and Defendant, Columbia Hospital for Women Medical Center, Inc. by their counsel, each hereby agree that:

(1) Defendant will withdraw its pending Motion to Strike Defense; and

(2) Plaintiff will withdraw the Sixth Defense in its Reply of Plaintiff to Amended Counterclaims 1 and 2 of Defendant.

These actions shall both be effective upon filing of this Joint Praecipe.

DATED: February 8, 2001

Roy Niedermayer JLL by permission

Roy Niedermayer, D.C. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 0007308-00 Calendar #8 Judge Linda K. Davis Next event: Discovery Deadline, 3/12/01

JOINT PRAECIPE

Plaintiff, NCRIC, Inc., and Defendant, Columbia Hospital for Women Medical Center, Inc. by their counsel, each hereby agree that:

(1) Defendant will withdraw its pending Motion to Strike Defense; and

(2) Plaintiff will withdraw the Sixth Defense in its Reply of Plaintiff to Amended Counterclaims 1 and 2 of Defendant.

These actions shall both be effective upon filing of this Joint Praecipe.

DATED: February 8, 2001

Roy Niedermayer JLL by permission

Roy Niedermayer, D.C. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,

Plaintiff,

v.

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant.

RECEIVED
Civil Clerk's Office
FEB 16 2001
District of Columbia
Washington, D.C.

Civil Action No. 00-0007308
Calendar 8 -- Judge Davis
Next Event: Discovery Deadline, 3/12/01

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 14th day of February, 2001, I served on opposing counsel, by Federal Express and facsimile, a copy of Defendant's Objections and Responses to the Second Request of Plaintiff to Defendant for Production of Documents, and that I will retain the original of these documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: February 14, 2001

Respectfully submitted,

Joseph R. Leahy,
D.C. Bar No. 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,)
)
Plaintiff,)
)
v.) Civil Action No. 00-0007308
) Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN) Next Event: Discovery Deadline, 3/12/01
MEDICAL CENTER, INC.,)
)
Defendant.)

RECEIVED
Civil Clerk's Office
MAR 16 2001
Superior Court of the
District of Columbia
Washington, D.C.

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 12th day of March, 2001, I served on opposing counsel, by First Class Mail, a copy of Defendant's First Set of Interrogatories to Plaintiff, Defendant's First Set of Requests for Admission to Plaintiff and Defendant's Second Set of Requests for Documents to Plaintiff. I certify that I will retain the original of these documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: March 12, 2001

Respectfully submitted,

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC., Plaintiff/Counter-Defendant,	
v.	Civil Action No. 00-0007308
	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Next Event: Deadline for Discovery Requests, March 12, 2001

DEFENDANT'S INITIAL LIST OF FACT WITNESSES FOR TRIAL

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby submits the following initial list of fact witnesses who may be called at trial:

1. R. Ray Pate, Jr.
2. Larry Wilson, Jr.
3. Robert Greenfield, Jr., M.D.
4. Melinda Murray
5. Ann Gaffey
6. Gerald Beaulieu
7. Thomas Foley
8. Dwaine Gasser
9. Susan Hansen
10. James Rodgers
11. Dana Serafin Carey
12. Michael R. Feldman
13. Nabil Asterbadi, M.D.
14. Safa Rifka, M.D.
15. Daryl Chamblee

16. Lynn Petersons

17. Patrick Kane

18. David Little

19. Jeffrey Marsh

20. Grant Sohm

21. Stephen Fargis

22. William Burgess

23. Diana Winter

24. Henry Chukwueizi

25. David Osborne

26. Harry Custis

27. George Samman

28. Herman Hunter

29. Lawrence Mirel

30. Colin van Niel

31. Robert Sloan

32. Michael Poe

33. Nancy Connolly

34. Any person involved in any way with calculation of NCRIC's loss reserves under the Retrospective Ration Plan Agreement between the parties

35. Any current or past member of the Attending Faculty, including any member of the Attending Faculty who moved his or her practice to Sibley Memorial Hospital.

36. Any current or past member of the Columbia Physician's Group.

37. All persons listed on any fact witness list of Plaintiff NCRIC, Inc.

38. Any attendee at the August 1998 meeting attended by NCRIC and Attending Faculty, as described in the Amended Answer and Counterclaims.

39. As discovery in this matter is continuing, Defendant reserves the right to supplement this List to include any and all individuals identified in discovery.

40. Columbia reserves the right to modify this List in the event that its pending motion to amend the Court's January 12, 2001 scheduling order is granted.

Dated: March 12, 2001.

Respectfully Submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-000406

CERTIFICATE OF SERVICE

I, Sylena L. Slaughter, hereby certify that on this 12th day of March, 2001, a copy of Defendant's Initial List of Fact Witnesses for Trial was served upon the following by first class mail, postage prepaid:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena L. Slaughter

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Deadline for Discovery Requests, March 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DEFENDANT'S INITIAL RULE 26(B)(4) STATEMENT AS A PROPONENT OF A CLAIM

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby states, pursuant to District of Columbia Superior Court Rules of Civil Procedure 16(b)(3) and 26(b)(4), that it currently expects that it may call one or more of the following persons as expert witnesses at trial on its behalf:

1. Elizabeth Wright, Independent Consultant; and

2. Mary Harriman, Director of Risk Management, Mercy Health Services.

Each of the foregoing experts is expected to testify, if retained and called as a witness, with regard to the following subjects:

1. methods, formulas and criteria for setting loss reserves by hospitals and/or insurers for medical malpractice liability claims in the District of Columbia and/or surrounding metropolitan area;

2. the reasonableness and propriety, in light of the industry standards for setting loss reserves for medical malpractice liability claims in the District of Columbia and/or surrounding metropolitan area, and in light of other loss reserves of the same nature set by NCRIC in the same region, of the loss reserves set by NCRIC under the Retrospective Rating Plan Agreement between the parties.

Columbia makes the forgoing statements subject to the following qualifications:

1. Columbia has not yet retained either of the foregoing witnesses to testify at trial, but rather, has contacted and/or is negotiating with such witnesses; if Columbia retains either of the foregoing expert witnesses to testify at trial, Columbia will supplement this Rule 26(b)(4) statement with information concerning the witness's address and qualifications, at that time;

2. due to its current financial situation, Columbia may be unable to retain either of the foregoing expert witnesses, in which case Dr. Henry Chukwueizi, Risk Manager, Columbia Hospital for Women Medical Center, Inc., or any other suitable person later discovered by Columbia, may testify as an expert to the foregoing subjects;

3. Columbia reserves its right to supplement the designations of expert witnesses and subjects of testimony set forth above at any time during the course of ongoing discovery;

4. Columbia reserves its right to designate any of the foregoing, or others, as rebuttal expert witnesses at the appropriate time; and

5. Columbia has yet not received from NCRIC the documents and information concerning its loss reserves that is necessary for the forgoing expert witnesses to render their opinions concerning the subjects set forth above, and therefore, these experts have not rendered any opinions or written any reports. Accordingly, Columbia is unable at this time to set forth the substance of the facts and opinions to which the experts are expected to testify, and a summary and grounds for each opinion. However, within a reasonable time after receiving all of the necessary documents and information concerning loss reserves from NCRIC, any experts retained by Columbia will render their opinions, and Columbia will supplement this Rule 26(b)(4) Statement with the required information.

6. Columbia reserves the right to modify this Statement in the event that its currently pending motion to amend the Court's January 12, 2001 scheduling order is granted.

16d-000409

DATED: March 12, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000410

CERTIFICATE OF SERVICE

I, Sylena L. Slaughter, hereby certify that on this 12th day of March, 2001, a copy of Defendant's Initial Rule 26(b)(4) Statement As A Proponent of A Claim was served upon the following by first class mail, postage prepaid:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena L. Slaughter

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Deadline for Discovery
MEDICAL CENTER, INC.,	)	Requests, March 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

MOTION TO AMEND SCHEDULING ORDER

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby moves the Court, pursuant to District of Columbia Superior Court Rule of Civil Procedure 16(b), to amend the Scheduling Order and assign this case to Track 4, with the following proposed deadlines (listed alongside of the current deadlines):

Deadline	Current	Proposed
Deadline for discovery requests	3/12/01	5/14/01
Exchange witness lists:	3/12/01	5/14/01
Proponent's rule 26(b):	3/12/01	5/28/01
Opponent's rule 26(b):	4/12/01	6/29/01
Discovery closes:	5/12/01	8/31/01
Deadline for filing motions:	5/27/01	9/17/01
Dispositive motions decided:	6/27/01	10/17/01
ADR:	7/12/01 - 8/12/01	11/7/01 - 12/7/01
Pretrial:	60 days	60 days

A Memorandum in support of this Motion and a proposed Order are attached hereto.

DATED: March 12, 2001

ORAL HEARING REQUESTED

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000413

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Deadline for Discovery
MEDICAL CENTER, INC.,	)	Requests, March 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITRIES IN SUPPORT OF MOTION TO AMEND SCHEDULING ORDER

Preliminary Statement

This is a complex commercial case which should be on Track 4, not Track 2. An amendment to the scheduling order is warranted because, despite diligent efforts by counsel, the complexity and enormity of factual and expert discovery make it impossible to comply with the constraints of the Track 2 scheduling order. While failure to modify the scheduling order will substantially prejudice Defendant's ability to pursue its counterclaims, Plaintiff will suffer no prejudice whatsoever from a modification. Accordingly, Defendant respectfully requests that this case be transferred to Track 4, with the schedule proposed below (or any substantially similar schedule ordered by the Court).

Factual Background

The Pleadings and the Allegations

The Amended Complaint, filed by Plaintiff NCRIC, Inc. ("NCRIC") on or about January 3, 2001, seeks damages of nearly $2 million for an alleged breach of contract. The contract at issue, the Retrospective Rating Plan ("the Plan") (attached as Exhibit A) is a complicated

agreement under which NCRIC provided a discount on the malpractice insurance premiums of physicians practicing at Columbia, in return for which Columbia agreed to pay NCRIC "additional premium" if losses exceeded expectations, and NCRIC agreed to pay "return premium" to Columbia if losses were less than expected. The centerpiece of the Plan is a complex, backwards-looking "retrospective rating" formula ("formula") used to perform "reconciliations" – *i.e.*, to calculate whether additional premium or return premium is owed – of the Plan each year. Application of the formula (which takes up four pages of text in the Plan) requires use of many variables and multiple multipliers. Further, each amount in the formula is itself a sum of underlying raw data (*e.g.*, the indemnities paid by NCRIC in lawsuits or loss reserves set aside by NCRIC for claims against physicians). In order to calculate the exact amount of additional or return premium owed under the Plan, the formula must be properly applied and all of the underlying data must be analyzed.

Columbia's Amended Answer and Counterclaims, filed on or about January 3, 2001, seeks an unspecified amount of damages for breach of contract, breach of fiduciary duty, fraud/constructive fraud, tortious interference with business relations, tortious interference with prospective advantage, negligent misrepresentation, defamation and conversion by NCRIC. Accordingly, this action is not just a simple contract dispute. Rather, it involves allegations of tortious conduct by NCRIC throughout the parties' seven-year business relationship.

Entry of the Scheduling Order

On January 12, 2001, this Court held a scheduling conference. Prior to the scheduling conference, counsel for Columbia had diligently attempted to determine the timeframe for each track or to ascertain any guideline for the type of cases that belong on each track. However, despite reviewing the District of Columbia Rules of Procedure and the Court's website, and

16d-000415

contacting the Clerk of Court, counsel could find no such information. At the scheduling conference, counsel for NCRIC requested that the case be assigned to Track 2. At that time counsel for Columbia did not object, having no basis to Track 2 *per se*. However, counsel for Columbia expected an opportunity to object to *individual* dates listed in the scheduling order. This opportunity never arose, as the conference ended and the parties received a copy of the scheduling order from the clerk *afterwards*. Upon reviewing the scheduling order, counsel for Columbia determined that the timetable set forth in the order might be inappropriate for this complex case, but decided to attempt in good faith to comply with the order with the option of later moving to amend should the Track 2 schedule prove unworkable.

Motion Practice

Currently pending before the Court is NCRIC's motion to dismiss all but two of Columbia's counterclaims and Columbia's pleas for punitive damages and attorney's fees. Also currently pending are NCRIC's motion for a more definite statement and motion to strike a defense as insufficient. The parties completed briefing of these motions on February 7, 2000. (Columbia also filed a motion to strike NCRIC's insufficient defense of fraud; this motion was withdrawn by mutual consent when NCRIC agreed to withdraw the defense.)

Discovery to Date

NCRIC has served interrogatories, a request for admissions, and two sets of document requests. Columbia has responded to the interrogatories and requests for admission; has provided written responses and made three productions of documents (totaling one full banker's box) in response to the requests for documents; has provided written responses to NCRIC's second requests for documents; and is engaged in rolling production of documents in response to

16d-000416

the second requests for documents. Recently, Columbia drafted, and the parties are still negotiating, a protective order to facilitate production of confidential information.

Columbia has served interrogatories, requests for admission and two sets of document requests on NCRIC. The responses to these requests are not yet due. Counsel for Columbia was unable to serve its discovery requests until recently because it was: (1) investigating and filing its counterclaims; (2) answering NCRIC's Complaint; (3) responding to NCRIC's multiple motions (including a dispositive motion); (4) filing motions before the required deadlines; and (5) responding to NCRIC's discovery requests.[1]

Impending Discovery Deadlines

The current deadline for designation of witnesses for trial, including expert witnesses, is March 12, 2001. However, Columbia has not completed its investigation of the events and circumstances underlying this lawsuit. Columbia is still interviewing witnesses and is searching its archives for relevant documents. For example, despite repeated attempts, Columbia has been unable to contact some important out-of-state witnesses, including a former executive who negotiated crucial amendments to the contract. Yet, in an attempt to comply with the scheduling order, Columbia has notified NCRIC of all the persons that it currently expects it may call at trial (including some witnesses it has not yet contacted). Columbia would be prejudiced, however, if it were unable to call any additional witnesses that come to light during further discovery.

[1] Columbia understands that NCRIC plans to file a motion to compel production of certain documents from Columbia. At issue in the motion is, *inter alia*, whether Columbia must produce documents relating to its attorneys fees *before* the outcome of the litigation is determined.

16d-000417

March 12 also is the deadline for each proponent's Rule 26(b) statement.[2] Columbia expects to offer expert testimony regarding NCRIC's loss reserves in support of some counterclaims (*e.g.*, negligence). However, Columbia's experts cannot analyze any of NCRIC's loss reserve data until it is received from NCRIC, in response to Columbia's discovery requests (the deadline for which are not yet due). For these reasons, in addition to the financial difficulties discussed *infra*, Columbia has not yet retained any experts. However, in an attempt to comply with the scheduling order, Columbia has provided NCRIC with (1) the names of several experts with whom Columbia is currently negotiating about testifying and (2) the subject matter on which each such expert would testify if retained. In addition, to facilitate the prompt completion of its expert reports, Columbia has requested that NCRIC provide all information regarding loss reserves as soon as possible.

Columbia's Financial Situation

To date, Columbia's progress in investigating the underlying events of this lawsuit, in naming witnesses and experts, and engaging in discovery, has been hampered by a lack of resources. Columbia emerged from bankruptcy last year, and remains in a difficult financial position. At the outset of this case, Columbia no longer had risk management personnel in its employ to assist with the investigation or help search for documents. Accordingly, investigating this matter fell to counsel, who was not intimately familiar with the filing system. Columbia's administrative are mainly new arrivals who have limited institutional knowledge. Columbia, has however, added a highly skilled risk manager, and has contacted former personnel to assist with

[2] Columbia has not received any Rule 26(b) statements from NCRIC. Counsel for NCRIC, which opposed modifying the scheduling order, has indicated that NCRIC will serve and file any Rule 26(b) statements by the deadline if decides to offer expert testimony in its case in chief.

16d-000418

searching old files. As such, Columbia expects to improve its ability to engage in discovery, and to complete its factual investigation, despite its financial situation.

Columbia's financial resources continue to hamper its negotiations with expert witnesses. Columbia has made inquires of, and is currently negotiating with, several experts. However, it cannot ascertain whether it will be able to afford any experts.

Proposed Scheduling Order Modification

Columbia recently proposed to NCRIC that this case be reassigned to Track 4, with following proposed modifications to the deadlines set forth in the scheduling order:

Deadline	Current	Proposed
Deadline for discovery requests	3/12/01	5/14/01
Exchange witness lists:	3/12/01	5/14/01
Proponent's rule 26(b):	3/12/01	5/28/01
Opponent's rule 26(b):	4/12/01	6/29/01
Discovery closes:	5/12/01	8/31/01
Deadline for filing motions:	5/27/01	9/17/01
Dispositive motions decided:	6/27/01	10/17/01
ADR:	7/12/01 - 8/12/01	11/7/01 - 12/7/01
Pretrial:	60 days	60 days

On February 22, 2001, and in several times thereafter, counsel for Columbia and counsel for NCRIC communicated regarding whether NCRIC would consent to a motion to amend the existing scheduling order. On March 3, 2001, NCRIC stated that it would not consent to any extension of the Scheduling Order beyond the current timetable.

When asked for NCRIC's basis for the refusal, counsel for NCRIC informed counsel for Columbia that a longer timetable would delay the receipt by NCRIC of any damages from Columbia that NCRIC may win on its breach-of-contract claim. At no time has NCRIC indicated to Columbia that it will suffer any other prejudice as a result of a longer timetable.

16d-000419

Argument

This Court's Scheduling Order, dated January 12, 2001, may be modified "by leave of court upon a showing of good cause." D.C. Sup. Ct. R. Civ. P. 16(b). Columbia has shown good cause for modification of the existing scheduling order for three independent reasons: (1) this is a complex, commercial case that belongs on Track 4 rather than on Track 2; (2) counsel have been unable to meet the tight deadlines of Track 2, despite diligent efforts; and (3) Columbia will be unable to properly prosecute its counterclaims if the scheduling order is not modified, yet NCRIC will *not* be prejudiced by any modification.

This Complex Case Belongs on Track 4

This is a complex, commercial case with nearly two million dollars at stake. Calculating the amount of premium owed under the contract requires application of an extremely complicated, multiple-page, retrospective rating formula, with many terms, multipliers and variables. Reading the contract itself requires analysis of multiple attachments, amendments and renewals. Further, in order for either side to make its case, it must analyze the raw data (*e.g.*, reserves for individual claims against Columbia's physicians) that underlies NCRIC's calculations of return premium or additional premium, which may be a massive undertaking. This is not a simple contract case. Columbia's wide-ranging tort claims may require testimony concerning events throughout the seven-year term of the contract. Complex, commercial cases like this, with more than a million dollars at stake, belong on the track for complex cases, Track 4.[3] *Cf.* Hon. Thomas P. Smith, *What Happened?! Or How to Get from Here to There . . .*, [An

[3] As explained *supra*, case is on Track 2 at the request of counsel for NCRIC, and through no fault of counsel for Columbia. It was not unreasonable for counsel for Columbia to attempt, diligently and in good faith, to comply with the current scheduling order for two months, rather than moving to amend the scheduling order immediately after the scheduling conference.

16d-000420

Informational Brochure Concerning Procedures for the Circuit Court of Prince George's County, Maryland] (explaining that, the top track, Track 5 is reserved for "Complex Litigation (Business, Complicated . . . Malpractice and other Tort cases)," while Track 2 is reserved for "Cases (tort/contract) having values [at stake] greater that $25,000 but not complex litigation."). A complex case like this requires more time to prepare for trial than an average case.

Cases like this also require a longer timetable than run-of-the-mill disputes because discovery is more extensive. Here, for example, NCRIC must produce all its loss reserve data, including all the information used in calculating its loss reserves. Undoubtedly, this will mean production of numerous boxes of documents that Columbia must review for use in depositions (which, under the current schedule, must be completed by May 12, 2001). If Columbia decides to use any of these documents at trial, both parties will be spared expense if Columbia is allowed to request admissions regarding the documents (the current deadline for which is March 12, 2001). In addition, for its tort claims, Columbia may need to depose or interview many witnesses who have left the employ of NCRIC and Columbia, some of whom have not yet been located.[4]

Additionally, this case may involve testimony of experts (*e.g.*, actuaries, risk management specialists) for both sides. Under Columbia's interpretation of the contract, NCRIC must show that it calculated its loss reserves reasonably, in good faith, and in accordance with the applicable industry standards. Further, Columbia expects that it may proffer expert testimony that NCRIC's calculation of its loss reserves was incorrect, inappropriate or unreasonable. Track 4, unlike

---

[4] A longer timetable also builds in time for discovery disputes, which are more likely to occur in cases with extensive discovery and confidential materials. Here, many documents, including confidential materials, have been requested by both sides. The parties have negotiated over discovery in good faith, and have negotiated a protective order for confidential documents – yet, there already is a discovery dispute, and NCRIC is expected to file a motion to compel.

16d-000421

Track 2, builds in adequate time for Columbia (which does yet not have possession of NCRIC's loss reserve documents) to retain experts, and for those experts to review NCRIC's (assumedly extensive) loss reserve data, draw conclusions and write reports.

A Modification is Warranted by Columbia's Diligence

Even if this case were not inherently complex, a modification of the existing scheduling order would be justified because Columbia has been unable to meet certain deadlines, despite its diligence. Diligence of the party requesting the modification is the touchstone for modifying a scheduling order under Rule 16(b). If the party is unable to meet a deadline despite diligent attempts, a modification is appropriate. See Fed. R. Civ. P. 16, Advisory Cmte's Note, subdivision (b) (1983 Amendment) (explaining that "good cause" means that the schedule "cannot reasonably be met despite the diligence of the party seeking the extension"). Here, Columbia has prosecuted its claims diligently, and has endeavored to comply with the existing scheduling order in good faith. Columbia has not stood idle since the scheduling order was entered. In less than two months, Columbia has responded to multiple motions by NCRIC, including a dispositive motion; filed a motion of its own; responded to NCRIC's discovery requests; and served its own discovery requests – all while continuing its investigation of the underlying facts and circumstances of this case.[5] Yet, due to the fast Track 2 schedule, Columbia has not been able to fully designate its witnesses and experts.

To date, Columbia has provided NCRIC with as much information as possible regarding its witnesses and experts. However, Columbia has not completed its investigation or retained

16d-000422

experts, due in part to its financial situation. Further, even if Columbia had retained experts, those experts could not perform any analysis of NCRIC's loss reserves until NCRIC produces documents relating to its calculation of the loss reserves. Moreover, although Columbia was unable to serve discovery until recently (because it was actively engaged in responding to motions and discovery requests by NCRIC), Track 2, not a lack of diligence by Columbia, is the reason Columbia's expert reports have not been completed. Even if Columbia had served discovery requests on NCRIC the day the scheduling order was entered, Columbia's experts would have had less than a month to analyze NCRIC's data and complete their reports – assuming that NCRIC provided all of its loss reserve data 30 days of receiving the request.

Accordingly, while Columbia can designate additional witnesses as soon as it knows of them, and can designate experts when it comes to terms with them, its experts cannot complete their reports until a reasonable time after they receive loss reserve data from NCRIC. As such, a modification of all deadlines for witnesses and expert witnesses is justified. Further, due to these modifications, and the additional issues that may arise after discovery closes, Columbia should be allowed additional time for discovery and discovery requests, as well.

Columbia Will Be Prejudiced if the Scheduling Order Is Not Modified; NCRIC Will Suffer No Prejudice if the Scheduling Order Is Modified

As stated *supra*, Columbia has not obtained the information that its experts will need to analyze in order to prepare their reports regarding loss reserves. Accordingly, if the scheduling order is not amended as proposed, Columbia could be denied the chance to introduce expert

---

[5] Columbia's diligence should be judged in light of its difficult financial situation. See CSX Transp., Inc. v. Lone Star Indus., No. 93-1505, 1994 WL 118475, at *11 (4th Cir. April 7, 1994). Columbia, the defendant, recently emerged from bankruptcy and is in no position to engage in a costly legal battle. Despite a limited resources and personnel, Columbia has actively pursued its counterclaims and diligently engaged in discovery.

16d-000423

testimony at trial. This would prejudice Columbia's ability to prosecute its counterclaims (*e.g.*, the negligence claims). This potential prejudice, in light of Columbia's good faith and diligence, is in itself a sufficient showing of good cause to extend the deadline for expert designation. See Potomac Elec. Power Co. v. Electric Motor Supply, Inc., 190 F.R.D. 372, 375 (D. Md. 1999).

In addition, Columbia has not deposed the witnesses it may need to depose regarding the seven-year history of the Plan. Yet, NCRIC's responses to Columbia's discovery requests are not due for several weeks. As a result, by the time Columbia completes its investigation and receives documents from NCRIC, it may have about one month (from early April to May 12, 2001) to complete all depositions. During that time, Columbia also will continue to provide NCRIC with documents on a rolling basis. Due to Columbia's limited resources, it will be difficult for Columbia to engage in extensive offensive and defensive discovery at the same time. Hence, unless Columbia receives additional time for discovery and discovery requests, it may be unable to depose all the important witnesses who have knowledge about its claims under the Plan. This will prejudice Columbia's ability to proceed with its claims, simply due to lack of time.

On the other hand, NCRIC will suffer no actual prejudice from any change in the existing timetable. In discussions between counsel, NCRIC has offered no reason *whatsoever* as a basis to claim prejudice. The only harm that NCRIC has claimed it will suffer (which assumes it will win this lawsuit), is a loss of the time value of any purported damages it believes it will obtain from Columbia. Yet, NCIRIC has identified no prejudice it will suffer, no matter how long this lawsuit is pressed back.

Moreover, because this case belonged on Track 4 in the first place, even NCRIC's claim that it is losing the time value of money is without merit. If counsel for Columbia had moved to amend the scheduling order immediately after reading the scheduling order, NCRIC would have

16d-000424

suffered no prejudice whatsoever in prosecution of this action. Less than two months later, NCRIC is in nearly the same position. This case is still in its infancy, and NCRIC cannot rightly complain that modifying the scheduling order will prejudice its trial strategy, or its ability to engage in discovery. [6] Indeed, extending discovery until after the pending motion to dismiss is decided may allow both parties to save time and money in discovery. If the motion is granted, the issues in the case will be narrowed and the parties will be able to limit the scope of their discovery. Hence, placing this case on Track 4 would not cause any prejudice to NCRIC.

Conclusion

WHEREFORE, Columbia requests that this case be reassigned to Track 4, with deadlines requested above (or substantially similar deadlines as the Court sees fit). For the reasons set forth above, Track 4 is the appropriate track for this complex, commercial case.

[6] It is important to note that Columbia is not simply asking for a modification of its own deadlines. The proposed modification of the scheduling order is an entirely different timetable for this case. As such, the proposal will allow both parties more time to investigate their claims, engage in discovery, analyze documents, file motions, etc.

16d-000425

DATED: March 12, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-000426

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, upon consideration of the points and authorities submitted by the parties, and for good cause shown, Defendant Columbia Hospital for Women Medical Center, Inc.'s Motion to Amend Scheduling Order is hereby GRANTED, and the Scheduling Order dated January 12, 2001 is amended as follows:

1. This case is transferred to Track 4; and

2. the deadlines for this case are amended to state as follows:

Deadline for discovery requests	_____/01
Exchange witness lists:	_____/01
Proponent's rule 26(b):	_____/01
Opponent's rule 26(b):	_____/01
Discovery closes:	_____/01
Deadline for filing motions:	_____/01
Dispositive motions decided:	_____/01
ADR:	_____/01 - _____/01
Pretrial:	60 days

SO ORDERED.

_____
Judge Linda K. Davis

Dated: _____, 2001.

16d-000427

Copies to:

Mark C. Hansen
Steven F. Benz
Joseph K. Leahy
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue
Suite 500
Bethesda, MD 20814

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

16d-000428

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Deadline, Mar. 12, 2001
	)	
	)	
Defendant/Counter-Plaintiff.	)	

RULE 12-I(A) CERTIFICATE

I, Joseph K. Leahy, hereby certify that I contacted counsel for Plaintiff/Counter-Defendant NCRIC, Inc. ("NCRIC") by telephone and by electronic mail on February 22, 2001, and then again on February 28, 2001, in an effort to determine whether NCRIC would consent to Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center Inc.'s ("Columbia") proposal to amend the Scheduling Order. On March 1, 2001 counsel for NCRIC informed me by way of electronic mail that NCRIC would not consent to the modification of the Scheduling Order requested by Columbia, and counsel further clarified, on March 3, 2001, that NCRIC would not consent to any extension of the Scheduling Order beyond the current timetable.

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Sylena L. Slaughter, hereby certify that on this 12th day of March, 2001, a copy of Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center Inc.'s Motion to Amend Scheduling Order and Memorandum of Points and Authorities in Support of Motion to Amend Scheduling Order were served upon the following by first class mail, postage prepaid:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

In addition, a courtesy copy of the aforementioned motion and memorandum in support were served upon the Chambers for Judge Linda K. Davis, care of the Clerk of Court.

Sylena L. Slaughter

2/12/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 00-007308
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next Event: Discovery close 5/12/01
	)
Defendant.	)

MOTION TO COMPEL DISCOVERY
BY PRODUCTION OF DOCUMENTS FROM DEFENDANT

Plaintiff, NCRIC, Inc., by Roy Niedermayer, its attorney moves this Court pursuant to SCR Rule 37 and the procedures of the General Order for Civil II cases, for any order compelling defendant to produce documents it has agreed to produce but failed to produce as yet and to produce documents which it has refused to produce without legal justification under the Rules.

Nature of the Case. This is a case involving collection of insurance premiums unpaid by defendant for a program of medical malpractice insurance provided by plaintiff to defendant. Defendant defends and counterclaims primarily on the basis of plaintiff's failure to calculate the premiums correctly in accordance with the formulas of the contract. Defendant has sought to elevate these claimed contract breaches to breaches of a fiduciary duty as well as throwing in claims of defamation, commercial disparagement, and negligence.

In discovery, plaintiff has been attempting since October 2000 to obtain the

documents which defendant has related to these claims and defendant's damages.

Procedural and Discovery Context for Plaintiff's Seeking to Compel Production.

Aside from defendant's simple failure *vel non* to produce documents and provide answers to interrogatories, there is a large discovery abuse being perpetrated by defendant in this case. Defendant is engaging in a pattern and process of discovery responses designed to preclude plaintiff from having enough time to obtain, evaluate, and conduct follow-up discovery and delay this case. Plaintiff began written discovery in this case in October 2000 with requests for admission, documents, and interrogatories. It received responses in November 2000 which were large objections and evasive based on claims of lack of understanding of what was being requested or that the discovery was premature. A fair reading of these responses suggests that defendant is feigning ignorance, lack of understanding, and misapprehension about the subject matters and claims of this suit in order to delay its discovery responses. After consultations and plaintiff's efforts to "clarify" what discovery is being requested through the filing of a 56 request second set of document requests in mid-January 2001, plaintiff still has no more than about a box and file of documents. Counsel for defendant has repeatedly stated that the documents are being produced on a "rolling" basis, meaning at defendant's own pace and pleasure.

The result is that despite beginning discovery early in this case, plaintiff still does not have all of defendant's responsive documents and has not been able to schedule or conduct depositions. This is consistent with defendant's strategy in this case which has been coupled with repeated requests for additional time and modifications of the Scheduling Order agreed to by it in January 2001. Defendant now seeks to further extend

the discovery period because it has not initiated discovery until March 2001 and to blunt the effect of plaintiff's diligence in beginning early discovery by dragging its feet in production of documents to plaintiff which it agrees to produce while refusing to produce other basic documents and failing to supplement other discovery requests it has already acknowledged are proper. For example, plaintiff has requested documents and asked in interrogatories for the defendant's calculation of damages and correct calculation of premiums owed plaintiff. Not only has defendant responded that it cannot make these calculations because it lacks the data (which is in the hands of plaintiff and must be procured from plaintiff in discovery), but it has not initiated discovery until March 2001 to obtain the very data it claims it needs. The upshot is that plaintiff is prevented from obtaining discovery and must wait until defendant decides to put itself in a position to obtain the information before plaintiff can learn about defendant's damages. In this manner, and by this pattern of discovery abuse, defendant can effectively prevent plaintiff from learning about the substance of defendant's claims and control the pace of discovery. Thus, defendant's discovery abuse goes beyond simple failure to provide discovery but is de facto designed to delay this case as is the interest of a defendant (in poor financial condition by its own admission) who is claimed to owe money.

It is in this context and with this background, that the Court must approach the resolution of the below discovery disputes. The following are the discovery requests, responses and reasons for compelling the response

PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 3: Documents concerning or relating to any counterclaim, setoff, or recoupment you assert against plaintiff.

RESPONSE TO REQUEST NO. 3: See General Objections.[1/] Medical Center specifically objects to Request No. 3 and will not respond thereto insofar as it seeks production of documents protected in whole or in part by the attorney-client and/or the work product privilege. Medical Center further objects to this Request insofar as it is vague and ambiguous. Due to the lack of clarity of this request, Medical Center declines to produce documents in response to this Request as it is written, but will attempt to confer with counsel for Plaintiff to see if the Request can be clarified so as to enable Medical Center

---

1/

The following General Objections apply to each and every document request and form an integral part of Medical Center's response to each document request:

1. Medical Center objects to Plaintiffs Requests insofar as they seek disclosure of information protected by the attorney-client privilege, the work-product privilege, the peer review privilege, the party-communication privilege or the investigative privilege. Medical Center also objects to Plaintiffs Requests insofar as they seek disclosure of information protected under the District of Columbia Superior Court Rules of Civil Procedure or any other applicable law. Medical Center does not intend by its responses or objections, or by the inadvertent production of any privileged documents, to waive any protection to which it is entitled.

2. Medical Center objects to Plaintiff s Requests insofar as they are vague, ambiguous, overly broad, unduly burdensome, harassing, or not reasonably calculated to lead to the discovery of admissible evidence in this action.

3 . Medical Center objects to Plaintiff s Requests insofar as they seek the production of documents already in NCRIC's possession, custody or control.

4. Medical Center objects to Plaintiffs Requests insofar as they seek production of documents not in Medical Center's possession, custody, or control.

5. It should not be inferred from the form or substance of any objection or response contained herein that documents responsive to any particular request exist.

6. At this early stage of the litigation, Medical Center has not yet completed its investigation relating to the litigation and anticipates that as the litigation proceeds, further information may be discovered. Thus, Medical Center reserves the right to modify or supplement its objections and responses based on such pertinent information as it may subsequently discover.

to produce responsive documents.

BASIS FOR COMPELLING RESPONSE: The defendant's response is evasive and incomplete. The privilege objections interposed are frivolous. The request seeks documents related to defendant's counterclaim or any credit by way of setoff or recoupment that defendant claims. Presumably, before filing its counterclaim in good faith, defendant conducted factual investigation including review of applicable documents. In addition, defendant knows the scope, extent and nature of its counterclaim better than plaintiff, which is now seeking to learn about them through discovery. Plaintiff seeks those documents which defendant knows or believes exist in its files which support the allegations of defendant's counterclaims. Assuming defendant understands what its own counterclaim is about, the request is not vague or ambiguous. Defendant's answer is merely an evasion of production of documents within its control.

Moreover, counsel consulted with each other as defendant stated it desired to do and defendant was informed that the documents being sought were those related to, concerning, or supporting the counterclaim of any type or description that defendant had in its possession.

The request for production was propounded about October 26, 2000. Defendant responded about November 27, 2000 without the production of any documents. Counsel consulted with each other on December 12 and 14, 2000 on the definition and scope of the request. To date, defendant has produced one box of documents on or about December 21, 2000 and one file of gathered documents on March 5, 2001. The documents as produced were not cross-referenced to correspond to the applicable categories as required by SCR 34(b) or in the files and manner kept in the usual course of business despite the

plaintiff's request that this be done.

Defendant's production is untimely and evasive by its slowness and limited response. Defendant has failed to produce additional documents although its counsel has advised plaintiff that it is continuously in the process of review. Defendant's process of production is to review the documents on its own schedule and then produce as and when it accommodates defendant. Discovery is set to close on May 12, 2001. Plaintiff needs early production of documents in order to take depositions and prepare for dispositive motions and trial. Defendant's dilatory actual production of documents for inspection prejudices plaintiff's ability to prepare its case-in-defense to the counterclaim.

Defendant's raising of General Objections and particularly the objection of privilege is disingenuous because the instructions for plaintiff's document requests do not require the production of privileged documents, only the preparation of a privilege list as is required by Court rule and caselaw.

REQUEST NO. 4: Documents sent to or received [sic] anyone concerning or related to the subject matter of (i) this action, (ii) your defenses to plaintiff s claims, and (iii) your counterclaims in this action.

RESPONSE TO REQUEST NO. 4: See General Objections. Medical Center specifically objects to Request No. 4 and will not respond thereto insofar as it seeks production of documents protected in whole or in part by the attorney-client and/or the work product privilege. Medical Center further objects to this Request insofar as it is vague and ambiguous. Moreover, the wording of the request, including without limitation the language "sent to or received anyone," renders the Request unintelligible. Subject to and without waiving the foregoing objections, Medical Center will produce responsive, non-privileged documents concerning (i) NCRIC's claim, (ii) Medical Center's counterclaims, and/or (iii) Medical Center's defenses to NCRIC's claim, to the extent that such documents exist and are in Medical Center's possession, custody or control.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its

reasons set forth with regard to Request No. 4. Defendant is deliberately evasive and disingenuous. It feigns lack of understanding. The requests are limited to the subject matters and claims of this action. Presumably, defendant understands the nature and scope of its defenses and counterclaim. The request does not ask for irrelevant documents about every topic. It requests documents about this case "sent to or received [from] anyone limited to materials that are in defendant's possession. Defendant is manufacturing excuses not to produce the documents which it must produce. It must be ordered to do so.

Even as to the documents it agrees to produce, defendant has not made a full production. Plaintiff requires a more rapid and timely production and requests the Court set a deadline for production consistent with the May 12, 2001 discovery completion deadline.

REQUEST NO. 5: Documents recording, evidencing, and related to oral communications with any person concerning the subject matter of (i) this action, (ii) your defenses to plaintiffs claims, and (iii) your counterclaims.

RESPONSE TO REQUEST NO. 5: See General Objections. Medical Center specifically objects to Request No. 5 and will not respond thereto insofar as it seeks production of documents protected in whole or in part by the attorney-client and/or the work product privilege. Medical Center further objects to this Request insofar as it is vague and ambiguous. Subject to and without waiving the foregoing objections, Medical Center will produce responsive, non-privileged documents concerning (i) NCRIC's claim, (ii) Medical Center's counterclaims, and/or (iii) Medical Center's defenses to NCRIC's claim, to the extent that such documents exist and are in Medical Center's possession, custody or control.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 4 and 5. Plaintiff is entitled to have these

documents in preparation for depositions during which the content may be inquired into.

REQUEST NO. 6: Documents identified in, related to, concerning or supporting any of your answers to the interrogatories propounded to you by defendant.

RESPONSE TO REQUEST NO. 6: See General Objections. Medical Center specifically objects to Request No. 6 and will not respond thereto insofar as it seeks production of documents protected in whole or in part by the attorney-client and/or the work product privilege. Medical Center further objects to this Request insofar as it is vague and ambiguous. Subject to and without waiving the foregoing objections, Medical Center will produce responsive, non-privileged documents, to the extent such documents exist and are within its possession, custody or

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 4 and 5.

REQUEST NO. 7: Documents consulted in preparing any of your answers to the interrogatories of defendant to you.

RESPONSE TO REQUEST NO. 7: See General Objections. Medical Center specifically objects to Request No. 7 and will not respond thereto insofar as it seeks production of documents protected in whole or in part by the attorney-client and/or the work product privilege. Medical Center further objects to this Request insofar as it is vague and ambiguous. Subject to and without waiving the foregoing objections, Medical Center will produce responsive, non-privileged documents, to the extent such documents exist and are within its possession, custody or control.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 4 and 5.

REQUEST NO. 9: Calendars, day timers, appointment books, and similar items, whether kept in written or electronic format concerning or relating to the subject matter of (i) this action, (ii) your defenses to plaintiff s claims, and (ill) your counterclaims in this action, and any allegations or statements in any pleading or paper filed in this case.

RESPONSE TO REQUEST NO. 9: See General Objections. Medical Center specifically objects to Request No. 9 and will not respond thereto insofar as it seeks

production of documents protected in whole or in part by the attorney-client and/or the work product privilege. Medical Center also objects to this Request insofar as it is vague and ambiguous, and further, insofar as it seeks production of documents not in Medical Center's possession, custody, or control. Additionally, Medical Center objects to this Request, and will not respond thereto insofar as it is overly broad and seeks documents that have no conceivable relation to NCRIC's claim Medical Center's defenses thereto, or its counterclaims, and insofar as responding thereto would place an unreasonable burden on Medical Center. For example, as written this Request appears to seek production of any calendar which contains a statement that Medical Center is a non-profit health care facility. Due to overbreadth of this Request, Medical Center declines to produce documents in response to this Request as it is written, but will attempt to confer with counsel for Plaintiff to see if the Request can be limited so as to enable Medical Center to produce responsive documents.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 4 and 5. Defendant is being deliberately evasive by interposing ridiculous arguments designed to evade timely production and feigning ignorance about the issues. For example, the request is directed at the issues and claims in this case. Yet defendant offers an makeweight example about calendars containing uncontested issues. What defendant is required to do is produce all the calendars in its possession which have entries about matters in this case.

After conferring with counsel no documents falling within this category have been produced, although the discovery and production is not difficult or particularly burdensome.

REQUEST NO. 10: Documents concerning or related to any affirmative defenses you assert in this action.

RESPONSE TO REQUEST NO. 10: See General Objections. Medical Center specifically objects to Request No. IO and will not respond thereto insofar as it seeks production of documents protected in whole or in part by the attorney-client and/or the work product privilege. Medical Center objects to this Request insofar as it is vague and ambiguous, and further, insofar as it seeks production of documents not in Medical Center's possession, custody, or control. Subject to and without waiving the foregoing objections, Medical Center will produce responsive, non-privileged documents, to the

extent such documents exist and are within its possession, custody or control.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 4 and 5.

REQUEST NO. 11: Documents sent to or received from Michael Feldman of Riggs, Councilman, Michaels, & Downes.

RESPONSE TO REQUEST NO. 11: See General Objections. Medical Center specifically objects to Request No. I I and will not respond thereto insofar as it seeks production of documents protected in whole or in part by the attorney-client and/or the work product privilege. Medical Center also objects to this Request insofar as it is vague and ambiguous, and further, insofar as it seeks production of documents not in Medical Center's possession, custody, or control. Additionally, Medical Center objects to this Request insofar as it seeks production of documents that have no conceivable relation to NCRIC's claim, Medical Center's defenses thereto, or its counterclaims, and insofar as responding thereto would place an unreasonable burden on Medical Center. For example, as written, this Request appears to seek production of all documents sent by anyone to Michael Feldman relating any insurance policies held by any client for which Mr. Feldman served as the broker. Subject to and without waiving the foregoing objections, Medical Center will produce responsive, non-privileged documents concerning NCRIC's claim, Medical Center's defenses thereto, or its counterclaims that were sent to or received from Mr. Feldman, to the extent that such documents exist and are within its possession, custody or control.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 4 and 5.

PLAINTIFF'S SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS.[2/]

GROUP 1.

3. **REQUEST**: Financial statements, including profit and loss statements, cash

---

[2/] Defendant's responses to the document requests were repetitive in their content. Rather than repeat each separate answer, plaintiff has grouped all requests with the same answer together and provided the reasons for compelling a response in one place.

flow, balance sheets, and/or reports made to any bankruptcy court for or by defendant for the years 1995-2000.

RESPONSE: See General Objections. Columbia specifically objects to Request No 3 insofar as it requests easily accessible public records and/or documents not in Columbia's possession. Subject to and without waiving the foregoing objections, Columbia will produce responsive, non-privileged documents.

BASIS FOR COMPELLING RESPONSE: Plaintiff propounded the request on January 12, 2001. Defendant provided its response about February 14, 2001. It stated it would produce the documents. It simply has not. Plaintiff has not received any documents or been permitted to inspect any documents as yet. Defendant has not provided any date or timetable for inspection, other than it is reviewing the documents and they will be produced in a "rolling" fashion as defendant on its own schedule reviews them.

GROUP 2.

5. **REQUEST**: Federal income tax returns for the years 1995-2000.

6. **REQUEST**: Reports to any federal or state agency regarding income and expenses of defendant for the years 1995-2000.

9. **REQUEST**: Documents concerning, supporting, or related to the allegations of the second sentence of paragraph 20 about plaintiff's domination of the D.C. MMLI market and keeping customers away from Virginia and Maryland.

12. **REQUEST**: Documents evidencing the communication to plaintiff of defendant's reliance as alleged in paragraph 30.

15. **REQUEST**: Documents concerning, supporting, or evidencing defendant's requests for actuarial certifications or verifications received by defendant from plaintiff as alleged in paragraphs 35 and 37.

19. **REQUEST**: Documents concerning, supporting, or evidencing plaintiff's awareness of defendant's financial condition and the ultimatum as alleged in paragraph 57.

20. **REQUEST**: Documents concerning, supporting, or evidencing defendant's efforts to obtain or discover alternative sources of MMLI insurance during the period of Fall 1997 through the end of 1998.

21. **REQUEST**: Documents sent to or received from Medical Inter-Insurance Exchange during 1997-1999.

25. **REQUEST**: Documents concerning, supporting, identifying, or evidencing plaintiff's efforts to gain leverage over defendant as alleged in paragraph 73.

26. **REQUEST**: Documents concerning, supporting, identifying, or evidencing the composition, actions, and communications of the committee described in paragraph 80.

30. **REQUEST**: Documents concerning, supporting, identifying, or about the allege that cancellation of the Policy as alleged in paragraph 86.

34. **REQUEST**: Documents concerning, supporting, identifying, or evidencing local media communications with defendant's personnel, doctors, staff, nurses, and executives in 1999-2000 concerning defendant's financial condition, loss of doctors and patients, closing of defendant's operations, and similar topics.

35. **REQUEST**: Documents concerning, supporting, identifying, or evidencing efforts to recruit physicians and staff during 1999-2000.

39. **REQUEST**: Documents concerning, supporting, identifying, or evidencing sources of income, expenses, creditors, accounts receivable, accounts payable, for the period 1998-2000.

40. **REQUEST**: Documents concerning, supporting, identifying, or evidencing the substantial economic loss sustained by defendant as alleged in paragraphs 158 and 163.

41. **REQUEST**: Documents on which you base your allegations in paragraphs 128 and 134 you lost revenues or suffered economic loss.

47. **REQUEST**: Documents concerning, supporting, identifying, or evidencing any false representations and concealment by plaintiff as alleged in paragraph 142.

48. **REQUEST**: Documents concerning, supporting, identifying, or evidencing any reliance by defendant on representations of plaintiff described in the counterclaims.

53. **REQUEST**: Documents concerning, supporting, identifying, or evidencing defendant's loss of reputation in the medical or general community.

RESPONSE: See General Objections. Subject to and without waiving

the foregoing objections, Columbia will produce responsive, non-privileged documents.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 3 In Group 1.

GROUP 3.

7. **REQUEST**: Documents sent or provided by defendant to any financial institution or other source of credit, loans, or financing for the years 1995-2000.

RESPONSE: See General Objections. Columbia also objects to this request insofar as it is overly burdensome. Subject to and without waiving the foregoing objections, Columbia will produce responsive, non-privileged documents.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 3 In Group 1.

GROUP 4.

10. **REQUEST**: Documents concerning, supporting, or related to the allegations of paragraph 24 about representation of plaintiff.

11. **REQUEST**: Documents concerning, supporting, or related to the allegations of paragraph 29 numbered (1) through (4).

29. **REQUEST**: Minutes of the board of directors of defendant during the period 1993 to date concerning, supporting, identifying, or evidencing any fact or allegation , defendant's financial condition, defendant's search for MMLI insurance, negotiations with plaintiff about MMLI insurance or changes to an existing policy.

RESPONSE: See General Objections. Columbia specifically objects to Request No; 10 insofar as it calls for documents dated or created prior to October 1, 1993 that are irrelevant and not calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Columbia will produce responsive, non-privileged documents.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its

reasons set forth with regard to Request No. 3 In Group 1.

GROUP 5.

18. **REQUEST**: Documents concerning, supporting, or evidencing plaintiff's failure and errors as alleged in paragraphs 38-41, 49 (second sentence), and 53 (second sentence).

RESPONSE: See Genera]. Objections. Columbia specifically objects to Request No.18 and will not respond thereto insofar as calls for documents in NCRIC's possession that are not in Columbia's possession and/or that Columbia has already produced. Subject to and without waiving the foregoing objections, Columbia will produce responsive, non-privileged documents.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 3 In Group 1.

GROUP 6.

28. **REQUEST**: Documents sent to or received from defendant's board of directors or executive officers by the committee described in paragraph 80.

38. **REQUEST**: Documents concerning, supporting, identifying, or evidencing defendant's claim or calculation of Return Premium due it from plaintiff from 1993 to date.

42. **REQUEST**: Documents sent to or received from any federal, D.C., or state regulatory or administrative agency concerning or related to defendant's financial condition, MMLI insurance, Attending Faculty or other physicians, and plaintiff.

43. **REQUEST**: Documents supporting, concerning, or containing references to or descriptions of reconciliations of premium whether sent to or received from plaintiff or others, or prepared by or for defendant.

RESPONSE: See General Objections. Columbia specifically objects to Request No. 28 insofar as it seeks production of documents protected in whole or in part by the attorney-clientwork product or peer-review privileges. Subject to and without waiving the foregoing objections, Columbia will produce responsive, non-privileged documents.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its

reasons set forth with regard to Request No. 3 In Group 1.

GROUP 7.

44. **REQUEST**: Documents supporting, concerning, or containing references to or descriptions of any discounts requested or given by plaintiff to defendant, including documents regarding or concerning the January 1, 1996 amendment, subsequent addenda dealing with discounts applied to the Deposit Premium, and corrections of the Deposit discount or percentage factor.

RESPONSE: See General Objections. Columbia specifically objects to Request No. 44 to the extent it is ambiguous and rests on a false premise (i.e. no discounts were "requested or given by plaintiff to defendant"). Subject to and without waiving the foregoing objections, Columbia will produce responsive, non-privileged documents.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 3 In Group 1.

GROUP 8.

45. **REQUEST**: Documents concerning, supporting, identifying, or evidencing the financial and cash position of defendant before and after paying plaintiff in early 1998.

RESPONSE: See General Objections. Columbia specifically objects to Request No.45 insofar as it calls for information that exists only as raw data and has not been compiled by Columbia, to the extent that production thereof would be overly burdensome and not calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Columbia will produce responsive, non-privileged documents.

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 3 In Group 1.

GROUP 9.

49. **REQUEST**: Documents concerning, supporting, identifying, or evidencing and audit by any accountant, government agency or otherwise of defendant during 1995-2000.

50. **REQUEST**: Documents concerning, supporting, identifying, or evidencing requests for data and back-up information from, or audits of plaintiff made by defendant.

RESPONSE: See General Objections. Columbia specifically objects to Request No. 49 insofar as it is ambiguous. Subject to and without waiving the foregoing objections, Columbia will produce responsive, non-privileged documents

BASIS FOR COMPELLING RESPONSE: Plaintiff incorporates herein its reasons set forth with regard to Request No. 3 In Group 1.

GROUP 10.

51. **REQUEST**: Documents concerning, supporting, identifying, or evidencing special damages suffered by defendant as a result of any defamatory act or statement by plaintiff.

52. **REQUEST**: Documents concerning, supporting, identifying, or evidencing special damages suffered by defendant as a result of any negligent act or statement by plaintiff.

RESPONSE: See General Objections. Columbia specifically objects to this request and will not respond thereto insofar as it requires a legal conclusion.

BASIS FOR COMPELLING RESPONSE: This request seeks documents supporting or related to the damages that defendant claims to have suffered by the acts of plaintiff. In particular, the discovery sought goes to the counterclaims of defendant on defamation and negligent misrepresentation in Counterclaim Counts 9 and 10: Defamation and Libel; Negligent Misrepresentation. In addition to any general damages due to loss of reputation in the community, plaintiff seeks to discovery any special or identifiable damages that defendant will claim as a proximate result of the acts complained of.

Defendants answer is deliberately and calculatedly evasive. Defendant knows that what plaintiff seeks is an itemization of specific damages attributable to the wrongful acts. Defendant is just avoiding the provision of this information because it does not have it or hopes to fish it up through discovery from plaintiff. The evidence sought is directly relevant to the issues in the case and plaintiff's defense to the counterclaims. The apparent "legal conclusion" required is the meaning of "special damages." Even if plaintiff had not told defendant what it was seeking, this objection is not well taken since defendant knows it must prove special damages in its case-in-chief on the counterclaim.

54. **REQUEST**: Documents concerning, supporting, identifying, or evidencing any analysis, evaluation, critique, or assessment of defendant's performance, delivery and quality of medical services during 1993-2000.

RESPONSE: See General Objections. Columbia specifically objects to Request No.54 and will not respond thereto insofar as it calls for documents that are irrelevant and not calculated to lead to the discovery of admissible evidence in this action.

BASIS FOR COMPELLING RESPONSE: Defendant has claimed injury to its reputation through defamation and disparagement by plaintiff. Documents critiquing and assessing defendant's performance, delivery and quality of medical services during 1993-2000 is directly relevant to its reputation and supports the defense of truth and accuracy to any statements plaintiff may have made. Such documents include reports made to or evaluations conducted by federal and District of Columbia regulatory agencies as part of routine assessments for participation in government reimbursement programs. Similarly, there may be other evaluations performed by defendant itself or other persons at defendant's request.

56. **REQUEST**: Documents concerning, supporting, identifying, or evidencing fee arrangements with attorneys which form the basis of any claim for attorneys' fees in this case, including payments already made.

RESPONSE: Sec General Objections Columbia specifically objects to Request No 56 and will not respond thereto insofar as it seeks production of documents protected in whole or in part by the attorney-client or work product privileges. Columbia also objects to this request and will not respond thereto insofar as it calls for documents that are not relevant at this juncture and not calculated to lead to the discovery of admissible evidence.

BASIS FOR COMPELLING RESPONSE: Defendant's have demanded attorneys' fees as a part of their judgment and award against plaintiff. Defendant suggests the claim for attorneys' fees may be presented on two separate bases: compensatory damages for breach of fiduciary duty in miscalculation of the insurance premiums or under SCR 11. See defendant's Supplemental Memorandum in Opposition to Plaintiff's Motion to Dismiss Counterclaims at 25. As a part of its damage claim, defendant must present this element of damages as part of its case-in-chief on the counterclaim. Plaintiff is entitled to discover and must be permitted to discovery the basis and facts underlying the claim so that it may defend against them by challenging the facts: time spent, necessity of work done, etc. In addition, an element of the proof is the fairness and reasonableness of the fee arrangements. For this plaintiff is entitled to learn in discovery the basis for the fee arrangements with the defendant and on which defendant is basing this element of its damage claim. Moreover, this information is also needed so that defendant will not be able to claim one basis for recovery of attorneys' fees as damages while actually incurring less fees on a different basis. Defendant raised the issue and insists on its legal validity. It must produce these relevant documents or surrender the claim.

WHEREFORE, plaintiff prays that this Court enter an order compelling defendant to produce the documents in response to the above requests and that defendant pay plaintiff its reasonable attorneys' fees caused by having to file this motion and obtain an order compelling discovery.

Roy Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

CERTIFICATION OF GOOD FAITH EFFORTS TO SECURE DISCOVERY AND RESOLVE DISCOVERY DISPUTES WITH DEFENDANT

The undersigned counsel hereby certifies that he made good faith efforts to secure the defendant's production of documents and to resolve the discovery disputes with defendant through the following actions:

1. Plaintiff received defendant's responses to plaintiff's First Set of Requests for Production of Documents after November 27, 2000. See attached Exhibit A. On December 12 and 14, 2000, counsel for plaintiff telephoned counsel for defendant to discuss the failure of response to the documents requests and when documents would actually be produced for inspection.

2. Defendant produced copies of documents about December 21, 2000 (notice of which was received by plaintiff's counsel on December 27, 2000) and advised plaintiff it would produce additional documents within "the next few weeks." See attached

Exhibit B. On December 22, 2000, counsel for plaintiff again telephoned counsel for defendant to inquire when the remainder of documents would be produced and what those documents would be. Defendant maintained it did not understand the substance of the requests per it objections and requested plaintiff to submit more detailed descriptions of the documents requested.

3. In an effort to avoid further delay in discovery and a further discovery dispute, plaintiff filed a Second Request for Production of Documents with 56 itemized descriptions of documents with cross-references to paragraphs of the counterclaim.

4. About January 12, 2001, defendant made a second installment production of 105 pages of documents. See attached Exhibit C.

5. On January 17, 2001, counsel for plaintiff wrote defendant requesting that the production comply with SCR 34 in the documents be produced as kept in the course of business or produce them organized and labeled to correspond to the numbers of the requests. See attached Exhibit D. In a telephone conversation with counsel for defendant, plaintiff advised that the Second Document Request did not supersede the First Set Defendant acknowledged this and promised a forthcoming additional production of documents. See attached Exhibit E.

6. On February 7 and 12, 2001, counsel for plaintiff again requested production of documents and a date for the production in telephone calls.

7. Defendant filed its responses to the Second Request for Production of Documents on February 14, 2001. No documents accompanied the filing and no date or timetable was provided when the production or inspection would take place.

8. Counsel for plaintiff telephoned defendant's attorney on February 22,

2001 to discuss production in response to the Second Request and to raise the issues of a motion to compel plaintiff intended to file. During this telephone call, plaintiff and defendant set the date of March 6, 2001 at 9:00 a.m. as the date and time of the face-to-face meeting in compliance with SCR 37. Counsel for plaintiff agreed to meet at counsel for defendant's office in order to facilitate the meeting and compliance with the Court's rules and orders.

9. On March 5, 2001, counsel for defendant advised plaintiff that resolution of dispute issues at the schedule March 6 meeting was unlikely. Defendant then cancelled the meeting. The parties then exchanged letters regarding a meeting. See attached Exhibits F-H. No meeting was ultimately held.

10. Defendant did not attend the previously scheduled face-to-face meeting on March 6 arranged by plaintiff as a required predicate to the filing of its motion to compel. Counsel for plaintiff had cleared his calendar for March 6 and was not available for a subsequent meeting as proposed by defendant after its actions had made the scheduled meeting impossible.

11. Counsel for plaintiff has made good faith efforts to comply with the Court's Rules and General Orders regarding a face-to-face meeting to promote resolution of discover matters as a precondition to filing a motion to compel. Defendant's responses have negated those efforts and will result in an additional delay for rescheduling while the discovery closure deadline is impending.

12. Plaintiff by the foregoing has extended itself to comply with spirit of the discovery rules, but has been thwarted by defendant. Plaintiff's actions meet the spirit of SCR 37 and the Court's Track II General Order.

Roy Niedermayer, Esq. #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on March 12, 2001, copies of the plaintiff's Motion to Compel Discovery by Production of Documents from Defendant were mailed first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy J. Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	Civil Action No. 00-007308 Calendar #8 Judge Linda Kay Davis Next Event: Discovery close 5/12/01

ORDER COMPELLING PRODUCTION OF DOCUMENTS IN RESPONSE TO PLAINTIFF'S FIRST AND SECOND SETS OF REQUESTS FOR PRODUCTION OF DOCUMENTS

This matter came before the Court on plaintiff's to Compel Discovery By Production of Documents from Defendant, and the Court having reviewed the Motions and any opposition thereto, it is this _____ day of _____, 2001

ORDERED that the plaintiff's Compel Discovery By Production of Documents from Defendant be and the same is hereby GRANTED; and it is further

ORDERED that defendant shall produce for inspection by plaintiff the following documents:

1. From Plaintiff's First Requests for Production of Documents: documents responsive to Requests No(s). _____ _____; and

16d-000454

2. From Plaintiff's Second Requests for Production of Documents: documents responsive to Requests No(s). _____ _____; and it is further

ORDERED that defendant produce the documents designated withing ___ ____ days of the entry of this Order,; and it is further

ORDERED that the defendant shall pay plaintiff the sum of $_____ as reasonable attorneys' fees and costs in having to file this Motion and obtaining this Order

_____
Linda Kay Davis, Superior Court Judge

cc:

Roy Niedermayer, Esq. DC.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

November 27, 2000

BY FIRST CLASS MAIL

Roy L. Neidermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Mr. Neidermayer:

Enclosed please find a copy of Defendant's Objections and Responses to Plaintiff's First Request for Admissions, Defendant's Objections and Responses to Plaintiff's First Set of Document Requests, and Defendant's Objections and Responses to Plaintiff's First Set of Interrogatories in the above-captioned action.

If you have any questions, please call me at (202) 326-7924.

Sincerely,

Joseph K. Leahy

Enclosure

PLAINTIFF'S EXHIBIT A

16d-000456

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

December 21, 2000

Roy I. Neidermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Defendant Columbia Hospital for Women Medical Center, Inc. hereby produces to Plaintiff NCRIC, Inc. documents bearing Bates numbers CHWMC 000001 through CHWMC 000889 in response to NCRIC's First Requests for Production of Documents and First Set of Interrogatories. As per your request, the documents are being produced to David Osborn. Forthcoming are (1) a list of the non-responsive documents that were pulled from this Bates range; and (2) a chart reflecting the documents that were withheld on grounds of privilege.

I anticipate that Medical Center will produce additional documents the next few weeks. Further, Medical Center reserves its right to supplement its document productions at any time.

If you have any questions, please do not hesitate to call me at (202) 326-7924.

Sincerely yours,

Joseph K. Leahy

cc: Mr. David Osborn (w/encl.)
By Hand Delivery

PLAINTIFF'S EXHIBIT B

PENGAD-Bayonne, N. J.

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

January 12, 2001

BY HAND DELIVERY

Roy I. Niedermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: **NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00**

Dear Roy:

Please find enclosed the following:

1. a list of the Bates Numbers of non-responsive documents that were pulled from Medical Center's first (12/21/00) document production to NCRIC;

2. Medical Center's second production of documents (bearing Bates Numbers from CHWMC 000890 to CHWMC 000985) in response to NCRIC's First Requests for Production of Documents and First Set of Interrogatories; and

3. a number of pages that were inadvertently withheld from, and a page that was mistakenly redacted in, Medical Center's first document production to NCRIC (all such pages bear Bates Numbers between CHWMC 000001 to CHWMC 000889).

A log describing the documents that were withheld from the first and second productions on grounds of privilege is forthcoming.

Sincerely,

Joseph K. Leahy

Enclosures

PLAINTIFF'S EXHIBIT C

LAW OFFICES OF
ROY I. NIEDERMAYER

7475 WISCONSIN AVENUE, SUITE 500
BETHESDA, MARYLAND 20814

TELEPHONE: 301-951-4456
TELECOPIER: 301-951-0585

E-MAIL: RIN @ RINLAW.COM
HTTP://www.lawyers.com/RINLAW

January 17, 2001

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.: Format of production of documents

Dear Joe:

I am writing you to request that defendant's production of documents comply with SCR 34 in the manner of production. Rule 34 offers you the option to produce documents as they are kept in the usual course of business. Since you are reviewing and selecting documents for production, it is clear that this method is not being elected.

The other option is to "organize and label them [the documents produced] to correspond with the categories in the requests. You have not been designating for which categories the documents are being produced. I am requesting that you do so for the documents already produced and follow this procedure for all future productions.

Sincerely yours,

Roy I. Niedermayer

RIN:

PLAINTIFF'S EXHIBIT
D
16d-000459

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

February 6, 2001

Roy I. Niedermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Please find enclosed Defendant's Supplemental Responses to Plaintiff's First Set of Interrogatories.

I also write to confirm that, as per your request, Columbia Hospital will not treat NCRIC's Second Requests for Production of Documents as a superceding the First Requests for Production of Documents. Pursuant to the instructions of the Second Request, Columbia will provide a written response, as required by the Superior Court Rules, within 30 days of service.

Finally, in response to your letter dated January 17, 2001, please find enclosed a listing of the location and custodian for each document Columbia produced in its first document production (12/20/00). Forthcoming is a list with regard to the second production. In all other respects, these documents were produced in the order in which they were kept in the ordinary course of business. See D.C. Sup. Ct. Rule 34(c).

Sincerely yours,

Joseph K. Leahy

Enclosures

EXHIBIT
E
16d-000460

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

March 5, 2001

BY FACSIMILE

Roy I. Niedermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

I write to inform you that, upon further consideration, in response to document requests 51 and 52 of NCRIC's Second Request of Plaintiff to Defendant for Production of Documents, Columbia will produce any responsive, non-privileged documents relating to its damages that it has in its possession, custody or control. However, Columbia will not specify at this time which documents, if any, relate to special damages for negligence and defamation.

In addition, as we discussed this afternoon, Columbia agrees to waive, solely in this instance, Judge Davis's requirement of a face-to-face conference regarding discovery disputes. We have discussed Columbia's responses to NCRIC's document requests fully on the telephone, twice, and I am convinced that a meeting we scheduled tomorrow morning is unlikely to result in any resolution of our dispute regarding these document requests. Based on our conversation this morning, I understand that you agree. Therefore, the meeting is canceled by mutual consent.

Sincerely yours,

Joseph K. Leahy

PLAINTIFF'S EXHIBIT F 16d-000461

LAW OFFICES OF
ROY I. NIEDERMAYER

7475 WISCONSIN AVENUE, SUITE 500
BETHESDA, MARYLAND 20814

TELEPHONE: 301-951-4456
TELECOPIER: 301-951-0585

E-MAIL: RIN@RINLAW.COM
HTTP://www.lawyers.com/RINLAW

March 6, 2001

BY TELECOPY AND
FIRST CLASS MAIL

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.: Meeting of Counsel pursuant to Court procedures to resolve discovery issues

Dear Joe:

I am in receipt of you faxed letter of March 5, 2001 received by my office at 3:30 a.m. on March 6, 2001. This is a follow up to my telephone call to you of this morning.

I must respectfully disagree with the characterization of our discussion as reflected in your last sentence as incorrect or a misunderstanding on your part.

You informed me that defendant was not substantially changing its position on the discovery issues raised by me and that a face-to-face meeting as required by SCR 37 and the Court's General Order would not result in any further resolution. I reminded you that the Court required such a meeting in order for me to proceed with filing a Motion to Compel and that I was prepared to attend the meeting in fulfillment of the Court's requirements. I did not consent to the cancellation of the meeting; I acknowledged your communication to me that conducting the meeting, except to meet the requirements of the rule, would be a futile and nugatory exercise for which you did not want to spend the time even though I had agreed to come to your office. Having been informed of this, I agreed that, with your expression of the lack of any value of meeting, there was nothing to be accomplished by meeting face-to-face and that I would proceed to file my motion forthwith.

PLAINTIFF'S EXHIBIT
G
16d-000462

I wish to be clear on this point insofar as it comes up in Court regarding the filing of my motion.

Sincerely yours,

Roy I. Niedermayer

RIN:

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

March 6, 2001

BY FACSIMILE

Roy I. Niedermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

I am perplexed by your letter and telephone call today.

I did not insist that our meeting scheduled for this morning be canceled, nor did I cancel the meeting for my convenience. I simply offered, as a courtesy to you, to waive the requirement of a face-to-face meeting. As I explained, I do not believe such a meeting would be fruitful in this instance. When we spoke, I thought that you agreed with me that a face-to-face meeting would be pointless, and further, I thought you appreciated my attempt to save you a trip downtown.

Apparently, however, you are concerned that Columbia's waiver of the face-to-face meeting requirement will be ineffective. If so, by all means, we can meet regarding our discovery dispute. I am available tomorrow morning at 10 a.m., if necessary. In any event, if you decide to file your motion to compel without meeting, Columbia will not oppose the motion on the grounds that counsel did not meet in person to discuss the matter.

Sincerely,

Joseph K. Leahy

PLAINTIFF'S EXHIBIT H

16d-000464

3/12/01

THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next event: Discovery closed 5/12/01
	)	
Defendant.	)	

PLAINTIFF'S RULE 26 (b) (4) STATEMENT

Pursuant to the Court's Scheduling Order dated January 12, 2001, plaintiff submits its Rule 26 (b) (4) Statement and designates the following persons as its experts for trial:

1. James McGuire, Esq.
   750 Seventh Avenue
   New York, New York 10019-6829

   A copy of Mr. McGuire's C.V. is attached.

Subject Matter of Testimony: Mr. McGuire may testify about (1) methods, bases, formulas, and other criteria for setting loss reserves by plaintiff and insurers for medical professional liability claims in the District of Columbia; (2) the validity and correctness of the loss reserves set by plaintiff generally and in accordance with its contract with defendant; (3) national, regional and District of Columbia industry standards for setting loss reserves for medical malpractice insurance claims; and (4) the validity and correctness of the loss reserves set by plaintiff in accordance with its contract with defendant in light of national, regional and District of Columbia industry standards for setting loss reserves for medical malpractice insurance.

Substance of Facts and Opinions: The loss reserves set by plaintiff under the Retrospective Rating Plan Agreement for insurance with defendant were adequate, proper and correct in their amount and calculation based upon the insurance industry methods, bases, formulas, and other criteria for setting loss reserves under national criteria and conditions prevailing in the District of Columbia market. Mr. McGuire may also testify that the loss reserves set for each individual claim covered by defendant's Retrospective Rating Plan Agreement for insurance were conservative, but adequate and correct under the terms of the agreement between the parties and national, regional, and District of

Columbia loss reserve criteria and standards and could reasonably have been raised for the cases involving the defendant.

Summary of Basis for Opinions: Mr. McGuire's opinions are based on his education and experience as a professional practicing in this area and engaged to review loss reserves for insurance and reinsurance companies. As part of his professional services he regularly analyzes and assesses the amounts and necessity for loss reserves for insurance claims under policies insuring against medical negligence. In addition, Mr. McGuire has reviewed the calculation and level of 10 years of loss reserves of plaintiff. He has specifically reviewed and analyzed the specific individual claims made against doctors practicing at Columbia Hospital for Women Medical Center and covered by the Retrospective Rating Plan Agreement with NCRIC in light of applicable legal standards, insurance industry criteria/formulas, and actuarial requirements.

2. James D. Hurley
Tillinghast-Towers Perrin
One Atlanta Plaza
950 East Paces Ferry Road
Atlanta, GA 30326-1119

A copy of Mr. Hurley's C.V. is attached.

Subject Matter of Testimony: Mr. Hurley may testify about the same subject matter as Mr. Hurley. In addition, Mr. Hurley will testify about the proper calculation of the premiums under the formula in the Retrospective Rating Plan Agreement including the mathematical and actuarial computation of the deposit factors to be applied under the formula in accordance with the premium discount negotiated and agreed to between the parties.

Substance of Facts and Opinions: Mr. Hurley concurs in the opinions expressed by Mr. McGuire. In addition, Mr. Hurley has verified a mathematical and actuarial analysis to arrive at the proper deposit factor to be used in the calculation of premiums. He may testify that several deposit factors described in the contract may be mathematically and actuarially inaccurate to reflect the agreed percentage discount negotiated between the parties.

Summary of Basis for Opinions: Mr. Hurley's opinions are based on his education and experience as an independent actuary providing services to insurance companies setting premium and discount rates, and setting or adjusting loss reserves. In addition, Mr. Hurley has audited and reviewed the loss reserves of plaintiff for several years and specifically reviewed and analyzed the specific individual claims made under the Retrospective Rating Plan Agreement against applicable legal standards, insurance industry criteria/formulas, and actuarial requirements. Mr. Hurley has calculated the proper level of premium and development factors applicable to the calculation of the retro

premium under the Retrospective Rating Plan Agreement.

Roy Niedermayer, Esq. DC Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on March 12, 2001, a copy of plaintiff's Plaintiff's Rule 26 (b) (4) Statement was sent first class mail postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380

James A. McGuire
Member
Mendes & Mount, LLP
750 Seventh Avenue
New York, New York 10019-6829
(New York Co.)
Telephone: 212-261-8000
Fax: 212-261-8750
Send Email

Rating Info

Admitted: 1976, New York; 1980, U.S. District Court, Southern and Eastern Districts of New York; 1982, U.S. Court of Appeals, Second Circuit; 1986, U.S. Court of Appeals, Eleventh Circuit; 1989, U.S. Court of Appeals, Third Circuit

Law School: Fordham University, J.D., 1975.

College: Boston College, A.B., cum laude, 1971.

Member: American Bar Association (Member, Excess, Surplus Lines and Reinsurance Special Committee, Section of Tort and Insurance Practice, 1978-1986); International Association of Defense Counsel (Member, Excess and Reinsurance Committee, 1986—).

Biography: Reviewer, Book, Reinsurance Contract Wording . Lecturer on Professional Liability Insurance, Practising Law Institute, New York and San Francisco, 1986. Co-author: "Bad Faith, Excess Liability and Extracontractual Damages: Counsel for the Excess Carrier Looks at the Issues," 72 University of Detroit - Mercy Law Review 49 (Fall, 1994); "Issues for Excess Insurer Counsel in Bad Faith and Excess Liability Cases," 62 Defense Counsel Journal 337 (July 1995); "Issues for Excess Insurer Counsel in Bad Faith and Excess Liability Cases," 8 National Insurance Law Review 49 (1996). Speaker: Euro Forum—U.S. Insurance Law & Practice, April 1999, "Punitive Damages"; 1998 National School Board Association Council of School Attorneys Law Seminar, New Orleans, LA, "Errors and Omissions and General Liability Insurance: An Update for Schools"; 1997 Physicians Insurers Association of America Underwriting Workshop, San Diego, CA, "Claims-made Coverage Challenge Overview"; 1997 Physicians Insurers Association of America Annual Meeting, New Orleans, LA, "Business & Medicine: Insurance Industry Response to Managed Care Exposures and Practice Environment"; 1995 Physicians Insurers Association of America Claims Section Interim Workshop, Scottsdale, AZ: "Reinsurance and the Claims Department".

Born: Detroit, Michigan, June 27, 1949.

JAMES D. HURLEY

Mr. Hurley is a consulting actuary with Tillinghast – Towers Perrin in its Atlanta office. He is a principal of Towers Perrin.

Mr. Hurley is an Associate of the Casualty Actuarial Society and a Member of the American Academy of Actuaries. He holds a B.S. in actuarial science from The College of Insurance in New York City, having participated in their five-year work-study program.

Mr. Hurley's consulting experience includes standard pricing and reserving assignments, special risk modeling and new product development and pricing. He has assisted state insurance departments in review of ratemaking methods and company reserving levels. Other consulting assignments, with specialization in the professional liability area, include captive insurer feasibility studies, financial modeling, self-insurance funding, development of experience and retrospective rating plans and valuation of insurance company economic worth.

Prior work experience includes activities in both corporate and pricing areas at varying levels of responsibility with several companies, including large multiple line property-casualty insurers as well as an insurer specializing in professional liability coverage. Areas of responsibility included preparation of financial statements, corporate planning, pro forma financial projections, analysis and development of reinsurance programs, interaction with state regulators on corporate and pricing matters and supervision and direction of accounting and data processing functions.

In earning his B.S. in actuarial science, Mr. Hurley participated in a five-year work-study program sponsored by a large, multiple line property-casualty insurer. During this period, he spent approximate six month assignments at increasing levels of responsibilities in the following areas: rating, statistical reporting, accounting (premium and expense), data processing, corporate research, market research, as well as in the actuarial area.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes, May 12, 2001
	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITRIES IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL

Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby opposes the Motion to Compel Discovery by Production of Documents from Defendant ("Motion to Compel") of Plaintiff/Counter-Defendant NCRIC, Inc. ("NCRIC"), and states as follows.

Preliminary Statement

NCRIC's Motion to Compel must be denied in its entirety due to NCRIC's blatant disregard for the procedure for filing such motions. Prior to filing the motion, counsel for NCRIC *never* raised with opposing counsel – much less made a good faith effort to meet and confer about – virtually *all* of the 60-plus discovery requests raised in the motion. Under this Court's rules, the sanction for this failure is clear: the motion must be summarily denied.

Yet, even if this court were to address the merits of NCRIC's Motion to Compel (which it should not, lest NCRIC believe it may violate this Court's rules without sanction), the motion should be denied because NCRIC's contentions lack merit. Most of NCRIC's first discovery requests are improper, and Columbia is reasonably complying with the rest of NCRIC's requests.

Factual Background

NCRIC's First Document Requests

The basic facts of this is a complex commercial case are set forth in Columbia's Amended Answer and Counterclaims (filed January 3, 2001). The general procedural history of the case is set forth in Columbia's pending Motion to Amend Scheduling Order (filed March 12, 2001). The case centers around an incredibly complicated agreement between the parties that lowered the cost of medical malpractice insurance to Columbia's physicians (it did not involve provision of insurance to Columbia, as NCRIC's Motion to Compel states), and the fiduciary relationship that evolved out of the agreement. This relationship lasted for seven years.[1]

NCRIC filed its initial complaint on October 3, 2000, and served three discovery requests on Columbia, including its First Requests for Production of Documents ("First Document Requests") on October 26, 2000 – *prior* to receiving Columbia's initial Answer and Counterclaims on November 7, 2000.[2] Columbia provided written responses to all of NCRIC's discovery requests in a timely fashion, on November 27, 2000.

Thereafter, as indicated the Certification of Good Faith Efforts to Secure Discovery and Resolve Discovery Disputes with Defendant ("Certification") attached to NCRIC's motion, counsel for the parties discussed NCRIC's First Document Requests and Columbia's responses thereto on the telephone. In particular, counsel discussed requests number 3, 4 and 9, which were so vague and ambiguous that Columbia had been unable to respond thereto. In these conversations, counsel for Columbia maintained that NCRIC's requests lacked reasonable particularity. Counsel for Columbia agreed that some documents (e.g., correspondence between

[1] Due to the long duration of the agreement, and the financial crises Columbia faced in the intervening years (e.g., bankruptcy, changes in administration, loss of many staff), Columbia's investigation of the facts is continuing.

16d-000471

the parties) clearly were responsive to the document requests, but explained that NCRIC's failure to request specific types of documents left Columbia uncertain what other documents were responsive. Nonetheless, counsel for Columbia agreed to endeavor to locate and produce documents responsive to all the requests, in order to avoid discovery disputes.

At no time during the conversations regarding First Document Requests did counsel for NCRIC indicate that a motion to compel was imminent. To the contrary, each time counsel discussed when Columbia would produce documents, counsel for Columbia stated "as soon as possible" and counsel for NCRIC indicated that NCRIC would "wait and see" whether it was satisfied with the production, and act accordingly. Counsel for NCRIC never indicated that it was dissatisfied with the timing of Columbia's document productions. Counsel for Columbia was given *absolutely* no forewarning that counsel for NCRIC would move to compel.

As stated in the Certification, counsel for the parties conferred telephonically on February 22, 2001. However, counsel for NCRIC *never* mentioned *any* concerns about the First Document Requests in that conversation. Nor did counsel for NCRIC – on February 22 or *any* other date -- propose to meet regarding any specific requests among the First Document Requests. In the only part of the conversation that *conceivably* related to the First Document Requests (which counsel for Columbia understood to pertain solely to the Second Document Requests), counsel for NCRIC asked if Columbia would produce documents "on a date certain," and counsel for Columbia stated that Columbia planned to continue producing documents on a rolling schedule. Counsel for NCRIC did not object to a rolling production, or state that a more rapid or certain schedule was required. Counsel for NCRIC also *never* – on February 22 or *any* other date – proposed a different schedule to Columbia, or suggested that the parties meet to

[2] Columbia's time to file an Answer and Counterclaims was extended to November 7, 2000, by an order of this Court upon a consent motion. NCRIC requested, and received, consent for an extension of time to file its reply.

16d-000472

develop a schedule, or indicated that NCRIC would ask the court to order a more rapid schedule. Accordingly, when NCRIC moved to compel production of documents requested in its First Document Requests, counsel for Columbia was taken *completely* by surprise.

NCRIC's Second Document Requests

On January 12, 2001, NCRIC served on Columbia its Second Requests for Production of Documents ("Second Document Requests"). Columbia provided written responses thereto in a timely fashion, on February 14, 2001. Since most of the Second Document Requests were not lacking in reasonable particularity, Columbia objected to few of these requests on those grounds.

On February 22, 2001, counsel for the parties discussed NCRIC's Second Document Requests and Columbia's responses over the telephone, as indicated the Certification. However, the Certification fails to explain that, in this conversation, counsel *only* discussed 9 of the 56 specific requests in the Second Document Requests. See infra. NCRIC *never* raised any disputes regarding *any* of the other requests. Further, for all but four of the requests, counsel for NCRIC *never* proposed – on February 22 or on or *any* other date -- that the parties meet and confer in an attempt to resolve their disputes.

Moreover, as explained supra, when counsel for Columbia stated that Columbia would continue a rolling document production, counsel for NCRIC made *no* objection whatsoever. Counsel for NCRIC *never* indicated that a certain, or more rapid, schedule was required. Nor did counsel for NCRIC *ever*, on any date, propose a different schedule, or suggest that the parties meet to develop a schedule, or indicate that NCRIC would move to compel a more rapid or definite production. Accordingly, when NCRIC moved to compel with regard to almost *all* of the documents requested in the Second Document Requests, counsel for Columbia was taken

16d-000473

completely by surprise. As explained infra, counsel for Columbia understood that NCRIC would move to compel solely with respect to four, specific document requests.

Disputes in the Second Document Requests

On February 22, 2001, the parties discussed document requests 2, 4, 37, 47, 49, 51, 52, 54 and 56 of NCRIC's Second Document Requests. Counsel to NCRIC requested clarification regarding some requests; for others, NCRIC provided clarification to counsel for Columbia. Counsels came to an agreement, and Columbia agreed to produce documents in response to, all of these document requests except requests 51, 52, 54 and 56, which Columbia maintained were improper. Subsequently, in the spirit of compromise, counsel for Columbia agreed to produce documents in response to requests 51 and 52. See Letter from Joseph K. Leahy to Roy I. Niedermayer, dated March 5, 2001 (attached to NCRIC's Motion to Compel as Exhibit F). Accordingly, the only remaining disputes between the parties involved requests 54 and 56.

As set forth in the Certification, counsels agreed to meet about the remaining two discovery disputes on March 6, 2000. On March 5, 2001, counsel for Columbia informed counsel for NCRIC – and later confirmed in a letter (attached to NCRIC's Motion to Compel as Exhibit F) – that, as a professional courtesy, Columbia would waive the meeting regarding the remaining two discovery disputes, because they had been discussed at length and no resolution seemed possible.[3] In a subsequent letter, counsel for NCRIC mischaracterized this effort as a refusal to meet and confer. See Letter from Roy I. Niedermayer to Joseph K. Leahy, March 6, 2001 (attached to NCRIC's Motion to Compel as Exhibit G). Counsel for Columbia then offered, repeatedly, to reschedule the meeting. See Letter from Joseph K. Leahy to Roy I.

[3] Columbia's offer to waive the requirement of a face-to-face discovery meeting required by the Rules implicitly related *only* to the two remaining items disputed items discussed on the between the parties on February 22, 2001. Had counsel for Columbia known that NCRIC would move to compel with regard to *all* of its discovery requests, rather that the two remaining discovery disputes, counsel for Columbia would have insisted on a meeting.

16d-000474

Niedermayer, March 6, 2001 (attached to NCRIC's Motion to Compel as Exhibit H); Letter from Joseph K. Leahy to Roy I. Niedermayer, dated March 7, 2001 (attached hereto as Exhibit A). In a March 9, 2001 telephone call, counsel for NCRIC stated there was no need to meet, because the situation would be addressed in the Certification. However, counsel for NCRIC failed to mention in the Certification that opposing counsels *never* discussed, on February 22, 2001 or any other date, the *vast* majority of discovery requests on which NCRIC now moves to compel.

Document Productions

Columbia has produced documents in good faith in response to both of NCRIC's requests. Columbia has made three productions of documents in response to NCRIC's requests – on December 22, 2000, on January 12, 2000, and on March 14, 2000.[4] Columbia plans to make another production of documents in the first week of April. Columbia has produced, and expects to continue to produce, documents on a rolling schedule, i.e., as quickly as possible in light of its difficult financial situation. However, Columbia is willing to agree to set a reasonable schedule, and would have attempted to do so in good faith if NCRIC had attempted to meet and confer.

Argument

NCRIC's Motion Must Be Dismissed For Failure to Meet and Confer

This Court's rule is crystal clear: if a party fails to make a good faith effort to meet and confer regarding the issues to be raised in a motion to compel, the motion will be "summarily denied." See General Order for Civil II Cases on All Calendars, at 2; see also D.C. Sup. Ct. R. of Civ. P. 37(a). This rule promotes judicial economy by encouraging parties to work out problems between themselves, rather than waste this Court's time with every minor dispute.

---

[4] Between the second and third productions counsel for Columbia was occupied by responding to NCRIC's multiple motions, including a dispositive motion, and by preparing Columbia's discovery requests.

16d-000475

Here, counsel for NCRIC made no attempt to meet and confer regarding the vast majority of the issues it raises in its motion to compel. Although counsel for Columbia agreed to forego a meeting regarding two outstanding discovery disputes, by no stretch of the imagination did Columbia' courtesy give NCRIC license to move with regard to nearly all of its document requests, including many requests the parties *never* discussed. Rather, NCRIC was required, like every other litigant, to attempt in good faith to meet and confer before moving to compel.

Due to NCRIC's blatant failure to meet and confer, this court should summarily deny NCRIC's Motion to Compel. Counsel for NCRIC knew full well of the obligation to meet and confer, as evidence by the parties' initial agreement to meet and confer regarding the outstanding four (now two) discovery disputes. However, counsel made *no attempt whatsoever* to meet and confer regarding Columbia's schedule for producing documents. Indeed, counsel for NCRIC *never* informed counsel for Columbia that NCRIC required a faster production schedule, or that NCRIC would move to compel a faster schedule under any circumstances. Rather, NCRIC has taken advantage of Columbia's courtesy, by attempting to move to compel virtually all of its requests for production, when the parties discussed only a few of those requests.

Had counsel for NCRIC attempted to met and confer with counsel for Columbia, or propose a reasonable production schedule to counsel for Columbia (or at least, inform counsel for Columbia that it planned to move to compel a more rapid schedule), the parties might have met to agree to a definite, yet reasonable, production schedule – and this matter never would

16d-000476

have come before the Court. In the interest of judicial economy, NCRIC must be required to make an effort to resolve *all* discovery issues it plans to raise before it moves to compel.[5]

NCRIC's Motion Must Be Dismissed Because All of Its Arguments Are Meritless

Many of the First Document Requests Are Invalid
Because They Are Not Reasonably Particular

All requests for documents must be reasonable. Amount other things, document requests must be reasonably *particular*.[6] See D.C. Sup. Ct. R. Civ. Pro. 34(b) ("The request shall set forth, either by individual item or by category, the items to be [produced], and describe each item and category with reasonable particularity.") Simply put, this means that the requesting party must provide enough specifics in its document requests so that the responding party can locate and produce responsive documents with a reasonable amount of effort. See Kidwiler v. Progressive Paloverde Ins. Co., 192 F.R.D. 193, 202 (N.D. W. Va. 2000) (explaining that the "test for reasonable particularity is whether the request places the party on reasonable notice of what is called for and what is not. . . . the party requesting the production of documents must provide sufficient information to enable the party to whom the request is directed to identify responsive documents" (internal quotation marks omitted)). Of course, NCRIC is not required to ask by every document specifically. However, it was required to describe categories of documents with sufficient particularity so they could be identified and produced by Columbia.

[5] A failure to comply with the meet and confer requirement is not a mere technical violation, which can be cured while the motion is pending. Rather, it is well established that the proper procedure is to dismiss the motions (without prejudice) and required that the motion be refiled after the movant complies with the rule. See, e.g., Alexander v. FBI, 186 F.R.D. 99, 101 (D.D.C. 1998) ("motion must be denied without prejudice to renewal after compliance with meet and confer rule); Alexander v. FBI, 186 F.R.D. 185, 187 (D.D.C. 1999) (denying motion to compel for failure to comply with meet and confer rule). If not, the rule would be rendered toothless.

[6] In its responses to NCRIC's first and second document requests, Columbia also objected to those document requests on numerous other grounds. Columbia hereby incorporates those objections by reference into this motion. Columbia reserves the right to present to this Court any of its other objections to NCRIC's requests for documents.

16d-000477

Here, requests 3, 4, 5, 6 and 10 of NCRIC's First Document Requests are improper because they because they fail to describe with reasonably particularity the categories of documents requested. Indeed, several of these requests are classic examples of requests that lack any particularity whatsoever. For example, Request 3 asks for all "[d]ocuments concerning or relating to any counterclaim, setoff, or recoupment" asserted against NCRIC. See First Document Requests, at 2. Such broad requests are "regularly stricken as too ambiguous." Parsons v. Jefferson-Pilot Corp., 141 F.R.D. 408, 411 (M.D. N.C. 1992). Other requests ask, for example, for correspondence or communications "concerning or related to the subject matter of (i) this action, [Columbia's] defenses to [NCRIC's] claims, and (iii) [Columbia's] counterclaims in this action." See First Document Requests, at 2. Such requests are too lacking in detail to be *reasonably* particular. See St. Paul Reinsurance Co. v. Commercial Fin. Corp., 198 F.R.D. 508, 514 (N.D. Iowa 2000); Kidwiler, 192 F.R.D. at 202; Fishel v. BASF Group, 175 F.R.D. 525, 531 (S.D. Iowa 1997); Robbins v. Camden City Bd. of Educ., 105 F.R.D. 49, 60 (D.N.J. 1985).[7] Accordingly, NCRIC's motion to compel production of documents in response to these requests should be denied.[8] Moreover, these documents should be stricken.

[7] It is no wonder that NCRIC failed to provide sufficient particularity in its First Document Requests: *NCRIC served these requests before it received Columbia's Answer and Counterclaims.* As a result, NCRIC's First Document Requests stand in stark contrast to its Second Document Requests, which it served after receiving Columbia's counterclaims. Most of the second requests are reasonably particular because the request a specific category of documents, see, e.g., Request 6 ("Federal income tax returns for the years 1995-2000"), or relate to a specific set of circumstances or events, see, e.g., Request 7 ("Documents sent or provided by [Columbia] to any financial institution or other source of credit, loans or financing for the years 1995-2000.").

[8] Columbia has struggled to identify documents in response to these ambiguous requests. Once anecdote is telling: several legal assistants – all of whom were trained as lawyers – attempted to locate responsive documents at Columbia after receiving a copy of the document requests and detailed instructions from counsel for Columbia. The assistants returned to counsel's office with six boxes of documents. Some time later, after the documents were copied, counsel for Columbia reviewed the documents. Upon careful review, counsel for Columbia determined that the great bulk of the documents obtained by the assistants (e.g., a NCRIC annual report) were not responsive. Only about *one sixth* of those documents were responsive. The assistants' trouble was not due a lack of training or instruction (both were adequate), but rather, NCRIC's failure to describe documents with reasonable particularity.

16d-000478

In addition, NCRIC's requests 54 and 56, the only requests to which Columbia currently objects and refuses to produce documents, are invalid. In request 54, NCRIC requests documents concerning any analysis of Columbia's delivery of services. However, these documents are entirely irrelevant because Columbia's allegations relate solely to *rumors* regarding its quality of its services, not the actual quality of its services; further NCRIC has not raised as an affirmative defense the truth of any of these rumors. In addition, any documents in Columbia's files are no proof or evidence of rumors, since they are strictly internal.

NCRIC's requests 56 is invalid because it misapprehends Columbia's request for legal fees and baldly misconstrues its own request. Columbia's request for legal fees – which could have been raised in a motion, post-trial – is *not* part of its case-in-chief. There is no reason for Columbia to produce evidence of its attorneys' fees (most of which are privileged and will require redaction), until Columbia is victorious in this case. Further, it is entirely misleading for NCRIC to state that Request 56 is an attempt to find out what legal fees Columbia wishes to assert as actual damages. Request 56 asks for documents related to "fee arrangements with attorneys which form the basis for any claim of attorney's fees *in this case*" (emphasis added). The only attorneys fees that Columbia might claim as *damages* are fees from its *bankruptcy*, not fees from this case; fees from this case are to be determined in a post-trial proceeding. Columbia has already agreed to produce nonprivileged documents related to its damages.

Columbia Has Complied with, or Is Reasonably Complying with
All of Other Document Requests

As described in its Motion to Amend Scheduling Order, Columbia has been hampered in its production of documents by NCRIC due to its limited staff and financial resources. Yet, Columbia has made, and continues to make, a good faith effort to comply with NCRIC's requests for documents. NCRIC has not offered any evidence to the contrary, other than mere

16d-000479

Conclusion

WHEREFORE, for the foregoing reasons, Columbia respectfully requests that NCRIC's Motion to Compel be denied in its entirety.

DATED: March 29, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000480

Copies to:

Mark C. Hansen
Steven F. Benz
Joseph K. Leahy
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue
Suite 500
Bethesda, MD 20814

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

16d-000481

EXHIBIT A

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

March 7, 2001

BY FACSIMILE

Roy I. Niedermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: **NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.,**
Civil Action No. 0007308-00

Dear Roy:

Yesterday prior to our scheduled meeting, exactly as you requested in our telephone call the day before, I faxed you a letter reflecting my offer, as a professional courtesy, to waive the face-to-face meeting requirement. Now, you have left me a voicemail message stating that the meeting must be held, and it must take place in your office. That is a strange turn of events.

I am willing to meet at my office, where our meeting was first scheduled. I did not cancel our first meeting unilaterally, and you may not reschedule the place of our meeting unilaterally. My schedule is very full this week, as I have two motions to write in the next two days; however, I would be willing to meet with you briefly on Thursday after 3 p.m. or Friday after 2 p.m..

In addition, if you refuse to meet at my office, I am willing, as a professional courtesy, to meet at your office in this instance. However, I will be unable to travel to your office until next Tuesday. Please call me to schedule a time for a meeting next Tuesday, if you wish.

Finally, if you prefer, I still am willing to waive the face-to-face meeting requirement.

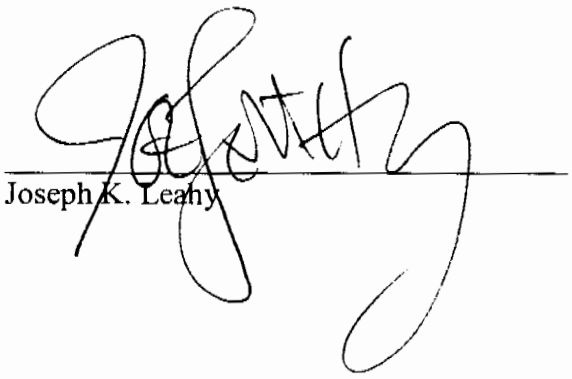
Sincerely,

Joseph K. Leahy

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 29th day of March, 2001, a copy of Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center Inc.'s Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Compel were served upon the following by first class mail, postage prepaid:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814



Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 5/12/01
	)	
Defendant.	)	

OPPOSITION TO MOTION TO AMEND SCHEDULING ORDER

Plaintiff, NCRIC, Inc., by counsel, opposes the Motion of defendant to amend the current Scheduling Order of the Court for the reasons presented herein.

STATEMENT OF THE REAL ISSUE BEFORE THE COURT.

This is a case where the defendant has caused its own problems through lack of diligence and now seeks to avoid its self-inflicted difficulties by asking the Court to amend the Court's Scheduling Order. The simple fact is that the defendant has neither been diligent in its investigation, discovery, or defense of this case, nor in the prosecution of its own counterclaims. It has squandered the more than adequate time provided in the Scheduling Order and now asks the Court to rescue it from its self-created problems. The Court should not do this under the specific facts of this case if it is to preserve the integrity of the scheduling process and the validity of its Scheduling Orders.

ARGUMENT.

I. The Defendant Has Not Been Diligent In Its Conduct of This Case.

The primary basis defendant raises for the amendment of the Scheduling

RECEIVED
APR 04 2001
16d-000485
By

Order is that it has been diligent, proactive, and hard-working in its dealing with this case, but that for a variety of reasons, it simply could not complete those discovery and factual investigative tasks required in the time allowed by the Scheduling Order. Nothing could be farther from the facts and a more disingenuous argument as demonstrated by the events.

This case was filed on October 3, 2000. At that time, the initial Scheduling Conference was set for January 12, 2001. Plaintiff immediately began its discovery by sending defendant interrogatories, requests for production of documents, and requests for admission on October 26, 2000. Defendant file its answer and counterclaims about November 6, 2000. The counterclaims were very detailed and amounted to about 27 pages and 168 paragraphs, highly suggesting a full factual investigation and detailed knowledge of the facts. Plaintiff filed its second requests for discovery on January 12, 2001 after receiving inadequate responses from defendant. Plaintiff has also (1) filed a motion to compel discovery from defendant, (2) notices the 30(b)(6) deposition of defendant, and (3) sought consent to take the depositions of defendant's experts without filing a motion. **Between October 3, 2000 and March 3, 2001, i.e., for 5 months, defendant literally did nothing by way of discovery. It did not file one discovery request. It simply sat on its hands and did nothing to obtain any discovery from plaintiff or to discover the facts it now claims it needs.** That if finds itself pressed by the discovery cut-off deadline is not surprising, but due entirely to its own fault. The Court should not allow the defendant to use its own misfeasance as the basis for an amendment of the Scheduling Order where plaintiff has been diligent in complying with the Court's order.

II. The Defendant's Arguments for Amendment Are Without Merit.

A. "The complexity and enormity of factual and expert discovery make it impossible to comply with the constraints of the Track 2 scheduling order."

This case is just not that factually complex. Defendant would simply like to portray it as such to justify and excuse its lack of diligence. Plaintiff seeks recovery of insurance premiums due it under a program involving a retrospective contract formula. Defendant disputes the calculation of the premiums under the formula. What was required of defendant was to commence discovery early on and uncover the facts supporting each element of the calculation of the formula by plaintiff. Plaintiff even supplied a spreadsheet (attached to the requests for admission) showing each element of the formula and the numbers calculated by plaintiff. All defendant needed to do was ask for the explanation of how the calculations were made and the documents supporting the calculations. This is just what it has done with its latest March 2001 discovery requests. It could and should have done this earlier. It has simply done this so late, that it is now running afoul of the discovery deadline.

Any complexity or increase in scope of the case was introduced, if at all, by defendant through its counterclaims. But it should have done its own factual investigation of these claims (and by the detail of allegation may have done so) and known the underlying facts when it filed the counterclaims. So, there should be no unknown complexity on its part, unless if filed the counterclaims without real investigation and in the hope of fleshing out the theories through a fishing expedition in plaintiff's files and through discovery from plaintiff which it did not commence until a few days ago.

Moreover, the claims of problems with expert discovery and preparation are

matters created by defendant for itself. From the outset of this case, defendant denied the accuracy of the calculation and recognized the possibility of the need for expert testimony. It now says it cannot obtain expert opinions in time to meet the discovery cut off because these opinions must be based on information and documents from plaintiff. But it did not even make any effort to obtain this information from plaintiff until 10 days (March 2, 2001) before the designation of witnesses and experts was required to be filed with the Court on March 12, 2001!

The impossibility of complying with the discovery closure deadline is not due to the complexity of this case. It is due to defendant's failure to act timely and diligently within the adequate time period from the filing of the case through the schedule of the Court's order. No one told defendant it had to wait until the Initial Scheduling Conference and the entry of a scheduling order to begin discovery or factual investigation. It made this decision itself and it should have to live with it now.

Finally, plaintiff is not complaining about the amount of time needed or the burden of producing its documents within the time required by the Rules or the Scheduling Order. If defendant has a time problem with review, then it should have started earlier or reduced the amount of material it wants to see.

B. Defendant Did Not Understand the Track System and the Meaning of the Election of Tracks.

Plaintiff cannot address the lack of knowledge of defendant about the Court's tracking system, except to say that it has been in use for a long, long time. Moreover, defendant neither made any effort to discuss the track with plaintiff prior to the conference and raised no objections at the Initial Scheduling Conference about the selection of Track

2. It could have done so if it was unsure. Further, the defendant waited about 2 months before it even moved to amend the scheduling order. Defendant has not been attentive, engaged, or diligent. Surely, it did not take 2 months to realize that the deadlines were restricting or difficult to meet. Again, defendant cannot claim to be diligent and yet have no real reason for its delay in acting.

This case does not require Track 4. Defendant simply wishes to create that impression by its own bootstrapping actions. Moreover, the "wide-ranging tort claims" primarily arise out of the claimed miscalculation of the premium formula and defamation. If plaintiff is satisfied with the time to complete discovery on the claims sounding in defamation, then there should be no reason for defendant to require more time. It brought the claims and presumably knows and knew more about the facts when it filed the claims.

C. There are Motions Pending Before the Court.

Plaintiff's motions to dismiss and for a more definite statement can only reduce the complexity of the case, not increase it by the elimination of legal theories.

D. Defendant Was Unable to Commence Discovery Until Just Recently and Cannot Meet the Scheduling Order Deadlines.

Defendant contends it was not able to commence discovery because of a variety of reasons including its own investigation and filing of counterclaims, answering the complaint, responding to plaintiff's motion, and responding to plaintiff's discovery requests. In other words, defendant was not able to conduct discovery because the defense of the case interfered. Actually, defendant's counterclaims and answer were filed about November 6, 2000. Defendant's opposition to plaintiff's motions to dismiss and for more definite statement were filed January 26, 2001, after defendant proceeded to raise

technical objections to the motions having preceded an amendment to the complaint. Interestingly, plaintiff had to prepare the motions, file responses to defendant's motions and opposition, and answer defendant's counterclaims – but still had time to initiate discovery. Parenthetically, plaintiff also notes it is represented by counsel who is a sole practitioner, not a lawyer in an over 20 lawyer firm. Defendant's arguments just don't hold water.

Finally, defendant has already met every deadline in the scheduling order, including the recent March 12, 2001filing of Witness Lists and its Rule 26(b)(4) expert designations from which it asks for relief and which it claims it cannot meet.

E. Defendant's Financial Condition and Lack of Resources Has Hampered Its Defense and Factual Investigation.

This reason is truly meritless and irrelevant. Moreover, it does not suggest that the underlying financial problems and defendant's ability to comply with an amended scheduling order will be cured by any increase of time to complete discovery and trial preparation tasks.

F. Plaintiff Has Refused to Consent to the Amended Scheduling Order.

The plaintiff's desire for a resolution of this case on the agreed schedule ordered by the Court is understandable. Defendant's desire to stretch out the time until resolution is equally understandable. But plaintiff's refusal to consent to the amendment for this reason is irrelevant to the merits of whether the amendment should be granted.

G. Defendant Seeks Modification of Deadlines That Have Already Passed.

Defendant's proposed amendment seeks to extend deadlines that have already passed and with which plaintiff and defendant have already complied. It would be

unfair to redo to completed deadlines where plaintiff made the effort to comply but now defendant wants more time. This is especially true with respect the designation of experts.

CONCLUSION.

Defendant has caused its own problems through its own lack of diligence. In fact, delay has largely been the hallmark of the defendant's conduct in all aspects of this case. It has created the situation in which it finds itself as a consequence of its own strategy to drag matters out. It has regularly requested and received additional time to file and to respond to pleadings. It has not even remotely responded in any substantial manner to plaintiff's discovery, despite its protestations that it has. Its failure to provide any real discovery response to plaintiff's requests for documents made in October 2000 and January 2001, except for 2-3 boxes which according to defendant are only the tip of the iceberg of documents that need to be reviewed, has forced plaintiff to file a motion to compel.

The main basis for defendant's motion is not there: good faith diligence in defense and prosecution of its counterclaims. A fair reading of defendant's motion reveals that all the investigation and discovery that it says it will need and cannot obtain was caused by its own failure to proceed in an expeditious manner with discovery, a failure dictated by a deliberately elected strategy of delay and footdragging coupled with a decision to avoid incurring the costs associated with its defense and counterclaims due to financial constraints. Based on the history of this case, there is no reason to believe an extension of time will cure the issues raised by defendant as the reasons for needing more time.

Defendant is not unlike the child who murders his parents and then asks the mercy of the Court because he is an orphan. Defendant should not be allowed to make its own inequitable and dilatory actions the basis for delaying this case. This will simply encourage it to do so again. Its motion should be denied or, at a minimum, the dates already past allowed to stand as completed.

Roy Niedermayer, Esq. D.C. Bar #180380
7475 Wisconsin Avenue
Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on March 31, 2001, a copy of the foregoing Opposition was mailed, first class mail, postage prepaid to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Rafael Diaz
	)	Next event: Initial Conference 1/12/01
	)	
Defendant.	)	

ORDER

Upon the defendant's Motion to Amend Scheduling Order, it is this ___day of ___

_____, 2001

ORDERED that the plaintiff's Motion to Amend Scheduling Order be and the same is hereby DENIED.

_____
Linda Kay Davis, Superior Court Judge

cc:

Roy Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 0007308-00
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next Event: Discovery close 5/12/01
	)
Defendant.	)

MOTION FOR PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS AND OTHER MATERIALS

Plaintiff, NCRIC, Inc., by counsel, moves this Court pursuant to SCR 26(c) for a protective order to protect the confidential commercial information, trade secrets and processes, client/insured information and financial information requested to be produced in discovery by defendant. The bases and grounds for this Motion are as follows:

1. In discovery by interrogatories and requests for production of documents, defendant has demanded production of the following types of information from plaintiff which constitutes its confidential commercial information, trade secrets and processes, client/insured information and financial information:

a. Information related to the assessment and setting of loss reserves under the insurance contract between the parties in this case;

b. Files of recently closed and pending medical negligence/malpractice cases related to the insurance contract between the parties in this case;

c. Nonpublicly disclosed financial information of plaintiff;

d. Identities of persons insured by plaintiff.

RECEIVED
APR 0 2 2001
16d-000494
By

2. The information described in ¶ 1(a) is proprietary to plaintiff. It encompasses risk and loss assessment in individual cases for which plaintiff is providing a defense in accordance with its insurance contracts. Disclosure of the information would prejudice not only plaintiff, but the plaintiff's insured doctor in the defense or settlement of the case in that revelation of the plaintiff's assessment of the risk and amount of loss may make settlement impossible.

3. In addition to attorney-client communications and assessments of the individual cases, these files contain nonpublic information about the insured doctor and his case. Disclosure of this information would be prejudicial to the doctor.

4. The information described in ¶ 1(a) is also confidential commercial information of plaintiff revealing its methods, practices, and techniques of operation which, if disclosed, would provide an unfair advantage to its competitors in the insurance market in the District of Columbia.

5. Counsel for the parties have been unable to agree on the terms of a protective order, although there is agreement of the necessity for such an order.

6. Attached to this Motion is a proposed form of protective order.

WHEREFORE, the plaintiff prays this Court to enter a protective order that the discovery of the information described in the protective order not be had except under the terms and conditions of the order.

Roy Niedermayer, Esq. D.C. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

1. SCR 26(c).

Roy I. Niedermayer, Esq. #180380

CERTIFICATION OF GOOD FAITH EFFORTS TO SECURE CONSENT AND RESOLVE DISCOVERY DISPUTES WITH DEFENDANT

The undersigned counsel hereby certifies that he made good faith efforts to secure the defendant's consent to a protective order:

1. On March 15, 20, and 21, counsel held telephone conferences to discuss the entry of and the terms of a protective order to be entered by the Court prior to production of plaintiff's confidential commercial information and trade secrets.

2. On March 8, 10, 12-16, 18-19, and 21-22, counsel for the parties exchanged over a half dozen e-mail correspondence with copies of proposed protective orders in process of negotiation and agreeing on the terms of a proposed protective order.

3. After these good faith efforts, the parties were not able to agree on the terms of the protective order.

Roy I. Niedermayer, Esq. #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on March 31, 2001, a copy of the foregoing Motion was mailed, first class mail, postage prepaid to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	Civil Action No. 0007308-00 Calendar #8 Judge Linda Kay Davis Next Event: Discovery close 5/12/01

PROTECTIVE ORDER REGARDING CONFIDENTIALITY
OF DOCUMENTS AND OTHER MATERIALS

Upon the Motion of plaintiff for a protective order pursuant to SCR 26(c), it is this _____ day of _____, 2001

ORDERED that:

1. All Classified Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.

2. "Classified Information" as used herein, means any information of any type, kind or character which is designated as "Confidential" or For Counsel Only" by any of the supplying or receiving parties, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise. In designating information as "Confidential" or "For Counsel Only, a party will make such designation only as to that information that it in good faith believes contains confidential information. Information or material which is available

to the public, including catalogues, advertising materials, and the like shall not be classified.

3. "Qualified Persons" as used herein, means

(a) Attorneys of record for the parties in this litigation and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation (so long as such attorneys and their employees are not direct employees of any party).

(b) Actual or potential independent technical experts or consultants who have signed the declaration form attached at Exhibit A hereto, but such declaration need not be served on opposing counsel for consulting experts or other consultants who will not be called as witnesses at trial. This order shall apply to consulting experts and consultants not called as witnesses in all other respects except disclosure to the other party. Such experts or consultants may not be employees of any party.

(c) In-house corporate officer(s) or employee(s) of a corporate party who has signed the declaration form attached at Exhibit A hereto with such declaration promptly served on opposing counsel by the counsel representing the corporate party.

(d) Any other person may be designated as a Qualified Person by a parties; or by order of this Court after notice and hearing to all parties. The designation of a persons designated by a party as a Qualified Person may be challenged by motion before the Court.

(e) The Judge, law clerks, and other personnel working in chambers.

4. Documents produced in this action may be designated by any party or parties as "Confidential" or "For Counsel Only" information by marking every page (or, at a

minimum, the first page) of the document(s) so designated with a stamp stating "Confidential" or "For Counsel Only."

In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copies that are produced or exchanged. Originals shall be preserved for inspection.

5. Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents, or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a third party (which information pertains to a party) may be designated by any party as "Confidential" or "For Counsel Only" information by indicating on the record at the deposition that the testimony is "Confidential" or "For Counsel Only" and is subject to the provisions of this order.

Any party may also designate information disclosed at such deposition as "Confidential" or "For Counsel Only" by notifying all of the parties in writing within 30 days of receipt of the transcript, of the specific pages and lines of the transcript which should be treated as "Confidential" or "For Counsel Only" thereafter. Each party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his possession, custody, or control. All deposition transcripts shall be treated as "For Counsel Only" for a period of 30 days after the receipt of the transcript.

To the extent practical, the court reporter shall segregate into separate transcripts information designated as "Confidential" or "For Counsel Only", with blank, consecutively numbered pages being provided in a nondesignated main transcript. The separate transcript containing "Confidential" or "For Counsel Only" information shall have page numbers that correspond to the blank pages in the main transcript.

6.(a) "Confidential" information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons. Information designated as "For Counsel Only" shall be restricted in circulation to Qualified Persons described in Paragraphs 3(a), (b) and (e) above.

(b) Information designated as "For Counsel Only" provided to a receiving party shall be maintained in the offices of the following outside counsel: for Plaintiff, Roy I. Niedermayer, Esquire; and for Defendant, Kellogg, Huber, Hanson, Todd & Evans, P.L.L.C.

Any documents produced in this litigation, regardless of classification, which are provided to Qualified Persons of Paragraph 3(b) above, shall be maintained only at the office of such Qualified Persons and only working copies shall be made of any such documents. Copies of documents produced under this Protective Order may be made, or exhibits prepared by independent copy services, printers, or illustrators for the purpose of this litigation.

(c) Each party's counsel shall maintain a log (either by description or Bates number) of all copies of "For Counsel Only" documents which documents received from another party that are delivered to any one or more Qualified Persons of listed in Paragraph 3(b) above.

7. Documents previously produced shall be retroactively designated by notice in writing of the designated class of each document by Bates number (or by other means by which the document can reasonably be identified) within 20 days of the entry of this order (but no later than three days prior to any scheduled hearing wherein the transcript might be used or relied upon). Documents unintentionally produced without designation

as "Confidential" may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party.

Documents to be inspected shall be treated as "For Counsel Only" during inspection. At the time of copying for the receiving parties, such inspected documents shall be stamped prominently "Confidential" or "For Counsel Only" by the producing party.

8. Nothing herein shall prevent disclosure beyond the terms of this order if each party designating the information as "Confidential" or "For Counsel Only" consents to such disclosure or, if the court, after notice to all affected parties, orders such disclosures. Nor shall anything herein prevent any counsel of record from utilizing "Confidential" or "For Counsel Only" information in the examination or cross-examination of any person who is indicated on the document as being an author, source, or recipient of the "Confidential" or "For Counsel Only" information, irrespective of which party produced such information.

9. A party shall not be obligated to challenge the propriety of a designation as "Confidential" or "For Counsel Only" at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation by the designating party of any information as "Confidential" or "For Counsel Only", or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who has designated the document or information as "Confidential" or "For Counsel Only".. The designating party shall be required to move the Court for an order preserving the

designated status of such information within 14 days of receipt of the written objection, and failure to do so shall constitute a termination of the restricted status of such item.

The parties may, by stipulation, provide for exceptions to this order, and any party may seek an order of this Court modifying this Protective Order.

10. It is the intention of the parties that the definition of Classified documents be consistent with that contained in SCR 26(c). Nothing shall be designated as "For Counsel Only" information except information of the most sensitive nature, which if disclosed to persons of expertise in the area would reveal significant technical or business advantages of the producing or designating party, and which includes as a major portion subject matter which is believed to be unknown to the opposing party or parties, or any of the employees of the corporate parties. Nothing shall be regarded as "Confidential" or "For Counsel Only" information if it is information that either:

(a) is in the public domain at the time of disclosure, as evidenced by a written document or equivalent;

(b) becomes part of the public domain through no fault of the other party, as evidenced by a written document or equivalent;

(c) the receiving party can show by written document that the information was in its rightful and lawful possession at the time of disclosure or equivalent; or

(d) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

11. In the event a party wishes to use any "Confidential" or "For Counsel Only" information in any affidavits, briefs, memoranda of law, or other papers filed in Court in this

litigation, such "Confidential" or "For Counsel Only" information used therein shall be filed under seal with the Court. The documents shall be maintained under seal by the Court, in an envelope provided by the party filing the documents, which bears a legend stating the following (or a substantially similar) legend: This envelope contains documents that are subject to a Protective Order entered by the Court in this action governing the use of "Confidential" and "For Counsel Only" information. These materials so filed shall be maintained by the Clerk of the Court.

12. The Clerk of the Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions, and other pleadings filed under seal with the Court in this litigation which has been designated, in whole or in part, as "Confidential" or "For Counsel Only" information by a party to this action. Such information shall not be opened or unsealed except as directed by the Court.

13. Unless otherwise agreed to in writing by the parties or ordered by the Court, all proceedings involving or relating to documents or any other information shall be subject to the provisions of this order.

14. Within 120 days after conclusion of this litigation and any final appeal thereof, any documents and all reproductions of documents produced by a party, in the possession of any of the persons qualified under Paragraphs 3(a) through (e) shall be returned to the producing party (or, at the Clerk's discretion, the documents may be destroyed), except as this Court may otherwise order or to the extent such information was used as evidence at the trial. As far as the provisions of any Protective Orders entered in this action restrict the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this litigation, except (a)

that there shall be no restriction on documents that are used as exhibits in Court unless such exhibits were filed under seal, and (b) that a party may seek the written permission of the producing party or order of the Court with respect to dissolution or modification of such Protective Orders.

15. This order shall not bar any attorney herein in the course of rendering advice to his client with respect to this litigation from conveying to any party client his evaluation in a general way of "Confidential" or "For Counsel Only" information produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his client, the attorney shall not disclose the specific contents of any "Confidential" or "For Counsel Only" information produced by another party herein, which disclosure would be contrary to the terms of this Protective Order.

16. Any party designating any person as a Qualified Person shall have the duty to reasonably assure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of any such person to observe the terms of this Protective Order.

17. If any person, entity, court or any administrative agency subpoenas or orders the production or designation of confidential documents that a party has obtained under the terms of this Order, such party shall promptly notify the subpoenaing third party that the documents are subject to a Protective Order, and shall notify the party or person who designated the materials as confidential of the pendency of such subpoena or order.

18. Nothing in this order shall prevent any party or other person from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

Linda Kay Davis, Superior Court Judge

cc:

Roy Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 5/12/01
	)	
Defendant.	)	

DECLARATION OF PROMISE TO ABIDE BY TERMS OF PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS AND OTHER MATERIALS (EXHIBIT A TO PROTECTIVE ORDER)

_____, solemnly state as follows:

I hereby certify and affirm, under the penalty of perjury, that I have read and am familiar with the terms of the Protective Order concerning the records and testimony produced by the respective parties in the case of *NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.*, Civil Action No. 00-0007308, in the Superior Court of the District of Columbia, and I agree to abide by all terms of said Protective Order and not to reveal or otherwise communicate any of the information disclosed to me pursuant thereto to anyone except in accordance with the terms of said Protective Order. I agree not to make any use of that information or materials other than for the purpose of this litigation.

_____

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes, May 12, 2001
	)	
	)	
Defendant.	)	

RECEIVED
Civil Clerk's Office
APR 05 2001
Superior Court
District of Columbia

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 5th day of April, 2001, I served on opposing counsel, by hand delivery, a copy of Defendant's Objections to Plaintiff's Notice of Deposition Pursuant to Superior Court Rule 30(b)(6). I certify that I will retain the original of these documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: April 5, 2001

Respectfully submitted,

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

4/5/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes, May 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S NOTICE OF DEPOSITION PURSUANT TO SUPERIOR COURT RULE 30(b)(6)

Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby objects as follows to the Notice of Rule 30(b)(6) Deposition of Defendant ("Notice") served by Plaintiff/ Counter-Defendant NCRIC, Inc. ("NCRIC"), for a deposition noticed for April 10, 2001.

GENERAL OBJECTIONS

These General Objections apply to each and every one of the deposition subjects listed in NCRIC's Notice ("deposition subjects") and form an integral part of Columbia's Objections:

1. Columbia objects to the deposition subjects to the extent they seek information protected by the attorney-client privilege, work product privilege, or any other applicable privilege that would make the information sought immune from discovery in whole or in part. "Privilege" as hereinafter used shall include all the above-named privileges and any other rule of law, privilege, or confidentiality provided by law. By designating a witness to testify on a given topic, it is not intended to be, or in any way may it be deemed, a waiver of any such available privilege to which Columbia is entitled.

2. Columbia objects to NCRIC's deposition subjects to the extent that they seek to impose obligations upon Columbia beyond those permitted by, or different from those required by, the District of Columbia Superior Court Rules of Civil Procedure.

3. Columbia objects to NCRIC's deposition subjects to the extent that they are vague, overly broad, unduly burdensome, or seek information that is not relevant to any claim or defense of a party or is not reasonably calculated to lead to the discovery of admissible evidence.

4. Columbia objects to NCRIC's deposition subjects to the extent that they relate to information that is already, or solely, in NCRIC's possession.

5. Columbia objects to NCRIC's deposition subjects to the extent that they relate to information not in Columbia's possession.

6. Columbia objects to NCRIC's deposition subjects to the extent that they relate to Columbia attorneys' fees in this action.

7. It should not be inferred from the form or substance of any objections contained herein that information responsive to any particular subject exists.

8. By designating a witness to testify on any subject, Columbia does not concede the relevance or admissibility of the information sought.

SPECIFIC OBJECTIONS

Subject No. 1: The facts and reasons forming the basis for defendant's claims that any of the calculations or numbers in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) are incorrect or fail to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant.

Objections to Subject No. 1: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that the Subject requests information that is solely in NCRIC's possession and/or to

the extent that the Subject requests information already provided to NCRIC in Columbia's responses to NCRIC's interrogatories. Columbia also objects this Subject to the extent it seeks testimony that is properly in the realm of expert testimony, and as such, constitutes an improper attempt to elicit Columbia's testimony expert without permission of the Court, in violation of District of Columbia Superior Court Rule 26(b)(4). Columbia objects further to this Subject to the extent that relates to pure matters of law, including interpretation of the agreement between the parties, and therefore, is not properly the subject of a deposition of a lay witness.

Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege. Columbia also objects to this Subject to the extent that it calls for information that is not currently currently in the possession of or reasonably obtainable by Columbia or any of its managing agents, but rather, is in the possession of counsel for Columbia and/or non-party witnesses. In effect, this Subject requires counsel for Columbia to marshal all of its factual proof and legal analysis regarding the subject, provide it to Columbia's 30(b)(6) designee, and then provide it to NCRIC. For this reason, Columbia objects that this Subject is not properly the subject of a 30(b)(6) deposition. Instead, this Subject is properly the subject of a contention interrogatory (the deadline for service of which passed on March 12, 2001, prior to service of NCRIC's 30(b)(6) deposition notice).

Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 1.

Subject No. 2: The correct amounts that should be used or inserted in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant; and facts and reasons why these numbers are the proper amounts and calculations to be used in calculating the amount of premium due plaintiff under the

contract.

Objections to Subject No. 2: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 2.

Subject No. 3: The amounts of premium that should have been charged to defendant in each year of the contract and the amount, year, and method of calculation of any refund of premium defendant claims was due it.

Objections to Subject No. 3: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 3.

Subject No. 4: The identity, terms, and facts concerning any contract, business relationship, or business expectancy between defendant and each of the doctors identified in paragraph 14-18 and 124 of defendant's amended counterclaims.

Objections to Subject No. 4: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it requests information that is solely in NCRIC's possession. Further, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 5: The specific actions and acts of plaintiff constituting the interference with the contracts between defendant and the doctors identified in paragraph 124 of defendant's amended counterclaims.

Objections to Subject No. 5: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but

not limited to the work-product privilege. Columbia also objects to this Subject to the extent that it requests information that is solely in NCRIC's possession. Further, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents, but rather, is in the possession of counsel for Columbia and/or non-party witnesses. In effect, this Subject requires counsel for Columbia to marshal all of its factual proof and legal analysis regarding the subject, provide it to Columbia's 30(b)(6) designee, and then provide it to NCRIC. For this reason, Columbia objects that this Subject is not properly the subject of a 30(b)(6) deposition. Instead, this Subject is properly the subject of a contention interrogatory (the deadline for service of which passed on March 12, 2001, prior to service of NCRIC's 30(b)(6) deposition notice).

Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 5.

Subject No. 6: Acts or statements of plaintiff exhibiting malice toward defendant.

Objections to Subject No. 6: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 6.

Subject No. 7: Acts or statements of plaintiff exhibiting any wanton or reckless disregard of the rights of defendant.

Objections to Subject No. 7: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 7.

16d-000513

Subject No. 8: Source, substance, nature, duties and responsibilities of NCRIC as fiduciary for defendant and actions constituting breach of any fiduciary duty.

Objections to Subject No. 8: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 8.

Subject No. 9: Identify, description, and calculation of damages suffered by acts alleged in each amended counterclaim count.

Objections to Subject No. 9: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to Subject No. 9 in that its investigation is continuing, and to the extent that its damage calculations are not completed at this time. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 9 at this time.

Subject No. 10: Defamatory actions or statements by plaintiff about defendant.

Objections to Subject No. 10: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 10.

Subject No. 11: The matters concerning calculation of loss reserves, adjustments of loss reserves, positive loss experiences of defendant under the Plan, use of additional years in calculating premiums, and each element of the formula or requirements for reconciliation of premiums due under the Plan.

Objections to Subject No. 11: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are

incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 11.

Subject No. 12: Allegations of errors by plaintiff made in paragraphs 38-41, 49 (second sentence), and 53 (second sentence) of the Amended counterclaims.

Objections to Subject No. 12: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 12.

Subject No. 13: The bases for the allegations of plaintiff's knowledge about defendant's financial situation as alleged in paragraph 43 of the Amended counterclaims.

Objections to Subject No. 13: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 13.

Subject No. 14: The specific errors, miscalculations and overstatements in the bill from plaintiff alleged in paragraphs 72 and 101 including the reasons and bases for the errors, and corrections required to make the bill accurate.

Objections to Subject No. 14: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 14.

Subject No. 15: The facts supporting or related to the allegations of paragraph 73 that plaintiff attempted to gain leverage over defendant.

Objections to Subject No. 15: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Further, Columbia objects to Subject No. 15

16d-000515

to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 16: The search for new or replacement MMLI insurance with companies other than plaintiff during the period 1993 to date.

Objections to Subject No. 16: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege and the attorney-client privilege. Further, Columbia objects to Subject No. 16 to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 17: The negotiations and events between plaintiff and defendant alleged in paragraphs 83-88 including the factual bases for defendant's allegations of cancellation without justification, retaliation, and reneging.

Objections to Subject No. 17: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege and the attorney-client privilege. Further, Columbia objects to Subject No. 17 to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 18: The events and statements described in paragraph 89 of the Amended counterclaims.

Objections to Subject No. 18: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege. Columbia also objects to this Subject to the extent that

the subject requests information that is solely in NCRIC's possession. Further, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents, but rather, is in the possession of counsel for Columbia and/or non-party witnesses. Moreover, Columbia objects to this Subject to the extent that it requires counsel for Columbia to marshal its factual proof and legal analysis regarding the Subject and provide it to Columbia's 30(b)(6) designee, and then provide it to NCRIC. To this extent, Columbia objects that this Subject is properly the subject of a contention interrogatory, not a 30(b)(6) deposition.

Subject No. 19: The substance, nature, and scope of any harm caused to the defendant's reputation in the community caused by the action of plaintiff including the nature, bases, and calculation of any monetary damages sustained as a result of the harm.

Objections to Subject No. 19: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents. Columbia also objects to this Subject in that its investigation is continuing, and to the extent that its damage calculations are not completed at this time. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 19 at this time.

Subject No. 20: The content of the rumors alleged in paragraphs 91 and 98 of the Amended counterclaims as well as the identities of the staff members originating and circulating the rumors.

Objections to Subject No. 20: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege and the attorney-client privilege. Further, Columbia objects to the

extent that the Subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 21: Defendant's reputation in the medical community and community at large.

Objections to Subject No. 21: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 22: The facts and events described in paragraph 92 of the Amended counterclaims.

Objections to Subject No. 22: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 18, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 23: Identities of the physicians, staff, nurses, and executives described in paragraphs 91, 93, 96, and 98 of the amended counterclaims and the reasons for the actions of these persons described in those paragraphs.

Objections to Subject No. 23: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 24: Local media communications with defendant's personnel, doctors, staff, nurses, and executives in 1999-2000 concerning defendant's financial condition, loss of doctors and patients, closing of defendant's operations, and similar topics.

Objections to Subject No. 24: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 25: Recruitment of physicians and staff during 1990-2000.

16d-000518

Objections to Subject No. 25: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 26: Damages and injury to defendant's business and property as alleged in paragraphs 109-110, 116-117, 122, 128, 134, 138, 146, 153, 158, 163, and 168 of the amended counterclaims.

Objections to Subject No. 26: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 19, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 26 at this time.

Subject No. 27: Loss of revenue due to loss of patient referrals, including the numbers of patients and source of patients lost, the amount of revenue lost, the services, materials, supplies that would have been charges the lost patients, the gross and net profit on each item of service, material or supply which would have been provided to the lost patients.

Objections to Subject No. 27: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 19, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 27 at this time.

Subject No. 28: The amount and calculation of defendant's claim of Return Premium due it from plaintiff from 1993 to date.

Objections to Subject No. 28: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 28.

Subject No. 29: Causes of defendant's current insolvency and financial problems.

Objections to Subject No. 29: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Further, Columbia objects to this Subject to

the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 30: The relationship between the actions of plaintiff and any damages claimed to have been sustained by defendant.

Objections to Subject No. 30: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 30.

Subject No. 31: Losses or damages proximately caused by harm to defendant's reputation.

Objections to Subject No. 31: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 19, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 31 at this time.

Subject No. 32: Loss of revenues from the departure of Attending Faculty described in paragraph 97.

Objections to Subject No. 32: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 19, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 32 at this time.

Subject No. 33: Identities of Attending Faculty of defendant for 1993 to date.

Objections to Subject No. 33: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 34: Physicians who had privileges at defendant but who have ceased referring patients to defendant or who have given up, abandoned, or relinquished their privileges from 1990 to date.

Objections to Subject No. 34: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 35: Identity of and reason for loss of physicians and staff from defendant from 1990 to date, including who, when, and why physicians and staff left or disassociated with defendant.

Objections to Subject No. 35: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 36: MMLI rates for OB/GYN physicians in D.C., Maryland, and Virginia from 1993 to date.

Objections to Subject No. 36: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 37: Actual patient referrals to defendant from 1993 to date identified by referring physician.

Objections to Subject No. 37: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 38: Expected numbers of patients referred by physicians and anticipated revenues from such patients for 1993 to date, including any studies, projections, or estimates made.

Objections to Subject No. 38: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 39: Actual revenues from patients described in subject matter paragraphs 37-38.

16d-000521

Objections to Subject No.39: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 40: Basis for allegations of MMLI market domination by plaintiff in 1993 and thereafter.

Objections to Subject No. 40: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 41: Communications between defendant and plaintiff described in paragraphs 21 and 36 of the amended counterclaims.

Objections to Subject No. 41: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 42: Representations of plaintiff described in paragraphs 24, 29, 126, 142, 148, and 155 of the amended counterclaims including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

Objections to Subject No. 42: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 43: Basis for allegations of plaintiff's knowledge described in paragraphs 21, 43, 125, and 131 of the amended counterclaims.

Objections to Subject No. 43: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 44: Audit requests by defendant to plaintiff and refusals by plaintiff to

permit audits or provide information including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

Objections to Subject No. 44: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 45: Actions exhibiting defendant's reliance on plaintiff as alleged in paragraphs 30, 36, and 42 of the amended counterclaims.

Objections to Subject No. 45: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 46: Factual basis for allegations in paragraph 92 of the amended counterclaims regarding underwriting justifications.

Objections to Subject No. 46: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 47: Hiring and loss of staff from 1990 to date including facts and reasons for loss of each physician and staff member, including facts of difficulty in hiring and maintaining staff.

Objections to Subject No. 47: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 48: Morale of physicians and staff from 1993 to date.

Objections to Subject No. 48: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

16d-000523

Subject No. 49: Identities of senior executives leaving defendant from 1993 to date and the reasons/cause for the departures.

Objections to Subject No. 49: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 50: Communications between defendant and print, radio, television, or other electronic media and defendant, including officers, employees, and directors from 1993 to date.

Objections to Subject No. 50: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 51: Performances under the Plan prevented, excused or waived by plaintiff.

Objections to Subject No. 51: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 51.

Subject No. 52: Facts concerning plaintiff's intent or intentional conduct as alleged in paragraphs 121, 126, 132, 151, and 161 of the amended counterclaims.

Objections to Subject No. 52: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 52.

Subject No. 53: Nature, scope, and duration of defendant's business expectancies or advantages alleged in paragraph 130 of the amended counterclaims.

Objections to Subject No. 53: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 54: Actions of defendant to audit, verify, or check the accuracy of plaintiff's accountings or reconciliations.

Objections to Subject No. 54: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 55: Industry standards for Loss Reserves.

Objections to Subject No. 55: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 55.

Subject No. 56: Concealment of facts by plaintiff from defendant including the identity and substance of the facts concealed, method/means/acts or concealment, persons concealing, and reasons for concealment.

Objections to Subject No. 56: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 56.

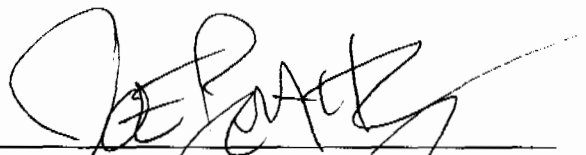
Subject No. 57: Attorneys' fees claimed, expended, and incurred, in the action, including the terms of all legal or other fee agreements, amounts billed, amounts paid, and amounts accrued or accounts payable by defendant.

16d-000525

Objections to Subject No. 57: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia objects to this Subject to the extent that it seeks information that is not relevant to any claim or defense of a party or is not reasonably calculated to lead to the discovery of admissible evidence. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 57.

DATED: April 4, 2001

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Sylena L. Slaughter, hereby certify that on this 5th day of April, 2001, a copy of Defendant's Objections to Plaintiff's Notice of Deposition Pursuant to Superior Court Rule 30(b)(6) was served upon the following by hand delivery:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena L. Slaughter

Sylena L. Slaughter

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes, May 12, 2001
	)	
	)	
Defendant.	)	

RECEIVED
Civil Clerk's Office
APR 05 2001
Superior Court
District of Columbia

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 5th day of April, 2001, I served on opposing counsel, by hand delivery, a copy of Defendant's Objections to Plaintiff's Notice of Deposition Pursuant to Superior Court Rule 30(b)(6). I certify that I will retain the original of these documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: April 5, 2001

Respectfully submitted,

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

4/12/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 5/12/01
	)	
Defendant.	)	

MOTION *IN LIMINE* TO EXCLUDE EXPERTS OF DEFENDANT OR, IN THE ALTERNATIVE, TO COMPEL DEFENDANT TO PROVIDE THE ANSWER TO INTERROGATORY OR SUPPLEMENT ITS RULE 26(B) 4) STATEMENT AND FOR LEAVE TO TAKE DEPOSITIONS OF DEFENDANT'S EXPERTS

Plaintiff, NCRIC, Inc., by counsel, moves this Court pursuant to SCR Rule 37, the procedures of the General Order for Civil II cases, and SCR 26(b)(4)(A)(ii) for an order:

a. precluding defendant from offering any testimony from expert witnesses at trial for failure to provide (i) the subject matter on which defendant's experts are expected to testify; (ii) the substance of the facts and opinions to which defendant's expert is expected to testify; and (iii) a summary of the grounds for each opinion; or

b. alternatively, compelling defendant to provide the information required by plaintiff's interrogatory and SCR 26(b)(4)(A)(i) as required by the Court's Scheduling Order; and

c. granting plaintiff leave to take the depositions of defendant's experts if the alternative relief is granted.

The bases and grounds for this Motion are as follows:

1. On October 26, 2000, plaintiff propounded its standard interrogatory no. 4 to

defendant tracking the language of SCR 26(b)(4)(A)(i) and by which plaintiff sought to discovery defendant's experts, their opinions, and the factual basis for their opinions:

> 4. State the name and address of each and every expert whom you expect to call as an expert witness at trial, and as to each state:
>
> (a) the subject matter on which the expert is expected to testify;
>
> (b) the substance of the facts and opinions to which the expert is expected to testify; and
>
> (c) a summary of the grounds for each opinion.

2. Defendant provided the following answer about November 27, 2000:

> **RESPONSE TO INTERROGATORY NO. 4:**
>
> * * *
>
> Subject to and without waiving the foregoing objections, Medical Center responds as follows: Medical Center has not presently identified which experts, if any, it expects to call as witnesses at trial. The informati0n sought by this Interrogatory will be provided at the time and in the form compliant with [SCR 16].

3. About March 12, 2001, defendant filed its SCR 24 (b)(4) statement in accordance with the Scheduling Order. In the statement, defendant identified its experts but provided only the following description of the opinions and factual bases for the opinions:

> * * *
>
> 5. . . . these experts have not rendered any opinions or written reports. Accordingly, Columbia is unable at this time to set forth the substance of the facts and opinions to which the experts are expected to testify, and a summary and grounds for each opinion.

4. Defendant has utterly failed to provide any of the information required by the plaintiff's interrogatory and the Court's Scheduling Order on experts, much less in a timely manner.

5. The deadline for completion of discovery is May 12, 2001.

6. Plaintiff has been and will continue to be prejudiced in the completion of discovery and preparation for trial by defendant's failure to provide the information on experts required of it.

7. Defendant's failure to provide the expert information is due to its own lack of diligence and lack of good faith efforts to conduct and complete discovery. For a more detailed description of defendant's failures, plaintiff incorporates herein the matter set for in its Opposition to Motion to Amend Scheduling Order.

8. Defendant's failure to comply with the Rules and this Court's order entitles plaintiff to a order precluding or preventing defendant from offering any expert testimony at trial.

9. Alternatively, plaintiff is entitled to obtain the information on experts designated by defendant, and this Court must compel defendant to produce that information.

10. In the event the Court denies plaintiff's motion to preclude expert testimony by defendant, the information provided by defendant is so inadequate that plaintiff needs to depose the experts to obtain their opinions and grounds for their opinions. Under the circumstances requiring plaintiff to depose the experts, the Court should order that defendant will bear the costs of these experts since defendant made it necessary to take these depositions.

11. Any depositions to be taken of defendant's experts must occur before May 12, 2001, the discovery cut-off deadline.

WHEREFORE, plaintiff prays this Court enter an order:

a. precluding defendant from offering any testimony from expert witnesses at trial for failure to provide the subject matter on which defendant's experts are expected to testify; the substance of the facts and opinions to which defendant's expert is expected to testify; and a summary of the grounds for each opinion; or

b. alternatively, compelling defendant to provide the information required by plaintiff's interrogatory and SCR 26(b)(4)(A)(i) as required by the Court's Scheduling Order by April 15, 2001 or granting the relief of excluding such expert testimony at trial; and

c. granting plaintiff leave to take the depositions of defendant's experts if the alternative relief is granted, but with defendant to bear to the costs of fees and expenses of these experts.

d. awarding plaintiff it costs incurred in having to file this motion and obtain this relief.

Roy Niedermayer, Esq. D.C. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

1. SCR Rule 37.

2. General Order for Civil II cases.

3. SCR 26(b)(4)(A)(ii).

4. The Court's Scheduling Order of January 12, 2001.

Roy I. Niedermayer, Esq. #180380

CERTIFICATION OF GOOD FAITH EFFORTS TO SECURE CONSENT AND RESOLVE DISCOVERY DISPUTES WITH DEFENDANT

The undersigned counsel hereby certifies that he made good faith efforts to secure the discovery which is the subject of this Motion:

1. Prior to March 16, 2001, counsel for plaintiff telephoned defendant's counsel and requested that the expert information be provided. Defendant responded with the substance of what is contained in its Rule 26(b)(4) statement at ¶ 5.

2. On March 16, 2001, counsel for plaintiff wrote defendant's counsel and requested consent to take the depositions of defendant's experts. A copy of defendant's response is attached.

3. Further efforts to obtain the information and consent would be nugatory given the response of defendant.

Roy I. Niedermayer, Esq. #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on April 12, 2001, a copy of the foregoing Motion was mailed, first class mail, postage prepaid to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

March 19, 2001

BY FACSIMILE

Roy I. Niedermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

I write in response to your letter, which I received on Friday, March 16, 2001.

I am open to the possibility of consenting to expert depositions pursuant to Superior Court Rule of Civil Procedure 26(b)(4)(A)(ii). However, I am currently unable to inform you, one way or another, regarding whether I will consent to such depositions.

As you know, Columbia is currently in the process of attempting to obtain experts. If and when Columbia retains any expert(s), I will notify you promptly. Once Columba receives documents from NCRIC, and once Columbia's experts have a reasonable opportunity to review the relevant documents and develop their opinions, I will be in a position to advise you regarding whether I will consent to the proposed depositions. If NCRIC provides documents to Columbia in a timely manner, I expect that I may be able to inform you whether Columbia will consent to the depositions you propose in time for you to prepare for the dates you propose, May 8-9, 2001.

Sincerely yours,

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 5/12/01
	)	
Defendant.	)	

ORDER *IN LIMINE* TO EXCLUDE EXPERTS OF DEFENDANT

This matter having come before the Court on plaintiff's Motion *in Limine* to Exclude Experts of Defendant Or, in the Alternative, to Compel Defendant to Provide the Answer to Interrogatory or Supplement its Rule 26(b) 4) Statement and for Leave to Take Depositions of Defendant's Experts, and the Court having considered the grounds and arguments of the parties, it is this _____ day of _____, 2001

ORDERED that the Motion of plaintiff be and the same is hereby GRANTED; and it is further

ORDERED that defendant shall not offer any testimony from expert witnesses at trial for failure to provide the subject matter on which defendant's experts are expected to testify; the substance of the facts and opinions to which defendant's expert is expected to testify; and a summary of the grounds for each opinion in compliance with the Court's Rules and Scheduling Order.

ORDERED that defendant shall pay plaintiff the sum of $_____ as reasonable attorneys' fees and costs incurred in having to file this motion and obtain this relief.

[ORDERED that defendant shall provide to plaintiff by _____, 2001 the information required by plaintiff's interrogatory no. 4 and SCR 26(b)(4)(A)(i) as required by the Court's Scheduling Order by April 15, 2001; and it is further

ORDERED that plaintiff is granted leave to take the depositions of defendant's experts at a date prior to the deadline for completion of discovery, but with defendant to bear to the costs of fees and expenses of these experts.]

_____
Linda Kay Davis, Superior Court Judge

cc:

Roy Niedermayer, Esq. D.C.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff /Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

RECEIVED
Court Clerk's Office
APR 12 2001
Superior Court of the
District of Columbia

PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS AND OTHER MATERIALS

Upon the Consent Motion of the parties for a protective order pursuant to Rule 26(c) of the District of Columbia Superior Court Rules of Civil Procedure,

It is hereby ORDERED that:

1. All Classified Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.

2. "Classified Information," as used herein, means any information of any type, kind or character which is designated as "Confidential" or "For Counsel Only" (*i.e.*, "Attorneys' Eyes Only") by any of the supplying or receiving parties, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise. In designating information as "Confidential" or "For Counsel Only," a party will make such designation only as to that information that it in good faith believes contains confidential information. Information or material which is available to the public, including catalogues, advertising materials, and the like shall not be classified.

3. "Qualified Persons," as used herein, means

(a) Attorneys of record for the parties in this litigation and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation (so long as such attorneys and their employees are not employees of any party).

(b) Actual or potential independent technical experts or consultants who have signed the declaration form attached at Exhibit A hereto (such declaration must be served promptly on opposing counsel by the attorney retaining such experts or consultants). Such experts or consultants may not be employees of any party.

(c) "In-house" corporate officer or employee of a corporate party who has signed the declaration form attached at Exhibit A hereto (such declaration must be promptly served on opposing counsel by the counsel representing the corporate party).

(d) Any other person may be designated as a Qualified Person by agreement of the parties; or by order of this Court after notice and hearing to all parties.

(e) The Judge, law clerks, and other personnel working in chambers.

4. Documents produced in this action may be designated by any party or parties as "Confidential" or "For Counsel Only" information by marking every page (or, at a minimum, the first page) of the document(s) so designated with a stamp stating "Confidential" or "For Counsel Only."

In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copies that are produced or exchanged. Originals shall be preserved for inspection.

5. Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents, or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a third party (which information pertains to a party) may be designated by any party as "Confidential" or "For Counsel Only" information by indicating on the record at the deposition that the testimony is "Confidential" or "For Counsel Only" and is subject to the provisions of this order.

Any party may also designate information disclosed at such deposition as "Confidential" or "For Counsel Only" by notifying all of the parties in writing within 30 days of receipt of the transcript, of the specific pages and lines of the transcript which should be treated as "Confidential" or "For Counsel Only" thereafter. Each party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his possession, custody, or control. All deposition transcripts shall be treated as "For Counsel Only" for a period of 30 days after the receipt of the transcript.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as "Confidential" or "For Counsel Only", with blank, consecutively numbered pages being provided in a nondesignated main transcript. The separate transcript containing "Confidential" or "For Counsel Only" (or "For Counsel Only" information shall have page numbers that correspond to the blank pages in the main transcript.

6. (a) "Confidential" information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons. Information designated as "For Counsel Only" shall be restricted in circulation to Qualified Persons described in Paragraphs 3(a), (b) and (e) above.

(b) Information designated as "For Counsel Only" provided to a receiving party shall be maintained in the offices of the following outside counsel: for Plaintiff, Roy I. Niedermayer, Esquire; and for Defendant, Kellogg, Huber, Hanson, Todd & Evans, P.L.L.C. Any documents produced in this litigation, regardless of classification, which are provided to Qualified Persons of Paragraph 3(b) above, shall be maintained only at the office of such Qualified Persons and only working copies shall be made of any such documents. Copies of documents produced under this Protective Order may be made, or exhibits prepared by independent copy services, printers, or illustrators for the purpose of this litigation.

(c) Counsel listed in Paragraph 6(b) shall maintain a log (either by description or Bates number) of all copies of "For Counsel Only" documents received from another party that are delivered to any one or more Qualified Persons listed in Paragraph 3(b) above.

16d-000540

7. Documents previously produced shall be retroactively designated by notice in writing of the designated class of each document by Bates number (or by other means by which the document can reasonably be identified) within 20 days of the entry of this order (but no later than three days prior to any scheduled hearing wherein the transcript might be used or relied upon). Documents unintentionally produced without designation as "Confidential" may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party.

Documents to be inspected shall be treated as "For Counsel Only" during inspection. At the time of copying for the receiving parties, such inspected documents shall be stamped prominently "Confidential" or "For Counsel Only" by the producing party.

8. Nothing herein shall prevent disclosure beyond the terms of this order if each party designating the information as "Confidential" or "For Counsel Only" consents to such disclosure or, if the court, after notice to all affected parties, orders such disclosures. Nor shall anything herein prevent any counsel of record from utilizing "Confidential" or "For Counsel Only" information in the examination or cross-examination of any person who is indicated on the document as being an author, source, or recipient of the "Confidential" or "For Counsel Only" information, irrespective of which party produced such information.

9. A party shall not be obligated to challenge the propriety of a designation as "Confidential" or "For Counsel Only" at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation by the designating party of any information as "Confidential" or "For Counsel Only", or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this protective order by objecting in writing to the party who has designated the document or information as "Confidential" or "For Counsel Only". The designating party shall be required to move the Court for an order preserving the designated status of such information within 14 days

16d-000541

of receipt of the written objection, and failure to do so shall constitute a termination of the restricted status of such item.

The parties may, by stipulation, provide for exceptions to this order, and any party may seek an order of this Court modifying this Protective Order.

10. It is the intention of the parties that the definition of Classified documents be consistent with that contained in SCR 26(c). Nothing shall be designated as "For Counsel Only" information except information of the most sensitive nature, which if disclosed to persons of expertise in the area would reveal significant technical or business advantages of the producing or designating party, and which includes as a major portion subject matter which is believed to be unknown to the opposing party or parties, or any of the employees of the corporate parties. Nothing shall be regarded as "Confidential" or "For Counsel Only" information if it is information that either:

(a) is in the public domain at the time of disclosure, as evidenced by a written document or equivalent;

(b) becomes part of the public domain through no fault of the other party, as evidenced by a written document or equivalent;

(c) the receiving party can show by written document that the information was in its rightful and lawful possession at the time of disclosure or equivalent; or

(d) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

11. In the event a party wishes to use any "Confidential" or "For Counsel Only" information in any affidavits, briefs, memoranda of law, or other papers filed in Court in this litigation, such "Confidential" or "For Counsel Only" information used therein shall be filed under seal with the Court. The documents shall be maintained under seal by the court, in an envelope provided by the party filing the documents, which bears a legend stating the following (or a substantially similar) legend: "This envelope contains documents that are subject to a

protective order entered by the Court in this action governing the use of Confidential and For Counsel Only information. These materials so filed shall be maintained by the Clerk of the Court."

12. The Clerk of the Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions, and other pleadings filed under seal with the Court in this litigation which has been designated, in whole or in part, as "Confidential" or "For Counsel Only" information by a party to this action.

13. Unless otherwise agreed to in writing by the parties or ordered by the Court, all proceedings involving or relating to documents or any other information shall be subject to the provisions of this order.

14. Within 120 days after conclusion of this litigation and any appeal thereof, any documents and all reproductions of documents produced by a party, in the possession of any of the persons qualified under Paragraphs 3(a) through (e) shall be returned to the producing party (or, at the Clerk's discretion, the documents may be destroyed), except as this Court may otherwise order or to the extent such information was used as evidence at the trial. As far as the provisions of any protective orders entered in this action restrict the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this litigation, except (a) that there shall be no restriction on documents that are used as exhibits in Court unless such exhibits were filed under seal, and (b) that a party may seek the written permission of the producing party or order of the Court with respect to dissolution or modification of such protective orders.

15. This order shall not bar any attorney herein in the course of rendering advice to his client with respect to this litigation from conveying to any party client his evaluation in a general way of "Confidential" or "For Counsel Only" information produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his client, the attorney shall not disclose the specific contents of any "Confidential" or "For Counsel

16d-000543

Copies to:

Mark C. Hansen
Steven F. Benz
Joseph K. Leahy
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue
Suite 500
Bethesda, MD 20814

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

16d-000544

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes, May 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	

DECLARATION OF PROMISE TO ABIDE BY TERMS OF PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS AND OTHER MATERIALS (EXHIBIT A TO PROTECTIVE ORDER)

_____, solemnly state as follows:

I hereby certify and affirm, under the penalty of perjury, that I have read and am familiar with the terms of the Protective Order concerning the records and testimony produced by the respective parties in the case of *NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.*, Civil Action No. 00-0007308, in the Superior Court of the District of Columbia, and I agree to abide by all terms of said Protective Order and not to reveal or otherwise communicate any of the information disclosed to me pursuant thereto to anyone except in accordance with the terms of said Protective Order. I agree not to make any use of that information or materials other than for the purpose of this litigation.

_____

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes, May 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	

MEMORANDUM IN PARTIAL OPPOSITION TO MOTION FOR PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS AND OTHER MATERIALS

Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby opposes, in part, the Motion for Protective Order Regarding Confidentiality of Documents and Other Materials ("Motion for Protective Order") of Plaintiff/Counter-Defendant NCRIC, Inc. ("NCRIC"), and in support of said opposition, states as follows:

1. Counsel for both sides have agreed to the necessity of a protective order to preserve the confidentiality of documents and other discovery materials in this case.

2. The parties have negotiated at length over the language of the proposed protective order, and have agreed to substantially all of the language submitted by NCRIC.

3. The only remaining disagreement regarding the language of the proposed protective order relates to the following two issues:

(a) whether the order must require that copies of the declaration signed by persons viewing confidential information be served on opposing counsel before the documents are viewed by such persons, and;

(b) whether the order should state that persons not listed on it or not falling under its existing categories may view confidential information by agreement of the parties, rather than by unilateral designation of one party.

For the reasons set forth in paragraphs 5 and 6 below, Columbia urges that the answer to each question is affirmative. NCRIC's proposed order answers both questions in the negative.

4. Columbia therefore requests that the Court enter Columbia's proposed order, or alternatively, make the following modifications to NCRIC's proposed Protective Order:

(a) In paragraph (3)(b) of the Order, insert the language "(such declaration must be served promptly on opposing counsel by the attorney retaining such experts or consultants)." after the words "Exhibit A hereto" (and delete the comma). Additionally, delete the language "but such declaration need not be served on opposing counsel for consulting experts . . . the other party."

(b) In paragraph (3)(d) of the Order, insert the language "by agreement of the parties" after the words "Qualified Person" (and before the period). Additionally, delete the language "The designation of a persons . . . before the Court."

Columbia's proposed Protective Order that is essentially the same as the NCRIC's proposed Protective Order, except that it incorporates the changes described above.

5. With regard to the issues set forth in paragraph 3(a) above, and in support of the changes set forth in paragraph 4(a) above, Columbia states as follows: The intent of the Protective Order is to control access to confidential information. As such, only certain persons

are authorized to view confidential information. In order to assure that its confidential information is viewed only by authorized persons, each party must know who is viewing its confidential information, and be able to stop unauthorized persons from viewing such information. If a party does not know who is viewing its confidential information, it cannot stop unauthorized persons from viewing its confidential information. Rather, the party is left subject to the whims of the other party, who might have a different understanding of who is an authorized person under the Protective Order. Accordingly, a party must receive a copy of the declaration for each person viewing its confidential information, regardless of whether that person is an non-testifying expert.

6. With regard to the issues set forth in paragraph 3(b) above, and in support of the changes set forth in paragraph 4(b) above, Columbia states as follows: In order to control access to confidential information, the Protective Order defines certain categories of persons who are authorized to view confidential information. If one party can unilaterally authorize additional persons to view confidential information, that party can authorize *anyone* to view confidential information. As such, the categories of the Protective Order are rendered entirely superfluous. Indeed, if a party can authorize any person to view confidential information, each party is left subject to the whims of the opposing party and the value of the Protective Order is rendered a nullity. Therefore, the parties should be allowed to authorize additional Qualified Persons *only* by mutual agreement.

7. For the foregoing reasons, Columbia urges this Court to enter its proposed Protective Order, rather than NCRIC's proposed Protective Order.

WHEREFORE, Columbia respectfully requests that the Court enter its proposed protective order, or alternatively, enter NCRIC's proposed order with the foregoing changes.

16d-000548

Dated: April 11, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000549

CERTIFICATE OF SERVICE

I, Sylena L. Slaughter, hereby certify that on this 11th day of April, 2001, copies of Defendant Columbia Hospital for Women Medical Center, Inc.'s Memorandum in Partial Opposition to Motion for Protective Order Regarding Confidentiality of Documents and Other Materials and a proposed Protective Order Regarding Confidentiality of Documents and Other Materials were served upon the following by first class mail, postage paid:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena L. Slaughter

Sylena L. Slaughter

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes, June 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

RECEIVED
Civil Clerk's Office
APR 23 2001
Superior Court of the
District of Columbia

SUR-REPLY OF DEFENDANT

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby replies to the Reply Memorandum In Support of Motion to Compel ("Reply") of Plaintiff NCRIC, Inc. ("NCRIC"), in order to address several factual misrepresentations set forth by NCRIC, and new legal arguments raised by NCRIC, in the Reply.

Factual Misrepresentations

In its Reply, NCRIC makes four factual misrepresentations concerning its failure to meet and confer prior to filing its motion to compel production of documents by Columbia:

First, NCRIC states that a face-to-face meeting was scheduled for March 6, 2001 "to resolve all discovery disputes." Reply at 2. This is completely false. Counsel for the parties scheduled the March 6 meeting on February 22, 2001 for the *sole* purpose of dealing with four issues that were discussed, but not resolved, on February 22. NCRIC *never* indicated that issues that were not discussed on February 22 would be discussed at the March 6 meeting.

Second, NCRIC states that "Columbia "waived or avoided the [March 6] meeting as nugatory and a waste of time." Id. This, too, is utterly false. Counsel for Columbia informed

counsel for NCRIC by telephone on March 5, 2001 that Columbia would waive the face-to-face meeting requirement, because it was unlikely that the parties would come to an agreement on the two remaining issues for the March 6 meeting. However, had the March 6 meeting been intended to deal with *every* discovery issue *ever* discussed by the parties, counsel for Columbia would *never* have suggested that the meeting be cancelled. Rather, counsel for Columbia would have insisted on attending the March 6 meeting to set a schedule for its production of documents.

Third, NCRIC accuses Columbia of engaging in a "strategy of delay" by requesting that NCRIC refile its motion to dismiss due to a "technicality." This accusation contradicts a statement made by Columbia's counsel in open court and has no basis in fact. As counsel for Columbia explained at the initial scheduling conference on January 12, 2001, he understood that refiling the motion to dismiss simply was the proper procedure; no bad faith delay was intended by asking NCRIC to follow that procedure. Further, when Columbia's counsel first raised the issue of refiling prior to the scheduling conference, NCRIC's counsel did not suggest that refiling was a mere "technical" requirement; to the contrary, NCRIC's counsel agreed to refile the motion. As a result, Columbia's counsel was taken *completely* by surprise when NCRIC's counsel argued, and this Court decided, that refiling was not required. Counsel for Columbia then asked for additional time to prepare its papers, so that Columbia would not be prejudiced by NCRIC's technical non-compliance. At no point did Columbia's counsel attempt any delay, or suggest that NCRIC should suffer any sanction, due to NCRIC's technical non-compliance.[1]

[1] Moreover, Columbia has overlooked NCRIC's technical non-compliance in the past. For example, Columbia choose not to move for default judgement when NCRIC technically defaulted on its Reply. In November 2001, at NCRIC's request, Columbia agreed to extend NCRIC's time for filing a Reply to Columbia's counterclaims. NCRIC decided to attempt to obtain the extension by filing a stipulation rather than a consent motion. This, of course, was improper: the Court's General Order states that stipulations between counsel are ineffective to extend deadlines. Accordingly, when the deadline for filing NCRIC's Reply passed, by rights, Columbia could have moved for default judgement. Yet, rather than move for default, Columbia decided to overlook NCRIC's technical non-compliance.

16d-000552

statements are conclusively presumed to be false). Evidence of truth therefore is entirely *irrelevant* to a defamation claim, unless and until the affirmative defense is raised.

Here, NCRIC chose to move to dismiss Columbia's defamation claim rather than to answer it. As such, at this time, NCRIC has not pleaded truth as an affirmative defense to the defamation claim. Therefore, the truth of NCRIC's statements is not yet an issue. The truth of the statements will be relevant if, and *only* if, the issue of truth is raised in a reply by NCRIC.

DATED: April 23, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000553

CERTIFICATE OF SERVICE

I, Sylena L. Slaughter, hereby certify that on this 23h day of April , 2001, a copy of Defendant Columbia Hospital for Women Medical Center Inc.'s Sur-Reply of Defendant were served upon the following by first class mail, postage prepaid:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena L. Slaughter

16d-000554

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
MAY 1 11 42 PM '01
ADMINISTRATIVE DIVISION

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes, May 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITRIES IN OPPOSITION TO PLAINTIFF'S MOTION TO EXCLUDE OR COMPEL/DEPOSE

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby opposes the Motion *in Limine* to Exclude Experts of Defendant Or, in the Alternative, to Compel Defendant to Provide the Answer to Interrogatory or Supplement Its Rule 26(b)(4) Statement and for Leave to Take Depositions of Defendant's Experts ("Motion to Exclude or Compel/Depose") of Plaintiff NCRIC, Inc. ("NCRIC"), and states as follows.

Preliminary Statement

The sole basis for NCRIC's Motion to Exclude or Compel/Depose is that Columbia has not completed its expert discovery. However, NCRIC's own failure to produce documents has rendered Columbia unable to complete its expert discovery. As NCRIC is well aware, Columbia's experts are unable perform their analyses of NCRIC's loss reserve documents until NCRIC first *produces* those documents. Yet, to date, NCRIC has refused to produce *any* loss reserve documents. NCRIC should not benefit from its failure to produce important documents.

Rather, NCRIC's attempt to exclude expert testimony should be denied as an cynical effort to deny Columbia access to expert testimony (Point I, infra). In addition, NCRIC's failure, once again, to meet and confer before moving to compel warrants summary dismissal of that aspect of the motion – and sanctions (Point II, infra). Further, NCRIC's request to depose Columbia's experts must be denied as baseless and premature (Point III, infra).

Factual Background[1]

NCRIC's Failure to Produce Documents

NCRIC has failed to produce a *single* document in this case. See Reply Memorandum in Support of Motion to Amend Scheduling Order ["Reply"] at 4 (May 1, 2001). Among the documents that NCRIC has failed to produce are those related to its loss reserves under the Retro Plan. See id. at 5. These documents are directly relevant to, inter alia, Columbia's allegation that NCRIC fraudulently or negligently failed to calculate loss reserves properly under the Plan. See Amended Answer and Counterclaims at ¶¶ 38, 139-152 (January 3, 2001). In order to prove this allegation, Columbia expects to engage experts to analyze NCRIC's loss reserve data. See Defendant's Initial Rule 26(B)(4) Statement As Proponent of a Claim at 1 (March 12, 2001). However, Columbia's experts cannot perform their analyses, and render their opinions, without NCRIC's loss reserve documents. See id. at 2. Although Columbia has repeatedly asked for these documents, NCRIC has refused to produce them until a protective order is entered. See Reply at 5. Hence, NCRIC's failure to produce documents – not a lack of diligence by Columbia – is the reason Columbia is unable to complete expert discovery at this time. Id. at 5-6 & n.5.

NCRIC's Failure to Meet and Confer

[1] For purpose of this memorandum, Columbia assumes that the court is familiar with the procedural history of and substantive legal issues raised by this case. For background, see generally Columbia's Amended Answer and Counterclaims (January 3, 2001); its pending Motion to Amend Scheduling Order (March 12, 2001); and its Reply Memorandum in Support of Motion to Amend Scheduling Order (April 30, 2001).

16d-000556

NCRIC did not meet and confer with Columbia prior to filing its motion to compel. Nor did NCRIC make any good faith effort to meet and confer. Indeed, NCRIC made no pretense about its failure to meet and confer. Rather, NCRIC contended that any effort to obtain Columbia's consent to its motion "would be nugatory," under the circumstances. See Certification of Good Faith Efforts to Secure Consent and Resolve Discovery Disputes with Defendant ["Certification"] (April 12, 2001) (attached to Motion to Compel or Exclude/Depose).

Argument

I. NCRIC's Motion *in Limine* to Exclude Testimony Must Be Denied Due to NCRIC's Refusal to Produce Documents That It Knows Columbia's Experts Need

NCRIC, the book- and record-keeper for the Retro Plan, knows what documents Columbia's experts need in order to evaluate the Retro Plan loss reserves. NCRIC also must have known that it would not produce these documents without a protective order in place. Further, NCRIC could have drafted its own protective order, or agreed to Columbia's protective order. NCRIC's failure to move for a protective order until March 31, 2001 has delayed its production of documents. See Reply at 5-6. As a result, Columbia has yet to receive any loss reserve documents; its experts have been unable to analyze NCRIC's loss reserve data and render opinions; and Columbia has been unable to summarize any expert opinions for NCRIC.

Accordingly, NCRIC is at least partially – if not entirely – responsible for Columbia's inability to complete its expert discovery by this time. Although Columbia was unable to produce summaries of its experts' opinions before the deadline for Rule 26(B)(4) statements,[2]

[2] Columbia filed its Rule 26(B)(4) statement before the March 12, 2001 discovery deadline. See Certificate of Discovery (March 12, 2001). However, due to financial difficulties and NCRIC's improper offensive discovery, Columbia had been unable to request NCRIC's loss reserve documents until March 2, 2001. See Reply at 2; see generally Motion to Amend Scheduling Order. Hence, Columbia's Rule 26(B)(4) Statement did not include any summaries of expert testimony. Columbia will supplement its Rule 26(B)(4) Statement as soon as practicable.

16d-000557

Columbia might have been able to produce such summaries by now, if only NCRIC had produced its loss reserve documents in a timely fashion. But NCRIC has not done so.

Instead, NCRIC (1) waited as long as possible to file its motion for a protective order; (2) refused to produce loss reserve documents needed by Columbia's experts in a timely fashion, claiming lack of a protective order; and (3) moved to exclude the testimony of those experts, who cannot render opinions without access to NCRIC's loss reserve documents, for failure to render opinions. This appears to be a cynical ploy to deny Columbia access to expert testimony, and this Court should not countenance it.[3] NCRIC's motion *in limine* should be denied.

II. NCRIC's Motion to Compel Must Be Summarily Denied – and Sanctions Should Be Imposed – Due to NCRIC's Failure to Meet and Confer Before Filing the Motion

Once again, NCRIC has failed to make a good faith effort to meet and confer regarding the issues to be raised in a motion to compel. See generally Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Compel (March 29, 2001) (NCRIC failed to meet and confer before filing its motion to compel production of documents). Yet, this time, NCRIC's failure to meet and confer cannot plausibly have occurred due to a misunderstanding, since NCRIC makes no pretense that it made *any* effort to meet and confer with Columbia. See Certification (explaining that further efforts to obtain Columbia's consent would be "nugatory").

Moreover, a mere contention that attempting to obtain Columbia's consent "would be nugatory" is not a proper basis for failing to meet and confer. See D.C. Sup. Ct. R. Civ. P. 37(a) (detailing exceptions to the meet and confer requirement, none of which are invoked by NCRIC here); 26(i) (same). Due to NCRIC's blatant failure to meet and confer, this Court should summarily deny NCRIC's motion to compel. See General Order for Calendar II Cases at 2.

[3] Moreover, any prejudice to NCRIC that has resulted from Columbia's inability to complete expert discovery by this time will be averted if this Court granted Columbia's pending motion to amend the scheduling order.

16d-000558

Since NCRIC's motion to compel was neither procedurally or substantively justified, NCRIC should be sanctioned for its repeated failure to follow this Court's meet-and-confer rules. See D.C. Sup. Ct. R. Civ. P. 37(b)(4) (authorizing sanctions when motion to compel is not "substantially justified"). An appropriate sanction would be the payment of Columbia's attorneys' fees and court costs in responding to this motion and any other related motions. Id.

III. NCRIC's Motion for Leave to Depose Columbia's Experts Must Be Denied Because NCRIC Offers No Basis for Such Depositions and Because the Motion Is Premature

The sole basis that NCRIC offers for its request for leave to depose Columbia's experts is that Columbia's expert discovery has been "inadequate." See Motion to Exclude or Compel/Depose at 3. Yet, NCRIC itself is responsible for Columbia's inability to produce expert discovery, since Columbia cannot produce summaries of expert testimony until its experts render opinions, and the experts cannot render opinions until they have NCRIC's loss reserve documents. NCRIC's failure to produce documents in a timely manner is not a proper basis for allowing it to depose Columbia's experts.

Moreover, NCRIC's request for leave to depose Columbia's experts is premature. Columbia will complete its expert discovery when its experts receive and review NCRIC's loss reserve documents. Until Columbia completes its expert discovery, this Court cannot determine whether that discovery is adequate. Fairness demands that NCRIC wait to receive Columbia's expert discovery before moving to supplement that discovery with expert depositions.

Conclusion

WHEREFORE, for the foregoing reasons, Columbia respectfully requests that NCRIC's Motion to Exclude or Compel/Depose be denied in its entirety.

DATED: May 1, 2001

16d-000559

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-000560

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, upon consideration of the points and authorities submitted by the parties, Plaintiff NCRIC, Inc.'s Motion *in Limine* to Exclude Experts of Defendant Or, in the Alternative, to Compel Defendant to Provide the Answer to Interrogatory or Supplement Its Rule 26(b)(4) Statement and for Leave to Take Depositions of Defendant's Experts is DENIED; and Defendant Columbia Hospital for Women Medical Center, Inc.'s request for its costs and reasonable attorneys' fees incurred in responding to NCRIC's motion is GRANTED. Within two weeks of entry of this order, Columbia shall submit an affidavit in support of its request for fees and costs.

SO ORDERED.

_____
Judge Linda K. Davis

Dated: _____, 2001.

Copies to:

Mark C. Hansen, Esq.
Steven F. Benz, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 1st day of May 2001, a copy of Defendant Columbia Hospital for Women Medical Center Inc.'s Memorandum of Points and Authorities in Opposition Plaintiff's Motion to Exclude or Compel/Depose were served upon the following by FedEx:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

In addition, on the same date, a courtesy copy of the aforementioned memorandum was served upon the Chambers of Judge Linda K. Davis, care of the Clerk of Court.

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
MAY 01 2001
Superior Court of the
District of Columbia

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 -- Judge Davis Next Event: Discovery Closes, May 12, 2001

REPLY MEMORANDUM IN SUPPORT OF MOTION TO AMEND SCHEDULING ORDER

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby replies to the Opposition to Motion to Amend Scheduling Order ("Opposition Memorandum") of Plaintiff NCRIC, Inc. ("NCRIC"), for the purpose of correcting NCRIC's mischaracterizations and to bring important new factual information to the Court's attention.

NCRIC's Mischaracterizations

NCRIC does not claim it will be prejudiced by an amendment to the scheduling order. NCRIC offers no factual support for its assertion that this case is not complex.[1] NCRIC provides no legal basis for the claim that Columbia's financial condition is irrelevant when gauging its diligence in discovery. NCRIC's *only* argument is that Columbia's situation is "self-created." Opposition Memorandum at 1. According to NCRIC, Columbia has not been "diligent in its investigation, discovery or defense of this case, nor in the prosecution of its own counterclaims." Id. This is a mischaracterization of the facts of this case and the relevant law, for several reasons.

[1] Indeed, a mere glance at the spreadsheet (attached hereto as Exhibit A) that lists NCRIC's retro formula calculations (but not, as NCRIC asserts, every element of the formula), shows that this case is *extremely* complex.

First, NCRIC is wrong to state that Columbia "literally did nothing by way of discovery" until March 3, 2001, while NCRIC diligently filed discovery requests at the outset of the case. In fact, Columbia engaged in *both* offensive and defensive discovery prior to that date.[2]

But more to the point, NCRIC's statement cynically ignores that its hastily-served discovery requests are an important reason that Columbia requires more time for discovery. NCRIC sued Columbia, then served discovery requests while Columbia was investigating and drafting its answer and counterclaims. (Soon thereafter, NCRIC filed a dispositive motion). Hence, from the outset, Columbia has been occupied with *responding* to NCRIC's discovery requests (and motions), rather than *serving* discovery requests. In addition, NCRIC's initial document requests were improper because they lacked reasonable particularity. See Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Compel at 8-9 (March 29, 2001). This lack of particularity (which NCRIC could have avoided if it had drafted its document requests *after* reviewing Columbia's answer and counterclaims) hindered Columbia's ability to identify responsive documents, and slowed its document production. See id. at nn. 7 & 8. Despite this difficulty, Columbia endeavored to identify and produce responsive documents. This time-consuming effort left Columbia with insufficient time to prepare its own discovery requests until early March 2001. Columbia's good-faith effort to engage in defensive discovery should be commended, not sanctioned. Hence, Columbia warrants an amendment to the scheduling order – not denial of an opportunity to engage in its own offensive discovery.

Second, NCRIC's claim that Columbia should have "commenced discovery early on" relies upon a false premise. A defendant is not required to commence formal discovery prior to

[2]Columbia served documents requests on March 2, 2001. It served timely responses NCRIC's requests for documents, admissions and interrogatories in November 2000, and has made several productions of documents. Columbia's diligence in defensive discovery stands in stark contrast to the actions of NCRIC. See infra.

16d-000565

the scheduling conference, or immediately thereafter. Rather, the defendant – which does not have the luxury of performing an investigation before the lawsuit is filed – is entitled to investigate its counterclaims fully, by whatever means necessary. For example, defendant may first investigate its claims by searching its own files and speaking with its employees, and then use any information it has gained to help formulate its discovery requests – as Columbia did here. So long as the defendant is reasonably diligent in investigating its claims, the scheduling order should be modified if more time is required for formal discovery.

Third, NCRIC's point that Columbia must "live with" the consequences of not starting discovery immediately by "reduc[ing] the amount of material it wants to see" is at odds with the "good cause" standard. Certainly, the scheduling order helps a case proceed expeditiously to a just resolution. However, the scheduling order is simply a *means* of reaching that just resolution, not an *end* in itself. If the scheduling order interferes with the just resolution of the case (by, for example, failing to provide the parties with sufficient time for investigation and discovery), the order may be modified for good cause. Here, NCRIC offers no reason for denying Columbia an opportunity for full discovery, other than strict compliance with the scheduling order itself.

Fourth, NCRIC is incorrect to contend that Columbia – which filed a lengthy initial answer and counterclaims – should have "known the underlying facts" about its counterclaims before filing the pleading. The standard for pleading is simple notice. Although Columbia easily met this burden, its careful investigation prior to filing its initial pleading was *far* from exhaustive; the initial pleading was lengthy simply because this case involves many events over the course of many years. Moreover, even though Columbia understood the basic facts of the case when it filed its pleading, further investigation was necessary to understand the details of the counterclaims and develop admissible evidence in support those claims. Hence, quite the

16d-000566

failure is an additional basis for granting Columbia's motion to amend the scheduling order.

Columbia served its first requests for production of documents on March 2, 2001. See Certificate of Discovery (March 2, 2001) (Columbia served document requests). Due to the impending discovery deadlines, Columbia requested that NCRIC produce documents that Columbia's experts needed to analyze as soon as possible. NCRIC indicated to Columbia that it expected to produce documents in a timely fashion. See Correspondence Between Joseph K. Leahy and Roy I. Niedermayer (March 9, 2001) (attached hereto as Exhibit C).

NCRIC, however, failed to respond to Columbia's first requests within the prescribed time period. See Certificate of Service of Discovery (April 12, 2001) (written responses to Columbia's document requests). Further, when NCRIC responded in writing to Columbia's first requests – nearly ten days late – NCRIC indicated that it would not produce documents Columbia's experts needed until this Court entered a protective order. See, e.g., Responses of Plaintiff to Defendant's First Requests for Production of Documents at 6-7 (documents relating to loss reserves) (attached hereto as Exhibit D). To date, nearly *one month* after NCRIC's document responses were due, NCRIC has not produced a *single* document to Columbia, or provided Columbia with a reasonable opportunity to inspect any documents. As a result, Columbia remains unable to complete its expert discovery.[5] Moreover, Columbia cannot depose NCRIC or its employees because Columbia has not been able to analyze NCRIC's documents.

Due to NCRIC's refusal to produce documents until the entry of a protective order, NCRIC's argument that Columbia's situation is "self-created" is completely meritless. Even if Columbia had requested documents *immediately* upon entry of the scheduling order (or at the

[5] Even assuming that NCRIC's delay would have been only one month if Columbia had served discovery requests on NCRIC immediately following the January 12, 2001 scheduling conference, Columbia's experts still would not have received any documents to examine until after the March 12, 2001 deadline for serving expert discovery.

16d-000567

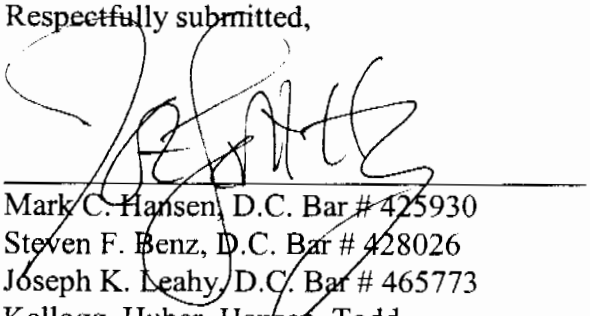
outset of the case), NCRIC would not have completed its discovery obligations by now, due to the lack of a protective order. Moreover, the failure to obtain a protective order before now is the fault of NCRIC – which did not move this Court for a protective order until March 31, 2001. Had NCRIC drafted its own protective order, rather than waiting for Columbia to draft one; and had NCRIC consented to Columbia's draft protective order, rather than haggling over the language for weeks and then refusing to consent – a protective order might be in place right now.

Conclusion

Accordingly, Columbia's motion to modify the scheduling order should be granted.

DATED: May 1, 2001

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-000568

EXHIBIT A

16d-000570 A

September 6, 2000
At 4th Qtr 2000 Plan Year

COLUMBIA HOSPITAL FOR WOMEN
RETRO-PROGRAM
Years : Sept 01,1993 - August 31,2000

	Y 94-95	Y 95-96	Y96-97	Y97-98	Y98-99	Cumulative 1994 - 1999
PREMIUM						
Subject (1st 500 Layer)	$ 2,844,913	$ 3,288,170	$ 3,495,306	$ 3,340,590	$ 3,609,667	$ 16,578,646
Deposit	$ 2,311,491	$ 2,045,242	$ 2,174,080	$ 2,077,847	$ 2,245,213	$ 10,853,873
Basic Premium Chg.	16.84%	16.84%	16.84%	16.84%	16.84%	
Basic	$ 479,083	$ 553,728	$ 588,609	$ 562,555	$ 607,868	$ 2,791,844
LOSSES						
Indemnity Reserves	$ -	$ 725,000	$ 1,070,000	*$ 800,000*	*$ 3,125,000*	$ 5,720,000
ALAE Reserves	$ -	*$ 460,000*	*$ 282,000*	*$ 240,000*	*$ 440,000*	$ 1,422,000
Total Reserves	$ -	$ 1,185,000	$ 1,352,000	$ 1,040,000	$ 3,565,000	$ 7,142,000
Indemnity Paid	$ 1,375,000	$ 600,000	$ 1,050,000	*$ 500,000*	$ 500,000	$ 4,025,000
Expense Paid	$ 341,454	$ 452,447	*$ 735,648*	*$ 148,723*	*$ 81,307*	$ 1,759,579
Total Paid	$ 1,716,454	$ 1,052,447	$ 1,785,648	$ 648,723	$ 581,307	$ 5,784,579
Total Losses	$ 1,716,454	$ 2,237,447	$ 3,137,648	$ 1,688,723	$ 4,146,307	$ 12,926,579
Development Factor	105.00%	105.00%	105.00%	80%	65%	
	capped at MIN			*capped at MIN*		
Retro Premium	**$ 1,960,898**	**$ 2,536,466**	**$ 3,355,700**	**$ 1,840,863**	**$ 3,110,192**	$ 13,140,397
(Refund)/Due	**$ (177,806)**	**$ 491,225**	**$ 1,181,620**	**$ (73,493)**	**$ 864,979**	**$ 2,286,525**
Columbia Payment						***$ (1,000,000)***
Net (Refund)/Due						***$ 1,286,525***
Max. Premium	$ 3,271,650	$ 4,373,266	$ 4,648,756	$ 4,442,984	$ 4,800,858	$ 21,537,514
Min. Premium	$ 2,133,685	$ 1,972,902	$ 2,097,183	$ 2,004,354	$ 2,165,800	$ 10,373,924
Max. Factor	1.15	1.33	1.33	1.33	1.33	
Min. Factor	0.75	0.60	0.60	0.60	0.60	

EXHIBIT B

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

April 20, 2001

BY FACSIMILE

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

NCRIC's failure to respond to *any* of Columbia's interrogatories is improper. Even if Columbia served more than 40 interrogatories and subparts, there is no basis in the D.C. Superior Court Civil Rules for NCRIC to refuse to respond to *any* of Columbia's interrogatories. If NCRIC believes that Columbia exceeded its limit, NCRIC should instead object and answer those interrogatories that, by its own count, constitute the first 40 interrogatories and subparts. I therefore request that you fax to me an answer to all of Columbia's interrogatories — or alternatively, what you consider to be the first 40 of Columbia's interrogatories and subparts — prior to our meeting to resolve discovery issues, on April 26, 2001.

NCRIC's failure to respond to any of Columbia's interrogatories is at odds with its discovery obligations. Please be advised that if NCRIC refuses to respond to Columbia's interrogatories, Columbia will bring NCRIC's failure to the Court's attention and request appropriate sanctions under Rule 37.

Sincerely yours,

Joseph K. Leahy

LAW OFFICES OF
ROY I. NIEDERMAYER

7475 WISCONSIN AVENUE, SUITE 500
BETHESDA, MARYLAND 20814

TELEPHONE: 301-951-4456
TELECOPIER: 301-951-0585

E-MAIL: RIN@RINLAW.COM
HTTP://www.lawyers.com/RINLAW

April 23, 2001

BY TELECOPY AND
FIRST CLASS MAIL

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Re: Meeting of Counsel: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.

Dear Joe:

I received your fax of Friday evening after business hours this morning has I left for a trial. I will respond substantively later.

It would assist me in responding if you would cite me the rule or case which suggests or requires the procedure you demand for answering interrogatories propounded in violation of SCR 33 by exceeding 40 in number so that I may consider the validity of your request and the nature of a response.

Sincerely yours,

Roy I. Niedermayer

RIN:

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

April 25, 2001

BY FACSIMILE

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

I write in regard to your letters of April 20 and 23, 2001.

First, even if NCRIC has counted Columbia's interrogatories correctly, NCRIC has a valid objection *only* to interrogatories 41 and above (by NCRIC's count). Hence, NCRIC must, at a minimum, answer Columbia's first 40 interrogatories (by NCRIC's count). If you contend otherwise, please provide me with the legal authority upon which you rely for your position.

Second, I did not, as you suggest, copy Columbia's documents due solely to my preference and contrary to your overtures. Rather, as I indicated when we first spoke about document production, I had *already* made a copy set of Columbia's documents and replaced the originals in Columbia's files; therefore, an inspection of Columbia's originals by you was not feasible. Thus, as I indicated to you at the time, I understood that each side would, as a matter of professional courtesy and efficiency, produce copies of documents for the other party. If you misunderstood my position, and expected that Columbia would bill NCRIC for copies of documents it produced, please let me know; I will gladly send NCRIC a bill for these documents.

Third, your fifth agenda item is insufficiently specific. I asked you to set a specific agenda to avoid any further disputes regarding what subjects are discussed in discovery conferences. Please do so.

Attached please find a written agenda for our meeting tomorrow, as promised.

Sincerely yours,

Joseph K. Leahy

Attachment

EXHIBIT C

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

March 9, 2001

BY FACSIMILE AND
FIRST CLASS MAIL

Roy I. Niedermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

I write to memorialize our conversation this afternoon with regard to discovery deadlines.

You informed me that, if you decide to designate any expert as a proponent of an issue (*e.g.*, loss reserves), *see* D.C. Rs. Civ. P. 16(b)(3), 26(d)(4), you will do so in compliance with the existing deadlines set in the scheduling order, March 12, 2001. You also informed me that you will not consent to a two-week extension of this deadline as allowed under Rule 16(b).

In addition, you informed me that you expect to produce all documents in response to Columbia's recent discovery requests at least by the time your response is due under the Rules. As we discussed, I would appreciate if you could produce any documents relating to loss reserves as soon as possible. As I explained, Columbia expects to retain experts to analyze, and possibly testify about, these documents. The sooner you provide us with these documents, the sooner our experts will be able to complete their reports and provide them to you. Thank you.

Sincerely,

Joseph K. Leahy

LAW OFFICES OF
ROY I. NIEDERMAYER

7475 WISCONSIN AVENUE, SUITE 500
BETHESDA, MARYLAND 20814

TELEPHONE: 301-951-4456
TELECOPIER: 301-951-0585

E-MAIL: RIN @ RINLAW.COM
HTTP://www.lawyers.com/RINLAW

March 9, 2001

BY TELECOPY AND
FIRST CLASS MAIL

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.: Meeting of Counsel pursuant to Court procedures to resolve discovery issues

Dear Joe:

I am in receipt of you faxed letter of March 9, 2001 received by my office at 4:19 a.m. on March 9, 2001. Since you wish to memorialize our conversation of today, I am responding to clarify and correct certain aspects of your letter.

First, I told you that plaintiff will be designating its experts on March 12, 2001, the current deadline set by the Court in its scheduling order and that I expected defendant to comply with that order also as the order governing discovery.

Second, I advised you that I anticipate, but did not promise, that plaintiff's production of documents would occur by the deadline for a response to the requests as provided by the Rules. Defendant will have plaintiff's response within the time limits of the Rules. Actual production may not take place on the precise day the response is filed but will occur when the documents requested have been assembled.

Sincerely yours,

Roy I. Niedermayer

EXHIBIT D

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	Civil Action No. 0007308-00 Calendar #8 Judge Linda Kay Davis Next Event: Discovery close 5/12/01

RESPONSES OF PLAINTIFF TO DEFENDANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS FROM DEFENDANTS

Defendants respond to the specific Requests for Production of Documents from plaintiff as follows:

Responses to First Requests for Production of Documents

1. All documents relating to Attending Faculty or the Retro Plan, including the negotiation and terms of the Plan, the performance thereof and the termination thereof.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

2. All documents relating to CPG or the Entity Policy, including the negotiation and terms of the Entity Policy, the performance thereof and the cancellation thereof.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

3. Any document relating to any communication between NCRIC and Columbia regarding the Attending Faculty or Retro Plan.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

4. Any document relating to any communication between NCRIC and Columbia regarding CPG or the Entity Policy.

RESPONSE: Plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

5. Any document relating to any communication between NCRIC and any person other than Columbia (including any news media, Sibley and any government agency, including the District of Columbia Department of Insurance and Securities Regulation), regarding Columbia, Attending Faculty, the Retro Plan, CPG or the Entity Policy.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as relating to "Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing and the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

6. Any document relating to the provision of MMLI to Attending Faculty, including all documents relating to the cost to NCRIC of providing MMLI to Attending Faculty.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

7. Any document relating to any discount on premium provided or offered by NCRIC to Attending Faculty, including any document reflecting the amount of any such discount (whether expressed in absolute terms or as a percentage) and any reason or rationale of NCRIC or others for providing or offering such discounts.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of

defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

8. Any document relating to any discount on premium provided or offered by NCRIC to physicians in the District of Columbia metropolitan area other than Attending Faculty (including physicians with privileges at Sibley or George Washington University Medical Center), including any document reflecting the amount of any such discount (whether expressed in absolute terms or as a percentage) and any reason or rationale of NCRIC or others for providing or offering such discounts.

RESPONSE: Upon advice of counsel, plaintiff objects and refused to produce the requested documents on the grounds that the documents sought are not related to or relevant to the issues and subject matter of this case, nor reasonably designed to lead to the discovery of admissible or relevant evidence.

9. All documents relating to Reconciliations, including all documents consulted, referred to, or relied upon in performing such reconciliations.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

10. Any documents relating to Multipliers, including any documents relating to NCRIC's use of Multipliers in performing Reconciliations.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

11. All documents relating to the number of Experience Periods (as defined in the Retro Plan) included in any Reconciliation, including documents relating to any

decision of NCRIC regarding which Experience Periods to include when performing Reconciliations.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

12. All documents relating to calculations of Retro Plan Premiums, including any analyses, tables, reports or opinions prepared by accountants, actuaries, auditors, risk managers or attorneys.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

13. Any documents reflecting errors or miscalculations, whether intentional or otherwise, by NCRIC in performing Reconciliations or calculating of Retro Plan Premiums.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

14. All documents relating to the calculation of Retro Plan Loss Reserves, including: documents created or consulted by actuaries, accountants, risk managers and attorneys involved in calculating such loss reserves; documents reflecting names of persons involved in calculating such loss reserves; and documents relating to internal NCRIC rules, guidelines, standards or procedures for calculating loss reserves.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

15. Any documents relating to certifications or reports of actuaries provided or required to be provided by NCRIC to Columbia under the Retro Plan.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

16. All documents relating to rules, regulations, guidelines, standards or procedures governing the calculation of loss reserves by insurance companies and NCRIC's compliance therewith, including any audit, analysis or review by NCRIC of its Retro Plan Loss Reserves.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies

of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

17. All documents relating to any audit, analysis or review of NCRIC's Retro Plan Loss Reserves performed by any person other than NCRIC, including independent accountants, actuaries or consultants; and any communications relating to any such audit, analysis or review.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

18. All documents consulted, referred to or relied upon in setting loss reserves for specific lawsuits, claims or incidents involving Attending Faculty.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as relating to "Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing and the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

19. Any document relating to or reflecting a comparison of the initial loss reserves for lawsuits, claims or incidents involving Attending Faculty and the amount of losses actually paid by NCRIC in relation to such lawsuits, claims or incidents.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as relating to "Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing and the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

20. All documents relating the "retro formula" described in paragraphs 28 of the Answer and Counterclaims, including any documents relating to NCRIC's interpretation or application of Exhibit A to the Retro Plan.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

21. All documents relating to investment earnings by NCRIC on Loss Reserves or on any money paid to NCRIC by Columbia pursuant to the Plan.

RESPONSE: Plaintiff has no documents in this category within its custody, possession, and control.

22. All documents relating to renewals or amendments to the Retro Plan, including any memoranda or electronic mail regarding such renewals or amendments, and any communications regarding the reasons for or terms of such renewals or amendments.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

23. All documents relating to payments made or owed under the Retro Plan.

RESPONSE: Plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

24. Any documents relating to communications regarding payments made or owed under the Plan, including all documents relating to demands for payment by NCRIC, negotiations regarding the amount to be paid by Columbia and any communication by NCRIC with Columbia or any government agency regarding the status or classification of payments.

RESPONSE: Plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

25. Any documents relating NCRIC's understanding of the terms of the Retro Plan.

RESPONSE: Plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

26. All documents from January 1, 1993 to present relating to representations by NCRIC about the terms the Retro Plan, including communications relating to the cost of the Plan to Columbia, the calculation of Loss Reserves, and the performance of Reconciliations.

RESPONSE: Plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

27. All documents from January 1, 1993 to present relating to Columbia's finances or financial situation, including any documents relating to NCRIC's knowledge or understanding of Columbia's financial situation and any documents relating to rumors about Columbia.

RESPONSE: Plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

28. Any documents relating to any proposed accounting settlement the Retro Plan, including any documents relating to negotiations regarding the possibility of such a settlement.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

29. All documents relating to the termination of the Retro Plan, including memoranda, emails or board meeting minutes relating to any decision not to renew the Plan.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

30. All documents relating to the cancellation of the Entity Policy, including memoranda, emails or board meeting minutes reflecting NCRIC's reasons for the cancellation.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of

defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

31. All documents relating to communication by NCRIC (including communications to Attending Faculty or CPG) regarding cancellation of the Entity Policy.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as relating to "Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing and the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

32. All documents relating to communication by NCRIC (including communications to Attending Faculty or CPG) regarding termination of the Retro Plan.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

33. Any document relating to the provision or proposed provision of MMLI to Attending Faculty by MIIX, MedPro or any company other than NCRIC.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because

plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

34. Any document relating to any communication by NCRIC (including communications to Attending Faculty or CPG) regarding MIIX's provision or potential of MMLI to Attending Faculty or CPG, including any documents relating to statements materially similar to those alleged in paragraphs 68-71 of the Answer and Counterclaims.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

35. Any documents (including handwritten notes) relating to MIIX that were referred to or possessed by NCRIC at any meeting attended by NCRIC and Attending Faculty, including the meeting that NCIRC admits it attended in August 1998 (see Reply ¶ 24).

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall

produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

36. Any document (including leaflets or memoranda) relating to MIIX created or disseminated by NCRIC, including any documents disseminated to any meeting attended by Attending Faculty in August 1998.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

37. Any document (including documents relating to communications by NCRIC to Attending Faculty or CPG) relating to Columbia's financial health.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

38. Any document (including documents relating to communications by NCRIC to Attending Faculty or CPG) relating to the quality of care at Columbia.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices

of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

39. Any document (including documents relating to communications by NCRIC to Attending Faculty or CPG) relating to Columbia's reputation in the community.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

40. Any document relating to any communication by NCRIC (including communications to Attending Faculty or CPG) regarding the Clinic, including any documents relating to statements materially similar to those alleged in paragraphs 89-90 of the Answer and Counterclaims.

RESPONSE: Plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant. Subject to the foregoing and the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

41. Any document relating to Attending Faculty's ceasing to practice at Columbia or threats or plans to move practices from Columbia to other hospitals, including all documents relating to application by Attending Faculty for privileges at Sibley.

RESPONSE: Upon advice of counsel, plaintiff objects and refused to produce the requested documents on the grounds that the documents sought are not related to or relevant to the issues and subject matter of this case, nor reasonably designed to lead to the discovery of admissible or relevant evidence. Moreover, even if the request were not objectionalbe, plaintiff is unable to produce for inspection and copying documents described as "relating to Attending Faculty" based on defendant's definition because plaintiff is without knowledge as the who are the current or former members of the faculty at defendant.

42. Any document relating to NCRIC's provision or non-provision of MMLI coverage to members of CPG for their work at the Clinic.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and refuses to produce documents to or from attorneys as within the attorney-client or work product privileges.

43. Any document relating to physicians leaving CPG or ceasing to practice at the Ambulatory Clinic, and any document relating to any nurses or other staff leaving Columbia.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff. Upon advice of counsel, plaintiff objects and

49. All documents relating to any defense Columbia has asserted to any claim set forth in the Complaint.

RESPONSE: For its response, plaintiff incorporates herein and adopts the Response of Defendant to plaintiff's Request No. 3 for Production of Documents, substituting the words "plaintiff" for "Medical Center."

50. All documents referred to, relied upon, or consulted in the preparation of your responses to any interrogatories or requests for admission propounded to you by Columbia, and any documents that you believe provide support for such responses.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

51. All documents referred to, relied upon, or consulted in the preparation of the Complaint or Reply, and any documents that you believe provide support for the statements set forth of facts alleged therein.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

52. Any document relating to the allegations set forth in paragraph 16 of the Answer and Counterclaims, including documents relating to any difference between or comparisons of (1) MMLI premiums paid by physicians in the District of Columbia and (2) MMLI premiums paid by physicians in Maryland or Virginia during the period from January 1, 1993 to present.

RESPONSE: Upon advice of counsel, plaintiff objects and refused to produce the requested documents on the grounds that the documents sought are not related to or relevant to the issues and subject matter of this case, nor reasonably designed to lead to the discovery of admissible or relevant evidence.

53. Any document relating to any difference between or comparisons of the MMLI premiums paid by (1) obstetricians or gynecologists and (2) other physicians in the District of Columbia metropolitan area during the period from January 1, 1993 to present.

RESPONSE: Upon advice of counsel, plaintiff objects and refused to produce the requested documents on the grounds that the documents sought are not related to or relevant to the issues and subject matter of this case, nor reasonably designed to lead to the discovery of admissible or relevant evidence.

54. Documents relating to the benefits or drawbacks to any party entering into an agreement to calculate premiums retrospectively, including any document relating to comparative benefits of "incurred loss" and "actual loss" retrospective rating programs.

RESPONSE: Plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

55. Any document relating to any proposals or communications regarding any proposed or possible "actual loss" retrospective rating program between NCRIC and Columbia, including all documents relating to NCRIC's decision to propose and design the Retro Plan on an "incurred loss" basis rather than an "actual loss" basis.

RESPONSE: Subject to the entry of the protective order for which plaintiff has requested the Court to enter in its pending Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, plaintiff shall permit the inspection and copying of whatever nonprivileged and designated documents plaintiff has within its custody, possession, and control at plaintiff's expense at plaintiff' offices or the offices of plaintiff's counsel during usual business hours on a date and time agreed to between

the parties. Alternatively, at the election of defendant, plaintiff may cause photocopies of the documents to be made and provided to defendant upon the agreement of defendant to reimburse or pay the reasonable costs of such duplication. Plaintiff shall produce those documents requested in the manner in which they are kept in the ordinary course of business by plaintiff.

Roy I. Niedermayer, Esq. # 03122
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 1st day of May, 2001, a copy of Defendant Columbia Hospital for Women Medical Center Inc.'s Reply Memorandum in Support of Motion to Amend Scheduling Order were served upon the following by FedEx:

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

In addition, on the same date, a courtesy copy of the aforementioned memorandum was served upon the Chambers of Judge Linda K. Davis by hand delivery.

Joseph K. Leahy

16d-000599

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, Inc.,	:	**Case No. 00ca7308**
Plaintiff	:	**Calendar 8**
	:	**Judge Linda K. Davis**
v.	:	
	:	
	:	
Columbia Hospital for Women Medical	:	
Center, Inc.,	:	
Defendant	:	

ORDER

Pending before the Court are:

1) Plaintiff's Motion to Dismiss Counterclaims, filed December 11, 2000, and the defendant's Opposition thereto, filed January 26, 2001;
2) Plaintiff's Motion for a More Definite Statement of Allegations of Fraud and Misrepresentation and Motion to Strike Insufficient Defense, filed December 11, 2000, and the defendant's Opposition thereto, filed January 27, 2001;
3) Defendant's Motion to Amend Scheduling Order, filed March 17, 2001, and the plaintiff's Opposition thereto, filed April 3, 2001;
4) Plaintiff's Motion to Compel Discovery by Production of Documents from Defendant, filed March 12, 2001, defendant's Opposition thereto, filed March 30, 2001, plaintiff's Reply, filed April 9, 2001, and defendant's Sub-Reply, filed April 23, 2001;
5) Plaintiff's Motion for Protective Order Regarding Confidentiality of Documents and Other Materials, filed April 3, 2001, and defendant's Opposition thereto, filed April 12, 2001; and
6) Plaintiff's Motion in Limine to Exclude Experts of Defendant, or in the Alternative, to Compel Defendant to Provide the Answer to Interrogatory or Supplement its Rule 26(B)(4) Statement and for Leave to Take Depositions of Defendant's Experts, filed April 16, 2001, and defendant's Opposition thereto, filed May 1, 2001.

The Court is aware that several of these motions have not been decided in a timely manner. However, a contributing factor to at least the two oldest pending motions being decided late is the fact that there were not chamber's copies provided for the Oppositions

to either of them. In the future, the parties shall provide copies directly to chambers of all pleadings filed.

In its Motion for More Definite Statement and to Strike Insufficient Defense, the plaintiff argues that because the defendant does not specify the amount of damages it is claiming, and because it is too vague as to which of its claims it seeks punitive damages, the plaintiff is unable to file a response. The plaintiff therefore wants the Court to order the defendant to provide a more definite statement. The defendant argues that plaintiff provides no legal support for its argument that the defendant must specify the amount in damages it is seeking. The defendant also argues that its request for punitive damages is clear, and that its pleading meets the requirement of SCR-Civil R. 8(a)(1). The Court agrees with the defendant, and it will not require the defendant to provide a more definite statement.

The plaintiff also argues that the defendant's tenth defense, in which defendant reserves the right to supplement and amend its answers at a later date, is legally insufficient, as this sort of reservation is not provided for in the D.C. Superior Court's Civil Procedure rules. The defendant argues that the plaintiff is not prejudiced by the existence of this defense. The Court agrees with the plaintiff, and the defendant's Tenth defense shall be struck. If the defendant wishes to amend or supplement its answer to the plaintiff's complaint at a later date, it may do so under the procedures set forth in SCR-Civil 15(a).

Both the plaintiff's Motion for Protective Order and the defendant's Opposition thereto have been considered by the Court. The Court's approved version of the Protective Order is being issued contemporaneously with the instant Order. Regarding

the plaintiff's Motion in Limine to Exclude the Experts of Defendant, the Court believes that a contributing factor to the plaintiff's lack of information regarding the defendant's expert is the pending Motion for a Protective Order. Therefore, because the terms of the Protective Order have now been resolved, the Court is, at this time, denying the plaintiff's Motion in Limine.

After reviewing all of the pleadings surrounding the plaintiff's Motion to Compel, it appears to the Court that the disagreement is not so much over the content of what is to be turned over, but as to the time frame in which it is due to the other side. In any event, the Court will address both the Motion to Compel and the Motion to Amend the Scheduling Order at a hearing on May 16, 2001, in courtroom 210 at 2:30 p.m.

Still pending before the Court is the plaintiff's Motion to Dismiss Counter-Claims. This motion will be decided in a separate Order to be issued in the near future. Therefore, it is, this 11th day of May, 2001 hereby

ORDERED that the plaintiff's Motion for More Definite Statement of Allegations of Fraud and Misrepresentation and Motion to Strike Insufficient Defense is **DENIED IN PART** and **GRANTED IN PART.** It is

FURTHER ORDERED that the plaintiff's Motion for Protective Order is **GRANTED**, and the Protective Order as amended by the Court is attached hereto. It is

FURTHER ORDERED that the plaintiff's Motion in Limine to Exclude Experts of Defendant, or in the alternative, to Compel Defendant to Provide the Answer to

16d-000602

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	Civil Action No. 0007308-00 Calendar #8 Judge Linda Kay Davis Next Event: Discovery close 5/12/01

PROTECTIVE ORDER REGARDING CONFIDENTIALITY
OF DOCUMENTS AND OTHER MATERIALS

Upon the Motion of plaintiff for a protective order pursuant to SCR 26(c), it is this 11th day of May, 2001

ORDERED that:

1. All Classified Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.

2. "Classified Information" as used herein, means any information of any type, kind or character which is designated as "Confidential" or For Counsel Only" by any of the supplying or receiving parties, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise. In designating information as "Confidential" or "For Counsel Only, a party will make such designation only as to that information that it in good faith believes contains confidential information. Information or material which is available

to the public, including catalogues, advertising materials, and the like shall not be classified.

3. "Qualified Persons" as used herein, means

(a) Attorneys of record for the parties in this litigation and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation (so long as such attorneys and their employees are not direct employees of any party).

(b) Actual or potential independent technical experts or consultants who have signed the declaration form attached at Exhibit A hereto, but such declaration need not be served on opposing counsel for consulting experts or other consultants who will not be called as witnesses at trial. This order shall apply to consulting experts and consultants not called as witnesses in all other respects except disclosure to the other party. Such experts or consultants may not be employees of any party.

(c) In-house corporate officer(s) or employee(s) of a corporate party who has signed the declaration form attached at Exhibit A hereto with such declaration promptly served on opposing counsel by the counsel representing the corporate party.

(d) Any other person may be designated as a Qualified Person by agreement of the parties; or by order of this Court after notice and hearing to all parties. ~~The designation of a persons designated by a party as a Qualified Person may be challenged by motion before the Court.~~

(e) The Judge, law clerks, and other personnel working in chambers.

4. Documents produced in this action may be designated by any party or parties as "Confidential" or "For Counsel Only" information by marking every page (or, at a

6.(a) "Confidential" information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons. Information designated as "For Counsel Only" shall be restricted in circulation to Qualified Persons described in Paragraphs 3(a), (b) and (e) above.

(b) Information designated as "For Counsel Only" provided to a receiving party shall be maintained in the offices of the following outside counsel: for Plaintiff, Roy I. Niedermayer, Esquire; and for Defendant, Kellogg, Huber, Hanson, Todd & Evans, P.L.L.C.

Any documents produced in this litigation, regardless of classification, which are provided to Qualified Persons of Paragraph 3(b) above, shall be maintained only at the office of such Qualified Persons and only working copies shall be made of any such documents. Copies of documents produced under this Protective Order may be made, or exhibits prepared by independent copy services, printers, or illustrators for the purpose of this litigation.

(c) Each party's counsel shall maintain a log (either by description or Bates number) of all copies of "For Counsel Only" documents which documents received from another party that are delivered to any one or more Qualified Persons of listed in Paragraph 3(b) above.

7. Documents previously produced shall be retroactively designated by notice in writing of the designated class of each document by Bates number (or by other means by which the document can reasonably be identified) within 20 days of the entry of this order (but no later than three days prior to any scheduled hearing wherein the transcript might be used or relied upon). Documents unintentionally produced without designation

as "Confidential" may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party.

Documents to be inspected shall be treated as "For Counsel Only" during inspection. At the time of copying for the receiving parties, such inspected documents shall be stamped prominently "Confidential" or "For Counsel Only" by the producing party.

8. Nothing herein shall prevent disclosure beyond the terms of this order if each party designating the information as "Confidential" or "For Counsel Only" consents to such disclosure or, if the court, after notice to all affected parties, orders such disclosures. Nor shall anything herein prevent any counsel of record from utilizing "Confidential" or "For Counsel Only" information in the examination or cross-examination of any person who is indicated on the document as being an author, source, or recipient of the "Confidential" or "For Counsel Only" information, irrespective of which party produced such information.

9. A party shall not be obligated to challenge the propriety of a designation as "Confidential" or "For Counsel Only" at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation by the designating party of any information as "Confidential" or "For Counsel Only", or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who has designated the document or information as "Confidential" or "For Counsel Only".. The designating party shall be required to move the Court for an order preserving the

designated status of such information within 14 days of receipt of the written objection, and failure to do so shall constitute a termination of the restricted status of such item.

The parties may, by stipulation, provide for exceptions to this order, and any party may seek an order of this Court modifying this Protective Order.

10. It is the intention of the parties that the definition of Classified documents be consistent with that contained in SCR 26(c). Nothing shall be designated as "For Counsel Only" information except information of the most sensitive nature, which if disclosed to persons of expertise in the area would reveal significant technical or business advantages of the producing or designating party, and which includes as a major portion subject matter which is believed to be unknown to the opposing party or parties, or any of the employees of the corporate parties. Nothing shall be regarded as "Confidential" or "For Counsel Only" information if it is information that either:

(a) is in the public domain at the time of disclosure, as evidenced by a written document or equivalent;

(b) becomes part of the public domain through no fault of the other party, as evidenced by a written document or equivalent;

(c) the receiving party can show by written document that the information was in its rightful and lawful possession at the time of disclosure or equivalent; or

(d) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

11. In the event a party wishes to use any "Confidential" or "For Counsel Only" information in any affidavits, briefs, memoranda of law, or other papers filed in Court in this

that there shall be no restriction on documents that are used as exhibits in Court unless such exhibits were filed under seal, and (b) that a party may seek the written permission of the producing party or order of the Court with respect to dissolution or modification of such Protective Orders.

15. This order shall not bar any attorney herein in the course of rendering advice to his client with respect to this litigation from conveying to any party client his evaluation in a general way of "Confidential" or "For Counsel Only" information produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his client, the attorney shall not disclose the specific contents of any "Confidential" or "For Counsel Only" information produced by another party herein, which disclosure would be contrary to the terms of this Protective Order.

16. Any party designating any person as a Qualified Person shall have the duty to reasonably assure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of any such person to observe the terms of this Protective Order.

17. If any person, entity, court or any administrative agency subpoenas or orders the production or designation of confidential documents that a party has obtained under the terms of this Order, such party shall promptly notify the subpoenaing third party that the documents are subject to a Protective Order, and shall notify the party or person who designated the materials as confidential of the pendency of such subpoena or order.

5/14/01 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

This case is set for an ADR session at the time and date shown. Review the Mediation and Case Evaluation procedures you received at the scheduling conference for attendance requirements and the Confidential Settlement Statement (CSS) Form. If you have a conflict with the scheduled date, call the Civil Assignment Office (202-879-1751) before the CSS Return date on this notice. With consent the date may be changed. Attorneys receiving this notice are deemed counsel of record; if you disagree, you must provide the Civil Clerk's Office with proper documentation.

CASE NUMBER: 00ca007308
NCRIC, Inc. vs Columbia Hospital for

CSS RETURN: 6/29/01

MEDIATION: 8/09/01 11:00am
check-in for 9:00am cases at 8:45am
check-in for 11:00am cases at 10:45am

TO:
00ca007308 D001 PRT.0118bsw 206
Joseph K Leahy
1615 M Street NW
Ste 400
Washington, DC
20036

REPORT TO: Room 112, 1st Floor; 515 5th Street, NW
PLEASE BRING THIS NOTICE WITH YOU WHEN YOU APPEAR.

16d-000609

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, upon consideration of the points and authorities submitted by the parties, and for good cause shown, Defendant Columbia Hospital for Women Medical Center, Inc.'s Motion to Amend Scheduling Order is hereby GRANTED, and the Scheduling Order dated January 12, 2001 is amended as follows:

1. This case is transferred to Track 4; and

2. the deadlines for this case are amended to state as follows:

Deadline for discovery requests	6/12/01
Exchange witness lists:	6/12/01
Proponent's rule 26(b):	6/26/01
Opponent's rule 26(b):	7/12/01 ~~7/12/01~~ for Defendant/Counter-Plaintiff and 7/26/01 for Plaintiff/Counter.
Discovery closes:	8/12/01
Deadline for filing motions:	8/27/01
Dispositive motions decided:	9/27/01
ADR:	10/12/01 - 11/12/01
Pretrial:	30~~60~~ days

SO ORDERED.

Linda K. Davis
Judge Linda K. Davis

Dated: 5/16, 2001.

16d-000610

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, upon consideration of the points and authorities submitted by the parties, and for good cause shown, Defendant Columbia Hospital for Women Medical Center, Inc.'s Motion to Amend Scheduling Order is hereby GRANTED, and the Scheduling Order dated January 12, 2001 is amended as follows:

1. This case is transferred to Track 4; and

2. the deadlines for this case are amended to state as follows:

Deadline for discovery requests	6/12/01
Exchange witness lists:	6/12/01
Proponent's rule 26(b):	6/26/01
Opponent's rule 26(b):	7/12/01 for Defendant/Counter-Plaintiff and 7/26/01 for Plaintiff/Counter.
Discovery closes:	8/12/01
Deadline for filing motions:	8/27/01
Dispositive motions decided:	9/27/01
ADR:	10/12/01 - "/12/01
Pretrial:	30~~60~~ days

SO ORDERED.

Judge Linda K. Davis

Dated: 5/16, 2001.

16d-000611

6/13/01

THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next event: Discovery closed 8/12/01
	)	
Defendant.	)	

PLAINTIFF'S WITNESS LIST FOR CASE IN CHIEF

Plaintiff, by counsel, submit its list of witnesses for its case in chief in accordance with the Court's Scheduling Order as follows, but reserving it right to supplement its list with defense and rebuttal witnesses upon receiving discovery from defendant:

1. Stephen S. Fargis
2. R. Ray Pate, Jr.
3. James McGuire
4. James Hurley
5. David Osborn
6. William Burgess
7. David Little
8. Jeffrey Marsh
9. Eric Anderson
10. Grant Sohm
11. Eric Hempelman
12. Larry Wilson, Jr.
13. Larry Wilson
14. Safa Rifka
15. Morton Roberts
16. Nabil Asterbadi
17. Melinda Murray
18. Ann Gaffey
19. Susan Hansen
20. Gerald Beaulieu
21. Thomas Foley
22. Pat Kane
23. Len Peterson
24. David Bickerstaff

RECEIVED
JUN 14 2001
By

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 00-007308 Calendar #8 Judge Linda Kay Davis Next Event: Discovery Close 5/12/01

CERTIFICATE OF SERVICE OF DISCOVERY

I HEREBY CERTIFY, that on June 13, 2001, a copy of plaintiff's Witness List was sent by fax and first class mail postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

6/13/01

THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next event: Discovery closed 8/12/01
	)	
Defendant.	)	

PLAINTIFF'S WITNESS LIST FOR CASE IN CHIEF

Plaintiff, by counsel, submit its list of witnesses for its case in chief in accordance with the Court's Scheduling Order as follows, but reserving it right to supplement its list with defense and rebuttal witnesses upon receiving discovery from defendant:

1. Stephen S. Fargis
2. R. Ray Pate, Jr.
3. James McGuire
4. James Hurley
5. David Osborn
6. William Burgess
7. David Little
8. Jeffrey Marsh
9. Eric Anderson
10. Grant Sohm
11. Eric Hempelman
12. Larry Wilson, Jr.
13. Larry Wilson
14. Safa Rifka
15. Morton Roberts
16. Nabil Asterbadi
17. Melinda Murray
18. Ann Gaffey
19. Susan Hansen
20. Gerald Beaulieu
21. Thomas Foley
22. Pat Kane

23. Len Peterson
24. David Bickerstaff
25. Diana Winter
26. Nancy Catalano
27. All persons whose names are contained in any of the documents produced by plaintiff in response to defendant's requests for production of documents may also have information or knowledge.
28. Rebecca Crunk
29. Christina Culp
30. Representatives of the Department of Insurance and Securities Regulation of the District of Columbia
31. A. M. Best & Co., Inc. analysts
32. Brian Jordan
33. Brian Nash, Esq.
34. Laura May
35. Nicholas McConnell, Esq.
36. Sharon Spinks
37. Steve Seitzman
38. Terry Rutkowski
39. Joyce Adams
40. T. Todd Sullivan
41. Beverley Sanders
42. Ken Blank, M.D.
43. Arthur Becker, M.D.
44. Edward Koch, M.D.
45. Nancy Ripp, M.D.
46. Heather Johnson, M.D.
47. Persons listed on defendant's witness list.
48. Doctors of practices leaving defendant including those moving to Sibley Memorial and G.W. Hospitals

Roy Niedermayer, Esq. D.C. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

16d-000615

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN	)	Judge Linda Kay Davis
MEDICAL CENTER, INC.	)	Next Event: Discovery Close
	)	5/12/01
	)	
Defendant.	)	

CERTIFICATE OF SERVICE OF DISCOVERY

I HEREBY CERTIFY, that on June 13, 2001, a copy of plaintiff's Witness List was sent by fax and first class mail postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

LAW OFFICES OF
ROY I. NIEDERMAYER
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Telephone: 301-951-4456
Telecopier: 301-951-0585
E-mail: rin @ rinlaw.com

FACSIMILE TRANSMITTAL SHEET

TO: Joseph Leahy, Esq. DATE: April 20, 2001

FROM: Roy Niedermayer, Esq.

Total Number of Pages (including coversheet): 4

FOR YOUR INFORMATION	____	PER YOUR REQUEST	____
PLEASE CALL UPON RECEIPT	____	NO REPLY NECESSARY	____
URGENT	____	RESPOND VIA FACSIMILE	____

MESSAGE:

This facsimile contains PRIVILEGED AND CONFIDENTIAL INFORMATION intended only for the use of the Addressee(s) named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the above address via the U.S. Postal Service. Thank you

If you have any problems, please contact my office at 301-951-4456.

Confirmation Copy Will Follow _____ Transmission Completed x

7/3/01

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, Inc.	:	**Case No: 00ca7308**
Plaintiff	:	**Judge Davis**
	:	**Calendar 8**
v.	:	
	:	
Columbia Hospital	:	
For Women Medical	:	
Center, Inc.,	:	
Defendant	:	

ORDER

This matter comes before the Court upon plaintiff's Motion to Dismiss Counterclaims, filed December 11, 2000. Defendant filed an Opposition on January 26, 2001, and plaintiff filed a Reply on February 7, 2001. In its motion, plaintiff seeks to dismiss several of defendant's Counterclaims. The Court is granting plaintiff's motion in part, and denying it in part for the reasons stated herein.

Plaintiff's Motion is brought under SCR-Civil R. 12(b)(6), failure to state a claim upon which relief can be granted. Granting a motion to dismiss for failure to state a claim upon which relief can be granted is impermissible unless it appears beyond doubt that a party can prove no set of facts in support of his claim which would entitle him to relief. See *Owens v. Tiber Island Condominium Ass'n,* 373 A.2d 890 (1977); *Atkins v. Industrial Telecommunications Ass'n*, 660 A.2d 885 (1995). For purposes of a motion to dismiss for failure to state a claim upon which relief can be granted, the complaint must be construed in the light most favorable to the party against whom the motion is made. See *McBryde v. Amoco Oil Co.*, 404 A.2d 200 (1979); *Cauman v. George Washington Univ.*, 630 A.2d 1104 (1993). For purposes of the motion to dismiss, the allegations in

the complaint are assumed to be true. See *Vincent v. Anderson*, 621 A.2d 367 (1993); *Fred Ezra Co. v. Pedas*, 682 A.2d 173 (1996).

Plaintiff argues that Count 3 of defendant's Counterclaim, breach of fiduciary duty, should be dismissed for two reasons. First, Plaintiff argues that it and defendant did not share a fiduciary relationship, and, as a result, it would be impossible for plaintiff to have breached any fiduciary duty. Plaintiff explains that there was no fiduciary relationship because the relationship that existed between plaintiff and defendant did not fit within the "traditional" notions of a fiduciary relationship, such as that of attorney-client, or doctor-patient. Plaintiff's second argument is that the relationship between the two parties was entirely contractual in nature, and that any duty or obligation owed between them arose solely out of the RRR agreement.

Defendant argues that the parties did in fact share a fiduciary relationship, due to the fact that defendant was relying on plaintiff, who defendant feels was in a position of superior knowledge and influence. Defendant further argues that plaintiff offers no legal support for its argument that the relationship between them must fall into one of the "traditional" categories in order for the defendant's breach of fiduciary duty Counterclaim to lie.

The Court agrees with defendant. Although the relationship between plaintiff and defendant may not fit into the "traditional" mold of one of the types of relationships for which claims of breach of fiduciary duty are typically filed, the Court sees no reason why defendant cannot bring its claim. The Court agrees with defendant that whether or not a claim for breach of fiduciary duty lies depends on the facts of each individual case. See *Church of Scientology, Int'l. v. Eli Lilly & Co.*, 848 F. Supp. 1018 (D.D.C. 1994).

16d-000619

Moreover, the Court also finds that plaintiff's argument that defendant's breach of fiduciary duty claim is not factually distinct from its breach of contract claim, and that it therefore cannot be brought, has no merit. The Court agrees with defendant that claims for breach of fiduciary duty and claims for breach of contract can be overlapping. In any event, the Court finds that defendant has alleged, at least in part, differences between the two claims. Therefore, construing all facts in the light most favorable to defendant, the Court finds that defendant may go forward with Count 3 of its Counterclaim, breach of fiduciary duty and the plaintiff's motion to dismiss Count 3 is **denied.**

Plaintiff next argues that defendant's Count 4, tortious interference with business relations, and defendant's Count 5, tortious interference with prospective business advantage, should be dismissed. Plaintiff argues that Count 4 should be dismissed because there is no contract between the doctors and the hospital, and therefore defendant cannot bring a claim for interference with contract. Plaintiff does not explain why it feels Count 5 should be dismissed. Defendant argues that tortious interference with business relations and tortious interference with prospective business advantage are two separate tort claims in the District, and that there is no requirement that defendant must prove the existence of a contract in order to bring a claim for tortious interference with business relations. See *Bennett Enters. V. Domino's Pizza, Inc.*, 45 F.3d 493 (D.C.C. 1995).

Plaintiff also argues that Count 4 should be dismissed because defendant has failed to plead the requisite level of intent to prove the claim. The Court agrees with defendant's argument that it only need plead some form of "egregious" behavior, and it has so plead. See *Genetic Sys. Corp. v. Abbott Labs,* 691 F. Supp. 407, 422 (D.D.C. 1988). Therefore, because there is no requirement in the District that a contract must

exist for a claim of tortious interference with business relations to lie, and because defendant has plead egregious behavior in relation to the claim, the Court finds that defendant may bring Counts 4 and 5 of its Counterclaim. In addition, as will be discussed at pp. 7-8, *infra*, the Court finds that NCRIC'statements as alleged in Counts 4 and 5 are not privileged. The plaintiff's motion to dismiss Counts 4 and 5 is accordingly **denied.**

Plaintiff next argues that defendant's Count 6, negligence, must be dismissed because it arises entirely out of the contract between the two parties, and it is therefore no different than defendant's Count 1, breach of contract. To bring both claims, plaintiff argues, would be redundant. Defendant argues that plaintiff had a duty of care when performing as defendant's bookkeeper in addition to plaintiff's simple contractual obligation to perform as bookkeeper. In this instance, the Court agrees with plaintiff. The Court fails to see any meaningful distinction between defendant's Count 1, breach of contract, and defendant's Count 6, negligence. Therefore, the plaintiff's motion to dismiss Count 6 of defendant's Counterclaim is **granted.**

Plaintiff also argues that defendant's Count 7, actual and/or constructive fraud, and Count 8, negligent misrepresentation, should be dismissed because they are entirely based upon the existence of the breach of contract between the parties. Defendant argues that Counts 7 and 8 are based on actions that took place after the parties entered into the contract, and are separate from plaintiff's obligations under the contract. Defendant explains that while its breach of contract claim alleges that plaintiff failed to pay defendant amounts owed under the contract, defendant's fraud and misrepresentation claims allege that plaintiff misrepresented the actual amount it failed to pay plaintiff. The

16d-000621

Court finds that there is a distinction between the breach of contract claim, and the fraud and misrepresentation claims. Therefore, defendant can go forward with Counts 7 and 8 and plaintiff's motion to dismiss these claims is **denied.**

Plaintiff next argues that defendant is barred from bringing Count 8, fraud, Count 9, defamation and libel, and Count 10, trade libel/commercial disparagement/injurious falsehood, because the statute of limitations for each claim has expired. Beginning with Count 9, the statute of limitations for defamation or libel is one year. D.C. Code 12-301(4) (1999). Some of the statements alleged as a basis for defendant's Count 9 were made in August of 1998. Defendant's Counterclaim was filed in December of 2000, clearly beyond the one-year statute of limitations. The rest of the statements asserted as libelous in Count 9 of defendant's Counterclaim were made in July and August of 2000. The Counterclaim was filed within the one-year statute of limitations for these statements. Therefore, regarding Count 9, the Court finds that defendant may not proceed on the basis of the 1998 statements, but defendant may go forward on this Count with respect to the July and August 2000 statements.

In terms of Count 8, fraud, plaintiff argues that because it arises out of the 1998 statements, it should be dismissed as well. Defendant argues, and the Court agrees, that defendant's fraud claim does not arise out of the 1998 statements. The Court finds that Count 8 of defendant's Counterclaim is not barred by the statute of limitations and the plaintiff's motion to dismiss Count 8 is **denied.**

Plaintiff argues that the facts giving rise to defendant's Count 10, injurious falsehood, arise from the same 1998 statements barred by the statute of limitations in Count 9. Defendant argues that rather than applying the one-year statute of limitations

16d-000622

for defamation, which protects personal reputation, the Court should apply the three-year statute of limitations for tortious interference with business relations, defendant's Count 4, to its injurious falsehood claim, as both tortious interference with business relations and injurious falsehood protect business or economic interests. The Court has reviewed the cases cited by defendant, and has decided that it agrees. See *Pro Golf Manufacturing, Inc. v. Tribune Review Newspaper Company*, 761 A.2d 553 (Penn. 2000); *Guess v. The Superior Court of Los Angeles County*, 176 Cal. App. 3d 473 (1986).

In *Guess*, the real parties in interest sued petitioner for trade libel, among other claims. Petitioner filed a motion for summary judgment with the trial court, arguing that the case should be dismissed because the statute of limitations for libel was one year, and had expired. The trial court denied defendant's motion, applying the statute of limitations for actions "upon a contract, obligation, or liability not founded upon an instrument of writing...." instead which in California is two years, *Id.*, at 476. Petitioner filed a writ of mandamus, arguing that the one-year statute of limitations should apply. The appellate court denied the petition, finding that although various courts around the country are split on the issue, the better finding is that the statute of limitations for trade libel or injurious falsehood is two years, rather than the one-year statute of limitations for libel or defamation. *Id.*, at 479. The court based its opinion on the fact that the one year statute of limitations applies to "all alleged infringement of personal rights," while the two year statute of limitations applies to "only alleged infringements of property rights." *Id,* at 478 (Quoting *Richardson v. Allstate Ins. Co.*, 117 Cal. App. 3d 8, 12 (1981). The court also cited to Prosser and Keaton, and the fact that they recognized an important distinction between defamation and injurious falsehood. *Id.*

Similarly, in *Pro Golf*, the Pennsylvania court compared the elements of "classic" defamation to the elements of injurious falsehood. In making its decision on whether to apply the statute of limitations for defamation or the statute of limitations for most other torts, the court found it significant that in proving injurious falsehood, the party bringing the claim must show actual pecuniary loss. *Id.*, at 555. While a party bringing a defamation claim must also show harm, it is a different type of harm, one involving "impairment of reputation and standing in the community ..." Id. Therefore, the court found that while sometimes overlapping, the two claims were entirely distinct. Because of the economic harm that must be shown in injurious falsehood claims, the court found that the correct statute of limitations to be applied is the one for tortious interference with property, rather than the statute of limitations for defamation. *Id*, at 557.

This Court agrees with the reasoning of the California and Pennsylvania courts. Defendant's claim for injurious falsehood seeks damages for an economic harm alleged to have been done to it by plaintiff. As such, the Court finds that the statute of limitations that should be applied is the same as that for claims of injury to property, which is three years. D.C. Code § 12-301(3) (1999).

Plaintiff argues that defendant's Count 10 also should be dismissed because the statements that the clinic "was a dangerous place to work," and that defendants "self-insurance trust was insufficiently funded to insure" the clinic are simply opinions of plaintiff about facts. Plaintiff further argues that the statements are not actionable because they are legal opinions. Finally, plaintiff argues that the statements are protected by an "insurer-insured" privilege. Defendant argues that the statements are not privileged because they were known to be false when made, that while the statements may have

16d-000624

been opinions about facts, they are still actionable, and that the statements were not legal opinions because they were statements of fact, not statements about "matters of law." The Court agrees with defendant.

First, because defendant alleges in his Counterclaim that the statements made were known to be false at the time they were made, the Court finds that defendant has alleged that they were made in "bad faith." Thus, the statements are not subject to qualified privilege at this time. See *Hahn v. Kotten*, 331 N.E.2d 713 (Ohio 1975); *International Adm'rs., Inc. v. Life Ins. Co.*, 753 F.2d 1373 (7th Cir. 1985); *Nasr v. Connecticut Gen. Life Insurance Co.*, 632 F. Supp. 1024 (N.D. Ill. 1986). Next, the Court finds the statement relating to the safety of the clinic's working environment and the statement regarding the sufficiency of the self-insurance trust are capable of bearing a defamatory meaning. See *Guilford Transp. Indus. Inc. v. Wilner*, 760 A.2d 580, 594 (D.C. 2000). Finally, the Court finds that the statements giving rise to defendant's Count 10 were not statements of legal opinion. Therefore, because Count 10 is not barred by the statute of limitations, and because the statements do not appear to the Court to be privileged, non-actionable statements of fact, nor legal opinions, defendant may go forward with its claim of injurious falsehood. Plaintiff's motion to dismiss Count 10 is **denied.**

Plaintiff next argues that defendant's claims for punitive damages in Count 1, breach of contract, Count 2, breach of implied covenant of good faith and fair dealing, Count 3, breach of fiduciary duty, Count 8, fraud, and Count 11, conversion[1], are not

[1] Plaintiff also argues that defendant's claim for punitive damages in Count 6, Negligence, is not permitted by law as well. However, because the Court is dismissing this claim for other reasons, there is no need to address plaintiff's argument regarding Count 6. See *supra*, at 4.

16d-000625

permitted by law. Plaintiff argues that Counts 1, 2, and 3 are based on contract claims for which punitive damages are not permitted. Plaintiff argues that defendant has not alleged the requisite "malice" to be able to recover punitive damages for Counts 8 and 11. Defendant argues that it has alleged bad faith, fraud, and malfeasance in relation to all of the claims for which it has claimed punitive damages. Defendant also argues that while punitive damages are generally not permitted for breach of contract claims, there is an established exception in cases where the parties also shared a fiduciary relationship.

Defendant argues that punitive damages are allowed in contract claims when the breach of contract "merges with and assumes the character of a willful tort." *Brown v. Coates*, 253 F.2d 36, 38 (D.C. Cir. 1958). Defendant claims that this is particularly true when the willful tort the breach of contract claim merges with is breach of fiduciary duty. *Wagman v. Lee*, 457 A.2d 401(D.C. 1983). Of course, the general rule regarding punitive damages for contract damages is that "where the basis of a complaint is [for] breach of contract...punitive damages will not lie, even if it is proved that the breach was willful, wanton, or malicious." See *Sere v. Group Hospitalization, Inc.* 443, A.2d 33 (D.C. 1980) (citations omitted). Punitive damages are generally disfavored in the law. See *Id.*, at 37. While the Court agrees that defendant has accurately described the court's conclusion in *Brown*, the opinion in that case also stressed that whether punitive damages for breach of contract could be brought was to be assessed entirely on a case-by-case basis. See *Brown, supra* 253 F.2d, at 40. Defendant alleges, and the Court has found, that defendant's breach of fiduciary duty claim is separate from its breach of contract claim. See *supra,* at 3. In order for punitive damages to lie in a breach of contract claim, "the breach must merge with and assume the character of a willful tort." See *Sere*, at 37. The

16d-000626

Court finds that this is not the case here, and therefore, defendant cannot claim punitive damages for Counts 1 and 2.

Factors that can support a claim for punitive damages for claims based in tort include "fraud, ill will, recklessness, wantonness, oppressiveness, willful disregard of the [other party's] rights, or other circumstances tending to aggravate the injury." *Jemison v. National Baptist Convention, USA, Inc.*, 720 A.2d 275, 286 n.10 (D.C. 1998); *Wagman,* at 405 (D.C. 1983). The Court has reviewed the entirety of defendant's Counterclaim, and finds that for Counts 8 and 11, defendant has not sufficiently alleged the kind of egregious behavior necessary to succeed on a claim for punitive damages.

Defendant has brought a claim for negligent misrepresentation, not a claim for fraudulent misrepresentation. By its very nature, negligent misrepresentation does not rise to the level of wrongful conduct necessary for a finding of punitive damages. To succeed on a claim of negligent misrepresentation, the party bringing the claim must show 1) that the opposing side made a false statement or omitted a fact that it had a duty to disclose, 2) that it involved a material issue, and 3) that the party bringing the claim reasonably relied upon the false statement or omission to his determent for the period of time at issue in this case. See *Hall v. Ford Enter., Ltd,* 445 A.2d 610, 612 (D.C. 1982); *Redmond v. State Farm Insurance Comp.,* 728 A.2d 1202, 1207 (D.C. 1999).

To succeed on a claim of fraudulent misrepresentation, on the other hand, the moving party must show 1) that the defendant made a false representation of material fact; 2) that the defendant either made the representation knowing that the representation was false, or made the representation recklessly without knowing it was true; 3) that the defendant made the representation with the intent to deceive the plaintiff; 4) that the

16d-000627

plaintiff justifiably relied on the representation, and 5) that the plaintiff suffered damages as a result of his or her reliance on the representation. See *Herculed & co. v. Shauna Restaurant Corp.*, 613 A.2d 916, 923 (D.C. 1992); *Pyne v. Jamaica Nutrition Holdings Ltd.*, 497 A.2d 118, 131 (D.C. 1985).

Defendant's claim is styled as one of negligent misrepresentation. Upon reviewing the facts alleged in defendant's Count 8, the Court finds that while defendant may have alleged more than just ordinary negligence on the part of plaintiff, it still does not rise to the level necessary for a claim of punitive damages. Punitive damages are generally disfavored, and not every finding of fraud warrants a finding of punitive damages. See *Feltman v. Sarbov*, 366 A.2d 137, 140 (D.C. 1976). An award of punitive damages is proper "only when the tort is aggravated by evil motive, actual malice, deliberate violence or oppression." *Id.* Defendant has not alleged this sort of egregious conduct. Therefore, the Court finds that defendant may not bring a claim for punitive damages for Count 8 of its Counterclaim.

Likewise, defendant's conversion claim, Count 11, makes no allegation of conduct necessary for a claim of punitive damages. Defendant's claim states that:

> NCRIC interfered with Medical Center's property to the exclusion and in defiance of Medical Center's rights to the property by not returning Medical Center's payments when and to the extent that NCRIC subsequently owed Medical Center Return Premium.

Defendant makes no allegation of malice, evil motive, or even wilfullness. The Court finds that the allegations in Count 11 are not enough to support a claim of punitive damages.

Defendant may go forward with its claim for punitive damages for Count 3, breach of fiduciary duty. The law is clear that punitive damages are recoverable for

16d-000628

claims of breach of fiduciary duty. See *Wagman v. Lee*, 457 A.2d 401 (D.C. 1983). Accordingly, the Court finds that as to the claims for punitive damages challenged by plaintiff in its motion to dismiss, defendant may only claim punitive damages for Count 3, its breach of fiduciary duty claim. Plaintiff's motion to dismiss defendant's punitive damages claims is **granted** as to Counts 1, 2, 8, and 11; and **denied** as to Count 3.

Plaintiff finally argues that defendant's claim for attorney's fees is not permitted by law. See *Concord Enterprises, Inc. v. Binder*, 710 A.2d 219 (D.C. 1998). Defendant argues that because it is alleges that plaintiff has brought this suit in bad faith, it can bring a claim for attorney's fees. See *Goffe v. Pickard*, 588 A.2d 265, 271 (D.C. 1991). The Court agrees with plaintiff. If defendant wishes to bring a claim for attorney's fees based on bad faith in filing suit, it must do so after this case has concluded. See SCR-Civil R. 11(c)(1); see *Morowitz v. Marvel*, 423 A.2d 196 (D.C. 1980). Therefore, defendant's claim for attorney's fees is **dismissed.**

Accordingly, it is, this 3rd day of July, 2001, hereby

ORDERED that plaintiff's motion is **GRANTED IN PART** and **DENIED IN PART,** as set forth with particularity above.

SO ORDERED.

Judge Linda Kay Davis
(Signed in Chambers)

16d-000629

Copies mailed from Chambers:

Roy Niedermayer
7475 Wisconsin Ave., Suite 500
Bethesda, MD 20814

Mark Hansen
Joseph Leahy
KELLOGG, HUBER, HANSEN, TODD & EVANS, PLLC
1615 M Street, N.W. Suite 400
Washington, D.C. 20006

16d-000630

7/11/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DEFENDANT'S OBJECTIONS TO THREE NOTICES OF RULE 30(b)(6) DEPOSITION OF DEFENDANT

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby objects as follows to the three Notice[s] of Rule 30(b)(6) Deposition of Defendant (collectively, "Notices"), served by Plaintiff NCRIC, Inc. ("NCRIC") on June 26, 26 and 28, 2001, respectively.

GENERAL OBJECTIONS

These General Objections apply to each and every one of the deposition subjects listed in NCRIC's Notices ("deposition subjects") and form an integral part of Columbia's Objections to each such notice:

1. All general objections set forth in Defendant's Objections to Plaintiff's Notice of Deposition Pursuant to Superior Court Rule 30(b)(6) ["Defendant's Objections"] (April 4, 2001) are incorporated by reference as if fully stated herein, and are applicable to each topic unless specified otherwise.

SPECIFIC OBJECTIONS

The specific objections to Subjects 1 through 57 (inclusive) set forth in Defendant's Objections are incorporated by reference as if fully stated herein, and are applicable to the corresponding Subjects listed in each Notice (i.e., the specific objections to Subject 1 of Defendant's Objections are incorporated herein and applicable to Subject 1 of each Notice; the specific objections to Subject 2 of Defendant's Objections are incorporated herein and applicable to Subject 2 of each Notice, etc.).

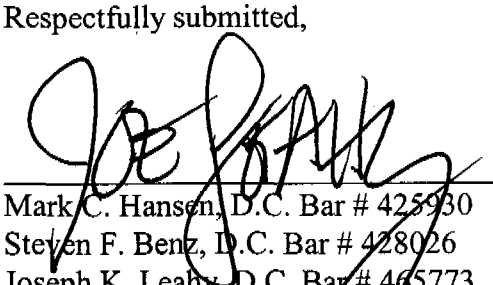
Subject to and without waiving the foregoing objections, Columbia has designated or will designate witnesses for subjects 4, 9, 15-27, 29, 31-50, 53 and 54.

Subject No. 58: Negotiations and discussions resulting in the Addenda and amendment of the contract between the parties in 1996, 1998, 1999 and 2000.

Objections to Subject No. 58: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it requests information that is solely in NCRIC's possession and/or to the extent that the Subject requests information already provided to NCRIC in Columbia's responses to NCRIC's interrogatories. Columbia also objects to this Subject to the extent that it calls for the disclosure of information protected by any privilege, including but not limited to the work-product privilege. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents, but rather, is in the possession of counsel for Columbia and/or non-party witnesses. Subject to and without waiving the foregoing objections, Columbia will designate a witness with regard to Subject No. 58.

DATED: July 11, 2001

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-000633

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 8/12/01
	)	
Defendant.	)	

OPPOSITION TO DEFENDANT'S MOTION TO EXTEND DEADLINE FOR PROPONENT'S RULE 26 (b)(4) STATEMENT
and
PLAINTIFF'S RENEWED MOTION *IN LIMINE* TO PRECLUDE DEFENDANT'S EXPERT TESTIMONY

PLAINTIFF'S ALTERNATIVE MOTION FOR ADDITIONAL TIME TO FILE OPPONENT'S RULE 26 (b)(4) STATEMENT

PLAINTIFF'S ALTERNATIVE MOTION FOR LEAVE TO COMPLETE DISCOVERY ON DAMAGES AFTER THE DISCOVERY DEADLINE

PLAINTIFF'S ALTERNATIVE MOTION FOR LEAVE TO DEPOSE DEFENDANT'S EXPERTS

NCRIC, Inc. ("NCRIC"), by counsel, opposes the defendant's Motion to Extend Deadline for Proponent's Rule 26 (b)(4) Statement for the reasons stated in this Opposition and, in conjunction with this Opposition, moves this Court pursuant to SCR 37, the procedures of the General Order for Civil II cases, and SCR 26(b)(4)(A)(ii) for an order precluding defendant from offering expert testimony at trial on the grounds that: (a) defendant failed to timely file its Rule 26(b)(4) statement as required by the Court ordered

June 26, 2001 deadline and (b) defendant failed to provide the substance of the facts and opinions to which its experts are expected to testify along with and a summary of the grounds for each opinion.

In addition, and alternatively in the event the Court grants defendant's Motion to Extend and denies NCRIC's Motion *in limine* to Preclude Defendant's Expert Testimony, NCRIC moves the Court pursuant to the procedures of the General Order for Civil II cases, SCR 16, and SCR 26 as follows:

1. For an order granting NCRIC an extension of time from July 26, 2001 to August 9, 2001 within which to file its Opponent's Rule 26 (b)(4) Statement;

2. For an order granting NCRIC leave to complete discovery by deposition and otherwise on defendant's damages and calculation of damages to be testified to by defendant's experts after the current August 12, 2001 discovery completion deadline set in the Court's amended Scheduling Order dated May 11, 2001; and

3. For an order granting NCRIC leave to take the depositions on oral examination of defendant's experts.

I. Actual and Total Scope of the Breach by Defendant's Calculated Failure to File a Timely and Complete Proponent's Rule 26(b)(4) Statement

For the second time,[1] defendant Columbia Hospital for Women, Inc. ("Columbia") has failed to comply with the applicable Scheduling Order for the Court-ordered timely submission of its Rule 26(b)(4) Statement on experts by June 26, 2001 and has not even provided the minimally required information about the experts' opinions mandated for its 26(b)(4) statement. Defendant blames NCRIC entirely for its own failures, claiming NCRIC's delayed production of documents needed for defendant's experts,[2] rather than its own lack of early diligence, its own failure to commit sufficient time and personnel to completion of document review in the face of the impending June 26, 2001 deadline, and repeated changing of experts (both the specific persons designated as well as the fields in which expertise is offered).[3] Because of the impending close of

---

[1] This action was filed in October 2000. Defendant filed its initial counterclaims about November 6, 2000. The Initial Conference was held on January 12, 2001 and set a March 12, 2001 date for the filing of the Proponent's Rule 26(b)(4) statement on experts. For 5 months after suit was commenced and for 3 months after the Scheduling Order was entered and with a set date for Proponent's Rule 26(b)(4) Statement, defendant did nothing to obtain any of the data from NCRIC it then claimed and now claims it needed for prospective experts it "might" call to testify. When it finally realized its dilatory commencement of discovery prevented obtaining the loss reserve documents it wanted for any experts by the March 12, 2001 deadline (defendant only filed its first request for documents about March 3, 2001), defendant finessed the 26(b)(4) statement by listing two experts it had not yet "retained" but with whom it was negotiating and might retain, so that no 26(b)(4) Statement information on the substance of actual opinions was provided. Instead, defendant sought to amend the Scheduling Order. NCRIC opposed this and made a Motion *in limine*. The same sequence has essentially repeated itself this time.

[2] Defendant faults NCRIC for its own failures, going so far as to disingenuously claim that the reason for its prior Motion to Amend Scheduling Order was due to NCRIC's failure to produce the same documents at issue here. In fact, Columbia knew at the time it filed its first Motion to Amend Scheduling Order those documents were not yet even due to be produced.

[3] In its first 26(b)(4) statement, defendant named two potential experts, Ms. Wright and Ms. Harriman with Dr. Chukwueizi as an alternative. In response to NCRIC's 30(b)(6) notice of deposition, defendant designated the president of the defendant (Larry

discovery and Columbia's neglect in failing to designate its experts by even the new deadline granted by the Court, Defendant's repeat attempt to circumvent the Court's Scheduling Order should be denied.

What is critical now is that the Court comprehend the full magnitude and scope of Columbia's avoidance of the deadline and why the present situation is not merely Columbia's need for added time because of its lack of information from NCRIC, even were the latter matter true in the degree selectively presented by Columbia in its motion. Columbia avoids addressing the substantive change in latest 26(b)(4) Statement by focusing the Court's entire attention on the issue of delayed production of documents by NCRIC dealing with loss reserves. Defendant would have the Court believe that its entire failure to comply with the Scheduling Order and supply its experts' opinions was attributable to its experts' lack of materials about loss reserves in NCRIC's possession and necessary for both of Columbia's experts' opinions. The facts will show this is simply not true.

The magnitude of, and the reasons for, defendant's failures in designating experts are far more egregious than are set forth in its Motion to Extend. What must be understood is defendant's counterclaims seek essentially two entirely different types of

---

Wilson) as the person to address damage calculations. Compare NCRIC's Notice of 30(b)(6) Deposition subject matter number 9, Exhibit 1, with defendant's designation of Mr. Wilson (Exhibit 2). At the June 26 Wilson deposition, defendant informed NCRIC that Mr. Wilson would not testify as to the calculation of damages. Exhibit 11. At the same time on June 26, defendant changed experts again and named two different experts, Mr. Ezra and Ms. Brill (Defendant's Rule 26(b)(4) Statement), one of whom was to render opinions in an area not previously identified. So defendant not only changed its experts, but took advantage of the opportunity to name a type of expert in a new area not heretofore identified and then seeking to preclude NCRIC from adequate response and discovery time by pushing back the date for its Rule 26(b)(4) Statement to July 12, 2001.

damages which are calculated differently and which are based on wholly different underlying facts. To simplify terminology issues, plaintiff will refer to the different categories as follows:

1. Tort Damages. Generally, these are damages which Columbia claims result from such tortious acts of NCRIC[4/] as interfering with Columbia's business relationships with the physicians who refer patients to Columbia (Counterclaim Counts 4-5, 8-10) or damaging defendant's reputation with a consequent loss of revenue, financing, profit opportunities, and other economic losses. See Counterclaim Counts 4-5 and 8-10.

2. Contract Formula Damages. These are damages resulting from NCRIC's claimed failure to perform correct calculations of Additional Premium or Return Premium[5/] under the Retro Plan formula. The result of this failure is that NCRIC claims it is owed Additional Premium while Columbia contends it is owed Return Premium (or lower Additional Premium). The calculation of damages is based on a contract formula ("Formula") contained in the Retro Plan contract between NCRIC and Columbia. The Formula requires the multiplication and addition of 5 different factors in order to come up with the Additional or Return Premium.[6/] The amount used as Loss Reserves affects the

---

[4/] E.g., interference with business relations and prospective business advantage, defamation and disparagement, and negligent misrepresentation.

[5/] Pursuant to the agreement, Columbia paid periodic premiums for each year of the Retro Plan, and any over payment ("Return Premium") was to be returned to Columbia with under payments ("Additional Premium") paid to NCRIC.

[6/] In its simplest explanation, the formula is: Loss Reserves multiplied by a Development Factor. The resulting mathematical product is added to Paid Losses for the period and then the new sum is multiplied by a Development Factor from the contract. The defined applicable Basic Premium is then added to this final product to determine the Return or Additional Premium. For purposes of this discussion, the exact operation of the

magnitude of and whether there is Additional or Return Premium. These damages are claimed in Counterclaim Counts 1-3, 6-7, and 11.

Columbia recognizes the differences in these types of damages and the different expert testimony needed for its proof of each type. Defendant has named two experts in its incomplete Rule 26(b)(4) Statement filed June 26, 2001: Peter Ben Ezra and Julia M. Brill. Mr Ezra is expected to testify about the damages to Columbia caused by the torts asserted in Counterclaim Counts 4-5 and 8-10. Ms. Brill's testimony and opinions deal with loss reserves and the Loss Reserve factor in the Formula. See Exhibit 3.

The failure of Columbia to file a timely and complete Rule 26(b)(4) must be judged separately with regard to each of these areas of damages and as to each expert. THIS IS A CRITICAL DISTINCTION WHICH COLUMBIA AVOIDS IN ITS ARGUMENTS BY LUMPING THE TWO EXPERTS TOGETHER AND ATTRIBUTING ITS FAILURE TO COMPLY WITH THE RULE 26(b)(4) STATEMENT REQUIREMENTS TO NCRIC'S ALLEGED FAILURES.

Plaintiff will discuss each category of expert individually below.

II. Columbia Failed to Comply with the Deadline for Filing and Providing the Content of its Proponent's Rule 26(b)(6) Statement As to the Tort Damages and the Deadline Should Not Be Extended Because any Necessary Information for Expert Review was in the Sole and Exclusive Possession of Columbia Well Prior to the Rule 26(b)(4) Deadline.

A. The failure to designate Mr. Ezra was unrelated to any alleged document production delay by NCRIC

Formula is not important, merely that the Loss Reserves are an element of the calculation.

Columbia's failed designation of Mr. Ezra as an expert on the tort damages has absolutely nothing to do with any alleged delay in the production of documents about loss reserves. Mr. Ezra does not need any of those documents in order to form his opinions on tort damages, and Columbia has not made any showing of any connection between the loss reserves and tort damages. No expert needs any of these loss reserve documents to form opinions about loss of revenues because the documents are irrelevant to such an analysis and opinions.

Indeed, the documents which are needed under Columbia's tort theories are financial statements of Columbia for the applicable periods, income and expense data, doctor referral of patient data, gross and net profit margin data, and similar materials.[7/] All of these materials are, and have always been, in the sole possession of Columbia since the moment it filed its Counterclaims. NCRIC has none of these documents in its possession to produce and, tellingly, Columbia has not asked NCRIC to produce them in any of Columbia's requests for production of documents. Presumably, the determination

---

[7/] In fact, NCRIC has been trying to discover these very materials since almost the inception of the case. See interrogatory nos. 6, 7, and 12 of NCRIC's First Set of Interrogatories to Columbia (dated October 26, 2000) attached hereto as Exhibit 4; requests nos. 2 and 6 of NCRIC's First Requests for Production of Documents to Columbia (dated October 26, 2000) attached hereto as Exhibit 5; requests nos. 2, 4, 7, 13, 36, and 37 of NCRIC's Second Requests for Production of Documents to Columbia (dated January 12, 2001) attached hereto as Exhibit 6; subject matter nos. 9, 19-20, 26-27, 30-32, 34, 37, 39, 47, and 53 of NCRIC's Notice of 30(b)(6) Deposition (dated March 14, 2001) attached hereto as Exhibit 1; all of which were objected to and no deponent produced by Columbia [See Columbia Objections to NCRIC Notice of 30(b)(6) Deposition filed April 5, 2001 and refusal to testify attached hereto as Exhibit 7]; and NCRIC's latest series of Notice of 30(b)(6) Deposition attached hereto as Exhibit 8. To date, NCRIC has been unable to obtain any calculation of these damages despite its repeated efforts through discovery to do so because of the manner of Columbia's opposition and its nonresponsive discovery.

of these damages was part of the ongoing, thorough investigation of facts and documents by Columbia which was used by defendant as a justification for its Motion for Amended Scheduling Order last time. See, *e.g.*, Columbia's Motion to Amend Scheduling Order at 4.

Thus, Columbia could and should have made the designation of an expert on this particular subject matter at the March 12, 2001 Rule 26(b)(4) deadline. There was no reason at all which prevented it from doing so, since no discovery was needed from NCRIC and Columbia had already had two months within which to come up with the expert and perform the analysis.

Interestingly, Columbia in its initial incomplete Rule 26(b)(4) Statement which it did file did not name or even suggest any expert to testify on the subject matter of the tort damages that Mr. Ezra will now attempt to testify about. Both "unretained" and potential experts named by Columbia were to testify solely about loss reserves. Only now has Columbia decided to have an expert on the tort damages. It certainly could have made this decision and started its analysis process earlier, enabling it to meet the June 26, 2001 deadline for an expert on these subject matters. It is irrelevant whether these actions exhibit Columbia's lack of diligence or conscious decisions designed for some dilatory or tactical reason.

Further, there can be no justification for Columbia's lack of diligence in failing to file a Rule 26(b)(4) Statement about Mr. Ezra in particular and about providing the substance of his opinions by either March 12, 2001 or June 26, 2001. Mr. Ezra is a CPA with financial expertise known to, and employed by, Columbia for a long time as a consultant in its "long period of receivership and . . . bankruptcy" who has "intimate

knowledge of Columbia's financial affairs. . . ." Surely it would have been easy to "discover" him and his opinions more rapidly since he was already familiar with Columbia's financial situation.

Nothing NCRIC did or could have done affected Columbia's ability or obligation to provide a timely Rule 26(b)(4) statement with respect to an expert such as Mr. Ezra or Mr. Ezra himself by June 26, 2001.

B. NCRIC will be severely prejudiced if Mr. Ezra is permitted to testify

Columbia's delay and failure to designate Mr. Ezra significantly prejudices NCRIC's ability to obtain opponent experts and have them complete their analysis and opinions in time for NCRIC's current July 26, 2001 deadline or even the close of discovery. NCRIC could not have known from Columbia's earlier March 12, 2001 Rule 26(b)(4) statement that there would be any experts on the tort damages. It has been surprised by this recent discovery. In none of the discovery responses to date has Columbia provided any calculation of such damages or made any suggestion of an expert on these damages despite outstanding discovery from NCRIC since October 2000 addressing these very issues. NCRIC still does not know any element critical of the calculation or Mr. Ezra's analysis. Does NCRIC need a CPA or a hospital administration consultant or an economist or simply a person familiar with the medical market and doctor referral – or all of these? NCRIC still has no inkling of what it will be required to rebut.

NCRIC cannot begin gathering the necessary information through discovery because it cannot be sure what information will be needed, and may not be able to obtain

sufficient information from Columbia in time anyway. [8/] To the contrary, NCRIC's attempts at discovery throughout this proceeding have been thwarted by Columbia's failure to provide even the most basic information about its damages.

NCRIC also cannot initiate the analytical process without knowing what it is that it must address. It does not know what defendant's calculations show, what is the methodology for calculation, or what are the assumptions and factual bases for the analysis and opinions because Columbia has not provided any of this information and does not want to provide it until July 12. Knowing the subject matter of Mr. Ezra's opinions is insufficient. If Columbia is simply allowed to present this information on July 12, then NCRIC will not have sufficient time to retain its own expert and file its own timely Rule 26(b)(4) Statement.

With regard to this area of expert testimony, Columbia has manipulated the process by its late decisions on experts, repeated change of the types of expert testimony and the identity of particular experts, and late or incomplete filings coupled with Motions to Amend the Scheduling Order. This will effectively deprive NCRIC of adequate time to

---

[8/] While Columbia repeatedly complains about NCRIC's delays in production of documents, the Court should note that NCRIC sent Columbia detailed requests for production of documents in January 2001. Columbia did not exert reasonable or diligent efforts to produce the documents in a timely manner, but instead produced documents on: December 21, 2000; January 12, February 6, March 5, March 14, April 13, April 19, May 30, June 8, 12, and 18, and July 5, 2001. In fact, the financial information which NCRIC surmised might be useful to challenge Columbia's damages in this area (see footnote 7) has only recently been produced. NCRIC obtained a CD computer disk with patient referral data on it only about June 18, 2001 – and the production was only a document containing lists of numbers without any explanation. It was only after NCRIC noticed the deposition of a Columbia agent who could explain the seemingly random and meaningless numbers on the page that Columbia provided a key to the columns on July 6, 2001. See Exhibit 10. Based on these experiences, NCRIC does not reasonably expect Columbia to be more forthcoming on the critical area of expert testimony.

obtain its own experts for trial. Simply giving NCRIC more time and extending discovery is not an appropriate solution where Columbia has ignored the Scheduling Order and SCR 16 and SCR 26 twice in this particular expert area for no justifiable reason or valid reason. If the Court's Scheduling Order deadlines are to have any meaning, Columbia must be barred from introducing an expert in the tort damages area where it had exclusive control over its expert designation unfettered by the need of data from NCRIC. It's no different than if NCRIC claimed it needed extra time on loss reserves because Columbia failed to produce documents on loss of patient revenues or damages to reputation. Defendant's lax attitude toward discovery and expert designation should not be rewarded. Sanctions for failure to comply with the deadlines in the Rules and Order of this Court should not be avoided simply by giving the opposing party a similar extension.

C. Conclusion

As to Mr. Ezra, both because of the lack of any prior notice that expert testimony in this area would be presented and because of the untimely and insufficient Rule 26(b)(4) information provided by June 26, 2001 without justification, the Court should grant the Motion *in limine* and prevent expert testimony from Columbia in this area.

III. Columbia Failed to Comply with the Deadline for Filing and the Content of its Proponent's Rule 26(b)(4) Statement As to the Loss Reserves Due to Its Own Lack of Diligence, and the Deadline Should not be Extended.

A. The failure to designate Ms. Brill was caused by defendant's own lack of diligence

Columbia's argument for indulgence in the area of its loss reserve expert testimony is also without merit. The argument is based solely on a justification that NCRIC's document production was delayed. Columbia's description of the events and

exchanges between the parties about these matters is selective of the events. NCRIC asks the Court to consider:

1. Columbia started its discovery 3 months after the Initial Conference and the Scheduling Order set the discovery and expert designation deadlines, so it was pressed for time once it began discovery.

2. Columbia requested all of NCRIC's underwriting and claims files from 1993 to date, many of which were stored offsite and took time to be retrieved. The volume and quantity of the approximately 150 requested claims files alone was about 40 to 50 boxes. Even a more limited production at Columbia's request involved 10 boxes.[9/]

3. NCRIC produced extensive documents and files beginning May 22, 2001 including claims files. It assembled documents in its conference rooms on the second and third floors. Once the initial arrangements for production were made, counsel for Columbia was instructed he "may continue to review the documents from day-to-day until you have exhausted the documents provided. This means that you are welcome to return on Wednesday, Thursday, Friday, and thereafter from day-to-day." See E-mail of Roy Niedermayer dated May 21, 2001 included in Columbia Exhibit E to the Motion to Extend. Only one reviewer for Columbia viewed documents on May 22, and for only

---

[9/] Columbia initially designated only 33 specific claims files to be produced. After these documents were produced, Columbia expanded its request to include several times the files first asked for. These documents, too, are being provided.

about 3 hours. No one for Columbia came on May 23, 24, 25 or 30.[10/] Some claims files were available on those days in a second floor conference room.

5. Columbia caused delay and confusion by requesting specific files be produced for its own convenience rather than reviewing all the files that were produced. See Columbia Exhibits E.

6. The claims files were available for review no later than May 31, 2001.[11/] Between May 31 and June 12, when Columbia finally ceased any further inspection, only one person for Columbia reviewed claims files for the number of hours as follows:

Date	Hours spent on review
June 1	2.3 hours;
June 6	4.2 hours;
June 7	5.8 hours;
June 8	6.8 hours;
June 11	4.2 hours; and
June 12	5.7 hours.

[10/] NCRIC maintains sign in sheets for all visitors, so it has a record of the days and hours spent by Columbia in review of documents on which these dates and hours are based. A copy of the log sheet is attached hereto as Exhibit 9.

[11/] Mr. Leahy, counsel for Columbia, acknowledges on June 4, 2001 that he (along with a colleague) had reviewed the claims files. The last day before June 4, 2001 that Mr. Leahy had reviewed any files was May 31, 2001. Thus, the documents were available on that date, and perhaps before.

No inspections took place on June 4-5. In the face of a June 26 deadline, Columbia did not provide adequate personnel to review all the documents and did not exhibit any urgency by a continuous inspection as permitted by plaintiff.

Columbia knew it was under a deadline to complete the selection of documents for its experts so they could reach opinions and file the Rule 26(b)(4) Statement by June 26. Columbia spent a total of 9 days reviewing the documents at NCRIC. If Columbia had come continuously as instructed, the review could have been completed by June 1. If Columbia had one person spend a full 7 hour business day reviewing documents, the review would have been done in 6 days or by May 28 or June 7 (if May 31 was the first day claims files were available). If two persons had spent full 7 hour business days reviewing files, the review would have been done in 3 days or by May 25 or June 4 (if May 31 was the first day claims files were available). If done by June 4 or June 7, Columbia would have had 3 weeks to compile the expert opinions. This is about the amount of additional time it wants now (3 weeks) based on it claim of receipt of the documents on June 20 and an extension to July 12. Columbia was just not diligent in pursuing review when it knew it had an impending deadline. It did not have enough personnel assigned or have them come continuously. The cause of failure to file the Rule 26(b)(4) statement on time as to the loss reserve expert lies with Columbia. It should not be permitted to bootstrap its lack of diligence into more time and prejudice NCRIC through the loss of adequate time to conduct discovery and prepare a rebuttal to Columbia's experts testimony.

B. NCRIC will be prejudiced if Columbia is permitted to designate Ms. Brill at this late date

Defendant's failure to designate an expert with respect to the loss reserves until this late date will prejudice plaintiff in its attempts to offer rebuttal witnesses. Again, defendant should not be permitted to avoid sanctions for its callous disregard of this Court's Rules and Orders by simply allowing plaintiff a similar extension of time.[12/]

III. In the Event the Court Grants Columbia's Motion to Extend, the Court Should Grant NCRIC's Plaintiff's Alternative Motion for Additional Time To File Opponent's Rule 26 (b)(4) Statement, Plaintiff's Alternative Motion for Leave to Complete Discovery on Damages after the Discovery Deadline, and Plaintiff's Alternative Motion for Leave to Depose Defendant's Experts.

If the Court grants Columbia's Motion to Extend and denies NCRIC's Motion in limine, then NCRIC should be entitled to additional time to file its Opponent's Rule 26(b)(4) Statement. This will require additional discovery from Columbia to obtain the documents and materials used by Columbia's experts in preparation of their opinions, a process which could be assisted by a Court order that Columbia turn over those materials forthwith in a form understandable and useable by NCRIC's experts. There simply is not enough time to accomplish this if NCRIC must file its Opponent's Rule 26(b)(4) Statement by July 26, 2001.

Further, NCRIC does not have any information from Columbia's experts or from other Columbia witnesses on the calculation of the damages, despite repeated attempts in accord with traditional discovery methods. Columbia's repeated lack of

---

[12/] Plaintiff notes that defendant has thus far not even agreed to this proposition, arguing instead that two weeks will be sufficient time for plaintiff to designate its rebuttal experts despite the fact that defendant has taken several months to designate its own experts.

compliance with the Rules and Orders of this Court casts significant doubt on the issue of whether future filings will give NCRIC sufficient information to consult and retain its own experts. NCRIC clearly needs to understand this information and can accomplish this most effectively by deposition. If the Court denies NCRIC's request, then there is a substantial likelihood that additional motions, oppositions, and responses will have to be prepared and heard to determine the adequacy of Columbia's expert designations. This will serve only to further delay these proceedings. There is no reason which has been or which can be offered by Columbia to oppose such a request except to hide the information.

WHEREFORE, NCRIC respectfully requests

1. That defendant's Motion to Extend Deadline for Proponent's Rule 26(b)(4) Statement be denied; and

2. That plaintiff's Motion *in limine* to Preclude Defendant's Expert Testimony be granted; or, in the alternative,

3. That plaintiff's Alternative Motion for Additional Time to File Opponent's Rule 26(b)(4) Statement be granted; and

4. That plaintiff's Alternative Motion for Leave to Complete Discovery on Damages After the Discovery Deadline be granted; and

5. That plaintiff's Alternative Motion for Leave to Depose Defendant's Experts be granted; and

6. Whatever other and further relief may be required in the interests of justice.

Roy J. Niedermayer, Esq. #180380

3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

1. SCR 16 and SCR 26.

2. General Order for Civil II cases.

Roy I. Niedermayer, Esq. #180380

CERTIFICATION OF GOOD FAITH EFFORTS TO SECURE CONSENT AND RESOLVE DISCOVERY DISPUTES WITH DEFENDANT

The undersigned counsel hereby certifies that he made good faith efforts to secure the defendant's consent to a protective order:

1. On July 7, 2001, counsel for plaintiff faxed, mailed and e-mailed counsel for defendant a letter requesting consent to the motions described above.

2. On July 10, 2001, counsel for defendant advised plaintiff that it would not consent unless certain other conditions were agreed to by plaintiff. Plaintiff was not able to agree to these changes.

3. After these good faith efforts, plaintiff was not able to obtain defendant's consent to the motions.

4. In light of the nature of defendant's Motion to Extend and plaintiff's Motion in limine, further efforts to obtain consent would be nugatory.

Roy I. Niedermayer, Esq. #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on July 11, 2001, a copy of the foregoing was mailed, first class mail, postage prepaid to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 8/12/01
	)	
Defendant.	)	

ORDER

THIS MATTER Coming on defendant's Motion to Extend Deadline for Proponent's Rule 26(b)(4) Statement and plaintiff's Renewed Motion *in limine* to Preclude Defendant's Expert Testimony and Plaintiff's Alternative Motion for Additional Time To File Opponent's Rule 26 (b)(4) Statement and plaintiff's Alternative Motion for Leave to Complete Discovery on Damages after the Discovery Deadline and plaintiff's Alternative Motion for Leave to Depose Defendant's Experts, the Opposition thereto having been read, heard, and considered, it is thereupon this _____ day of July, 2001, by the Superior Court for the District of Columbia,

ORDERED, that defendant's Motion to Extend Deadline for Proponent's Rule 26(b)(4) Statement be, and hereby is denied; it is further

ORDERED, that plaintiff's Renewed Motion *in limine* be, and hereby is, granted; it is further

ORDERED, that plaintiff's Alternative Motion for Additional Time to File Opponent's Rule 26(b)(4) Statement be, and hereby is, denied as moot; and it is further

ORDERED, that plaintiff's Alternative Motion for Leave to Complete Discovery on Damages after the Discovery Deadline be, and hereby is, denied as moot; and it is further

ORDERED, that plaintiff's Alternative Motion for Leave to Depose Defendant's Experts be, and hereby is, denied as moot.

Linda Kay Davis, Judge
D.C. Superior Court

copies to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 8/12/01
	)	
Defendant.	)	

ORDER

THIS MATTER Coming on defendant's Motion to Extend Deadline for Proponent's Rule 26(b)(4) Statement and plaintiff's Renewed Motion *in limine* to Preclude Defendant's Expert Testimony and Plaintiff's Alternative Motion for Additional Time To File Opponent's Rule 26 (b)(4) Statement and plaintiff's Alternative Motion for Leave to Complete Discovery on Damages after the Discovery Deadline and plaintiff's Alternative Motion for Leave to Depose Defendant's Experts, the Opposition thereto having been read, heard, and considered, it is thereupon this _____ day of July, 2001, by the Superior Court for the District of Columbia,

ORDERED, that defendant's Motion to Extend Deadline for Proponent's Rule 26(b)(4) Statement be, and hereby is granted; it is further

ORDERED, that plaintiff's Renewed Motion *in limine* be, and hereby is, denied; it is further

ORDERED, that plaintiff's Alternative Motion for Additional Time to File Opponent's Rule 26(b)(4) Statement be, and hereby is, granted; and it is further

ORDERED, that plaintiff's Alternative Motion for Leave to Complete Discovery on Damages after the Discovery Deadline be, and hereby is, granted; and it is further

ORDERED, that plaintiff's Alternative Motion for Leave to Depose Defendant's Experts be, and hereby is, granted.

Linda Kay Davis, Judge
D.C. Superior Court

copies to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

PLAINTIFF'S MOTION EXHIBITS IN SUPPORT OF OPPOSITION AND MOTION IN LIMINE

PENGAD-Bayonne, N. J.
EXHIBIT
1

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 00-007308
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next Event: Discovery close 5/12/01
	)
Defendant.	)

NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT

Please take notice that NICRIC, Inc., plaintiff, by Roy Niedermayer, its attorney, hereby notices the deposition upon oral examination of an officer(s) or managing agent(s) of defendant pursuant to SCR 30(b)(6) at the offices of NCRIC, Inc., 1115 30th Street, N.W., Washington, DC 20007 beginning at 9:30 a.m. on April 10, 2001 and continuing from day to day thereafter until completed.

The designated persons shall be prepared to testify on the following subjects:

1. The facts and reasons forming the basis for defendant's claims that any of the calculations or numbers in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) are incorrect or fail to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant.

2. The correct amounts that should be used or inserted in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant; and facts and reasons why these numbers are the proper amounts and calculations to be used in calculating the amount of premium due plaintiff under the contract.

3. The amounts of premium that should have been charged to defendant in each year of the contract and the amount, year, and method of calculation of any refund of premium defendant claims was due it.

4. The identity, terms, and facts concerning any contract, business relationship, or business expectancy between defendant and each of the doctors identified in paragraph 14-18 and 124 of defendant's amended counterclaims.

5. The specific actions and acts of plaintiff constituting the interference with the contracts between defendant and the doctors identified in paragraph 124 of defendant's amended counterclaims.

6. Acts or statements of plaintiff exhibiting malice toward defendant.

7. Acts or statements of plaintiff exhibiting any wanton or reckless disregard of the rights of defendant.

8. Source, substance, nature, duties and responsibilities of NICRIC as fiduciary for defendant and actions constituting breach of any fiduciary duty.

9. Identify, description, and calculation of damages suffered by acts alleged in each amended counterclaim count.

10. Defamatory actions or statements by plaintiff about defendant.

11. The matters concerning calculation of loss reserves, adjustments of loss reserves, positive loss experiences of defendant under the Plan, use of additional years in calculating premiums, and each element of the formula or requirements for reconciliation of premiums due under the Plan.

12. Allegations of errors by plaintiff made in paragraphs 38-41, 49 (second sentence), and 53 (second sentence) of the Amended counterclaims.

13. The bases for the allegations of plaintiff's knowledge about defendant's financial situation as alleged in paragraph 43 of the Amended counterclaims.

14. The specific errors, miscalculations and overstatements in the bill from plaintiff alleged in paragraphs 72 and 101 including the reasons and bases for the errors, and corrections required to make the bill accurate.

15. The facts supporting or related to the allegations of paragraph 73 that plaintiff attempted to gain leverage over defendant.

16. The search for new or replacement MMLI insurance with companies other than plaintiff during the period 1993 to date.

17. The negotiations and events between plaintiff and defendant alleged in paragraphs 83-88 including the factual bases for defendant's allegations of cancellation without justification, retaliation, and reneging.

18. The events and statements described in paragraph 89 of the Amended counterclaims.

19. The substance, nature, and scope of any harm caused to the defendant's reputation in the community caused by the action of plaintiff including the nature, bases, and calculation of any monetary damages sustained as a result of the harm.

20. The content of the rumors alleged in paragraphs 91 and 98 of the Amended counterclaims as well as the identities of the staff members originating and circulating the rumors.

21. Defendant's reputation in the medical community and community at large.

22. The facts and events described in paragraph 92 of the Amended counterclaims.

23. Identities of the physicians, staff, nurses, and executives described in paragraphs 91, 93, 96, and 98 of the amended counterclaims and the reasons for the actions of these persons described in those paragraphs.

24. Local media communications with defendant's personnel, doctors, staff, nurses, and executives in 1999-2000 concerning defendant's financial condition, loss of doctors and patients, closing of defendant's operations, and similar topics.

25. Recruitment of physicians and staff during 1990-2000.

26. Damages and injury to defendant's business and property as alleged in paragraph 109-110, 116-117, 122, 128, 134, 138, 146, 153, 158, 163, and 168 of the amended counterclaims.

27. Loss of revenue due to loss of patient referrals, including the numbers of patients and source of patients lost, the amount of revenue lost, the services, materials, supplies that would have been charges the lost patients, the gross and net profit on each item of service, material or supply which would have been provided to the lost patients.

28. The amount and calculation of defendant's claim of Return Premium due it from plaintiff from 1993 to date.

29. Causes of defendant's current insolvency and financial problems.

30. The relationship between the actions of plaintiff and any damages claimed to have been sustained by defendant.

31. Losses or damages proximately caused by harm to defendant's reputation.

32. Loss of revenues from the departure of Attending Faculty described in paragraph 97.

33. Identities of Attending Faculty of defendant for 1993 to date.

34. Physicians who0 had privileges at defendant but who have ceased referring patients to defendant or who have given up, abandoned, or relinquished their privileges from 1990 to date.

35. Identity of and reason for loss of physicians and staff from defendant from 1990 to date, including who, when, and why physicians and staff left or disassociated with defendant.

36. MMLI rates for OB/GYN physicians in D.C., Maryland, and Virginia from 1993 to date.

37. Actual patient referrals to defendant from 1993 to date identified by referring physician.

38. Expected numbers of patients referred by physicians and anticipated revenues from such patients for 1993 to date, including any studies, projections, or estimates made.

39. Actual revenues from patients described in subject matter paragraphs 37-38.

40. Basis for allegations of MMLI market domination by plaintiff in 1993 and thereafter.

41. Communications between defendant and plaintiff described in paragraphs 21 and 36 of the amended counterclaims.

42. Representations of plaintiff described in paragraphs 24, 29, 126, 142, 148, and 155 of the amended counterclaims including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

43. Basis for allegations of plaintiff's knowledge described in paragraphs 21, 43, 125, and 131 of the amended counterclaims.

44. Audit requests by defendant to plaintiff and refusals by plaintiff to permit audits or provide information including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

45. Actions exhibiting defendant's reliance on plaintiff as alleged in paragraphs 30, 36, and 42 of the amended counterclaims.

46. Factual basis for allegations in paragraphs 92 of the amended counterclaims regarding underwriting justifications.

47. Hiring and loss of staff from 1990 to date including facts and reasons for loss of each physician and staff member, including facts of difficulty in hiring and maintaining staff.

48. Morale of physicians and staff from 1993 to date.

49. Identities of senior executives leaving defendant from 1993 to date and the reasons/cause for the departures.

50. Communications between defendant and print, radio, television, or other electronic media and defendant, including officers, employees, and directors from 1993 to date.

51. Performances under the Plan prevented, excused or waived by plaintiff.

52. Facts concerning plaintiff's intent or intentional conduct as alleged in paragraphs 121, 126, 132, 151, and 161 of the amended counterclaims.

53. Nature, scope, and duration of defendant's business expectancies or advantages alleged in paragraph 130 of the amended counterclaims.

54. Actions of defendant to audit, verify, or check the accuracy of plaintiff's accountings or reconciliations.

55. Industry standards for Loss Reserves.

56. Concealment of facts by plaintiff from defendant including the identity and substance of the facts concealed, method/means/acts or concealment, persons concealing, and reasons for concealment.

57. Attorneys' fees claimed, expended, and incurred in the action, including the terms of all legal or other fee agreements, amounts billed, amounts paid, and amounts accrued or accounts payable by defendant.

Roy I. Niedermayer, Esq. DC. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

16d-000662

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

June 13, 2001

BY FACSIMILE

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Enclosed please find a list of the designees who will testify on Columbia's behalf with regard to certain topics listed in NCRIC's Rule 30(b)(6) deposition notice, on the dates that we discussed. Columbia will name designees to testify regarding other topics in a separate letter.

Please confirm the deposition dates for these designees, and let me know the time (I suggest 9:30 a.m.) and location for each deposition, at your earliest convenience.

Thank you.

Sincerely yours,

Joseph K. Leahy

Joseph K. Leahy

Designees to Testify on Behalf of Columbia Hospital for Women, Inc.

Columbia hereby designates the following witnesses to testify on the following dates, concerning the following topics listed on NCRIC's Rule 30(b)(6) deposition notice:

Date	Designee	Designated Topics
June 21, 2001	Safa Rifka, M.D.	19, 20, 21, 24, 50
June 27, 2001	Larry Wilson, Jr.	9, 17, 19, 23, 25, 26, 27, 29, 31, 32, 33, 34, 37, 38, 39, 46, 47, 53
June 28, 2001	Nabil Asterbadi, M.D.	35, 36, 37, 48
July 9, 2001	Dwaine Gasser	4, 18, 22, 23, 25, 33, 35, 47, 49*

*NOTE: Dwaine Gasser left the employ of Columbia Hospital for Women, Inc. in September 2000. For all topics of the 30(b)(6) deposition for which Mr. Gasser is designated, except topic 35, Larry Wilson, Jr. is Columbia's designee for the period after Mr. Gasser left Columbia. For topic 35, Dr. Asterbadi is Columbia's designee for the period after Mr. Gasser left Columbia.

EXHIBIT
3

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Deadline for Discovery Requests, March 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DEFENDANT'S INITIAL RULE 26(B)(4) STATEMENT AS A PROPONENT OF A CLAIM

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby states, pursuant to District of Columbia Superior Court Rules of Civil Procedure 16(b)(3) and 26(b)(4), that it currently expects that it may call one or more of the following persons as expert witnesses at trial on its behalf:

1. Elizabeth Wright, Independent Consultant; and

2. Mary Harriman, Director of Risk Management, Mercy Health Services.

Each of the foregoing experts is expected to testify, if retained and called as a witness, with regard to the following subjects:

1. methods, formulas and criteria for setting loss reserves by hospitals and/or insurers for medical malpractice liability claims in the District of Columbia and/or surrounding metropolitan area;

2. the reasonableness and propriety, in light of the industry standards for setting loss reserves for medical malpractice liability claims in the District of Columbia and/or surrounding metropolitan area, and in light of other loss reserves of the same nature set by NCRIC in the same region, of the loss reserves set by NCRIC under the Retrospective Rating Plan Agreement between the parties.

Columbia makes the forgoing statements subject to the following qualifications:

1. Columbia has not yet retained either of the foregoing witnesses to testify at trial, but rather, has contacted and/or is negotiating with such witnesses; if Columbia retains either of the foregoing expert witnesses to testify at trial, Columbia will supplement this Rule 26(b)(4) statement with information concerning the witness's address and qualifications, at that time;

2. due to its current financial situation, Columbia may be unable to retain either of the foregoing expert witnesses, in which case Dr. Henry Chukwueizi, Risk Manager, Columbia Hospital for Women Medical Center, Inc., or any other suitable person later discovered by Columbia, may testify as an expert to the foregoing subjects;

3. Columbia reserves its right to supplement the designations of expert witnesses and subjects of testimony set forth above at any time during the course of ongoing discovery;

4. Columbia reserves its right to designate any of the foregoing, or others, as rebuttal expert witnesses at the appropriate time; and

5. Columbia has yet not received from NCRIC the documents and information concerning its loss reserves that is necessary for the forgoing expert witnesses to render their opinions concerning the subjects set forth above, and therefore, these experts have not rendered any opinions or written any reports. Accordingly, Columbia is unable at this time to set forth the substance of the facts and opinions to which the experts are expected to testify, and a summary and grounds for each opinion. However, within a reasonable time after receiving all of the necessary documents and information concerning loss reserves from NCRIC, any experts retained by Columbia will render their opinions, and Columbia will supplement this Rule 26(b)(4) Statement with the required information.

6. Columbia reserves the right to modify this Statement in the event that its currently pending motion to amend the Court's January 12, 2001 scheduling order is granted.

16d-000667

DATED: March 12, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000668

EXHIBIT
4

* * *

Roy I. Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

16d-000670

PENGAD-Bayonne, N. J.
EXHIBIT
5

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 00-007308 Calendar #8 Judge Rafael Diaz Next Event: Initial Conf. 1/12/01

FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

TO: Defendant

FROM: Plaintiffs

Defendant, by counsel, pursuant to the Superior Court Rules requests that defendant produce the documents requested herein for inspection and copying at the offices of Roy Niedermayer, Esquire, 7475 Wisconsin Avenue, Suite 500, Bethesda, MD 20814 or at such place as counsel may agree between them, on or before the expiration of 30 days from service of these interrogatories on defendant.

DEFINITIONS AND INSTRUCTIONS

* * *

REQUESTS FOR PRODUCTION

* * *

2. Documents provided to or used by any expert you expect to call as a witness at trial.

* * *

6. Documents identified in, related to, concerning or supporting any of your answers to the interrogatories propounded to you by defendant.

* * *

Roy Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

16d-000673

PENGAD-Bayonne, N. J.
EXHIBIT
6

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 00-007308 Calendar #8 Judge Linda Kay Davis Next Event: Initial Conf. 1/12/01

SECOND REQUEST OF PLAINTIFF TO DEFENDANT FOR PRODUCTION OF DOCUMENTS

TO: Defendant

FROM: Plaintiffs

Defendant, by counsel, pursuant to the Superior Court Rules requests that defendant produce the documents requested herein for inspection and copying at the offices of Roy Niedermayer, Esquire, 7475 Wisconsin Avenue, Suite 500, Bethesda, MD 20814 or at such place as counsel may agree between them, on or before the expiration of 30 days from service of these interrogatories on defendant.

DEFINITIONS AND INSTRUCTIONS

* * *

REQUESTS FOR PRODUCTION

* * *

2. Records for the years 1995-2000 reporting or showing for each of the doctors referred to in paragraphs 124 and 130 the numbers of patients referred to defendant by each of the doctors, the date of the referral or admission of the patient, the services performed by defendant for these patients, and the amount of fees or charges paid by that patient.

* * *

4. Documents reporting the income and expenses of defendant by medical

service or procedure provided, admitting physician, inpatient or outpatient treatment method, etc.

* * *

7. Documents sent or provided by defendant to any financial institution or other source of credit, loans, or financing for the years 1995-2000.

* * *

13. Documents concerning, supporting, or evidencing insurance industry standards for setting loss reserves for medical malpractice underwriting or for setting the Loss Reserves as alleged in paragraph 35.

* * *

36. Documents concerning, supporting, identifying, or evidencing defendant's claim of loss of revenue due to loss of patient referrals, including the numbers of patients and source of patients lost, the amount of revenue lost, the services, materials, supplies that would have been charges the lost patients, the gross and net profit on each item of service, material or supply which would have been provided to the lost patients.

37. Documents concerning, supporting, identifying, or evidencing defendant's claim of loss of revenue due to loss of Attending Faculty, including the numbers of patients and source of patients lost, the amount of revenue lost, the services, materials, supplies that would have been charges the lost patients, the gross and net profit on each item of service, material or supply which would have been provided to the lost patients.

* * *

Roy Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

PENGAD-Bayonne, N. J.
EXHIBIT
7

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes, May 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S NOTICE OF DEPOSITION PURSUANT TO SUPERIOR COURT RULE 30(b)(6)

Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby objects as follows to the Notice of Rule 30(b)(6) Deposition of Defendant ("Notice") served by Plaintiff/ Counter-Defendant NCRIC, Inc. ("NCRIC"), for a deposition noticed for April 10, 2001.

GENERAL OBJECTIONS

These General Objections apply to each and every one of the deposition subjects listed in NCRIC's Notice ("deposition subjects") and form an integral part of Columbia's Objections:

1. Columbia objects to the deposition subjects to the extent they seek information protected by the attorney-client privilege, work product privilege, or any other applicable privilege that would make the information sought immune from discovery in whole or in part. "Privilege" as hereinafter used shall include all the above-named privileges and any other rule of law, privilege, or confidentiality provided by law. By designating a witness to testify on a given topic, it is not intended to be, or in any way may it be deemed, a waiver of any such available privilege to which Columbia is entitled.

2. Columbia objects to NCRIC's deposition subjects to the extent that they seek to impose obligations upon Columbia beyond those permitted by, or different from those required by, the District of Columbia Superior Court Rules of Civil Procedure.

3. Columbia objects to NCRIC's deposition subjects to the extent that they are vague, overly broad, unduly burdensome, or seek information that is not relevant to any claim or defense of a party or is not reasonably calculated to lead to the discovery of admissible evidence.

4. Columbia objects to NCRIC's deposition subjects to the extent that they relate to information that is already, or solely, in NCRIC's possession.

5. Columbia objects to NCRIC's deposition subjects to the extent that they relate to information not in Columbia's possession.

6. Columbia objects to NCRIC's deposition subjects to the extent that they relate to Columbia attorneys' fees in this action.

7. It should not be inferred from the form or substance of any objections contained herein that information responsive to any particular subject exists.

8. By designating a witness to testify on any subject, Columbia does not concede the relevance or admissibility of the information sought.

SPECIFIC OBJECTIONS

Subject No. 1: The facts and reasons forming the basis for defendant's claims that any of the calculations or numbers in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) are incorrect or fail to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant.

Objections to Subject No. 1: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that the Subject requests information that is solely in NCRIC's possession and/or to

16d-000679

the extent that the Subject requests information already provided to NCRIC in Columbia's responses to NCRIC's interrogatories. Columbia also objects this Subject to the extent it seeks testimony that is properly in the realm of expert testimony, and as such, constitutes an improper attempt to elicit Columbia's testimony expert without permission of the Court, in violation of District of Columbia Superior Court Rule 26(b)(4). Columbia objects further to this Subject to the extent that relates to pure matters of law, including interpretation of the agreement between the parties, and therefore, is not properly the subject of a deposition of a lay witness.

Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege. Columbia also objects to this Subject to the extent that it calls for information that is not currently currently in the possession of or reasonably obtainable by Columbia or any of its managing agents, but rather, is in the possession of counsel for Columbia and/or non-party witnesses. In effect, this Subject requires counsel for Columbia to marshal all of its factual proof and legal analysis regarding the subject, provide it to Columbia's 30(b)(6) designee, and then provide it to NCRIC. For this reason, Columbia objects that this Subject is not properly the subject of a 30(b)(6) deposition. Instead, this Subject is properly the subject of a contention interrogatory (the deadline for service of which passed on March 12, 2001, prior to service of NCRIC's 30(b)(6) deposition notice).

Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 1.

Subject No. 2: The correct amounts that should be used or inserted in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant; and facts and reasons why these numbers are the proper amounts and calculations to be used in calculating the amount of premium due plaintiff under the

contract.

Objections to Subject No. 2: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 2.

Subject No. 3: The amounts of premium that should have been charged to defendant in each year of the contract and the amount, year, and method of calculation of any refund of premium defendant claims was due it.

Objections to Subject No. 3: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 3.

Subject No. 4: The identity, terms, and facts concerning any contract, business relationship, or business expectancy between defendant and each of the doctors identified in paragraph 14-18 and 124 of defendant's amended counterclaims.

Objections to Subject No. 4: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it requests information that is solely in NCRIC's possession. Further, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 5: The specific actions and acts of plaintiff constituting the interference with the contracts between defendant and the doctors identified in paragraph 124 of defendant's amended counterclaims.

Objections to Subject No. 5: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but

not limited to the work-product privilege. Columbia also objects to this Subject to the extent that it requests information that is solely in NCRIC's possession. Further, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents, but rather, is in the possession of counsel for Columbia and/or non-party witnesses. In effect, this Subject requires counsel for Columbia to marshal all of its factual proof and legal analysis regarding the subject, provide it to Columbia's 30(b)(6) designee, and then provide it to NCRIC. For this reason, Columbia objects that this Subject is not properly the subject of a 30(b)(6) deposition. Instead, this Subject is properly the subject of a contention interrogatory (the deadline for service of which passed on March 12, 2001, prior to service of NCRIC's 30(b)(6) deposition notice).

Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 5.

Subject No. 6: Acts or statements of plaintiff exhibiting malice toward defendant.

Objections to Subject No. 6: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 6.

Subject No. 7: Acts or statements of plaintiff exhibiting any wanton or reckless disregard of the rights of defendant.

Objections to Subject No. 7: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 7.

16d-000682

Subject No. 8: Source, substance, nature, duties and responsibilities of NCRIC as fiduciary for defendant and actions constituting breach of any fiduciary duty.

Objections to Subject No. 8: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 8.

Subject No. 9: Identify, description, and calculation of damages suffered by acts alleged in each amended counterclaim count.

Objections to Subject No. 9: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to Subject No. 9 in that its investigation is continuing, and to the extent that its damage calculations are not completed at this time. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 9 at this time.

Subject No. 10: Defamatory actions or statements by plaintiff about defendant.

Objections to Subject No. 10: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 10.

Subject No. 11: The matters concerning calculation of loss reserves, adjustments of loss reserves, positive loss experiences of defendant under the Plan, use of additional years in calculating premiums, and each element of the formula or requirements for reconciliation of premiums due under the Plan.

Objections to Subject No. 11: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are

incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 11.

Subject No. 12: Allegations of errors by plaintiff made in paragraphs 38-41, 49 (second sentence), and 53 (second sentence) of the Amended counterclaims.

Objections to Subject No. 12: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 12.

Subject No. 13: The bases for the allegations of plaintiff's knowledge about defendant's financial situation as alleged in paragraph 43 of the Amended counterclaims.

Objections to Subject No. 13: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 13.

Subject No. 14: The specific errors, miscalculations and overstatements in the bill from plaintiff alleged in paragraphs 72 and 101 including the reasons and bases for the errors, and corrections required to make the bill accurate.

Objections to Subject No. 14: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 14.

Subject No. 15: The facts supporting or related to the allegations of paragraph 73 that plaintiff attempted to gain leverage over defendant.

Objections to Subject No. 15: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Further, Columbia objects to Subject No. 15

to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 16: The search for new or replacement MMLI insurance with companies other than plaintiff during the period 1993 to date.

Objections to Subject No. 16: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege and the attorney-client privilege. Further, Columbia objects to Subject No. 16 to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 17: The negotiations and events between plaintiff and defendant alleged in paragraphs 83-88 including the factual bases for defendant's allegations of cancellation without justification, retaliation, and reneging.

Objections to Subject No. 17: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege and the attorney-client privilege. Further, Columbia objects to Subject No. 17 to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 18: The events and statements described in paragraph 89 of the Amended counterclaims.

Objections to Subject No. 18: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege. Columbia also objects to this Subject to the extent that

16d-000685

the subject requests information that is solely in NCRIC's possession. Further. Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents, but rather, is in the possession of counsel for Columbia and/or non-party witnesses. Moreover, Columbia objects to this Subject to the extent that it requires counsel for Columbia to marshal its factual proof and legal analysis regarding the Subject and provide it to Columbia's 30(b)(6) designee, and then provide it to NCRIC. To this extent, Columbia objects that this Subject is properly the subject of a contention interrogatory, not a 30(b)(6) deposition.

Subject No. 19: The substance, nature, and scope of any harm caused to the defendant's reputation in the community caused by the action of plaintiff including the nature, bases, and calculation of any monetary damages sustained as a result of the harm.

Objections to Subject No. 19: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents. Columbia also objects to this Subject in that its investigation is continuing, and to the extent that its damage calculations are not completed at this time. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 19 at this time.

Subject No. 20: The content of the rumors alleged in paragraphs 91 and 98 of the Amended counterclaims as well as the identities of the staff members originating and circulating the rumors.

Objections to Subject No. 20: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege and the attorney-client privilege. Further, Columbia objects to the

16d-000686

extent that the Subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 21: Defendant's reputation in the medical community and community at large.

Objections to Subject No. 21: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 22: The facts and events described in paragraph 92 of the Amended counterclaims.

Objections to Subject No. 22: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 18, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 23: Identities of the physicians, staff, nurses, and executives described in paragraphs 91, 93, 96, and 98 of the amended counterclaims and the reasons for the actions of these persons described in those paragraphs.

Objections to Subject No. 23: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 24: Local media communications with defendant's personnel, doctors, staff, nurses, and executives in 1999-2000 concerning defendant's financial condition, loss of doctors and patients, closing of defendant's operations, and similar topics.

Objections to Subject No. 24: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 25: Recruitment of physicians and staff during 1990-2000.

16d-000687

Objections to Subject No. 25: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 26: Damages and injury to defendant's business and property as alleged in paragraphs 109-110, 116-117, 122, 128, 134, 138, 146, 153, 158, 163, and 168 of the amended counterclaims.

Objections to Subject No. 26: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 19, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 26 at this time.

Subject No. 27: Loss of revenue due to loss of patient referrals, including the numbers of patients and source of patients lost, the amount of revenue lost, the services, materials, supplies that would have been charges the lost patients, the gross and net profit on each item of service, material or supply which would have been provided to the lost patients.

Objections to Subject No. 27: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 19, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 27 at this time.

Subject No. 28: The amount and calculation of defendant's claim of Return Premium due it from plaintiff from 1993 to date.

Objections to Subject No. 28: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 28.

Subject No. 29: Causes of defendant's current insolvency and financial problems.

Objections to Subject No. 29: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Further, Columbia objects to this Subject to

16d-000688

the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 30: The relationship between the actions of plaintiff and any damages claimed to have been sustained by defendant.

Objections to Subject No. 30: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 30.

Subject No. 31: Losses or damages proximately caused by harm to defendant's reputation.

Objections to Subject No. 31: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 19, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 31 at this time.

Subject No. 32: Loss of revenues from the departure of Attending Faculty described in paragraph 97.

Objections to Subject No. 32: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 19, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 32 at this time.

Subject No. 33: Identities of Attending Faculty of defendant for 1993 to date.

Objections to Subject No. 33: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 34: Physicians who had privileges at defendant but who have ceased referring patients to defendant or who have given up, abandoned, or relinquished their privileges from 1990 to date.

16d-000689

Objections to Subject No. 34: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 35: Identity of and reason for loss of physicians and staff from defendant from 1990 to date, including who, when, and why physicians and staff left or disassociated with defendant.

Objections to Subject No. 35: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 36: MMLI rates for OB/GYN physicians in D.C., Maryland, and Virginia from 1993 to date.

Objections to Subject No. 36: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 37: Actual patient referrals to defendant from 1993 to date identified by referring physician.

Objections to Subject No. 37: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 38: Expected numbers of patients referred by physicians and anticipated revenues from such patients for 1993 to date, including any studies, projections, or estimates made.

Objections to Subject No. 38: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 39: Actual revenues from patients described in subject matter paragraphs 37-38.

Objections to Subject No.39: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 40: Basis for allegations of MMLI market domination by plaintiff in 1993 and thereafter.

Objections to Subject No. 40: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 41: Communications between defendant and plaintiff described in paragraphs 21 and 36 of the amended counterclaims.

Objections to Subject No. 41: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 42: Representations of plaintiff described in paragraphs 24, 29, 126, 142, 148, and 155 of the amended counterclaims including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

Objections to Subject No. 42: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 43: Basis for allegations of plaintiff's knowledge described in paragraphs 21, 43, 125, and 131 of the amended counterclaims.

Objections to Subject No. 43: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 44: Audit requests by defendant to plaintiff and refusals by plaintiff to

permit audits or provide information including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

Objections to Subject No. 44: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 45: Actions exhibiting defendant's reliance on plaintiff as alleged in paragraphs 30, 36, and 42 of the amended counterclaims.

Objections to Subject No. 45: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 46: Factual basis for allegations in paragraph 92 of the amended counterclaims regarding underwriting justifications.

Objections to Subject No. 46: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 47: Hiring and loss of staff from 1990 to date including facts and reasons for loss of each physician and staff member, including facts of difficulty in hiring and maintaining staff.

Objections to Subject No. 47: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 48: Morale of physicians and staff from 1993 to date.

Objections to Subject No. 48: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

16d-000692

Subject No. 49: Identities of senior executives leaving defendant from 1993 to date and the reasons/cause for the departures.

Objections to Subject No. 49: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 50: Communications between defendant and print, radio, television, or other electronic media and defendant, including officers, employees, and directors from 1993 to date.

Objections to Subject No. 50: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 51: Performances under the Plan prevented, excused or waived by plaintiff.

Objections to Subject No. 51: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 51.

Subject No. 52: Facts concerning plaintiff's intent or intentional conduct as alleged in paragraphs 121, 126, 132, 151, and 161 of the amended counterclaims.

Objections to Subject No. 52: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 52.

Subject No. 53: Nature, scope, and duration of defendant's business expectancies or advantages alleged in paragraph 130 of the amended counterclaims.

16d-000693

Objections to Subject No. 53: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 54: Actions of defendant to audit, verify, or check the accuracy of plaintiff's accountings or reconciliations.

Objections to Subject No. 54: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 55: Industry standards for Loss Reserves.

Objections to Subject No. 55: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 55.

Subject No. 56: Concealment of facts by plaintiff from defendant including the identity and substance of the facts concealed, method/means/acts or concealment, persons concealing, and reasons for concealment.

Objections to Subject No. 56: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 56.

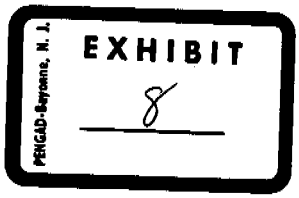
Subject No. 57: Attorneys' fees claimed, expended, and incurred, in the action, including the terms of all legal or other fee agreements, amounts billed, amounts paid, and amounts accrued or accounts payable by defendant.

CERTIFICATE OF SERVICE

I, Sylena L. Slaughter, hereby certify that on this 5th day of April, 2001, a copy of Defendant's Objections to Plaintiff's Notice of Deposition Pursuant to Superior Court Rule 30(b)(6) was served upon the following by hand delivery:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena L. Slaughter


PENGAD-Bayonne, N. J.
EXHIBIT
8

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 00-007308
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next Event: Discovery close 8/12/01
	)
Defendant.	)

NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT

Please take notice that NICRIC, Inc., plaintiff, by Roy Niedermayer, its attorney, hereby notices the deposition upon oral examination of the defendant by the following officer(s) or managing agent(s) of defendant pursuant to SCR 30(b)(6) at the offices of NCRIC, Inc., 1115 30th Street, N.W., Washington, DC 20007 beginning at 9:30 a.m. on the dates designated **and continuing from day to day thereafter until completed**:

Dwayne Gasser, July 9, 2001

Nabil Asterbadi, M.D., July 11, 2001

The deponents shall be prepared to testify from among the following subjects as designated by defendant:

1. The facts and reasons forming the basis for defendant's claims that any of the calculations or numbers in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) are incorrect or fail to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant.

2. The correct amounts that should be used or inserted in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses

to Requests for Admissions) to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant; and facts and reasons why these numbers are the proper amounts and calculations to be used in calculating the amount of premium due plaintiff under the contract.

3. The amounts of premium that should have been charged to defendant in each year of the contract and the amount, year, and method of calculation of any refund of premium defendant claims was due it.

4. The identity, terms, and facts concerning any contract, business relationship, or business expectancy between defendant and each of the doctors identified in paragraph 14-18 and 124 of defendant's amended counterclaims.

5. The specific actions and acts of plaintiff constituting the interference with the contracts between defendant and the doctors identified in paragraph 124 of defendant's amended counterclaims.

6. Acts or statements of plaintiff exhibiting malice toward defendant.

7. Acts or statements of plaintiff exhibiting any wanton or reckless disregard of the rights of defendant.

8. Source, substance, nature, duties and responsibilities of NICRIC as fiduciary for defendant and actions constituting breach of any fiduciary duty.

9. Identify, description, and calculation of damages suffered by acts alleged in each amended counterclaim count.

10. Defamatory actions or statements by plaintiff about defendant.

11. The matters concerning calculation of loss reserves, adjustments of loss reserves, positive loss experiences of defendant under the Plan, use of additional years in calculating premiums, and each element of the formula or requirements for reconciliation of premiums due under the Plan.

12. Allegations of errors by plaintiff made in paragraphs 38-41, 49 (second sentence), and 53 (second sentence) of the Amended counterclaims.

13. The bases for the allegations of plaintiff's knowledge about defendant's financial situation as alleged in paragraph 43 of the Amended counterclaims.

14. The specific errors, miscalculations and overstatements in the bill from plaintiff alleged in paragraphs 72 and 101 including the reasons and bases for the errors, and corrections required to make the bill accurate.

15. The facts supporting or related to the allegations of paragraph 73 that plaintiff attempted to gain leverage over defendant.

16. The search for new or replacement MMLI insurance with companies other than plaintiff during the period 1993 to date.

17. The negotiations and events between plaintiff and defendant alleged in paragraphs 83-88 including the factual bases for defendant's allegations of cancellation without justification, retaliation, and reneging.

18. The events and statements described in paragraph 89 of the Amended counterclaims.

19. The substance, nature, and scope of any harm caused to the defendant's reputation in the community caused by the action of plaintiff including the nature, bases, and calculation of any monetary damages sustained as a result of the harm.

20. The content of the rumors alleged in paragraphs 91 and 98 of the Amended counterclaims as well as the identities of the staff members originating and circulating the rumors.

21. Defendant's reputation in the medical community and community at large.

22. The facts and events described in paragraph 92 of the Amended counterclaims.

23. Identities of the physicians, staff, nurses, and executives described in paragraphs 91, 93, 96, and 98 of the amended counterclaims and the reasons for the actions of these persons described in those paragraphs.

24. Local media communications with defendant's personnel, doctors, staff, nurses, and executives in 1999-2000 concerning defendant's financial condition, loss of doctors and patients, closing of defendant's operations, and similar topics.

25. Recruitment of physicians and staff during 1990-2000.

26. Damages and injury to defendant's business and property as alleged in paragraph 109-110, 116-117, 122, 128, 134, 138, 146, 153, 158, 163, and 168 of the amended counterclaims.

27. Loss of revenue due to loss of patient referrals, including the numbers of patients and source of patients lost, the amount of revenue lost, the services, materials, supplies that would have been charges the lost patients, the gross and net profit on each item of service, material or supply which would have been provided to the lost patients.

28. The amount and calculation of defendant's claim of Return Premium due it from plaintiff from 1993 to date.

29. Causes of defendant's current insolvency and financial problems.

30. The relationship between the actions of plaintiff and any damages claimed to have been sustained by defendant.

31. Losses or damages proximately caused by harm to defendant's reputation.

32. Loss of revenues from the departure of Attending Faculty described in paragraph 97.

33. Identities of Attending Faculty of defendant for 1993 to date.

34. Physicians who0 had privileges at defendant but who have ceased referring patients to defendant or who have given up, abandoned, or relinquished their privileges from 1990 to date.

35. Identity of and reason for loss of physicians and staff from defendant from 1990 to date, including who, when, and why physicians and staff left or disassociated with defendant.

36. MMLI rates for OB/GYN physicians in D.C., Maryland, and Virginia from 1993 to date.

37. Actual patient referrals to defendant from 1993 to date identified by referring physician.

38. Expected numbers of patients referred by physicians and anticipated revenues from such patients for 1993 to date, including any studies, projections, or estimates made.

39. Actual revenues from patients described in subject matter paragraphs 37-38.

40. Basis for allegations of MMLI market domination by plaintiff in 1993 and thereafter.

41. Communications between defendant and plaintiff described in paragraphs 21 and 36 of the amended counterclaims.

42. Representations of plaintiff described in paragraphs 24, 29, 126, 142, 148, and 155 of the amended counterclaims including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

43. Basis for allegations of plaintiff's knowledge described in paragraphs 21, 43, 125, and 131 of the amended counterclaims.

44. Audit requests by defendant to plaintiff and refusals by plaintiff to permit audits or provide information including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

45. Actions exhibiting defendant's reliance on plaintiff as alleged in paragraphs 30, 36, and 42 of the amended counterclaims.

46. Factual basis for allegations in paragraphs 92 of the amended counterclaims regarding underwriting justifications.

47. Hiring and loss of staff from 1990 to date including facts and reasons for loss of each physician and staff member, including facts of difficulty in hiring and maintaining staff.

48. Morale of physicians and staff from 1993 to date.

49. Identities of senior executives leaving defendant from 1993 to date and the reasons/cause for the departures.

50. Communications between defendant and print, radio, television, or other electronic media and defendant, including officers, employees, and directors from 1993 to date.

51. Performances under the Plan prevented, excused or waived by plaintiff.

52. Facts concerning plaintiff's intent or intentional conduct as alleged in paragraphs 121, 126, 132, 151, and 161 of the amended counterclaims.

53. Nature, scope, and duration of defendant's business expectancies or advantages alleged in paragraph 130 of the amended counterclaims.

54. Actions of defendant to audit, verify, or check the accuracy of plaintiff's accountings or reconciliations.

55. Industry standards for Loss Reserves.

56. Concealment of facts by plaintiff from defendant including the identity and substance of the facts concealed, method/means/acts or concealment, persons concealing, and reasons for concealment.

57. Attorneys' fees claimed, expended, and incurred in the action, including the terms of all legal or other fee agreements, amounts billed, amounts paid, and amounts

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 00-007308
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis) Next Event: Discovery close 8/12/01
	)
Defendant.	)

NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT

Please take notice that NICRIC, Inc., plaintiff, by Roy Niedermayer, its attorney, hereby notices the deposition upon oral examination of an officer(s) or managing agent(s) of defendant pursuant to SCR 30(b)(6) at the offices of NCRIC, Inc., 1115 30th Street, N.W., Washington, DC 20007 beginning at 9:30 a.m. on July 16, **2001 and continuing from day to day thereafter until completed**.

The designated persons shall be prepared to testify on the following subjects:

1. The facts and reasons forming the basis for defendant's claims that any of the calculations or numbers in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) are incorrect or fail to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant.

2. The correct amounts that should be used or inserted in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant; and facts and reasons why these numbers are the proper amounts and calculations to be used in calculating the amount of premium due plaintiff under the contract.

3. The amounts of premium that should have been charged to defendant in each year of the contract and the amount, year, and method of calculation of any refund of premium defendant claims was due it.

4. The identity, terms, and facts concerning any contract, business relationship, or business expectancy between defendant and each of the doctors identified in paragraph 14-18 and 124 of defendant's amended counterclaims.

5. The specific actions and acts of plaintiff constituting the interference with the contracts between defendant and the doctors identified in paragraph 124 of defendant's amended counterclaims.

6. Acts or statements of plaintiff exhibiting malice toward defendant.

7. Acts or statements of plaintiff exhibiting any wanton or reckless disregard of the rights of defendant.

8. Source, substance, nature, duties and responsibilities of NICRIC as fiduciary for defendant and actions constituting breach of any fiduciary duty.

9. Identify, description, and calculation of damages suffered by acts alleged in each amended counterclaim count.

10. Defamatory actions or statements by plaintiff about defendant.

11. The matters concerning calculation of loss reserves, adjustments of loss reserves, positive loss experiences of defendant under the Plan, use of additional years in calculating premiums, and each element of the formula or requirements for reconciliation of premiums due under the Plan.

12. Allegations of errors by plaintiff made in paragraphs 38-41, 49 (second sentence), and 53 (second sentence) of the Amended counterclaims.

13. The bases for the allegations of plaintiff's knowledge about defendant's financial situation as alleged in paragraph 43 of the Amended counterclaims.

14. The specific errors, miscalculations and overstatements in the bill from plaintiff alleged in paragraphs 72 and 101 including the reasons and bases for the errors, and corrections required to make the bill accurate.

15. The facts supporting or related to the allegations of paragraph 73 that plaintiff attempted to gain leverage over defendant.

16. The search for new or replacement MMLI insurance with companies other than plaintiff during the period 1993 to date.

17. The negotiations and events between plaintiff and defendant alleged in paragraphs 83-88 including the factual bases for defendant's allegations of cancellation without justification, retaliation, and reneging.

32. Loss of revenues from the departure of Attending Faculty described in paragraph 97.

33. Identities of Attending Faculty of defendant for 1993 to date.

34. Physicians who0 had privileges at defendant but who have ceased referring patients to defendant or who have given up, abandoned, or relinquished their privileges from 1990 to date.

35. Identity of and reason for loss of physicians and staff from defendant from 1990 to date, including who, when, and why physicians and staff left or disassociated with defendant.

36. MMLI rates for OB/GYN physicians in D.C., Maryland, and Virginia from 1993 to date.

37. Actual patient referrals to defendant from 1993 to date identified by referring physician.

38. Expected numbers of patients referred by physicians and anticipated revenues from such patients for 1993 to date, including any studies, projections, or estimates made.

39. Actual revenues from patients described in subject matter paragraphs 37-38.

40. Basis for allegations of MMLI market domination by plaintiff in 1993 and thereafter.

41. Communications between defendant and plaintiff described in paragraphs 21 and 36 of the amended counterclaims.

42. Representations of plaintiff described in paragraphs 24, 29, 126, 142, 148, and 155 of the amended counterclaims including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

43. Basis for allegations of plaintiff's knowledge described in paragraphs 21, 43, 125, and 131 of the amended counterclaims.

44. Audit requests by defendant to plaintiff and refusals by plaintiff to permit audits or provide information including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

45. Actions exhibiting defendant's reliance on plaintiff as alleged in paragraphs 30, 36, and 42 of the amended counterclaims.

46. Factual basis for allegations in paragraphs 92 of the amended counterclaims regarding underwriting justifications.

47. Hiring and loss of staff from 1990 to date including facts and reasons for loss of each physician and staff member, including facts of difficulty in hiring and maintaining staff.

48. Morale of physicians and staff from 1993 to date.

49. Identities of senior executives leaving defendant from 1993 to date and the reasons/cause for the departures.

50. Communications between defendant and print, radio, television, or other electronic media and defendant, including officers, employees, and directors from 1993 to date.

51. Performances under the Plan prevented, excused or waived by plaintiff.

52. Facts concerning plaintiff's intent or intentional conduct as alleged in paragraphs 121, 126, 132, 151, and 161 of the amended counterclaims.

53. Nature, scope, and duration of defendant's business expectancies or advantages alleged in paragraph 130 of the amended counterclaims.

54. Actions of defendant to audit, verify, or check the accuracy of plaintiff's accountings or reconciliations.

55. Industry standards for Loss Reserves.

56. Concealment of facts by plaintiff from defendant including the identity and substance of the facts concealed, method/means/acts or concealment, persons concealing, and reasons for concealment.

57. Attorneys' fees claimed, expended, and incurred in the action, including the terms of all legal or other fee agreements, amounts billed, amounts paid, and amounts accrued or accounts payable by defendant.

58. Negotiations and discussions resulting in the Addenda and amendment of the contract between the parties in 1996, 1998, 1999, and 2000.

Roy I. Niedermayer, Esq. DC. Bar #180380
7475 Wisconsin Avenue, Suite 500

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 8/12/01
	)	
Defendant.	)	

NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT

Please take notice that NICRIC, Inc., plaintiff, by Roy Niedermayer, its attorney, hereby notices the deposition upon oral examination of Larry Wilson, an officer(s) or managing agent(s) of defendant pursuant to SCR 30(b)(6) at the offices of NCRIC, Inc., 1115 30th Street, N.W., Washington, DC 20007 beginning at 9:30 a.m. on July 16, 2001 and continuing from day to day thereafter until completed.

The designated person shall be designated to testify on all of some of the following subjects:

1. The facts and reasons forming the basis for defendant's claims that any of the calculations or numbers in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) are incorrect or fail to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant.

2. The correct amounts that should be used or inserted in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant; and facts and reasons why these numbers are the proper amounts and calculations to be used in calculating the amount of premium due plaintiff under the contract.

3. The amounts of premium that should have been charged to defendant in

each year of the contract and the amount, year, and method of calculation of any refund of premium defendant claims was due it.

4. The identity, terms, and facts concerning any contract, business relationship, or business expectancy between defendant and each of the doctors identified in paragraph 14-18 and 124 of defendant's amended counterclaims.

5. The specific actions and acts of plaintiff constituting the interference with the contracts between defendant and the doctors identified in paragraph 124 of defendant's amended counterclaims.

6. Acts or statements of plaintiff exhibiting malice toward defendant.

7. Acts or statements of plaintiff exhibiting any wanton or reckless disregard of the rights of defendant.

8. Source, substance, nature, duties and responsibilities of NICRIC as fiduciary for defendant and actions constituting breach of any fiduciary duty.

9. Identify, description, and calculation of damages suffered by acts alleged in each amended counterclaim count.

10. Defamatory actions or statements by plaintiff about defendant.

11. The matters concerning calculation of loss reserves, adjustments of loss reserves, positive loss experiences of defendant under the Plan, use of additional years in calculating premiums, and each element of the formula or requirements for reconciliation of premiums due under the Plan.

12. Allegations of errors by plaintiff made in paragraphs 38-41, 49 (second sentence), and 53 (second sentence) of the Amended counterclaims.

13. The bases for the allegations of plaintiff's knowledge about defendant's financial situation as alleged in paragraph 43 of the Amended counterclaims.

14. The specific errors, miscalculations and overstatements in the bill from plaintiff alleged in paragraphs 72 and 101 including the reasons and bases for the errors, and corrections required to make the bill accurate.

15. The facts supporting or related to the allegations of paragraph 73 that plaintiff attempted to gain leverage over defendant.

16. The search for new or replacement MMLI insurance with companies other than plaintiff during the period 1993 to date.

17. The negotiations and events between plaintiff and defendant alleged in paragraphs 83-88 including the factual bases for defendant's allegations of cancellation without justification, retaliation, and reneging.

18. The events and statements described in paragraph 89 of the Amended counterclaims.

19. The substance, nature, and scope of any harm caused to the defendant's reputation in the community caused by the action of plaintiff including the nature, bases, and calculation of any monetary damages sustained as a result of the harm.

20. The content of the rumors alleged in paragraphs 91 and 98 of the Amended counterclaims as well as the identities of the staff members originating and circulating the rumors.

21. Defendant's reputation in the medical community and community at large.

22. The facts and events described in paragraph 92 of the Amended counterclaims.

23. Identities of the physicians, staff, nurses, and executives described in paragraphs 91, 93, 96, and 98 of the amended counterclaims and the reasons for the actions of these persons described in those paragraphs.

24. Local media communications with defendant's personnel, doctors, staff, nurses, and executives in 1999-2000 concerning defendant's financial condition, loss of doctors and patients, closing of defendant's operations, and similar topics.

25. Recruitment of physicians and staff during 1990-2000.

26. Damages and injury to defendant's business and property as alleged in paragraph 109-110, 116-117, 122, 128, 134, 138, 146, 153, 158, 163, and 168 of the amended counterclaims.

27. Loss of revenue due to loss of patient referrals, including the numbers of patients and source of patients lost, the amount of revenue lost, the services, materials, supplies that would have been charges the lost patients, the gross and net profit on each item of service, material or supply which would have been provided to the lost patients.

28. The amount and calculation of defendant's claim of Return Premium due it from plaintiff from 1993 to date.

29. Causes of defendant's current insolvency and financial problems.

30. The relationship between the actions of plaintiff and any damages claimed

to have been sustained by defendant.

31. Losses or damages proximately caused by harm to defendant's reputation.

32. Loss of revenues from the departure of Attending Faculty described in paragraph 97.

33. Identities of Attending Faculty of defendant for 1993 to date.

34. Physicians who0 had privileges at defendant but who have ceased referring patients to defendant or who have given up, abandoned, or relinquished their privileges from 1990 to date.

35. Identity of and reason for loss of physicians and staff from defendant from 1990 to date, including who, when, and why physicians and staff left or disassociated with defendant.

36. MMLI rates for OB/GYN physicians in D.C., Maryland, and Virginia from 1993 to date.

37. Actual patient referrals to defendant from 1993 to date identified by referring physician.

38. Expected numbers of patients referred by physicians and anticipated revenues from such patients for 1993 to date, including any studies, projections, or estimates made.

39. Actual revenues from patients described in subject matter paragraphs 37-38.

40. Basis for allegations of MMLI market domination by plaintiff in 1993 and thereafter.

41. Communications between defendant and plaintiff described in paragraphs 21 and 36 of the amended counterclaims.

42. Representations of plaintiff described in paragraphs 24, 29, 126, 142, 148, and 155 of the amended counterclaims including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

43. Basis for allegations of plaintiff's knowledge described in paragraphs 21, 43, 125, and 131 of the amended counterclaims.

44. Audit requests by defendant to plaintiff and refusals by plaintiff to permit audits or provide information including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

45. Actions exhibiting defendant's reliance on plaintiff as alleged in paragraphs 30, 36, and 42 of the amended counterclaims.

46. Factual basis for allegations in paragraphs 92 of the amended counterclaims regarding underwriting justifications.

47. Hiring and loss of staff from 1990 to date including facts and reasons for loss of each physician and staff member, including facts of difficulty in hiring and maintaining staff.

48. Morale of physicians and staff from 1993 to date.

49. Identities of senior executives leaving defendant from 1993 to date and the reasons/cause for the departures.

50. Communications between defendant and print, radio, television, or other electronic media and defendant, including officers, employees, and directors from 1993 to date.

51. Performances under the Plan prevented, excused or waived by plaintiff.

52. Facts concerning plaintiff's intent or intentional conduct as alleged in paragraphs 121, 126, 132, 151, and 161 of the amended counterclaims.

53. Nature, scope, and duration of defendant's business expectancies or advantages alleged in paragraph 130 of the amended counterclaims.

54. Actions of defendant to audit, verify, or check the accuracy of plaintiff's accountings or reconciliations.

55. Industry standards for Loss Reserves.

56. Concealment of facts by plaintiff from defendant including the identity and substance of the facts concealed, method/means/acts or concealment, persons concealing, and reasons for concealment.

57. Attorneys' fees claimed, expended, and incurred in the action, including the terms of all legal or other fee agreements, amounts billed, amounts paid, and amounts accrued or accounts payable by defendant.

58. Negotiations and discussions resulting in the Addenda and amendment of the contract between the parties in 1996, 1998, 1999, and 2000.

Roy I. Niedermayer, Esq. DC. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

16d-000711

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 00-007308
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next Event: Discovery close 8/12/01
	)
Defendant.	)

NOTICE OF DEPOSITION OF DEFENDANT

Please take notice that NICRIC, Inc., plaintiff, by Roy Niedermayer, its attorney, hereby notices the deposition upon oral examination of Larry Wilson to be taken at the offices of NCRIC, Inc., 1115 30th Street, N.W., Washington, DC 20007 beginning at the conclusion of his deposition as a designee of defendant pursuant to a previous Notice of Deposition pursuant to SCR 30(b)(6) beginning on July 16, 2001 and continuing from day to day thereafter until completed.

/s/

Roy I. Niedermayer, Esq. DC. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

PERGAD-Bayonne, N. J.
EXHIBIT
9

NCRIC, INC. **SIGN-IN SHEET** NCRIC, INC.

16d-000714

NAME	COMPANY	PERSON VISITING	REASON FOR VISIT	DATE	TIME IN	TIME OUT
Caitlin Osborne	ECOLAB	Penthouse	work	5-21-01	1:20	
[illegible]	UPS	Del		522	935	
Joseph Leahy	KHHTE	Schmidt	Review files	5/22	11:15	0:22
Saunders	Metropolis	Del	Desk	5/22	11:30	11:3[illegible]
Bowen	Enpower	Del		5/22	12	12
Diane Taylor	SunTrust	R. Gunn		5/22	3:30	
Art Gerard	SunTrust	R. Gunn		5/22	3:30	
Paul Mesterhazy	KHHTE	Schmidt	Review files	5/22	3:55	5:22
Herman Howard	Fedex	~~De~~	Del	5/25	0941	
Nisha Mital	—	McCorkle	work	5/23	10:30	
Ultimate	IDS	Sharon	Delivery	5/23	10:42	
B. Barnes	B.O. B. M.D. P.C.					
B. Barnes	B.O. B. M.D. P.C.					
C. Williams	Falcon	NCR	Delivery	5/24	10:19	
B. Newberry		Pay Pate	meeting	5/24	12:40	
R. Goldstein		"	"	"	12:40	

ALL VISITORS MUST SIGN BOOK

NCRIC, INC. **SIGN-IN SHEET** NCRIC, INC.

16d-000715

NAME	COMPANY	PERSON VISITING	REASON FOR VISIT	DATE	TIME IN	TIME OUT
H. Howard	Fedex		Del	5/24/01	1340	
B Barnes	B.O. Barnes M.D. P.C.		MSO	5/24/01		
ML H	Fedex		Del	5/29/01	944	
Saunders	Metropolis	Desk	Del	5/29/01	11:20	11:21
[illegible]	[illegible]		Del	5/29	11:22	11:22
[illegible]	NCRIC	R. Burgess	Interview	5/29/01	12:53	
[illegible]	[illegible]	[illegible]	[illegible]	5/29/01	1:30	
J Leahy	KHHTE	reviewDocs	review doc	5/29/01	2:16pm	5:01pm
Gene Hoover	AVF	MCRIC		5/29/01	3.45	
BMB	[illegible]		Delivery	5/30/01	11	11
Sonny Yong	Kim, Mi Yong M.D.	Accountant	Payment	5/30/01	11:11	
[illegible]	MORA	Other	DEL	5-30-01	430	
T. Cam	Neurocrine	Rachel	none	5-31-01	1100	110
J. Leahy	KHHTE	BSchmidt	review docs	5/31/01	130	[illegible]
P. Mastrazzo	KHHTE	BSchmidt	review docs	11	11	455pm
MORA	FEDEX	—	DROP	6/1/01	400	415

Cam Scanned

ALL VISITORS MUST SIGN BOOK

NCRIC, INC. **SIGN-IN SHEET** NCRIC, INC.

16d-0007196

NAME	COMPANY	PERSON VISITING	REASON FOR VISIT	DATE	TIME IN	TIME OUT
KY	CH		Del	3-31	3:45	
Blake Wilson	DAT	Christina Culp	Kevin Beck	6-1-01	10:45	10:45
Saunders	Metropolis	Desk	Del	6-1-01	11:30	1131
Barry	BMS		Del	6/1	11:30	11:36
PAUL MESTERHAZY	KHHTE	RACHEL	REVIEW DOCS	6/1	2:00	4:20
Coreen Kieswetter, My			Review docs	6/1	3:00	
MORA	IRON M	—	DRDA	6-1-00	4:00	4:00
Craig Dreyfinger	DFG	Forgis		6-04	11 AM	
S.R Speedy	S R Speedy	2	DEL	6-4	1:10	
ART PERARD	SunTrust	Becky Gunn		6-4	1:55	3:00
Sebastien WEETABIX	NCRIC		Private.	6-4-01		
Beth Malone	NCRIC	Beckhunk		6-4-01	3:00	
THE, TIONG	NCR DCGH	TITE	Malpractice	6/4/01	3:47	
Picone, C		Underwr. C.		6/4/01	6:45P	
M Bell	falcon	Lobby	Del		905	906
Saunders	Metropolis	Desk	Del	6/4/01	12:00	12:01

ALL VISITORS MUST SIGN BOOK

NCRIC, INC. **SIGN-IN SHEET** NCRIC, INC.

T6d-000717

NAME	COMPANY	PERSON VISITING	REASON FOR VISIT	DATE	TIME IN	TIME OUT
M C H	Fedex	—	Delv	6-5-01	1:30	
Paul Mesterhazy	KHHTE	Rachel	Document Search	6/6/01	10:30	12:30
BRB	BCBMPC		Delv	6/6	12	12
D W Parsons	SHSO	C. Porter	mtg.	"	"	
Brad Lefkowitz		Africa	lunch	6-6	12:40	
T. Cox	Venable LLP	Rachel	work	6-6	1:30	4:00
Paul Mesterhazy	KHHTE	Rachel	Document Search	6/6	1:30	4:45
Cathy Gavaldo	Frank-Lin's	SCF				
B. Berns	BCBMPC					
MCH	Fedex		Delv	6-7-01	9:45	
Paul Mesterhazy	KHHTE	Rachel	Document Search	6/7/01	10:10	12:45
John Preston	Fed Ex		PU	6/7/01	1:50	
Paul Mesterhazy	KHHTE		Document Search	6/7/01	1:30	4:50
Gary Shaw	NR	Marty	Delivery Service	6-7-01	1:45	
Paul Mesterhazy	KHHTE	Rachel	Doc. Search	6/8/01	8:45	12:20
Sara Chung	NR	Marty	IT	6/8/01		

ALL VISITORS MUST SIGN BOOK

NCRIC, INC.

SIGN-IN SHEET

NCRIC, INC.

16d-0009

NAME	COMPANY	PERSON VISITING	REASON FOR VISIT	DATE	TIME IN	TIME OUT
PAUL MESTERHAZY	KHHTE	RACHEL	DOC. REVIEW	6/12	8:45	12:00
R. Niedermayer	Hfy	Fargis	Legal	6/12	9:00	
MC Hawkins	Fedex		Delv.	6/12	9:55	
Saunders	Metropolis	Desk	Del	6/12	11:40	11:41
Bell	BBMC	Delivery	Deliv	6/12	12	12
PAUL MESTERHAZY	KHHTE	RACHEL	DOC REVIEW	6/12	1:00	3:30
[illegible]	[illegible]	[illegible]	[illegible]	6/12	3:10	3:30
[illegible]	—	A. Missett	—	6/12	9:24	
Scott Davis	Willis	Becky Cook		6/13	10:30	
JON HAASE	HCA	"		6-12	10:30	
J Wilson	N/E		PVP	6/13	11:20	
Ron Gillaspie	Boynton B.	Anne M.	Phys Reg Cert	6/13	11:50	
[illegible]	BBMC		Delivery	6/13	12	R
Wilson	N/E		PVP	6/13	12:45	
Bell	Fedex		P/U		[illegible]	[illegible]
B. Bennett	BBMC					

ALL VISITORS MUST SIGN BOOK

PENGAD-Bayonne, N. J.
EXHIBIT
10

11	9520172	148657	61395	100695	75	38.15	96.85	-60
12	9544812	119268	122195	80896	5006.52	3304.3	1727.22	-25
12	9539307	330362	21100	0	0	0	0	0
12	9543716	46753	121300	0	0	0	0	0
12	9508632	166011	32395	112796	2921.43	1821.43	1125	-25
12	9507330	41479	30695	82495	222	0	129	93
12	9513625	138083	21100	0	0	0	0	0
12	9530638	266653	21100	0	0	0	0	0
13	9514611	322544	21100	0	0	0	0	0
18	9542339	331536	121095	71896	14826.37	13759.44	1066.93	0
18	9539720	182841	72696	72696	712.9	0	32.09	0
18	9537731	234292	110895	71696	5211.19	1795.61	3415.58	0
20	9504913	49482	21495	42195	79	0	103.73	-24.73
21	9512527	255406	41495	70695	276	27.6	276	-27.6
21	9515571	161622	50495	110196	314	314	0	0
27	9523530	325559	70795	12696	533	252.8	280.2	0
27	9535071	117258	100595	32596	5478.84	3358.84	2226	-106
35	9508432	103250	31495	71195	327	264.69	356.61	-294.3
35	9508428	320548	11701	0	0	0	0	0
35	9534222	313354	121300	0	0	0	0	0
35	9509275	54247	32195	71195	199	156.17	221.93	-179.1
35	9504703	319359	21395	71195	77	65.65	80.65	-69.3
35	9521052	303282	62095	100695	199	158.17	219.93	-179.1
35	9527085	322370	11701	0	0	0	0	0
35	9531735	315813	90795	122995	75	51	91.5	-67.5
35	9505164	315690	11701	0	0	0	0	0
35	9515701	318566	51295	100695	8711.96	5936.96	2875.92	-100.92
35	9517877	323668	53095	100695	75	41.43	101.07	-67.5
35	9533344	328180	92095	122995	270	220.95	292.05	-243
35	9511761	245078	41095	71195	3896.17	389.61	3585.36	-78.8
35	9518624	100789	11701	0	0	0	0	0
35	9500556	318020	21100	0	0	0	0	0
35	9505682	319699	0	0	0	0	0	0
35	9514988	213621	50495	71395	75	50.59	99.41	-75
35	9515284	322787	50995	100695	219	21.9	335.87	-138.77
35	9527698	221745	81195	82895	8159.56	3045.2	5230.36	-116
37	9539963	328353	111695	123196	2624.59	2028.59	596	0
37	9517828	323651	53195	123196	2565.42	1969.42	596	0
37	9545718	160936	122895	123196	2721.92	2125.92	596	0
37	9545435	332481	122995	123196	2724.67	2128.67	596	0
37	9545738	332595	122995	123196	2652.58	2056.58	596	0
37	9545405	273881	122895	123196	2799.42	2203.42	596	0
37	9544524	331975	122095	31396	2988.19	1528.34	1459.85	0
37	9508980	312218	32995	123196	2951.09	2951.09	0	0
37	9510902	312218	21100	0	0	0	0	0
37	9500930	140430	12095	31695	2687.53	2687.53	0	0
37	9533750	182146	92695	123196	2702.41	2106.41	596	0
45	9513719	322267	21100	0	0	0	0	0
45	9523144	221269	0	0	0	0	0	0

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 00-007308
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next Event: Discovery close 8/12/01
	)
Defendant.	)

NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT

Please take notice that NICRIC, Inc., plaintiff, by Roy Niedermayer, its attorney, hereby notices the deposition upon oral examination of defendant by Elnora Johnson or a designated officer(s) or managing agent(s) of defendant pursuant to SCR 30(b)(6) at the offices of NCRIC, Inc., 1115 30th Street, N.W., Washington, DC 20007 beginning at 3:30 p.m. on July 16, **2001 and continuing from day to day thereafter until completed**.

The designated persons or Ms. Johnson shall be prepared to testify on the following subjects:

1. The description and meaning of the numbers shown on the rows and columns in the spreadsheets on CHWCD 001 and CHWCD 002.

2. Actual collections for each patient listed on CHWCD 001 and CHWCD 002.

3. Expenses associated with the delivery of the services and items charged to each patient on the spreadsheets on CHWCD 001 and CHWCD 002.

4. Gross and net profit for each charge for the services and items charged to each patient on the spreadsheets on CHWCD 001 and CHWCD 002.

Roy I. Niedermayer, Esq. DC. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

PENGAD-Bayonne, N. J.
EXHIBIT
11

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,
Defendant.

****

Washington, D.C.
June 27, 2001

Deposition of
LARRY WILSON, JR.
a witness, called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 11:34 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

Page 159

individual doctor's policy. We only assume part of the risk in exchange for a discount. So to the extent that there are special provisions in a doctor's policy, I don't know.

Q. Do you contend that NCRIC offers insurance programs at other hospitals that it doesn't offer at Columbia Hospital for Women?

A. That's what it appears to me.

Q. Why does it appear that way to you?

A. Because I have not heard of any other hospital with a clinic that excluded, where the physicians were excluded.

Q. Do you contend that NCRIC offers a Retro program at other hospitals but won't offer one to Columbia?

A. Not on the terms and conditions that I wanted or the hospital wanted. I mean you can get anything for a price. In my opinion, the Retro plan as constituted with NCRIC was a bad business deal for the hospital. I think NCRIC agreed to that.

Page 160

Q. My question was, let me make it more pointed, do you think that NCRIC offers an insurance program at Sibley Hospital that's not available to be implemented at Columbia Hospital?

A. I don't know what the plan is at Sibley.

Q. Do you contend that NCRIC offers an insurance plan at George Washington Hospital that's not available to be implemented to Columbia Hospital for Women?

A. I don't know the specifics of that plan. I have heard that the plans at Sibley and George Washington are subsidized plans.

Q. Isn't it true that the plan that is currently in effect at Columbia Hospital is less expensive than the plan offered by NCRIC?

MR. LEAHY: Object to the form. It assumes a fact not in the record.

MR. NIEDERMAYER: What fact?

MR. LEAHY: That there is a plan in effect.

Page 161

BY MR. NIEDERMAYER:

Q. Mr. Wilson, is there a plan in effect at Columbia Hospital for Women for physicians?

A. No. We don't have an attending faculty plan.

Q. Do you have insurance coverage for physicians at Columbia Hospital?

A. The hospital does not have coverage for attending faculty.

Q. Does it have a plan whereby it offers a discount to physicians at Columbia Hospital through some plan with an insurance company?

A. It does not offer a discount, not for the plan. We offer a discount for risk management incentives.

Q. Do you know whether the premiums being paid by doctors who practice at Columbia Hospital are the same or less than doctors practicing at Sibley or George Washington Hospital?

Page 162

A. I think the premiums at Columbia are less.

Q. Let's see if we can go back –

A. That's how we made our comparisons and the rates that were quoted by NCRIC were certainly higher than the ones we had at the time.

Q. Let's go back to Count One. Can you describe for me each type of damage that you claim under Count One has been incurred by the hospital?

MR. LEAHY: I'm going to object and instruct you not to answer to the extent that you got knowledge from work product of your attorney, that it's not Columbia's knowledge. If you have information that's Columbia Hospital's, give it.

THE WITNESS: As you know, this has been discussed with attorneys. So maybe I should not answer that.

MR. NIEDERMAYER: This witness has been proffered as being able to answer these

Page 163

questions. Are you telling me he can't answer any of these questions?
MR. LEAHY: He's not our expert. To the extent the party has knowledge, the party can answer. To the extent the knowledge is the party's lawyer's knowledge or the expert witness' knowledge, you'll have to depose those people. To the extent the party has information, go ahead and answer. I'm sure the party has some information. But don't answer about what your lawyer knows.
THE WITNESS: Yeah. We contend there were damages as a result. Damage to reputation, damage to lost opportunities, damage to loss of volume.
BY MR. NIEDERMAYER:
Q. Those aren't breach of contract, but tell me how much is the damages for loss of reputation.
A. We haven't been able to quantify that. Considerable.
Q. Who is going to quantify it?

Page 164

A. Our damage expert.
Q. When will that be done?
MR. LEAHY: You can answer to the extent you know.
THE WITNESS: We're working on it now.
BY MR. NIEDERMAYER:
Q. What's the basis on which he's quantifying it?
A. The best information we have available, whatever that is.
Q. Did you provide any information to that expert?
A. We've provided some information.
Q. What information have you provided?
A. We had discussions about inflammatory remarks that were made that caused damage to the hospital. We are trying to quantify or will quantify the loss of opportunities as a result of physicians not coming to, physicians leaving the clinic that

Page 165

day; damages to the extent that we may have exposure through future lawsuits because of inadequate coverage in the clinic that day, as an example.
Q. What are the inflammatory comments that you referred to in your testimony?
A. Inflammatory remarks like the clinic is an unsafe place to work.
Q. You contend that someone at NCRIC said that?
A. It was reported to me that someone at -- let me see. It was third-hand, but I heard something to that effect. I don't recall exactly.
Q. Who at NCRIC said that?
A. The comment was not made to me directly, I can say that.
Q. Who was it made to?
A. That was anecdotal comments I heard all along.
Q. Are they from the people other than Dr. Cook and Dr. Glassman?

Page 166

A. Not from NCRIC. I can't tell you I heard anyone from NCRIC make that statement.
Q. So if I understand your testimony, you cannot identify any person at NCRIC that made the statement that had been attributed to NCRIC.
A. Not firsthand, no, I cannot.
Q. Do you know of anyone other than Drs. Cook and Glassman who have firsthand knowledge that NCRIC made any inflammatory statements about the hospital?
A. No.
MR. LEAHY: What was that answer?
(Record read by the reporter.)
BY MR. NIEDERMAYER:
Q. Can you tell me what facts you have provided to your experts for their calculation of damages to the reputation of the hospital?
A. We provided facts to substantiate that our foundation board did in fact cancel a gala that we had planned; provided the fact to

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC., Plaintiff,	
v.	Civil Action No. 00-0007308 Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Opponent's Rule 26(b)(4) Statement Due: July 12, 2001
Defendant.	

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 12th day of July, 2001, I served on opposing counsel, by First Class Mail, postage-prepaid, a copy of Defendant's Objections and Responses to the Third Request of Plaintiff to Defendant for Production of Documents and Defendant's Objections and Responses to Plaintiff's Second Set of Interrogatories. I certify that I will retain the original of the aforementioned documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: July 12, 2001

Respectfully submitted,

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

7/12/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 -- Judge Davis Next Event: Opponent's Rule 26(b)(4) Statement Due: July 12, 2001

RULE 26(B)(4) STATEMENT AS AN OPPONENT OF A CLAIM AND SUPPLEMENTAL RULE 26(B)(4) STATEMENT AS A PROPONENT OF A CLAIM

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby states, pursuant to District of Columbia Superior Court Rules of Civil Procedure 16(b)(3) and 26(b)(4), that it expects to call at trial, as an expert witness on its behalf:

3. Susan M. Darrell-Smith, 3615-D Chain Bridge Road, Fairfax, VA 22030.

Ms. Darrell-Smith (whose curriculum vitae is attached hereto as Exhibit A), or any similarly-qualified expert who may assist her, is expected to testify with regard to the same subjects as Julia Brill and NCRIC's experts, James McGuire and James Hurley.

Due to NCRIC, Inc.'s untimely production of documents (which is still ongoing), Ms. Darrell-Smith has not had an opportunity to review and analyze all of the documents necessary for her to evaluate the reasonableness and propriety of NCRIC's loss reserves. As such, Ms. Darrell-Smith has not yet fully developed her factual and opinion testimony. However, Columbia expects that, once Ms. Darrell-Smith completes her review of the relevant NCRIC claim files, she may testify that, for some or all of the Retro Plan claims: NCRIC's loss reserves are unreasonable, in light of the accepted industry standards; that lower reserves would have

been adequate and fiscally prudent for an insurance company in NCRIC's position; that the reserves appear to have been set by a risk manager without adequate experience or who failed to perform sufficient research regarding the claim before setting the reserve; that the reserves were boilerplate, set without regard to proper considerations; that the reserves were not sufficiently adjusted downward over time as new information became available; that reserves for one or more co-defendants in a multi-defendant case were unjustified, in light of differential liability between defendants. Once Ms. Darrell-Smith completes her review of the relevant documents, Columbia will supplement this statement, if necessary, to reflect any other conclusions.

The factual basis for Ms. Darrell-Smith's opinions, should she complete her review of NCRIC's claim files and fully develop her testimony, will be a detailed understanding of each claim for which NCRIC set a loss reserve, developed through a careful review of the files. Ms. Darrell-Smith's opinions will be based, it is expected, on her long-time experience as a risk manager, claims auditor, and consultant in the medical malpractice claims field.

4. Consulting Actuary, Casualty Actuarial Society.

In addition, Columbia is currently in the process of attempting to retain an actuarial expert. To date, Columbia has been unable to do so, in part because the local actuaries it has contacted have been conflicted out of testifying or have been occupied with other engagements. In addition, Columbia has yet to determine whether it can afford an actuarial expert from outside of the metropolitan area, in light of Columbia's current financial position. If Columbia is able to retain an actuarial expert, it will supplement this statement at the appropriate time.

* * *

Columbia makes the forgoing statements regarding the experts it expects to call at trial subject to the following qualifications: (1) Columbia reserves the right to call any witness listed

in Defendant's Initial Rule 26(B)(4) Statement as a Proponent of a Claim (March 12, 2001), or any other suitable person later discovered by Columbia, if it is unable to retain Ms. Darrell-Smith as an expert; (2) Columbia reserves its right to supplement or change this statement, including its expert witness designations, at any time during the course of discovery; (3) Columbia reserves its right to designate any of the foregoing, or others, as rebuttal expert witnesses.

DATED: July 12, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000730

EXHIBIT A

SUSAN M. DARRELL-SMITH
7323 Eastgate Lane
Alexandria, Virginia 22310
Home: (703) 922-7854 / work: (703)279-1403

PROFESSIONAL EXPERIENCE

Hamilton Insurance Agency, President Risk Management Division 1997 – Present
Advice and support for health care facilities nationally including, but not limited to, medical malpractice claims handling.

Dimensions Healthcare System, Corporate Director, Claims Management 1994 - 1997
Responsible for all aspects of Self Insured Retention of $6 million including, but not limited to, evaluation of exposure and liability in medical malpractice and general liability claims.

Placing appropriate reserves and liaising with Excess Carriers handling all aspects of law suits relating to medical malpractice including retaining defense attorneys and determining disposition of claims.

Caronia Corporation, Branch Manager 1991 - 1994
Analyzed reports, evaluated exposure and liability in high dollar medical malpractice claims. Determining and setting appropriate initial reserves. Re-evaluating each file as subsequent information became available and adjusting the reserves accordingly. Recommended appropriate course of action to clients regarding settlement, denial, or litigation. Assigned cases to defense attorneys, directed defense counsel, monitored and approved defense attorney and expert physician review costs.

Conducted quarterly claims meetings for each client, attended by CEO, CFO, Corporate Counsel, Corporate and Facility Risk Directors and physicians, addressing each new case for that quarter, explaining and discussing exposure, liability and reserve philosophy. Produced quarterly Loss Runs.

Identified, reported and reserved excess reportable cases to ensure appropriate coverage for cases with the potential to pierce excess layers. Liaised with Excess Carriers and met fiduciary responsibilities. Advised and directed risk managers with regard to policy and procedures. Identified and advised on potential system problems.

Conducted independent medical malpractice reserve audits for large hospital systems and excess insurance companies and certified the reserves.

Assistant Branch Manager .May 1990 .May 1991
Supervised and evaluated professional and general liability claims through review of analysts' reports of medical record reviews, investigation and interviews conducted. Preparation of reports summarizing findings and making recommendations to clients for disposition of cases. Assigning and directing defense counsel in preparation of defense of lawsuits. Adequately reserving files for indemnity and expense. Identifying and reporting to excess carriers those cases requiring such.

Jul 12 01 09:53p Suzanne Leedy 703-922-4416 p.1

Senior Claims Analyst -June 1989 -May 1990

Evaluation of professional liability claims through review of medical records and interviews with appropriate personnel. Preparation of reports summarizing findings. Interacting with plaintiff attorneys for negotiating and/or settling cases. Responsible for maintaining file on a diary system to ensure prompt and thorough investigation and case disposition.

Ob-Gyn Associates of Northern Virginia - 5 1/2 years

Aramco (Dhahran. Saudi Arabia) Supervisor, eight bed coronary care unit.

Abu Dhabi (United Arab Emirates) Supervisor private OB and GYN clinic

Lady Dudley Nursing Home (Johannesburg. South Africa)

Brenthurst Clinic (Johannesburg. South Africa)

EDUCATION

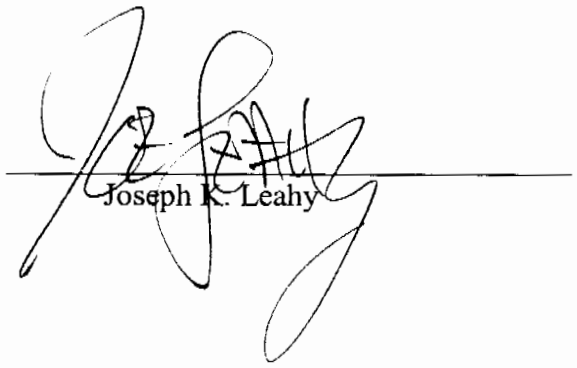
Royal Postgraduate Medical School for England and Wales, Hammersmith Hospital, London . Registered Nurse, 1970.

Brenthurst Clinic; Johannesburg, South Africa; Critical Care Registered Nurse, 1972.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 12th day of July, 2001, a copy of Defendant Columbia Hospital for Women Medical Center, Inc.'s Rule 26(b)(4) Statement As An Opponent of A Claim and Supplemental Rule 26(b)(4) Statement As A Proponent of A Claim was served upon the following by first class mail, postage paid:

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814



Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

COPY

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery Close 8/12/01
	)	
Defendant.	)	

CERTIFICATE OF SERVICE OF DISCOVERY

I HEREBY CERTIFY, that on July 16, 2001, a copy of plaintiff's Responses of Plaintiff to Defendant's Third Requests for Production of Documents from Defendants was served by first class mail on:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

7/20/01

COPY

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 8/12/01
	)	
Defendant.	)	

ORDER

THIS MATTER Coming on defendant's Motion to Extend Deadline for Proponent's Rule 26(b)(4) Statement and plaintiff's Renewed Motion *in limine* to Preclude Defendant's Expert Testimony and Plaintiff's Alternative Motion for Additional Time To File Opponent's Rule 26 (b)(4) Statement and plaintiff's Alternative Motion for Leave to Complete Discovery on Damages after the Discovery Deadline and plaintiff's Alternative Motion for Leave to Depose Defendant's Experts, the Opposition thereto having been read, heard, and considered, it is thereupon this 20th day of July, 2001, by the Superior Court for the District of Columbia,

ORDERED, that defendant's Motion to Extend Deadline for Proponent's Rule 26(b)(4) Statement be, and hereby is granted; it is further

ORDERED, that plaintiff's Renewed Motion *in limine* be, and hereby is, denied; it is further

ORDERED, that plaintiff's Alternative Motion for Additional Time to File Opponent's Rule 26(b)(4) Statement be, and hereby is, granted with a new deadline of 8/9/01; and it is further

16d-000736

ORDERED, that plaintiff's Alternative Motion for Leave to Complete Discovery on Damages after the Discovery Deadline be, and hereby is, granted with a deadline of 7/1/01; and it is further

ORDERED, that plaintiff's Alternative Motion for Leave to Depose Defendant's Experts be, and hereby is, granted with a deadline of 9/01/01.

Linda Kay Davis

Linda Kay Davis, Judge
D.C. Superior Court

SIGNED IN CHAMBERS

copies to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Copies mailed from chambers
on 7-23-01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 8/12/01
	)	
Defendant.	)	

MOTION TO COMPEL DEFENDANT'S DESIGNATED WITNESSES TO ANSWER QUESTIONS PROPERLY POSED AT DEPOSITION

Plaintiff, NCRIC, Inc., by Roy Niedermayer its attorney, moves this Court pursuant to SCR Rule 37 for an order compelling defendant to produce for deposition designated witnesses to supply information that was requested at previous depositions, but to which answer was refused on counsel's instruction. The basis for this motion is that counsel inappropriately instructed corporate designees not to answer, or to only partially answer, questions, incorrectly asserting a non-applicable attorney work product privilege. Additional facts and argument are provided in the accompanying memorandum of grounds and authorities.

Respectfully submitted,

Roy I. Niedermayer /DJK

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

CERTIFICATION OF GOOD FAITH EFFORTS TO SECURE DISCOVERY AND RESOLVE DISCOVERY DISPUTES WITH DEFENDANT

The undersigned counsel hereby certifies that he made good faith efforts to secure the defendant's answers and to resolve the discovery disputes with defendant by face to face meetings at depositions on June 21, 2001 and June 27, 2001. The meetings took place at plaintiff's offices on 30th Street NW, Washington, D.C.

Roy Niedermayer, Esq. #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on August 6, 2001, a copy of plaintiff's Motion to Compel Discovery was mailed first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 5/12/01
	)	
Defendant.	)	

ORDER GRANTING MOTION TO COMPEL WITNESSES TO ANSWER QUESTIONS PROPERLY POSED AT DEPOSITION

This matter came before the Court on plaintiff's Motion to Compel Witnesses to Answer Questions Properly Posed at Deposition, and the Court having reviewed the Motion and any opposition thereto, it is this _____ day of _____ _____, 2001

ORDERED that the same be, and is hereby GRANTED; and it is further;

ORDERED, that Safa Rifka, M.D. and Larry Wilson will submit for a continuation of their depositions, at which time plaintiff, through counsel, may inquire into those areas to which the witnesses previously refused to answer questions on the basis of attorney work product privilege; and it further

ORDERED that the defendant shall pay plaintiff the sum of $_____ as reasonable attorneys' fees and costs in having to file this Motion and obtaining this Order; and it is further

ORDERED, that if the Court determines that, at the continued depositions, defendant again refuses to answer questions without cause, additional sanctions of _____ will be imposed.

_____
Linda Kay Davis, Superior Court Judge

cc:

Roy Niedermayer, Esq. DC.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 00-007308
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next Event: Discovery close 8/12/01
	)
Defendant.	)

MEMORANDUM OF GROUNDS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL DEFENDANT'S DESIGNATED WITNESSES TO ANSWER QUESTIONS PROPERLY POSED AT DEPOSITION

I. BACKGROUND

Plaintiff filed this case on October 3, 2000, and defendant counterclaimed on November 6, 2000 alleging, among other things, defamation and disparagement on the part of plaintiff. Before defendant had even filed its counterclaim, plaintiff, on October 26, 2000, propounded interrogatories seeking "the names and addresses of any individuals who you know or believe have any information or knowledge of any matters concerning the subject matter of . . . (iii) your counterclaims." Interrogatory number 1. Defendant produced a list of witnesses but none was indicated as having knowledge of defendant's claims for defamation and disparagement.

Plaintiff also sought "the method of calculation and factual bases for any monetary damages you claim against defendant by way of counterclaim, setoff, recoupment or otherwise." Interrogatory 6. Defendant answered by objecting and claiming that it did not have the necessary information to answer at that time.

Plaintiff, requiring the information that had been refused in the answers to interrogatories, responded by noting the deposition on March 14, 2001 of defendant's corporate designees, setting forth with particularity 58 subject areas of testimony. Defendant designated, among others, Safa Rifka, M.D. and Larry Wilson.[1/] The depositions were set for June 21, 2001 and June 27, 2001, respectively. By agreement of counsel, Mr. Wilson's deposition was suspended and reconvened. At the depositions, plaintiff's counsel asked questions seeking factual information directly related to defendant's counterclaims.

Defense counsel objected to questions and instructed Dr. Rifka not to answer, or to give only a partial answer, on no less than ten occasions, including to questions calling for straightforward factual answers such as to whom allegedly defamatory statements were made. Deposition transcript at p. 115. On each of the ten occasions, defense counsel claimed attorney work product privilege as the basis for instructing the witness not to answer. Defense counsel instructed Mr. Wilson to either not answer, or to only partially answer, questions on no less than five occasions.

The questions the witnesses refused to answer sought factual information that goes to the very essence of defendant's claims and defenses. **The impressions of counsel were not sought.** Again, Dr. Rifka refused to provide the identities of persons who had allegedly made defamatory statements about defendant. This information is central to defendant's counterclaims for plaintiff's alleged tortious activity. Not only will it

---

[1/] Defendant designated witnesses to testify to only a small portion of the subjects set forth in the deposition notice. This failure is the subject of a separate Motion to Compel.

alert plaintiff to the actual people claimed to be involved, but it will give plaintiff sufficient information to conduct additional formal and informal discovery. Dr. Rifka refused to provide any information that his attorneys had discovered as to identities. Defendant's failure to provide this information severely prejudices plaintiff's ability to defend itself.

The only explanation for this behavior is that it is an attempt by defendant to "hide the ball" and either surprise plaintiff at trial or conceal the absence of any facts on which to base its claims for plaintiff's tortious behavior. If defendant intends to introduce these statements at trial, it would be unfair for plaintiff not to have the opportunity to conduct its own investigation about them. If defendant has no facts on which to support its claims for plaintiff's alleged tortious behavior, those claims should be dismissed.

II. ARGUMENT

A. Defense Counsel's Reliance on the Attorney Work-product Privilege of SCR 26(b)(3) Is Misplaced Because No Documents or Tangible Things Were Requested.

SCR 26(b)(3) only protects "documents and tangible things." Id. The subjects of defense counsel's instructions not to answer were unrelated to any requests for documents or other tangible things. See transcript excerpts, attached hereto as Exhibit "A." Thus, SCR 26(b)(3) does not operate as an appropriate basis in this case to instruct the witnesses not to answer. "Rule 26(b)(3) itself provides protection only for documents and tangible things and ... it does not bar discovery of facts a party may have learned from documents that are not themselves discoverable." CHARLES ALAN WRIGHT, ET AL Federal Practice and Procedure §2024 (1994); Resolution Trust Corp. v. Dabney, 73 F.3d 262 (10th Cir. 1995) (interpreting the substantively identical Federal counterpart to this Rule.)

B. Defense Counsel's Reliance on the Attorney Work-product Privilege of the Common Law Is Also Misplaced Because That Privilege Does Not Protect Facts.

The common law doctrine of attorney work-product privilege was set forth in *Hickman v. Taylor*, 329 U.S. 495 (1947). One holding of that opinion is that "[i]nformation as to facts and witnesses' statements obtained by the adverse party's attorney are not within the common law privilege..." CHARLES ALAN WRIGHT, ET AL Federal Practice and Procedure §2022 (1994). Again, defense counsel's instructions not to answer were in response to questions calling for factual responses, such as the names of persons to whom defamatory statements were made.

C. Discovery of the Facts Should Be Permitted Even If Otherwise Protected by the Attorney Work Product Privilege Because Plaintiff Can Establish a Substantial Need for the Information and Cannot Obtain the Substantial Equivalent by Other Means.

Even if the information is protected by the work-product privilege, it is discoverable if plaintiff can show (a) a substantial need for the information; and (b) undue hardship in obtaining the substantial equivalent by other means. SCR 26(b)(3). Because plaintiff does have a substantial need for the information, and because there is no other way for plaintiff to learn the substantial equivalent, the witnesses should be compelled to answer the questions even if the court finds the information would otherwise have been protected by the work-product privilege.

(a) Plaintiff has been accused of defaming defendant and causing it serious damages, damages estimated in the area of ten million dollars by its corporate

designee.[2/] It is essential that plaintiff discover the substance of the allegedly defamatory statements as well as the makers.

(b) There is no way for plaintiff to learn who defendant contends made the statements without being told by the defendant. The questions were properly asked. They should be answered.

D. Defendant's Actions Are Egregious, and the Court Should Award Sanctions

In the face of simple questions, defense counsel repeatedly and without justification instructed his client not to answer, or to only partially answer. The doctrine of attorney work product privilege is well established and has clear confines. The information sought to be protected is clearly not within those confines. Plaintiff's counsel advised defense counsel of his position that defendant could testify to these facts, but defense counsel refused to yield. Defendant, through its counsel, should not be permitted to flout discovery in this way.

III. CONCLUSION

For the foregoing reasons, plaintiff's Motion to Compel Production of Facts Supporting Defendant's Counterclaims and Defenses should be granted.

WHEREFORE, plaintiff respectfully requests

(1) that it's Motion to Compel Production of Facts Supporting Defendant's Counterclaims and Defenses be granted;

[2/] Mr. Wilson was unable to explain how he calculated this figure or provide the bases therefor.

(2) whatever other and further relief may be required in the interests of justice;

(3) fees and costs associated with filing this motion.

Respectfully submitted,

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR
WOMEN MEDICAL CENTER,
INC.,
Defendant.

****

Washington, D.C.
June 21, 2001

Deposition of:
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,
Designated Representative
SAFA RIFKA, M.D.,
called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 9:50 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

Q. Prior to filing the Chapter 11, is there any information the hospital has about rumors or inquiries whether the hospital would be closing?
A. We are not aware of that.
Q. After the hospital filed its Chapter 11 proceedings and prior to August of 2000, were there inquiries or rumors about the hospital closing?
A. Not really.
Q. You didn't hear any.
A. I didn't hear.
Q. You are not aware of any.
A. I am not aware of any.
Q. Is the reputation of the hospital different among different segments of the community or is it uniform through all the segments of the community?
MR. LEAHY: Objection to the form. But you can answer if you understand.
THE WITNESS: I don't know what you mean by segments.

BY MR. NIEDERMAYER:
Q. Okay. Does the medical community have a different perception of the reputation of the hospital than other parts of the community?
A. I don't think so.
Q. Does the staff at the hospital have a different view of the reputation of the hospital than other parts of the community?
A. Prior to August 2000 or --
Q. Yeah. Well, you said it was the same before and after.
A. Reputation is still -- no, they did not have the same good reputation.
Q. They did not have the same reputation?
A. No. They did not have a different opinion. They still had the same good reputation.
Q. That's what I thought you said.
A. Yes. Thank you for correcting me.
Q. What I'm trying to find out is does any particular group in the community, the medical community or the community at large, have

a different opinion about the hospital than the one you reported to me as it being excellent?
A. I'm not aware of that.
Q. Could I ask you to look at Page 30 of Exhibit 2, which is the counterclaims. In Paragraph 158 it refers to "false and defamatory statements that caused damages and harm to the reputation of the hospital." Can you tell me what false and defamatory statements made by NCRIC caused harm to the reputation of the hospital?
*** CERTIFICATION REQUESTED ***
MR. LEAHY: I'm going to object here on the grounds of work product doctrine. You're seeking something that is not necessarily in Columbia's knowledge. Columbia may have some knowledge of it, but this document was obviously created by a lawyer. So to the extent that you can talk about information that is your own knowledge, Columbia's own knowledge, not something that is its lawyer's work product, you may speak to that. But I would direct you not to

answer to the extent that it is something that the lawyer might have developed through interviews with other people, et. cetera. Just speak on Columbia's own knowledge.
MR. NIEDERMAYER: I'm going to object to that. The knowledge of Columbia's lawyers is the knowledge of Columbia.
MR. LEAHY: It's protected by work product. We won't speak to it.
MR. NIEDERMAYER: Just mark that one. We'll bring that up to the judge.
BY MR. NIEDERMAYER:
Q. You may answer to the extent that counsel has permitted you.
A. I think the economic loss somebody else would talk about.
Q. Let me interrupt you. I'm asking you what are the defamatory statements that NCRIC made that harmed the reputation of the hospital.
A. It's our belief that closure of the hospital is not good for its reputation. We believe that not covering physicians who work in

PR and the vice president and some senior management of the hospital. For other specifics, I think Larry Wilson will be able to, the president of the hospital will be able to give you these details.

Q. Have you told me, though, all of the persons whom you know left as a result of the rumors?

A. All the persons that I can currently remember, actually.

Q. Okay. I had asked you to identify the false and defamatory statements that are described, alleged in Paragraph 158 of the counterclaim.

A. Yes, sir.

Q. You told me that there were three statements that were made that you were aware of. The first was that the hospital was going to close; second was that NCRIC would not be covering physicians in the clinic; and the third was that the self-insurance trust was bankrupt. Are there any other statements that are included

within those false and defamatory statements by NCRIC that caused harm to the reputation of the hospital?

MR. LEAHY: Same objection as before.

BY MR. NIEDERMAYER:

Q. Go ahead, you may answer.

A. Can you repeat them, Mr. Niedermayer? I'm sorry.

Q. I believe you testified that there were three statements.

A. Yes, sir.

Q. That the hospital was going to close, that physicians would not be covered by NCRIC insurance for activities in the clinic, and that the self-insurance trust was bankrupt. Are there any other statements made by NCRIC that harmed the reputation of the hospital?

MR. LEAHY: Same objection.

THE WITNESS: I'm not aware of any.

BY MR. NIEDERMAYER:

Q. Tell me who it is that made the statement from NCRIC that the hospital was going

to close.

A. I can't identify the name.

Q. Can you tell me when it occurred?

A. Around towards the NCRIC contract that was not going through, about September 1st.

Q. To whom was it communicated or to whom was that statement made?

MR. LEAHY: I'm going to object here, same objection as before.

THE WITNESS: I'm not aware.

MR. NIEDERMAYER: What is your objection?

MR. LEAHY: My objection is the same objection I made before.

MR. NIEDERMAYER: Well, what is it?

MR. LEAHY: The objection is based on work product, that I will allow him to answer only to the extent that he is talking on behalf of Columbia's knowledge. He is giving you Columbia's knowledge. He's not giving you Columbia's lawyers' knowledge which was gained in interviews with other people which was not

imparted to Columbia which is part of the lawyers' work product. I.e., it was as if you were trying to get a hold of my interview memos. It's the same thing. He's answering only to the extent Columbia, the client, knows, which is what you have a right to, not to the extent that you are requesting work product from the attorney.

MR. NIEDERMAYER: I'm entitled to know the identities of the persons. That is not work product.

MR. LEAHY: If Columbia knows.

MR. NIEDERMAYER: They know if their attorneys know.

MR. LEAHY: Well, that's --

MR. NIEDERMAYER: Work product only covers the content of the interview and only if I can show that I can't get it in another way. I can't get it in another way unless I know the identity of the persons. That is not work product. That is knowledge of the hospital. So therefore, would you please -- let's just be clear.

BY MR. NIEDERMAYER:
Q. Dr. Rifka, do you know the identities of persons to whom the statements by NCRIC that were harmful to the reputation of the hospital were made?
MR. LEAHY: I'm going to object. Are we talking about all the statements?
MR. NIEDERMAYER: Whatever my question asks, yes.
MR. LEAHY: Okay.
THE WITNESS: I have not personally in my ears heard a NCRIC official tell me that.
BY MR. NIEDERMAYER:
Q. Are you aware of the identities of any persons known to any member of the hospital, including its attorneys, to whom NCRIC made the statement that the hospital would close?
A. I am not aware of a NCRIC official who said that in my presence.
Q. Do you know whether your attorneys know of any person to whom that statement was made by --

A. I think you can ask my attorney.
Q. No, I can only ask you. You can ask your attorney.
A. Okay. I will ask my --
MR. LEAHY: I would direct you not to answer to the extent if it would reveal any conversation that we have had.
THE WITNESS: I do not know what all my attorney knows.
BY MR. NIEDERMAYER:
Q. I'm going to ask you to inquire of your attorney whether the identities of such persons are known to the hospital including their attorneys.
MR. LEAHY: You can ask that, but I'm going to object. That's not a question that he can answer at a deposition.
BY MR. NIEDERMAYER:
Q. So the hospital has no knowledge of any person, any NCRIC officer who made the statement that the hospital will close.
A. To my recollection, that's correct.

MR. NIEDERMAYER: I'll give you fair warning that if the testimony of the hospital is it doesn't know anything, that the attorneys know it, that it won't be introduced at trial. I'll make a motion in limine about that.
MR. LEAHY: Okay. Go ahead.
BY MR. NIEDERMAYER:
Q. Do you know which person at NCRIC said that the physicians working in the clinic would not be covered by NCRIC's insurance?
A. Lenny Glassman who is a physician at Columbia and on the Board of NCRIC.
Q. Do you know when he said that?
A. In the cafeteria in front of everybody.
Q. Do you know whether he was authorized to say that by NCRIC?
A. I have no knowledge of that.
Q. Did you assume when you heard he had said that that it was an official statement of NCRIC?
MR. LEAHY: Objection to the

relevance.
THE WITNESS: I know that he is on the Board of NCRIC and when things are said I do not know in what authority did he say it.
BY MR. NIEDERMAYER:
Q. When did a representative of NCRIC say that the self-insurance trust was bankrupt?
A. I've heard that NCRIC was telling the physicians that the self-insurance trust is bankrupt and that's why NCRIC was doing what it was doing.
Q. From whom did the hospital hear that?
MR. LEAHY: I'm going to object to this, the same continuing objection as before, that to the extent you are seeking work product this is impermissible.
BY MR. NIEDERMAYER:
Q. From whom did the hospital hear that?
A. Physicians who are on the hospital staff.
Q. Which physicians?
A. I think it was a collective knowledge

brought about to the -- it was discussed in physician circles and in the executive committee and this about that the self-insurance trust has no money, bankrupt.

Q. Give me the names of some of the physicians who you, the hospital, knows said that NCRIC had said that.

MR. LEAHY: Same objection. This is continuing.

THE WITNESS: I know of some physicians who might have directed the president of the hospital, actually, told me that he had conversations and correspondence from some physicians who says that straightforward. And I have had questions in executive committee meetings of the medical staff that the self-insurance trust is bankrupt.

BY MR. NIEDERMAYER:

Q. My question is who or which physicians stated or told you that NCRIC had said that the self-insurance trust was bankrupt?

A. I think everybody who talked to NCRIC

came up with that impression. And I cannot name who personally because that was a general discussion and a general point of discussion. I think that maybe Larry Wilson will identify these persons. But physicians in correspondence with the hospital and in oral conversation with the hospital have told the hospital that the self-insurance trust is bankrupt. And that's probably after having a conversation with NCRIC.

Q. Tell me which physicians then told the hospital that the self-insurance trust was bankrupt.

A. Everyone that I talked to who have --

Q. Name names. Don't tell me "everyone;" otherwise, I'll go get a list of every member of the hospital and we'll go through every one and you can say yes or no.

A. I'm trying to name. There was an insurance committee that was formed by the medical staff to look after this issue. One of them is Dr. Greenfield. One of them is Kathy Bis or Marty Roberts. One of them is -- I would have

to look at the list, Mr. Niedermayer, and I don't have it with me. And these are the ones who came back from talking to NCRIC with the impression that the self-insurance trust is bankrupt.

Q. So everyone on the insurance committee are the physicians that you are aware of that reported that NCRIC said --

A. Yes, and some who are not on the insurance committee who have said that they would not accept the self-insurance trust covering them because it has no money. And that's Leonard Glassman who said that. And one of the physicians who comes to mind I think could be Heather Johnson. So Leonard Glassman said it. Heather Johnson I think could have wrote it.

Q. I'm only talking about the people who orally communicated it.

A. You asked for specific. I squeezed my memory to five names. I don't know unless if I see a list and I really did not -- this is the medical staff committee and I am on the Board and we are two separate structures. I purposely was

not on the committee. We let the medical staff themselves decide without Board influence.

Q. Is it your testimony that Larry Wilson should know the names of these persons?

A. If there are any further names, he would know them, yes, sir, because they were talking to him about coverage of the clinic.

Q. Let me ask you, if you would, to look at Page 16, Paragraph 69 of the counterclaims. Did you attend the meeting in August of 1998 in which NCRIC made or is alleged to have made the statements in 69?

A. I think I did.

Q. Can you tell me specifically the words that were stated by a representative of NCRIC about the first item that's listed in there that's alleged to have been false?

MR. LEAHY: I'm going to make the same objection here, continuing objection. Answer to the extent Columbia knows you're designated to answer. Well, to the extent this is part of your designation, to the extent it goes to reputation

or whatever, the harms, you may answer on behalf of Columbia. You may not answer anything your attorney knows, if you know what your attorney knows.

MR. NIEDERMAYER: The witness said he attended and he was there, and I asked him what specifically the language was that was said with regard to MIIX, M-I-I-X, remaining in the D.C. Insurance market.

MR. LEAHY: To the extent he has his own memory and he has Columbia knowledge, you go ahead and you answer.

THE WITNESS: 1 of 69, yes, it was said that.

BY MR. NIEDERMAYER:

Q. Was it said exactly in those words?

A. Yes.

Q. That's a quote then. Who said it?

A. I don't recall, but there were people at NCRIC attending it. I think there was Steve Fargis, I think there was Pate, I think there was Joheo, among others -- I don't know them very

well -- with the physicians. And I think it was hosted either here or in a hotel. There were two meetings either in the hotel which is facing the hospital if it's not Bristol Hotel, or here.

Q. Did you attend both meetings?

A. I think I attended both meetings.

Q. Tell me what other physicians were present at the meetings that you recall.

MR. LEAHY: Same objection.

THE WITNESS: A lot of physicians. I cannot tell you exactly who wasn't there and who was there. But it was attended.

BY MR. NIEDERMAYER:

Q. Can you remember the names of any physicians who were there in the meetings you attended?

A. There was one meeting here that I was not invited to.

Q. I'm not asking about the meetings you weren't invited to. I'm asking about the two meetings that you testified to that you did attend. Can you recall the names of any other

physicians that were there?

A. Sure. I was saying there was a meeting here that I was not invited to but I attended anyhow. So there was a bouquet of physicians who were invited. And I am sure NCRIC records since they called the meeting would have who attended. I just went in to listen to what is being said so that I don't hear it secondhand.

And a second meeting I think was in August in a hotel to try to talk to physicians to drum support for NCRIC, both called by the NCRIC group to drum support for them. And the support, the arguments that were floated were the following: That NCRIC, that MIIX, the new company, is a fly-by-night operation. They remained a part of the Hartford company that decided not to underwrite at one year and left physicians hanging. Second, that MIIX does not guarantee the premiums for two years because at that time MIIX was giving less markedly decreased premiums than NCRIC.

NCRIC had to come up with an

explanation how a competitor would come in and give a markedly decreased premium. And the defense was the MIIX is not here to stay, MIIX, there is no guarantee for it to look at the premiums, that MIIX was an unreliable insurance company.

Q. Was it explained what that meant?

A. It meant that it was explained that the physicians cannot rely on it for MIIX to keep insuring them and that MIIX's plan to raise premiums was entered in the District of Columbia, that we are being used as a stepstone for MIIX to go in and once they go in then they start jack up the prices. And their experience is not good, they cut loose and leave while NCRIC, although they charge much more, is here to stay. So the physicians can pay more and stay with a more reliable insurance company rather than pay less and risk their insurance. And that the MIIX was a proposal which would benefit members of the Medical Board of Directors, correct, that was said. It was said actually by some Board members

of the NCRIC, too. And that the Medical Center had lied to it by citing that it could not afford to continue the plan, that is correct.

Q. That is correct that that statement was made.

A. Yes. And that the Medical Center can't afford going with the plan because the plan is the best, and that we are not making much money on the plan and, therefore, the Medical Center is not continuing the plan because financially it cannot do so because it elects not to do so. There was electivity rather than an obligatory thing that we had to face.

Q. Was the word "lied" used in the presentation?

A. "Did not say the truth," I think, or something of the sort. And that the lawyers with whom NCRIC contracted when making a claim would not work with MIIX, that's correct. They said that the lawyers that work with NCRIC, that physicians who are used to the NCRIC lawyers, these lawyers might not work, would not work for

MIIX and, hence, MIIX would bring in with a new set of lawyers and you're used to these ones who are excellent, they are very responsive, they are here, who knows what MIIX will bring.

Q. Was there any visual presentation made at this August 1998 meeting you attended?

A. There was.

MR. LEAHY: Same objection.

THE WITNESS: There was slides.

BY MR. NIEDERMAYER:

Q. Slides.

A. I think.

Q. Do you know what that's called, a PowerPoint show?

A. PowerPoint show, more or less, yes, dog and pony show, yes. Yes, it was a show.

Q. After the meeting was over, did you have any conversation directly with any of the representatives of NCRIC?

MR. LEAHY: Same objection.

THE WITNESS: I forgot. I can't recall.

BY MR. NIEDERMAYER:

Q. Can you tell me any of the names of other physicians who attended the August 1998 meeting?

A. I think there was, I remember -- I think NCRIC would have a better recollection because they probably took attendance. I do not really with accuracy recall who was there.

MR. LEAHY: Can we go off the record for a minute?

MR. NIEDERMAYER: ES.

(Discussion off the record.)

BY MR. NIEDERMAYER:

Q. Dr. Rifka, you then do not recall the names of any physicians at the August 1998 meeting which we've been talking about.

MR. LEAHY: Same continuing objection.

THE WITNESS: Not with certainty.

BY MR. NIEDERMAYER:

Q. Do you recall any with a lack of certainty?

A. Yes. With a lack of certainty, Robert

Greenfield --

MR. LEAHY: Objection.

THE WITNESS: -- Kathleen Bis, Norman Neches.

MR. LEAHY: You got my objection, ma'am, same objection.

THE WITNESS: Martin Dukes. With uncertainty, all of them.

BY MR. NIEDERMAYER:

Q. Did you say Norman Neches?

A. N-e-c-h-e-s.

Q. Dr. Bis?

A. B-i-s.

Q. Did you understand from your attendance at the meeting that NCRIC was making a public relations presentation to convince doctors to stay with it?

MR. LEAHY: Objection to relevance. And same objection.

THE WITNESS: If you insist on that description only at the expense of Columbia Hospital.

BY MR. NIEDERMAYER:
Q. I don't insist on the description. I just want to know whether you agree or understood that it was an effort of NCRIC to market its product.
A. I don't know what was the intent of the meeting because NCRIC called for it. I know the content was an offensive against MIIX and against the hospital and a scare tactic to scare the physicians from going into another route.
Q. Are the statements that are numbered 1, 2, 3, 4, and 7 on Paragraph 69 --
A. 1 --
Q. 2, 3, 4 and 7, defamatory, do you claim, of the hospital?
MR. LEAHY: I'm going to object and tell the witness not to answer. That's a legal conclusion. There is absolutely no reason to ask a lay witness whether a statement is a defamatory statement.
MR. NIEDERMAYER: That's not what I asked. That's not the question I asked, whether

it was defamatory. I asked whether he contended it was defamatory. And that's a perfectly proper question to ask the representative of the hospital who is dealing with harm to its reputation.
THE WITNESS: Yes, because the hospital Board had elected to go with MIIX, and that the reason the hospital Board elected to go with MIIX was because of a variety of financial advantages that we have and to escape from the $1 million deadline that NCRIC imposed on us to come up with while we were in bankruptcy.
So the Board of Directors hurried, spent a lot of time with the administration, got a group called MIIX that made the presentation for the physicians. And that reversing that decision, an attempt by NCRIC to have this campaign to reverse it would hurt the hospital because it will put us under the same bad plan. It would put us, we stand to pay NCRIC $1 million. We will not bust loose of the monopoly and give the physicians an option. And

the reversing a Board decision by pressure, we were under Chapter 11, we thought that this was not something we want to see.
Q. Is it your testimony that while the hospital was in Chapter 11 proceedings that NCRIC made a demand on it to pay $1 million?
A. Yes, a deadline, or else the plan would be switched. Therefore, we hurried and got another insurer for the group. And administration will have the worksheet for that, too.
Q. Who at the hospital had the ultimate decision whether to accept a policy from MIIX or NCRIC?
A. The Board.
Q. Did the attending faculty have any role or authority in making that decision?
A. Through their representative who is the president of the medical staff, and through that they are the customers of the place. And if you end up displeasing your customers while you are in Chapter 11, your dreams of emerging from

Chapter 11 will be shattered under these type of circumstances we were operating. And NCRIC was demanding things that we could not deliver.
Q. In this August '98 meeting you attended was the word "cronyism" used by any representative of NCRIC?
MR. LEAHY: Again, same objection, work product. Answer to the extent you or Columbia knows.
THE WITNESS: It was floated that the MIIX proposal is brought by some members on the Board who stand to gain financial gains from that contract.
BY MR. NIEDERMAYER:
Q. Were those members identified?
MR. LEAHY: Same objection.
THE WITNESS: Not to my knowledge.
BY MR. NIEDERMAYER:
Q. Was it explained what the benefit would be to those members?
MR. LEAHY: Same objection.
THE WITNESS: Not to my knowledge. It

was made, though, the sentence was made that some might be bringing them here for their personal gain.

BY MR. NIEDERMAYER:

Q. At the meeting of August '98 did representatives of NCRIC ask members who attended to dissociate themselves from the Medical Center?

MR. LEAHY: Same objection on work product.

THE WITNESS: Yes.

BY MR. NIEDERMAYER:

Q. Who said that?

A. Upon asked what if the Retro plan is not renewed with Columbia, the NCRIC representative said other hospitals will have a similar plan.

Q. Did any representative of NCRIC say to the physicians, "We suggest, recommend that you move from Columbia to the other hospitals"?

MR. LEAHY: Same objection. You're instructed to answer only to the extent Columbia has knowledge.

THE WITNESS: Not in my presence.

BY MR. NIEDERMAYER:

Q. Were you there continuously throughout the whole meeting?

A. Yes, sir.

Q. May I ask you to look on Page 19 at Paragraph 89 of the counterclaim. Are you familiar with NCRIC making the statements that are described in Paragraph 89 of the counterclaim?

MR. LEAHY: Again, same work product objection.

THE WITNESS: I have received a -- yes, I am aware that they have made that sentence and these accusations.

BY MR. NIEDERMAYER:

Q. How were you made aware of that?

MR. LEAHY: Same objection.

THE WITNESS: Through the same, through the vice president of the hospital, Dwaine Gasser, and through the president of the hospital, Larry Wilson, that physicians have

called NCRIC and they told them all of these things from 1 to 4.

BY MR. NIEDERMAYER:

Q. So it was reported to you by Mr. Gasser and Mr. Wilson that these have been said.

A. Yes, sir.

MR. LEAHY: Same objection.

BY MR. NIEDERMAYER:

Q. Did they report to you when these were said?

MR. LEAHY: Same objection.

THE WITNESS: Probably -- definitely I recall towards the end of August, beginning of September. It was a Friday and I was made aware of it because the vice president have called me, the president was somewhere else, and that physicians have called NCRIC, they're not covered, they're not going to go to the clinic; and that if they are told that the self-insurance trust is covering them, that its bankrupt. And that's part of why NCRIC does not want to get

involved with the hospital any more because there is no self-insurance trust there. And the reason they don't cover, the NCRIC policy does not cover the clinic is because the clinic is a dangerous place to work.

BY MR. NIEDERMAYER:

Q. Dangerous for whom or to whom?

MR. LEAHY: Same objection. You're answering only to the extent Columbia knows.

THE WITNESS: To the extent -- to that I would say that "dangerous" means that the quality of the patients are litigation material and, hence, working in the clinic will expose the physician to a lot of legal issues.

BY MR. NIEDERMAYER:

Q. Was it reported to you that the danger associated with the ambulatory clinic related to working there without insurance coverage?

MR. LEAHY: Same objection.

THE WITNESS: Dangerous includes to me that when physicians asked, "Since I have a NCRIC insurance policy, why am I covered in the

operating room on my patient and I'm not covered in the basement looking after clinic patients?" The answer was that in the clinic it's more dangerous and, therefore, your NCRIC personal policy does not cover you in the clinic of Columbia Hospital. And that's where my sentence came to the vice president saying this is like Nationwide insuring you everywhere except the beltway means the beltway is dangerous place to drive.

BY MR. NIEDERMAYER:

Q. Was it reported to you who made these statements in Paragraph 89?

MR. LEAHY: Same objection.

THE WITNESS: It was reported to me that the physicians who were supposed to cover the clinic on September 1st have made these representations to the vice president of the hospital and, hence, refused to go down to the clinic which produced a huge amount of anarchy there. And I think that the president later, I was told, has tried to call NCRIC to issue a

statement that, no, they are covered. NCRIC never did that.

BY MR. NIEDERMAYER:

Q. My question was was it reported to you who as the representative of NCRIC made these statements?

MR. LEAHY: Same objection.

THE WITNESS: I was not aware of who.

MR. LEAHY: Roy, I am going to start objecting to further questioning because I think we're well beyond any of the topics in which he's been designated here. I just want to warn you I don't see a topic here. I'm going to start objecting and telling him not to answer at all unless you tell me where we are on the subject of the deposition. We have gotten far afield and into other subjects for which he is not designated. And I don't see this on any of our subjects.

MR. NIEDERMAYER: I'll tell you where it is, though I'm not obligated to do so. Count 9 is a count for defamation and libel, and refers

to the fact that NCRIC made false and defamatory statements, including statements in Paragraph 69 and 89. And Paragraph 158 says "As a result of the foregoing false and defamatory statements, the Medical Center suffered harm to its reputation." Therefore, I am asking about the statements which caused the harm. It's well within the ambit which he is designated to testify about.

MR. LEAHY: No, he isn't. He's been asked about the subject, nature and scope of any harm. You have separate topics about what the statements are. You asked about the content of rumors, not defamatory statements. You asked about its reputation and the subject, nature and scope of the harm. The statements themselves are not the scope of the harm.

MR. NIEDERMAYER: I'm not going to argue with you. Just instruct him not to answer. We'll go see the judge on it.

MR. LEAHY: All right.

MR. NIEDERMAYER: You know the rules

on instructing not to answer.

MR. LEAHY: Roy, he's not here on a notice of deposition on himself. So if it's outside the scope, I can certainly instruct him not to answer.

MR. NIEDERMAYER: Off the record.

(Discussion off the record.

MR. NIEDERMAYER: Counsel, I'm going to ask you not to object on the basis of anything other than instructing the witness not to answer privilege or those things that are permitted by the rules, not on relevancy or other matters which you know are improper under the rules to raise as objections, except you may object as to the form of the question.

MR. LEAHY: In a 30(b)(6) deposition I can object to relevance, especially when we have an agreement here that you're not going to ask about other topics. Rather than walk, I'm going to object to relevance. You are breaching our agreement.

MR. NIEDERMAYER: Maybe you're

available right now and we can go see the judge.
MR. LEAHY: Fine. You're breaching your agreement.
MR. NIEDERMAYER: When we're done we'll go see the judge and we'll ask about the question about whether it's a work product about the knowledge of the hospital.
MR. LEAHY: I think that's going to be a paper motion.
BY MR. NIEDERMAYER:
Q. Dr. Rifka, could you tell me, referring to Paragraph 89, what is untrue about the first statement that the policy had expired?
MR. LEAHY: Same work product objection. You are instructed to answer only to the extent Columbia has knowledge.
THE WITNESS: Actually, the policy has been canceled by NCRIC.
BY MR. NIEDERMAYER:
Q. So on the effective date of the cancellation it had expired, hadn't it?
A. Yes.

Q. So that's a true statement?
MR. LEAHY: Same objection.
BY MR. NIEDERMAYER:
Q. You may answer.
A. Yes, it was expired.
Q. So it's a true statement.
A. As far as I can tell.
MR. LEAHY: Same objection.
MR. NIEDERMAYER: Okay.
MR. LEAHY: And legal conclusion objection.
BY MR. NIEDERMAYER:
Q. Is it true that in August of 2000 that the Medical Center's self-insurance trust was insufficiently funded to insure the CPG?
A. It is --
MR. LEAHY: Same objection.
THE WITNESS: It is technically true, but funding of all malpractice legal costs and suits have been paid by the hospital, whether it's from the self-insurance trust or from operations.

BY MR. NIEDERMAYER:
Q. May I ask --
A. Just to explain to you further on the self-insurance trust, during the bankruptcy proceedings we were not allowed to put money there and, hence, up to June 2000 or July 2000 we had no power to go from the bankruptcy estate and put money in the self-insurance trust. Plus, before we went into bankruptcy NCRIC took $1 million out of it. So technically it had insufficient funds for variety of reasons, but the hospital continues to pay its liability from operations.
Q. Let me understand your statement.
A. Yes.
Q. NCRIC doesn't have any authority to remove money from the self-insurance trust, does it?
MR. LEAHY: Same objection.
THE WITNESS: NCRIC demanded before we went into a Chapter 11, way before, came and had a meeting with Jerry Beaulieu, who was then the

president of the hospital, and said that "Although our agreement does not require you to pay money, your tenuous position financially requires that you give us some money which we will put in your name on our books, it will stay for you guys. But either get us a letter of credit or a CD or $1 million." At that time we had no option but to give them the $1 million. Anything less than that we would risk a war with them and, hence, a problem for the hospital.
BY MR. NIEDERMAYER:
Q. Who was it that said those things on behalf of NCRIC?
A. If you name me names --
MR. LEAHY: Same work product objection.
THE WITNESS: If you would name me names, I will tell you. But I know Steve Fargis was there and another gentleman, I can see him by face. If you tell me names of NCRIC, I could help you.
BY MR. NIEDERMAYER:

Q. Was it Mr. Pate?
A. I don't remember that.
Q. Was it Mr. Osborne?
A. Go ahead, next. Other than Osborne.
Q. Mr. Sohm?
A. Mr. who?
Q. Sohm?
A. No. Next?
Q. Let me ask you if you would look at Paragraph 92 of Exhibit 2. Are the statements that it's alleged that NCRIC made to physicians in Paragraph 92 part of the false and malicious statements that hurt the reputation of the hospital?
A. Yes.
MR. LEAHY: Same objection.
BY MR. NIEDERMAYER:
Q. Who made those statements referred to in Paragraph 92, who made them on behalf of NCRIC?
MR. LEAHY: Same objection.
THE WITNESS: Physicians have called

NCRIC here and somebody in NCRIC talked to these physicians and told them about this, the clinic and the coverage there.
BY MR. NIEDERMAYER:
Q. You don't know who that was at NCRIC that said that.
A. No.
MR. LEAHY: Same objection.
BY MR. NIEDERMAYER:
Q. Which physicians were there that called NCRIC?
MR. LEAHY: Same objection.
THE WITNESS: I would know at least of one of them that called, or two. I think either Ed Cook and Heather Johnson, on that September 1st, on that Friday. This I have knowledge of. Others have, too. I'm sure NCRIC would be the best source of who that they received phone calls from.
Q. Do you have any knowledge about the last sentence of Paragraph 92 that there is no justification for the exclusion for the

ambulatory clinic?
MR. LEAHY: Same objection. To the extent Columbia has knowledge of that, you may answer. To the extent Columbia does not have knowledge, you may not.
THE WITNESS: We are bewildered as to why an insurance company will be charging twice to cover the same individual in the same place. And we are bewildered -- sorry.
BY MR. NIEDERMAYER:
Q. No, complete your answer, please.
A. We are bewildered why would the clinic be excluded from coverage under the NCRIC insurance. And we would wonder whether other hospitals are treated similarly or physicians who go to an emergency room and practice, whether NCRIC will cover them or not.
Q. Does the hospital have any information or knowledge about the underwriting justification for the exclusion of physicians practicing in the hospital's clinic?
A. I am not aware of why NCRIC has done

that.
Q. Let me ask you to look at Paragraph 94 of the counterclaim.
A. Yes, sir.
Q. Are the statements in that Paragraph that NCRIC's alleged to have made part of the false and defamatory statements that harmed the reputation of the hospital?
MR. LEAHY: Same work product objection here.
THE WITNESS: Mr. Niedermayer, is this 94 you said?
MR. NIEDERMAYER: Yes.
MR. LEAHY: Take your time.
THE WITNESS: I think that two things have been done is I think NCRIC has established a new discounted plan with GW at that time that ours have expired and has informed physicians of the Sibley plan and, therefore, in an attempt to keep physicians within the NCRIC environment they have structured for them two places to practice, one in GW which is currently structured and I

believe structured at the time when our contract switched off with them, and I believe that they told them of Sibley as another place.

BY MR. NIEDERMAYER:

Q. What information does the hospital have about this GW plan?

A. We understand that we do not have any direct plan from GW, but we know that GW which did not have a discounted plan now does.

Q. Let me see if I understand. You said you have no direct information about what the GW plan is.

A. The contract, I don't have the written document. It's our belief that the physicians who left Columbia and are still with the NCRIC plan have been diverted to Sibley and some to GW which now has an analogous plan which I don't have the document for.

Q. What's the basis of your understanding?

A. Because this is where our physicians went after our contract with NCRIC expired. They

went, the majority, to Sibley and the minority to GW.

Q. So the fact that physicians left or went to each of these hospitals is the basis for your belief that the insurance plans offered by NCRIC at these hospitals were what? Better?

A. I don't know they were offered by NCRIC in GW. I know they are offered by NCRIC in Sibley. They are analogous. They offer the physician a 30 percent discount on her or his malpractice insurance.

Q. Without any direct copy of the document, what is the basis for your understanding about the terms of either the GW or the Sibley plan with NCRIC?

A. I want to ask you that question, what did NCRIC offer in the plans and how did they do it. But I understand from the physicians who left that they have a 30 percent discount on their malpractice wherever they went to.

Q. Who are the physicians that left and went to Sibley?

A. They are the Horowitz-Safran group, a group of five or six physicians. There is the women's group. There is the Roberts-Bis group, Martin Dukes. And there is another lady who is on the Board of NCRIC, I will remember her name. And I think that is all of the people that I know. And some go there a certain number of times just because the contract for them to have a 30 percent discount they have to do so many cases, so they have to go there to satisfy the cases.

Q. Do you know the reasons why the physicians or groups that you just identified who went to Sibley did so?

MR. LEAHY: Same objection with regard to work product. You may answer only to the extent that Columbia has knowledge other than its attorney's knowledge.

THE WITNESS: I think in the newspaper article it was cited as a malpractice insurance financial issue. And that's what they said. I think that they all left within 30 days, 30 to 60

days of the contract termination. To the extent that Sibley now I don't think accepts any new physicians.

BY MR. NIEDERMAYER:

Q. Did any of these physicians or groups that you identified leave Columbia and go to Sibley because of facilities at Sibley?

MR. LEAHY: Same work product instruction and objection.

THE WITNESS: Actually, Sibley has no facilities for obstetrics-gynecology. It's a small hospital for OB-GYN. It's a huge hospital and fantastic for other disciplines of medicine. And there are no facilities. They had to apply for a certificate of need when they had this influx to build a new facility to accommodate the new commerce.

The new commerce did not go to a great facility. They went to a crowded facility to be expanded thereafter. And they went to a place, too, where women in labor below 30 weeks are not allowed or admitted because they do not have an

11-3 nursery. So they went really to a place which is more crowded, to a place that does not deliver the excellent and the complicated care that Columbia delivers and knows how to deliver. And there has to be a reason, which according to the newspaper article they said is for business opportunity or for the malpractice insurance.

BY MR. NIEDERMAYER:

Q. So you are not aware of any other reason that these physicians or groups left to go to Sibley other than the cost of the malpractice insurance?

MR. LEAHY: Same objection.

THE WITNESS: They have said that in public and in private, that if we don't go with NCRIC they're going to go and they're going to go to a place that gives them the same discount. And so they did. Whether they are going to address it to the public any way where it's nearer, no traffic, the air quality is better, that's something different. But the window of time was, all of this happened miraculously at

the time when the contract expired.

BY MR. NIEDERMAYER:

Q. How about the doctors who went to GW, who were they?

A. GW offered another program like, I don't know with who. And these doctors have to deliver or have to do a certain number of cases there. And they are a group of them. One is Norman Neches, Cooper, James Powers and his group, Jim Powers and his group and Marcy Wilkerson and Art Becker, they're in the same group, and Amy Kesselman. Then you have Russ Bridges, Bruce Barnes, Allen Bernquist, Sarah Emershein. That's the extent of my knowledge. They left and they still come to Columbia, these guys, but they have to do a certain number of cases there to be eligible for the discounted plan.

Q. What is your knowledge about the reasons why they left to go to GW and participate in GW's program?

MR. LEAHY: Same objection. You're

instructed not to answer to the extent Columbia doesn't have knowledge.

THE WITNESS: Same reason, for the NCRIC issue.

BY MR. NIEDERMAYER:

Q. Is that the cost of the insurance is the reason?

A. Yes, the financial cost.

Q. Isn't it true that Columbia Hospital now has an insurance program that costs the physicians less than the NCRIC program?

MR. LEAHY: Same answer.

THE WITNESS: Yes, it is.

BY MR. NIEDERMAYER:

Q. If that's the case do you know why these physicians would have left if it was to achieve a lower financial cost?

MR. LEAHY: Same objection.

THE WITNESS: It is not less with the discount, okay? So if you take the discounted Sibley plan and the new plan that we offer through another insurance company, there is not

much difference. So with the 30 percent discount implemented you stay with your own insurance company and the insurance company which gives you the same premium. So the money out-of-pocket is the same. For us, the hospital, we do not share in the risk, we do not shoulder and we do not put our assets on the line.

BY MR. NIEDERMAYER:

Q. With your current policy.

A. Yes.

Q. So it's better than NCRIC's.

A. For the hospital. For the physician it's about the same or a little bit more, because if we offer a 30 percent discount with the present policy then it would be much less compared with the 30 percent discount that is offered. But we do not offer a 30 percent discount. So our full policy is the same as the 30 percent discounted policy of NCRIC. And the premiums are blended premium with NCRIC.

For example, not everybody has the same rate. I used to pay with a 30 percent

00001
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR
WOMEN MEDICAL CENTER,
INC.,
Defendant.

****

Washington, D.C.
June 27, 2001

Deposition of
LARRY WILSON, JR.
a witness, called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 11:34 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

Q. I will come back to that, but what I'm asking you is did NCRIC do anything that you know, you or the hospital know of, that prevented the hospital from performing anything it had to do under the Retro plan?

MR. LEAHY: I'm going to object to the extent that that calls for a legal conclusion. I'm going to instruct you not to answer if and to the extent that the hospital's knowledge would be knowledge gained from its attorney. That would be work product. If you have knowledge that is not knowledge gained through your discussions with your attorney, you may answer.

THE WITNESS: Maybe it's just after lunch. I need to go back. Let me put this in context again. State the question again.

BY MR. NIEDERMAYER:

Q. I'm sorry. Did you want me to state the question?

A. Yes.

Q. I'm asking you whether you know of anything that NCRIC did that stopped or prevented the hospital from doing what it was obligated to do under the Retro plan.

MR. LEAHY: Same objection.

THE WITNESS: Under the Retro plan. Well, if I can, it is my belief that as a result of entering into a new plan, as a result of the termination of the old plan, that NCRIC had something to do with us losing our positions.

BY MR. NIEDERMAYER:

Q. Let's come back to that later. But before we do, do you understand that NCRIC had no right to cancel the program?

MR. LEAHY: Again, objection to the extent it calls for a legal conclusion. And you are directed not to answer to the extent this would involve work product from your attorney, any type of discussion with your attorney.

THE WITNESS: Okay. Then I won't

the hospital that it didn't have to do something under the plan that it was obligated to do?

MR. LEAHY: Object to the extent it calls for a legal conclusion.

MR. NIEDERMAYER: It does not because it is a report of another person to him saying "you don't have to do something you're obligated under the plan to do."

MR. LEAHY: It calls for him to make a judgment with regard to whether or not the plan calls for something and whether he was told not to. I'm going to object. It's just an objection. You can answer.

THE WITNESS: No.

BY MR. NIEDERMAYER:

Q. Are you able to describe for me what damages that the hospital suffered that are being claimed under Count One of the counterclaims?

MR. LEAHY: I'm going to object and instruct you not to answer to the extent

any of your knowledge might come from your attorney and be otherwise solely your attorney's knowledge and not be knowledge of the hospital. I'm also going to object to the extent that any knowledge might come from the expert, because you're not designated as an expert. You may speak to the hospital's knowledge only.

MR. NIEDERMAYER: Let's go off the record a second.

(Discussion off the record.)

BY MR. NIEDERMAYER:

Q. Mr. Wilson, may I have your answer, please?

A. State the question again.

Q. Are you able to describe for me the damages that the hospital is claiming under Count One, breach of contract, in its counterclaims?

MR. LEAHY: I'm going to instruct you not to answer to the extent that there's knowledge that is from your attorney or that's

expert knowledge. You may answer to the extent that Columbia knows what its damages are.

THE WITNESS: I can give you an example of damages.

BY MR. NIEDERMAYER:

Q. Why don't you do that to start with.

A. Okay. Well, in my opinion we've suffered damages in the tens of millions of dollars to the extent that our reputation has been damaged, we've lost volume, we've lost face in the community, and I could go on just as an example of a few.

Q. Some of those have to do with reputation, they are in later counts. This says breach of contract. I just want to know what damages you claim the hospital claims have been suffered as a result of NCRIC's breach of contract. Can you tell me that?

A. Yes. The part of the reputation that goes back to that dim day in August when

A. I think the premiums at Columbia are less.

Q. Let's see if we can go back --

A. That's how we made our comparisons and the rates that were quoted by NCRIC were certainly higher than the ones we had at the time.

Q. Let's go back to Count One. Can you describe for me each type of damage that you claim under Count One has been incurred by the hospital?

MR. LEAHY: I'm going to object and instruct you not to answer to the extent that you got knowledge from work product of your attorney, that it's not Columbia's knowledge. If you have information that's Columbia Hospital's, give it.

THE WITNESS: As you know, this has been discussed with attorneys. So maybe I should not answer that.

MR. NIEDERMAYER: This witness has been proffered as being able to answer these

questions. Are you telling me he can't answer any of these questions?

MR. LEAHY: He's not our expert. To the extent the party has knowledge, the party can answer. To the extent the knowledge is the party's lawyer's knowledge or the expert witness' knowledge, you'll have to depose those people. To the extent the party has information, go ahead and answer. I'm sure the party has some information. But don't answer about what your lawyer knows.

THE WITNESS: Yeah. We contend there were damages as a result. Damage to reputation, damage to lost opportunities, damage to loss of volume.

BY MR. NIEDERMAYER:

Q. Those aren't breach of contract, but tell me how much is the damages for loss of reputation.

A. We haven't been able to quantify that. Considerable.

Q. Who is going to quantify it?

CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR
WOMEN MEDICAL CENTER,
INC.,
Defendant.

****

Washington, D.C.
July 16, 2001

Resumed Deposition of:

LARRY WILSON, JR.

called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 10:00 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

Page 215

MR. LEAHY: Right, because as I said, I don't think we have any information other than the data dumps themselves. However, if it turns out that there are questions that Larry believes there are other people who have that information, he will answer and say, "Oh, I think this person has that information," or that person. And so that we don't produce someone who doesn't know anything, we'll come back and designate someone else.

MR. NIEDERMAYER: He's also going to be designated on the topic of expenses associated with the delivery of the services and items charged to each patient on the spreadsheets contained on CHW-CD1 and CHW-CD2.

MR. LEAHY: Right, which is the hospital's raw data files.

MR. NIEDERMAYER: Go off the record a second.

(Discussion off the record.)

Page 216

--Whereupon

LARRY WILSON, JR.

a witness, called for examination, having previously duly sworn (or affirmed), was examined and testified further as follows:

****

EXAMINATION BY MR. NIEDERMAYER

Q. Mr. Wilson, you understand you're still under oath as a continuation of your deposition.

A. Yes, I do.

Q. I just want to confirm with you you're not going to testify on behalf of the hospital as to the calculation of any damages arising out of the miscalculation of additional or return premium. Is that right?

A. That's correct.

Q. That's going to be done by expert witnesses on behalf of the hospital?

MR. LEAHY: Actually with regard to the return premium, that's not going to be done by an expert witness.

Page 217

MR. NIEDERMAYER: Who are you going to designate to do that? Mr. Wilson?

MR. LEAHY: No. Is that a topic?

MR. NIEDERMAYER: Yes.

MR. LEAHY: That's a purely legal question. So I don't think we're going to have anyone designated for that.

MR. NIEDERMAYER: So you're saying that the calculation of your damages for return premiums is a legal question?

MR. LEAHY: Except for the loss reserve. We'll have an expert for that.

MR. NIEDERMAYER: I'm entitled to know how you calculate your damages.

MR. LEAHY: You can depose our expert.

MR. NIEDERMAYER: You're expert, you just told me, is not going to testify about the return premium.

MR. LEAHY: Our expert is going to be the damages expert with regard to lost profits.

Page 218

BY MR. NIEDERMAYER:

Q. Mr. Wilson, has anyone made a computation on behalf of the hospital as to the proper amounts of return or additional premium that the hospital is claiming is correct for the years since the inception of the Retro plan?

MR. LEAHY: I'm going to direct you not to answer that on the grounds it infringes on the work product privilege.

MR. NIEDERMAYER: The identity of the person who does it does not infringe on the work product.

MR. LEAHY: We don't have to give up the identity of any consulting experts.

MR. NIEDERMAYER: So you're representing that they're made by consulting experts.

MR. LEAHY: Can we go off the record?

MR. NIEDERMAYER: No, we're not going to go off the record.

8/6/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	Civil Action No. 00-007308 Calendar #8 Judge Linda Kay Davis Next Event: Discovery close 8/12/01

MOTION TO COMPEL DISCOVERY BY DESIGNATION UNDER SCR 30(b)(6) AND APPEARANCE AT DEPOSITION

Plaintiff, NCRIC, Inc., by Roy Niedermayer its attorney, moves this Court pursuant to SCR Rule 37 for an order compelling defendant to designate persons to appear at deposition and answer questions about the subject matters described in plaintiff's Notice of 30(b)(6) Deposition and, in particular, subject matter topic numbers 1-14, 28-29, 51-52, and 56-57.

The grounds and bases for the Motion are as follows:

1. Plaintiff served defendant a Notice of 30(b)(6) Deposition first on March 14, 2001 and again on June 26, 2001. The notice described 58 subject matters on which plaintiff sought to depose the defendant with particularity. A copy of the Notice is attached hereto as Exhibit A.

2. Defendant refused to designate or provide persons to testify concerning subject matter numbered 1-4,[1/] 5-14, 28-29, 51-52, and 56-57, at times

[1/] Defendant produced persons to state where data concerning the subject matters could be found, but not persons who could provide substantive responses about the matters described, i.e., in what manner plaintiff's calculations on spreadsheets were incorrect.

contending that it was not required to produce a witness to testify to information that had been provided in previous written discovery. Defendant designated and provided representatives of defendant to respond to specific subject matters numbered 15-27, 30-50, 53-55, and 58.[2/]

3. The subject areas of the Notice of Deposition were tailored to request only information relevant to plaintiff's case in chief or in defense to defendant's counterclaims, as set forth below:

Areas	Description of requested testimony
1-2	Explanation of a chart summarizing certain aspects of defendant's alleged damages.
3	Information regarding what defendant contends should have been the appropriate premium charged its doctors under the plan. This is relevant to both liability and damages because defendant claims that its doctors were overcharged, causing them to leave the hospital.
4	Information regarding what defendant contends were the circumstances surrounding, and terms of, contracts with physicians who allegedly left CHW as a result of plaintiff's actions. This is important to show CHW's alleged damages and the causal connection between those damages and plaintiff's alleged tortious conduct.
5-8	Plaintiff is alleged to have interfered with contracts between defendant and its attending physicians tortiously, maliciously, and with wanton and reckless disregard. These subjects seek specifics as these claims. They further seek specifics as to defendant's claim that plaintiff breached some alleged fiduciary duty.

[2/] Defendant's witnesses did not testify to a significant portion of the information for which they were designated, claiming that the information sought was protected by the attorney work-product privilege. These failures are the basis of yet another Motion to Compel.

9	This subject seeks information concerning how defendant calculates its damages. Despite numerous attempts, plaintiff has simply been unable to discover sufficient information in this regard.[3/]
10	Plaintiff is alleged to have defamed defendant. This subject seeks information concerning those statements.
11-14, 28-29	Plaintiff is alleged to have miscalculated the amounts due and owing by defendant under the contract, with full knowledge of defendant's weak financial situation. These subject areas seek information concerning the bases for that claim, the magnitude of the error claimed, the causes of defendant's insolvency, and the bases for the assertion that plaintiff knew about defendant's financial condition.
51	In this subject area, plaintiff seeks information about alleged performances under the Plan that were prevented, excused, or waived by plaintiff.
52	This subject area seeks information about plaintiff's allegedly intentional acts.
56	Plaintiff is alleged to have concealed facts from defendant. This subject area seeks to determine which facts were allegedly concealed, how they were concealed, and which specific persons were involved in the concealment.
57	This area seeks information concerning defendant's claim for attorneys' fees.

5. On July 16, 2001, counsel for plaintiff wrote to counsel for defendant, again requesting "identification and production of 30(b)(6) designees for topics 1-3, 5-8, 10-14, 28-29, 51-52, and 56-57." See correspondence from Mr. Niedermayer to Mr. Leahy, attached hereto as Exhibit "B."

[3/] Defendant's failure to provide detailed information regarding its damages was the subject of plaintiff's recent Motion to Compel depositions of defendant's expert witnesses. This motion was granted.

6. Defendant has neither sought nor obtained a Protective Order pursuant to SCR 26(c) in this regard.[4/]

7. On July 16, 2001, counsel discussed the issue of proper designation, but defendant still refused to produce the witnesses as required by the rules of this Court.

8. Defendant has failed to appear for its deposition taken by its officers, directors, managing agents, or other persons on the topics which it has refused to designate or provide a witness.

9. This failure has severely prejudiced plaintiff's ability to prosecute its own case or to defend against the counterclaims that have been brought against it.

10. Sanctions are immediately available for defendant's failure to appear for its deposition as noted.

WHEREFORE, plaintiff prays that this Court enter an order compelling defendant to designate witnesses pursuant to SCR 30(b)(6) and to appear to be deposed as to the remaining subject matters and that defendant pay plaintiff its reasonable attorneys' fees caused by having to file this motion and obtain an order compelling discovery.

[4/] Defendant did file a list of "objections" to the subject areas noted in plaintiff's Notice of Deposition, but this procedure to forestall provision of designees is not provided for in and Court Rule.

Respectfully submitted,

Roy Niedermayer, DSK

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

CERTIFICATION OF GOOD FAITH EFFORTS TO SECURE DISCOVERY AND RESOLVE DISCOVERY DISPUTES WITH DEFENDANT

The undersigned counsel hereby certifies that he made good faith efforts to secure the defendant's witnesses and to resolve the discovery disputes with defendant through the following actions:

1. Correspondence dated July 16, 2001;

2. A face to face meeting with defense counsel at the deposition of Larry Wilson, taken at plaintiff's offices located at 1115 30th Street, NW/Washington, DC;

3. These efforts have been unsuccessful as defendant continues to refuse to provide the witnesses as requested.

Roy Niedermayer, DSK

Roy Niedermayer, Esq. #180380

MEMORANDUM OF GROUNDS AND AUTHORITIES

1. SCR 30(b)(6);

2. SCR 37

2. The record herein.

Roy Niedermayer/DJK
Roy Niedermayer, Esq. #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on August 6, 2001, a copy of plaintiff's Motion to Compel Discovery by Designation Under SCR 30(b)(6) and Appearance at Deposition from defendant were mailed first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer/DJK
Roy I. Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 5/12/01
	)	
Defendant.	)	

ORDER GRANTING MOTION TO COMPEL DISCOVERY BY DESIGNATION UNDER SCR 30(b)(6) AND APPEARANCE AT DEPOSITION

This matter came before the Court on plaintiff's Motion to Compel Discovery By Production of Witnesses to Testify Pursuant to SCR 30(b)(6), and the Court having reviewed the Motions and any opposition thereto, it is this _____ day of _____ _____, 2001

ORDERED that the plaintiff's Motion to Compel Discovery by Designation under SCR 30(b)(6) and Appearance at Deposition be and the same is hereby GRANTED; and it is further

ORDERED that defendant shall produce corporate designee(s) to testify to the following subject matters identified in plaintiff's Notice of Deposition: _____, and it further

ORDERED that the defendant shall pay plaintiff the sum of $_____ as reasonable attorneys' fees and costs in having to file this Motion and obtaining this Order

_____
Linda Kay Davis, Superior Court Judge

16d-000779

cc:

Roy Niedermayer, Esq. DC.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 00-007308
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next Event: Discovery close 8/12/01
	)
Defendant.	)

NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT

Please take notice that NICRIC, Inc., plaintiff, by Roy Niedermayer, its attorney, hereby notices the deposition upon oral examination of an officer(s) or managing agent(s) of defendant pursuant to SCR 30(b)(6) at the offices of NCRIC, Inc., 1115 30th Street, N.W., Washington, DC 20007 beginning at 9:30 a.m. on July 16, 2001 and continuing from day to day thereafter until completed.

The designated person shall be designated to testify on all of some of the following subjects:

1. The facts and reasons forming the basis for defendant's claims that any of the calculations or numbers in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) are incorrect or fail to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant.

2. The correct amounts that should be used or inserted in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant; and facts and reasons why these numbers are the proper amounts and calculations to be used in calculating the amount of premium due plaintiff under the contract.

3. The amounts of premium that should have been charged to defendant in

each year of the contract and the amount, year, and method of calculation of any refund of premium defendant claims was due it.

4. The identity, terms, and facts concerning any contract, business relationship, or business expectancy between defendant and each of the doctors identified in paragraph 14-18 and 124 of defendant's amended counterclaims.

5. The specific actions and acts of plaintiff constituting the interference with the contracts between defendant and the doctors identified in paragraph 124 of defendant's amended counterclaims.

6. Acts or statements of plaintiff exhibiting malice toward defendant.

7. Acts or statements of plaintiff exhibiting any wanton or reckless disregard of the rights of defendant.

8. Source, substance, nature, duties and responsibilities of NICRIC as fiduciary for defendant and actions constituting breach of any fiduciary duty.

9. Identify, description, and calculation of damages suffered by acts alleged in each amended counterclaim count.

10. Defamatory actions or statements by plaintiff about defendant.

11. The matters concerning calculation of loss reserves, adjustments of loss reserves, positive loss experiences of defendant under the Plan, use of additional years in calculating premiums, and each element of the formula or requirements for reconciliation of premiums due under the Plan.

12. Allegations of errors by plaintiff made in paragraphs 38-41, 49 (second sentence), and 53 (second sentence) of the Amended counterclaims.

13. The bases for the allegations of plaintiff's knowledge about defendant's financial situation as alleged in paragraph 43 of the Amended counterclaims.

14. The specific errors, miscalculations and overstatements in the bill from plaintiff alleged in paragraphs 72 and 101 including the reasons and bases for the errors, and corrections required to make the bill accurate.

15. The facts supporting or related to the allegations of paragraph 73 that plaintiff attempted to gain leverage over defendant.

16. The search for new or replacement MMLI insurance with companies other than plaintiff during the period 1993 to date.

17. The negotiations and events between plaintiff and defendant alleged in paragraphs 83-88 including the factual bases for defendant's allegations of cancellation without justification, retaliation, and reneging.

18. The events and statements described in paragraph 89 of the Amended counterclaims.

19. The substance, nature, and scope of any harm caused to the defendant's reputation in the community caused by the action of plaintiff including the nature, bases, and calculation of any monetary damages sustained as a result of the harm.

20. The content of the rumors alleged in paragraphs 91 and 98 of the Amended counterclaims as well as the identities of the staff members originating and circulating the rumors.

21. Defendant's reputation in the medical community and community at large.

22. The facts and events described in paragraph 92 of the Amended counterclaims.

23. Identities of the physicians, staff, nurses, and executives described in paragraphs 91, 93, 96, and 98 of the amended counterclaims and the reasons for the actions of these persons described in those paragraphs.

24. Local media communications with defendant's personnel, doctors, staff, nurses, and executives in 1999-2000 concerning defendant's financial condition, loss of doctors and patients, closing of defendant's operations, and similar topics.

25. Recruitment of physicians and staff during 1990-2000.

26. Damages and injury to defendant's business and property as alleged in paragraph 109-110, 116-117, 122, 128, 134, 138, 146, 153, 158, 163, and 168 of the amended counterclaims.

27. Loss of revenue due to loss of patient referrals, including the numbers of patients and source of patients lost, the amount of revenue lost, the services, materials, supplies that would have been charges the lost patients, the gross and net profit on each item of service, material or supply which would have been provided to the lost patients.

28. The amount and calculation of defendant's claim of Return Premium due it from plaintiff from 1993 to date.

29. Causes of defendant's current insolvency and financial problems.

30. The relationship between the actions of plaintiff and any damages claimed

to have been sustained by defendant.

31. Losses or damages proximately caused by harm to defendant's reputation.

32. Loss of revenues from the departure of Attending Faculty described in paragraph 97.

33. Identities of Attending Faculty of defendant for 1993 to date.

34. Physicians who0 had privileges at defendant but who have ceased referring patients to defendant or who have given up, abandoned, or relinquished their privileges from 1990 to date.

35. Identity of and reason for loss of physicians and staff from defendant from 1990 to date, including who, when, and why physicians and staff left or disassociated with defendant.

36. MMLI rates for OB/GYN physicians in D.C., Maryland, and Virginia from 1993 to date.

37. Actual patient referrals to defendant from 1993 to date identified by referring physician.

38. Expected numbers of patients referred by physicians and anticipated revenues from such patients for 1993 to date, including any studies, projections, or estimates made.

39. Actual revenues from patients described in subject matter paragraphs 37-38.

40. Basis for allegations of MMLI market domination by plaintiff in 1993 and thereafter.

41. Communications between defendant and plaintiff described in paragraphs 21 and 36 of the amended counterclaims.

42. Representations of plaintiff described in paragraphs 24, 29, 126, 142, 148, and 155 of the amended counterclaims including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

43. Basis for allegations of plaintiff's knowledge described in paragraphs 21, 43, 125, and 131 of the amended counterclaims.

44. Audit requests by defendant to plaintiff and refusals by plaintiff to permit audits or provide information including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

45. Actions exhibiting defendant's reliance on plaintiff as alleged in paragraphs 30, 36, and 42 of the amended counterclaims.

46. Factual basis for allegations in paragraphs 92 of the amended counterclaims regarding underwriting justifications.

47. Hiring and loss of staff from 1990 to date including facts and reasons for loss of each physician and staff member, including facts of difficulty in hiring and maintaining staff.

48. Morale of physicians and staff from 1993 to date.

49. Identities of senior executives leaving defendant from 1993 to date and the reasons/cause for the departures.

50. Communications between defendant and print, radio, television, or other electronic media and defendant, including officers, employees, and directors from 1993 to date.

51. Performances under the Plan prevented, excused or waived by plaintiff.

52. Facts concerning plaintiff's intent or intentional conduct as alleged in paragraphs 121, 126, 132, 151, and 161 of the amended counterclaims.

53. Nature, scope, and duration of defendant's business expectancies or advantages alleged in paragraph 130 of the amended counterclaims.

54. Actions of defendant to audit, verify, or check the accuracy of plaintiff's accountings or reconciliations.

55. Industry standards for Loss Reserves.

56. Concealment of facts by plaintiff from defendant including the identity and substance of the facts concealed, method/means/acts or concealment, persons concealing, and reasons for concealment.

57. Attorneys' fees claimed, expended, and incurred in the action, including the terms of all legal or other fee agreements, amounts billed, amounts paid, and amounts accrued or accounts payable by defendant.

58. Negotiations and discussions resulting in the Addenda and amendment of the contract between the parties in 1996, 1998, 1999, and 2000.

Roy I. Niedermayer, Esq. DC. Bar #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

LAW OFFICES OF
ROY I. NIEDERMAYER

3 BETHESDA METRO CENTER, SUITE 430
BETHESDA, MARYLAND 20814

TELEPHONE: 301-951-4456
TELECOPIER: 301-951-0585

E-MAIL: RIN @ RINLAW.COM
HTTP://www.lawyers.com/RINLAW

July 16, 2001

BY HAND DELIVERY

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Re: Meeting of Counsel on Outstanding Discovery Issues

Dear Joe:

While we are together for the depositions of Columbia, I would like to discuss resolution of the following discovery matters:

1. Production of the materials on the attached listing derived from my prior letters to you.

2. Duplication charges.

3. Identification and production of 30(b)(6) designees for topics 1-3, 5-8, 10-14, 28-29, 51-52, and 56-57.

4. Supplementation of Columbia's Rule 26(b)(4) Statements with the substantive opinions, grounds and bases for the opinions for Ezra, Darrell-Smith, Brill, and the actuary.

5. Further supplementation of discovery responses, e.g., from plaintiff's first set of interrogatories (nos. 4, 6, 8-9, and 14) and other from plaintiff's second request for production of documents.

6. A missing page from CHW 10234.

Sincerely yours,

Roy I. Niedermayer

RIN:
Encl.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Aug 8 7 18 PM '01
ADMINISTRATIVE
DIVISION

NCRIC, INC.,

Plaintiff,

v.

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant.

Civil Action No. 00-0007308
Calendar 8 -- Judge Davis
Next Event: Discovery Closes Aug. 12, 2001

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 8th day of August, 2001, I served on opposing counsel, by First Class Mail, postage-prepaid, a copy of Defendant's Supplemental Responses to the Third Request of Plaintiff to Defendant for Production of Documents. I certify that I will retain the original of the aforementioned document in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: August 8, 2001

Respectfully submitted,

Joseph R. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 0007308-00
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda K. Davis
	) Next Event: Discovery close 8/12/01
	)
Defendant.	)

RULE 26(b)(4) STATEMENT AS OPPONENT OF A CLAIM

Plaintiff, by and through its attorney Roy Niedermayer, hereby states in accordance with SCR 26(b)(4) that it expects to call the following expert witnesses at the trial of this matter:

1. **W. McKay Henderson and Mary Woodford**
   1900 K Street, NW Suite 900
   Washington DC, 20006

Mr. Henderson and Ms. Woodford, whose *curriculum vitae* are attached hereto as Exhibits A and B, are expected to testify with regard to analysis and rebuttal to the calculation of damages as alleged by the experts for Columbia Hospital for Women. While defendant has not provided a report or the detailed substance of calculations for the damages it alleges or the bases for any opinions which he will render, and the deposition of defendant's expert noticed for August 22, 2001 has not yet taken place, and defendant has informed plaintiff that its expert Mr. Peter Ben Ezra has not yet prepared his calculations or analysis, it is anticipated that Mr. Henderson and Ms. Woodford will be assessing the various damage elements that defendants have stated, including loss of revenue, damaged reputation in the community, and the loss of good will. Mr. Henderson and Ms. Woodford are expected to testify that the damages allegedly suffered by defendant are substantially if not wholly the result of factors other than those alleged by defendant. To the extent the damages are found to be related to any tortious activity by plaintiff, Mr. Henderson and Ms. Woodford are further expected to testify that the amount of damages caused by plaintiff's activities is less than as calculated by defendant's experts.

Upon receipt of damage information from defendant, Mr. Henderson and Ms. Woodford can provide the substance and facts to which they are expected to testify. It would be expected that the factual data Mr. Henderson and Ms. Woodford will consider in evaluating alleged damages may include analysis of Columbia's historical records and reports, operating statistics and financial results for the Hospital and specific doctors that were impacted and other relevant market data.

For his expected opinion testimony, Mr. Henderson, a Partner with PricewaterhouseCoopers LLP, and a Certified Public Accountant, will draw upon his professional training, knowledge and experience in the fields of accounting and financial analysis, knowledge of the healthcare field and knowledge of methodologies for the calculation of economic damages. He has been qualified as an expert to testify on economic damages in other courts.

Ms. Woodford, a Director with PricewaterhouseCoopers LLP, with a Masters in Business Administration, will draw upon her professional training, knowledge and experience in the fields of accounting and financial analysis, and knowledge of methodologies for the calculation of economic damages. She has been qualified as an expert to testify on economic damages in other courts.

2. **Steve Moore**
1900 K Street, NW Suite 900
Washington DC, 20006.

Mr. Moore, whose *curriculum vitae* is attached hereto as Exhibit C, is expected to testify with regard to analysis and rebuttal of damages as alleged by Columbia Hospital for Women. While defendant has not provided a report or the detail substance or calculations for the tens of millions of dollars in damages it alleges, it is anticipated that Mr. Moore will provide testimony involving a market analysis of the hospital and healthcare market in the District of Columbia Metro area, impact of certain financial and market factors such as admissions, reimbursement levels, demographics, staffing, revenue cycles, etc. on the financial stability of a hospital and the defendant. Mr. Moore is expected to testify that the damages allegedly suffered by defendant are the result of factors other than those alleged by defendant. To the extent the damages are found to be related to any tortious activity by plaintiff, Mr. Moore is further expected to testify that the amount of damages caused by plaintiff's activities is less than as calculated by defendant's experts.

Upon receipt of damage information from the plaintiffs Mr. Moore can provide the substance and facts to which he is expected to testify. It is expected that the factual data Mr. Moore will consider in evaluating alleged damages may include analysis of Columbia's historical records and reports, financial statements, operating statistics and financial results for the Hospital.

For his expected opinion testimony, Mr. Moore, a Partner with PricewaterhouseCoopers LLP, and a Certified Public Accountant, will draw upon his professional training, knowledge and experience in the fields of accounting and financial analysis, knowledge of the healthcare operations, and knowledge of financial and market factors effecting hospitals in the District of Columbia Metro area.

3. **Martin Cohen**
1900 K Street, NW Suite 900
Washington DC, 20006.

Mr. Cohen, whose *curriculum vitae* is attached hereto as Exhibit D, is expected to testify with regard to analysis and rebuttal of damages as alleged by Columbia Hospital for Women. While defendant has not provided a report or the detail substance or calculations for the tens of millions of damages it alleges, it is anticipated that Mr. Cohen will provide testimony on the impact from a financial, competitive market, and staffing position that bankruptcy filings have on a hospital and various related issues that arise in negotiations and relationships with physicians. Mr. Cohen is expected to testify that the damages allegedly suffered by defendant are the result of factors other than those alleged by defendant. To the extent the damages are found to be related to any tortious activity by plaintiff, Mr. Cohen is further expected to testify that the amount of damages caused by plaintiff's activities is less than as calculated by defendant's experts.

Upon receipt of damage information from the plaintiffs, Mr. Cohen can provide the substance and facts to which he is expected to testify. It is expected that the factual data Mr. Moore will consider in evaluating alleged damages might include analysis of Columbia's historical financial records and reports, bankruptcy filings, financial statements, and operating statistics.

For his expected opinion testimony, Mr. Cohen, a Partner with PricewaterhouseCoopers LLP, will draw upon his professional training, knowledge and experience in the fields of finance and financial analysis, knowledge of the healthcare operations, and knowledge of the bankruptcy process as related to healthcare entities.

Respectfully submitted,

Roy I. Niedermayer, DJK

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on August 9, 2001, a copy of plaintiff's Rule 26(b)(4) Statement as Opponent of a Claim was mailed first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer/DJK

Roy I. Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

W. Mckay Henderson
w.mckay.henderson@us.pwcglobal.com

POSITION

Partner, Financial Advisory Services, PricewaterhouseCoopers LLP

EDUCATION

Bachelor of Science in Business Administration, emphasis-Accounting - University of North Carolina - Chapel Hill - (1976 to 1981)

Appalachian State University, Boone, NC (1974 to 1976, Transferred to UNC-CH)

RANGE OF EXPERIENCE

Mr. Henderson is a Partner in PricewaterhouseCoopers' Financial Advisory Services practice, specializing in dispute analysis and investigations. He has assisted law firms and corporate clients in financial and operational analysis and damages calculations in a variety of litigation matters, including breach of contract, franchising matters, minority shareholder disputes, insurance fraud, business interruption claims, wrongful termination/lost wages, lender liability, and securities litigation. He has been named and testified as an expert witness in many of these matters. He also has extensive experience with investigative/forensic accounting matters including assisting clients with the allegations of vendor kickbacks, embezzlements by employees, insurance fraud, and healthcare fraud both investigating third parties and defending against Government actions. Mr. Henderson has been involved with dispute analysis and investigations since 1984.

PROFESSIONAL EXPERIENCE

PRICEWATERHOUSECOOPERS LLP., Washington, DC (1998-present), Financial Advisory Services,

COOPERS & LYBRAND L.L.P., Philadelphia, PA (1990-1998), Financial Advisory Services,

LAVENTHOL & HORWATH., Philadelphia, PA (1987 – 1990), Litigation and Insurance Claims,

GRANT THORNTON., Philadelphia, PA (1985 – 1987), Litigation Consulting Services,

ARTHUR YOUNG & COMPANY., Charlotte, NC (1983-1985), Management Consulting,

DUKE POWER., Philadelphia, PA (1981-1983)

PUBLICATIONS & SPEECHES

Co-authored article entitled "Proceed with Caution" published in the Summer 1993 in Chester County Business & Industry.

"Taming the Liability Monster" – L&H Perspective, Vol. 15, Number 1, 1989

"What Every Non-Profit Director Needs to Know" – Philadelphia Business Journal, January 1994

"Making the Best of Corporate Integrity Agreements" – Healthcare Financial Management – July 2001.

TESTIMONY EXPERIENCE

* Testified at trial on the value of chemical distributor related to a divorce action. (Montgomery County Court of Common Pleas)

* Testified at disposition and trial concerning lost profits and value of a custom van dealership. (United States District Court for the Eastern District of Pennsylvania)

* Testified at trial on the value of partnership interest related to the dissolution of a physician practice. (Bucks County Court of Common Pleas)

* Testified at trial in a defamation matter as to analysis of lost earnings of an OB-GYN practice. (Court of Common Pleas-Philadelphia, PA)

* Testified at trial and deposition in an insurance fraud matter related to the trucking industry as to the calculation of insurance premiums owed by plaintiff. (Superior Court of Delaware)

* Testified at deposition on behalf of insurance carrier as to income reported per filed tax returns.

*Testified at deposition on behalf of quick lube franchiser as to value of potential franchises. (Federal Court – Camden, NJ)

* Testified as a fact witness at deposition on behalf of client related to internal investigation of travel and entertainment expenses. (District Court Western District of Washington at Seattle)

* Testified at trial on behalf of charter service as to lost profits in a breach of contract matter. (Superior Court of New Jersey – Atlantic County)

* Testified at deposition on behalf of investment banking firm as to investigation of the misappropriation of investments by management of an investment fund. (Superior Court of New York)

OTHER EXPERIENCE

Economic Damages

* Engaged to assist counsel with the analysis of alleged lost profits related to termination of a contract involving water purification equipment.

* Involved in dispute between a contractor and municipality on cost overruns and lost profits on the reconstruction of a housing development.

* Engaged to assist franchisor of fast food restaurants with the calculation of damages related to alleged breach of contract by franchisee.

* Engaged by franchisor of national quick lube chain to analyze franchisee's damage calculation and developed alternative damage theories.

* Engaged to investigate alleged lost profits and potential fraud related to claims made by owner of restaurant to their insurance carrier.

OTHER EXPERIENCE

* Engaged to analyze plaintiff's damage calculations involving losses allegedly substantiated due to contaminated product injuring livestock.

* Engaged to analyze lost profits alleged by various roofing contractors related to allegations of price fixing and anti-trust violations.

* Engaged by a hospital to assist with breach of contract claims against a third party-billing agency related to collections and fees charged.

* Engaged by a large physician practice at assist with breach of contract claims against a third party billing company.

Accounting Investigations

* Engaged on behalf of the majority shareholders of a family owned business to assist with the defense of allegations by minority shareholders of the misuse of corporate assets. Assistance included analysis of the corporation's accounting records, analysis of capital expenditures, dividend payments, officer' s compensation and retirement benefits.

* Assisted with the identification and tracing of assets misappropriated by the president and other officers of a corporation. Our team traced over $70 million of funds that were originally invested by individual investors through private placement offerings. The president used over 20 corporations for the movement of investor funds and acquisition of assets.

* Engaged by majority owners of a start-up corporation. The owners were concerned that the president was misappropriating corporate assets. Analyzed the corporation accounting records, interviewed the president and other employees, confirmed certain assets through physical observation and performed searches of public records.

* Engaged by a church organization to investigate allegations that checks were

PROFESSIONAL CREDENTIALS	Certified Public Accountant – P.A., N.C., D.C. Certified Fraud Examiner
PROFFESIONAL MEMBERSHIP	American Institute of Certified Public Accountants Pennsylvania and North Carolina Institute of Certified Public Accountants National Association of Fraud Examiners

Mary A. Woodford
mary.a.woodford@us.pwcglobal.com

POSITION

Director, Financial Advisory Services, PricewaterhouseCoopers LLP

EDUCATION

MBA/General Management, Colgate Darden Graduate School of Business Administration, University of Virginia, Charlottesville, VA (1976-78). Recipient of the William Michael Shermet Award (1977).

AB/Economics, Summa Cum Laude, Sweet Briar College, Virginia (1972-76). Ranked first in graduating class. Phi Beta Kappa. Junior year at University of Southhampton, England.

RANGE OF EXPERIENCE

Ms. Woodford is a Director in PricewaterhouseCoopers' Financial Advisory Services practice, specializing in dispute consulting and financial analysis. She has assisted law firms and corporate clients in financial and operational analysis and damages calculations in a variety of litigation matters, including patent and trademark infringement, theft of trade secrets, antitrust, breach of contract, consumer fraud, unfair competition, lender liability, solvency and bank fraud. In addition to specializing in litigation consulting since 1989, Ms. Woodford has 10 years of financial management experience with a Fortune 200 company, including assignments in the United States and in Barcelona, Spain.

PROFESSIONAL EXPERIENCE

PRICEWATERHOUSECOOPERS LLP., Washington, DC (1998-present), Financial Advisory Services, **Director** (1998-present)

COOPERS & LYBRAND L.L.P., Philadelphia, PA (1993-1998), Financial Advisory Services, **Director** (1997-1998); **Manager** (1993-97)

PRICE WATERHOUSE, Philadelphia, PA (1989-93), Litigation Services, **Senior Manager** (promotion announced April 1993); **Manager**, (1990-93); **Senior Consultant**, (1989-90)

FMC CORPORATION, Chicago, IL (1979-89)

- Foret SA, Barcelona, Spain (Subsidiary of FMC Corporation) (1987-89), **Financial Manager**
- Peroxygen Chemicals Division, Philadelphia, PA (1984-87), **Financial Analyst**
- Special Products Group, Philadelphia, PA (1982-84), **Planning Manager**
- Corporate Development, Chicago, IL (1979-82)
- **Senior Acquisitions Analyst**

CONTINENTAL ILLINOIS BANK, Chicago, IL (1978-79), **Multinational Banking Associate**

PUBLICATIONS & SPEECHES

"Financial Aspects of LICENSE NEGOTIATION, LESSONS FROM GEORGIA PACIFIC", Les Nouvelles, September 1995.

"The Prejudgment Interest Award in Alpex Computer Corp. v. Nintendo Co. Ltd": The Pittsburgh Legal Journal, April 1996; Les Nouvelles, December 1996.

Panelist at Stakeholder Session held by USPTO, October 1998, to discuss the role of intellectual property and of the USPTO in the US economy.

Presentation on the Use of Financial Statements for Lawyers, American Corporate Counsel Association, November 1998.

Instructor, PricewaterhouseCoopers Internal Training. Advanced Intellectual Property Course, 1998 and 2000; Introductory Intellectual Property Course, April 1999.

Calculating Monetary Relief: Damages and Profits, ALI-ABA Litigating Trademark, Trade Dress, and Unfair Competition Cases, December 2000.

Patent Damages, LEI Intellectual Property Law Conference, January 2001.

Did Grain Processing Murder Panduit in the Conservatory with a Candlestick? Or, Are Rumors of Panduit's Demise Exaggerated?, ABA IP Section Newsletter, Winter 2001.

Review of Chapter on "Damages Issues of Trademark, Trade Secret, False Advertising and Copyright Cases," Litigation Services Handbook, 3rd Edition, Wiley 2001.

TESTIMONY EXPERIENCE

* Testified at deposition on behalf of plaintiff in misappropriation of trade secrets involving health care practice management computer systems. (U. S. District Court Western District of Wisconsin)

* Testified at deposition on behalf of defendant in a Lanham Act matter involving retail of women's apparel. (U.S. District Court Southern District of New York)

* Testified at arbitration on behalf of defendant in a breach of contract, and misappropriation of trade secrets matter involving interactive electronic program guides used on cable television set-top boxes. (AAA, San Francisco)

* Testified at deposition on behalf of defendant in class action matter involving potential excess interest on consumer credit cards. Submitted expert affidavit in connection with approval of settlement. (U.S. District Court of Delaware)

* Testified at deposition on behalf of defendant in breach of warranty matter involving defective shoes. (U. S. District Court of Maine)

* Testified at trial on behalf of defendant in patent infringement matter, as to lost profits, price erosion, and reasonable royalty in office products industry. (U. S. District Court Western District of Wisconsin)

* Testified at deposition and in a Daubert hearing on behalf of defendant in breach of contract matter involving the distribution of a consumer product in the Baltics. (U.S. District Court, New Jersey)

* Testified at deposition on behalf of Chapter 11 debtor-plaintiff in breach of contract matter involving a critical raw material in a start-up venture. Matter settled prior to trial. (U.S. Bankruptcy Court, New Jersey)

* Testified at deposition and at trial on behalf of plaintiff in breach of contract matter involving the distribution of specialty paper. (U.S. District Court, New York – Southern District)

* Testified at trial on behalf of hospital in breach of contract matter involving a cardiac surgery practice. (Pennsylvania State Court)

* Testified as to the adequacy of a university environmental laboratory's cost accounting system relative to compliance with state regulations. (Iowa State Court)

* Testified to the appropriate methodology of determining the damages to a bank resulting from the fraudulent use of a working capital line of credit. (U.S. District Court; Eastern District of Pennsylvania)

OTHER INTELLECTUAL PROPERTY EXPERIENCE

* Issued expert report on reasonable royalty rate and damages involving toy software.

* Directed engagement on lost profits, unjust enrichment, and reasonable royalty damages involving genetically modified seed in a breach of contract matter.

* Directed engagement on reasonable royalty rate and damages involving a pharmaceutical product. Matter settled before trial.

* Directed engagement on reasonable royalty rate and damages involving a sensor used in carbon monoxide detectors. Matter settled before trial.

* Directed engagement on royalty revenue recovery for multinational telecommunications client in Europe and Far East.

* Issued expert opinion as to lost profits and reasonable royalty in design patent matter involving novelty items. Matter settled before trial.

* Selected as the expert to lead engagement team on patent infringement damages, including lost profits and reasonable royalty on behalf of alleged infringer in sports equipment industry. Issues also involved evaluating impact of infomercials. Matter settled before expert discovery was completed.

* Lead engagement team on patent infringement damages, including lost profits, reasonable royalty, and price erosion, on behalf of alleged infringer in television transmitter industry.

* Lead engagement team on patent infringement damages, including lost profits and reasonable royalty, of both claimant and counterclaimant in multi-billion dollar consumer product industry.

* Directed engagement team in two engagements on determination of the infringing revenue base for reasonable royalty determination involving process patent in semiconductor industry. Assisted counsel in analysis and rebuttal of reasonable royalty opinions issued by opposing experts.

* On behalf of defendant, analyzed and prepared critique of damage claims for tens of millions of dollars related to alleged theft of trade secrets by major publicly owned entertainment company.

* Issued expert opinion as to reasonable royalty in patent infringement matter involving automotive product.

* Issued report and expert opinion involving reasonable royalty involving textiles and bedding products. Matter settled before trial.

* Lead engagement team in determining trademark infringement damages in consumer mail order business. Matter settled before trial.

OTHER INTELLECTUAL PROPERTY EXPERIENCE

* Lead engagement team in matter involving breach of contract on software/networking product development.

* Lead engagement team in insurance coverage dispute involving an approximately $26 million settlement of litigation involving past and future rights to certain trademarks and logos involving personal computers and musical products.

* Issued expert rebuttal report addressing damages in a dispute involving the installation of a computer system at a food processing company.

OTHER EXPERIENCE

* Directed engagement concerning performance of software of an Internet product in a network environment. Coordinated with counsel and technical computer experts.

* Directed multidisciplinary engagement team in analysis of and reconstruction of multi-billion dollar mortgage-backed securities portfolio, analysis of institutional performance and other issues associated with a savings and loan.

* Assisted testifying witness and counsel in analysis and discovery of breach of contract claim involving the distribution of novelty gift items. Client was awarded approximately $46 million in damages.

* Assisted counsel in discovery and rebuttal of plaintiff's damages claim in antitrust matter involving electronic funds transfer.

* Directed engagement team to assist expert witness and counsel for defendant in analysis of liability and damages issues in a lender liability matter involving a real estate construction loan.

* Directed engagement to assist expert witness and counsel in defense of lender liability claim involving government contracts for a regional fuel oil distributor.

* Directed engagement team to assist expert witness in analysis of liability and damages issues in lender liability claim involving a retail clothing company.

* Issued expert report on the value to a debtor's estate of an exclusive distribution contract for beverages.

* Assisted expert witness in development of solvency opinion in connection with a fraudulent conveyance claim for a bankrupt airline. Analyzed company projections, aircraft purchase contracts and lease agreements, and coordinated analysis with technical airline industry experts.

STEPHEN M. MOORE

Partner

Steve serves as partner-in-charge of our Healthcare Consulting Practice in the Mid-Atlantic Region. He is an integral part of our Firm's healthcare practice from our Washington office with eighteen years of experience serving a variety of healthcare clients. He also serves as the National partner-in-charge of PwC's finance team within the Healthcare Consulting Practice, dealing with consulting engagements in the areas of financial analysis and feasibility studies, mergers and acquisitions, merger efficiency studies, operations improvement, managed care, reimbursement issues, decision support, internal controls reviews, and revenue cycle re-engineering. He has most recently spent the past twenty-four months dealing with many of these issues at a major Academic Medical Center in assisting management in developing and implementing a performance improvement plan.

Steve is an active member of the Healthcare Financial Management Association ("HFMA") where he served on a statewide Board of Directors as President. He currently serves on the National Advisory Board of the Healthcare Financial Management Association.

Professional Experience:

- Responsible for planning and execution of financial audits in the healthcare field, including academic medical centers, healthcare systems, long-term care providers, senior housing and assisted living providers, and home health entities.
- Consulting with healthcare providers on various matters ranging from reimbursement issues to strategic planning and compliance issues.
- Mergers and acquisitions consulting for healthcare and other clients, including merger efficiency studies.
- Internal controls reviews.
- Compliance program development and implementation.
- Numerous agreed-upon procedures engagements.
- Management of engagements for providers issuing bonds or other forms of debt for capital expansion.

Education:

B.S.B.A., Phi Beta Kappa honors graduate, University of North Carolina at Chapel Hill, Concentration - Accounting 1983

Professional Affiliations:

North Carolina Chapter of the Healthcare Financial Management Association (HFMA)
North Carolina Association of Certified Public Accountants
American Association of Certified Public Accountants

POSITION

Principal, Business Recovery Services
PricewaterhouseCoopers LLP, Washington DC

EDUCATION

Virginia Polytechnic Institute and State University
B.A., Political Science, 1973

Virginia Polytechnic Institute and State University
MBA (concentration in Finance), 1974

RANGE OF EXPERIENCE

Mr. Cohen has over 25 years experience in the Healthcare Industry. During this time, he has served as Chief Financial Officer, Chief Marketing, Strategic Planning and Business Development Officer, Chief Operating Officer, President, Director and advisor to numerous healthcare companies.

Mr. Cohen has represented both creditors and debtors in formal bankruptcy and out-of-court settlements. Activities performed in this area include: analysis of cash flow projections and development of cash management programs; operational reviews and development of business/strategic plans; bankruptcy planning; assessment and development of asset sale/liquidation plans; facilitation and negotiation of asset sales in and out of bankruptcy and negotiations with parties in interest.

Mr. Cohen has extensive experience representing various parties in interest in the health care arena including the hospital, post acute, physician practice management, ambulatory and medical supply segments. Representative engagements in the hospital and post acute segments include Integrated Health Services (post acute care); New American Healthcare (rural hospitals); Charter Behavioral (freestanding psychiatric hospitals); and Mariner Post Acute Network (post acute care). Representative engagements in the physician practice management segment include PhyCor, ProMedCo Management Company, a leading single-specialty ENT PPM, and Response Oncology.

In addition, Mr. Cohen has represented parties in interest in the manufacturing and distribution sectors including Crown Simplimatic, a manufacturer of bottling and packaging systems and USA Floral, a floral importer and distributor.

Prior to joining PricewaterhouseCoopers Mr. Cohen was Senior Vice President with Inova Health System, one of the nations leading integrated health care systems with net revenues in excess of $1.0 billion annually. During his 12-year tenure at Inova, he led the division responsible for the development and operation of Inova's post acute, ambulatory, and behavioral services. Mr. Cohen was also responsible for all of Inova's strategic planning, marketing, and business development.

RANGE OF EXPERIENCE, Continued

Mr. Cohen has extensive experience in the development and operation of Hospital services. Prior to his tenure at Inova, Mr. Cohen served as a financial officer for the Greater Southeast Community Hospital, a 450 bed hospital located in Washington, D.C. Mr. Cohen has also advised numerous hospitals on utilization management, cost management, new program development, and mergers and acquisition as a principal with a regional management consulting firm that specialized in health care. During his tenure at Inova Mr. Cohen had primary responsibility for growing the system. In this capacity, he was responsible for strategic planning, marketing, new business development, mergers, and acquisitions, joint ventures, and relationships with affiliated health care systems. Mr. Cohen was also responsible for the development of Inova's strategies for integrating with it's affiliated physicians. As a senior executive with Inova Mr. Cohen was extensively involved in the development and implementation of system-wide operating plans.

Mr. Cohen has extensive experience in the development and operation of behavioral services. While at Inova he was responsible for all inpatient and outpatient mental health services which included hospital based psychiatric units at each Inova hospital, freestanding outpatient child and adolescent services, substance abuse services, a large multi-disciplinary group practice, and managed mental health products covering over 275,000 lives.

Mr. Cohen has extensive experience in the development and operation of freestanding ambulatory services. While at Inova he was responsible for various ambulatory services including occupational health, employee assistance, urgent care centers emergency care centers, rehabilitation centers, and radiation therapy. Mr. Cohen was also responsible for Inova's development of freestanding ambulatory centers.

Mr. Cohen has extensive experience in post acute care having led the development and operation of these services for most of his tenure at Inova. Inova's post acute services included nursing homes, subacute units, assisted living facilities, a wide range of home health services, and case management services. The home health services operated by Mr. Cohen included home intermittent services (over 300,000 visits per annum), private duty services, infusion services, durable medical equipment, and respiratory services.

As a consultant, Mr. Cohen has also provided services in the areas of bond financing and feasibility studies. Mr. Cohen has served as Director to various health care organizations including the Genetics & IVF Institute and several HMO's.

8/14/01 ...UR COURT OF THE DISTRICT OF COLUMBIA

This case is set for an ADR session at the time and date shown. Review the Mediation and Case Evaluation procedures you received at the scheduling conference for attendance requirements and the Confidential Settlement Statement (CSS) form. If you have a conflict with the scheduled date, call the Civil Assignment Office (202-879-1751) before the CSS Return date on this notice. With consent the date may be changed. Attorneys receiving this notice are deemed counsel of record; if you disagree, you must provide the Civil Clerk's Office with proper documentation.

CASE NUMBER: 00ca007308
NCRIC, Inc. vs Columbia Hospital for

CSS RETURN: 9/25/01

MEDIATION: 11/06/01 9:00am
check-in for 9:00am cases at 8:45am
check-in for 11:00am cases at 10:45am

TO:
00ca007308 D001 PRT.0118bsw 163
Joseph K Leahy
1615 M Street NW
Ste 400
Washington, DC
20036

REPORT TO: Room 112, 1st floor; 515 5th Street, NW
PLEASE BRING THIS NOTICE WITH YOU WHEN YOU APPEAR.

16d-000808

10/24/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 8/12/01
	)	
Defendant.	)	

MOTION TO COMPEL DEFENDANT TO PRODUCE PRIVILEGE LOG

Plaintiff, NCRIC, Inc., by Roy Niedermayer its attorney, moves this Court for an order compelling defendant to produce a privilege log with respect to documents withheld and documents produced in redacted form, and for cause states:

1. Plaintiff propounded its first Request for Production of Documents on October 26, 2001; its second Request for Production of Documents on January 12, 2001; and its third Request on June 12, 2001.

2. In response to these requests, defendant has produced documents in 13 installments, beginning with its first production on December 21, 2000 and continuing through its most recent production on July 23, 2001.

3. The pages that have been produced are numbered sequentially, and it is clear that not all page numbers have been provided. For example, no documents numbered between CHW00014 and CHW00150 have been produced, but some documents with numbers lower than CHW00014 or higher than CHW00151 have been produced. Defendant has admitted that it has withheld some documents on the basis of privilege.

4. Some of the documents that have been produced have redacted portions.

5. Defendant has repeatedly promised to produce a privilege log explaining which documents have been withheld on the basis of an asserted privilege. Copies of correspondence from defendant's counsel dated December 21, 2000; January 12, 2001; April 13, 2001 and July 5, 2001 in which he promises to produce such a log are attached hereto as Exhibit A.

6. Despite promises to the contrary, no appropriate privilege log has been produced.

7. Plaintiff is concerned that defendant may be asserting a privilege as to documents or portions of documents that the Court may determine are not privileged. This concern has been raised in the past, most recently in a Motion to Compel Answers to Deposition Questions, filed August 6, 2001, in which plaintiff argues that defendant has incorrectly asserted attorney work product privilege as a basis for instructing defendant's corporate designees to refuse to answer certain questions at deposition.

8. Plaintiff is entitled to know which documents defendant is refusing to produce and why. Plaintiff is prejudiced by defendant's failure to provide even this minimal information in that it may be determined that certain documents must be produced despite defendant's contention to the contrary.

WHEREFORE, plaintiff respectfully requests:

1. That the Court issue an Order compelling defendant to produce a privilege log as to documents withheld and documents produced in redacted form; and

2. Whatever other and further relief may be required in the interests of justice.

Respectfully submitted,

Roy Niedermayer, DJK

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

CERTIFICATION OF GOOD FAITH EFFORTS TO SECURE DISCOVERY AND RESOLVE DISCOVERY DISPUTES WITH DEFENDANT

The undersigned counsel hereby certifies that he made good faith efforts to secure the defendant's witnesses and to resolve the discovery disputes with defendant through the following actions:

1. Defendant has agreed to produce the log on several occasions, and has simply failed to do so.

Roy Niedermayer, DJK

Roy Niedermayer, Esq. #180380

MEMORANDUM OF GROUNDS AND AUTHORITIES

1. SCR 26;

2. The record herein.

Roy Niedermayer, DJK

Roy Niedermayer, Esq. #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on August 13, 2001, a copy of plaintiff's Motion to Compel Defendant to Produce Privilege Log was mailed first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 5/12/01
	)	
Defendant.	)	

ORDER GRANTING MOTION TO COMPEL PRIVILEGE LOG

This matter came before the Court on plaintiff's Motion to Compel Defendant to Produce Privilege Log, and the Court having reviewed the Motion and any opposition thereto, it is this _____ day of _____, 2001

ORDERED that the plaintiff's Motion to Compel Defendant to Produce Privilege Log be and the same is hereby GRANTED; and it is further

ORDERED that defendant shall produce a log of all documents withheld or redacted, including the date, type, subject, creator, recipient, and basis for asserted privilege on or before the _____ day of _____, 2001.

_____
Linda Kay Davis, Superior Court Judge

cc:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

December 21, 2000

Roy I. Neidermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Defendant Columbia Hospital for Women Medical Center, Inc. hereby produces to Plaintiff NCRIC, Inc. documents bearing Bates numbers CHWMC 000001 through CHWMC 000889 in response to NCRIC's First Requests for Production of Documents and First Set of Interrogatories. As per your request, the documents are being produced to David Osborn. Forthcoming are (1) a list of the non-responsive documents that were pulled from this Bates range; and (2) a chart reflecting the documents that were withheld on grounds of privilege.

I anticipate that Medical Center will produce additional documents the next few weeks. Further, Medical Center reserves its right to supplement its document productions at any time.

If you have any questions, please do not hesitate to call me at (202) 326-7924.

Sincerely yours,

Joseph K. Leahy

cc: Mr. David Osborn (w/encl.)
By Hand Delivery

RECEIVED

DEC 27 2000

16d-000815

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

January 12, 2001

BY HAND DELIVERY

Roy I. Niedermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Please find enclosed the following:

1. a list of the Bates Numbers of non-responsive documents that were pulled from Medical Center's first (12/21/00) document production to NCRIC;

2. Medical Center's second production of documents (bearing Bates Numbers from CHWMC 000890 to CHWMC 000985) in response to NCRIC's First Requests for Production of Documents and First Set of Interrogatories; and

3. a number of pages that were inadvertently withheld from, and a page that was mistakenly redacted in, Medical Center's first document production to NCRIC (all such pages bear Bates Numbers between CHWMC 000001 to CHWMC 000889).

A log describing the documents that were withheld from the first and second productions on grounds of privilege is forthcoming.

Sincerely,

Joseph K. Leahy

Enclosures

16d-000816

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

April 13, 2001

Roy I. Niedermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Columbia Hospital for Women Medical Center, Inc. hereby makes its fourth production of documents to NCRIC, Inc. This production includes documents bearing Bates numbers ranging from CHW 000151 to CHW 013029, produced in response to NCRIC's First Requests for Production of Documents, Second Requests for Production of Documents and First Set of Interrogatories. In addition, please find enclosed documents bearing Bates numbers CHWMC 000012 - CHWMC 000015, and CHWMC 000969 - CHWMC 00970, which should have been included in Columbia's second and third productions, respectively. As per your request, the documents are being produced to Stephen Fargis of NCRIC.

Forthcoming are a privilege list for all of Columbia's productions to date, and a list reflecting the custodian and file of all documents in this production. The enclosed documents are organized in the order in which they were kept in the ordinary course of business.

Columbia reserves its right to supplement its document productions at any time.

Sincerely yours,

Joseph K. Leahy

cc: Mr. Stephen Fargis (w/encl.)
By Hand Delivery

RECEIVED
APR 16 2001
16d-000817

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

July 5, 2001

By FedEx

Roy I. Niedermayer, Esquire
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Columbia Hospital for Women Medical Center, Inc. hereby makes its eleventh production of documents to NCRIC, Inc. This production consists of documents bearing Bates Numbers CHWMC 0002158 through CHWMC 0002397, being produced in response to NCRIC's First Requests for Production of Documents, Second Requests for Production of Documents, and First Set of Interrogatories. As with prior productions, most of the documents (all Confidential) are being sent to Stephen Fargis of NCRIC. Documents with Bates Numbers CHWMC 0002194 to CHWMC 0002397, however, are being sent to you. These documents are "For Counsel Only."

Columbia reserves its right to supplement its document productions at any time.

Sincerely yours,

Joseph K. Leahy/sls

Joseph K. Leahy

Enclosures

cc: Mr. Stephen Fargis (w/encl.)
By FedEx

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 00-007308
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next Event: Discovery close 8/12/01
	)
Defendant.	)

MOTION FOR PROTECTIVE ORDER BARRING INQUIRY INTO SUBJECT MATTER AREAS FOR 30(b)(6) DEPOSITION OF PLAINTIFF

NCRIC, Inc., by Roy Niedermayer, its attorney, moves this Court pursuant to SCR 26(c) for the entry of a protective order barring the defendant from deposing plaintiff's designees pursuant to a notice of 30(b)(6) deposition of defendant to plaintiff. The grounds for this motion are that the subject matter areas inquired into are neither relevant nor designed to lead to the discovery of relevant or admissible evidence, and are otherwise burdensome and beyond the scope of the issues in this case.

The specific subject matter areas objected to and for which a protective order is sought, along with the reasons the subject matter areas are objectionable, are set forth as follows:

1. Subject Matter 19. MMLI premiums for the Attending Faculty from 1993 to date, including the undiscounted premium for each Attending Faculty member, the discounted premium for each Attending Faculty member; the basis for each discount; the actual premium collected by NCRIC from each Attending Faculty member; the amount NCRIC billed to each Attending Faculty member after the Plan was terminated; and any

refunds of premium from NCRIC to Attending Faculty members.

Basis for Protective Order: The information sought by testimony from plaintiff's designee is overly burdensome in production and designed simply for its oppressive nature. The information sought by defendant is contained within multiple voluminous underwriting files for each individual Attending Faculty member. Each file must be reviewed in a time consuming process. Moreover, the necessary underwriting files were produced to defendant in response to Defendant's Request for Production of Documents. The defendant inspected each of these files and copied those portions which it desired. Each of the matters of information which defendant now seeks by testimony was contained in those files and could be derived by defendant as easily as plaintiff.

Plaintiff has no previously prepared compilation of these materials from which its designees could testify. Plaintiff's designee would have to look at each individual file separately and testify directly from each file with the file before him in order to provide the information requested.

The information sought by defendant has previously been provided through the production of the documents. There is no reasonable basis for defendant to now seek this information by testimony, especially where no designee of plaintiff has this information within his memory but all such testimony would have to come from the primary files already produced to defendant. What defendant requests is that plaintiff's designee testify with each of these files in front of him, essentially reading aloud to counsel the identical information that counsel has already had opportunity to read himself. Plaintiff should be protected from having to produce such a designee pursuant to SCR 26(b)(1).

There is no legitimate reason for this designated subject matter area other than to

oppress and harass the plaintiff's designee.

Subject Matter 21. Industry standards for application of development factors; application of development factors under other retrospective rating plans (or other agreements listed in 2, *supra*).

Basis for Protective Order: This subject matter area is improper for two reasons. First, the information sought is assumed to be within the knowledge of the plaintiff for which it could designate one of its agents or employees. Second, this information is the subject of expert testimony, not the testimony of plaintiff's designees. It is nugatory and improper for defendant to seek to elicit this information from plaintiff even should one of its agents have such information.

Subject Matter 24. Industry standards for calculating loss reserves; any rules, regulations, guidelines, standards or procedures governing the calculation of loss reserves by insurance companies in the District of Columbia, and NCRIC's compliance therewith.

Basis for Protective Order: Plaintiff incorporates herein its response to subject matter 21.

In addition, the information sought concerns legal issues and matters about which the plaintiff's designees are not competent to testify since they call for an interpretation of the District of Columbia statutes and the application of those statutes to hypothetical calculations of loss reserves by insurance companies in the District of Columbia. It is not proper to request that plaintiff designate an employee to provide this information even if it could provide it.

Subject Matter 31. Other hospitals, clinics, locations or procedures for which NCRIC has ever refused to provide Group MMLI coverage, cancelled Group MMLI coverage or

issued endorsements excluding Ob-Gyns from coverage under their individual MMLI policies.

Basis for Protective Order: The information sought here is irrelevant to the issues raised by the defendant's counterclaims or its defense to plaintiff's claim. Plaintiff's business and insurance relationships with other hospitals or doctors are not and cannot be probative of any relationship it had with defendant nor probative of any reason why plaintiff took the actions it did with regard to defendant's Group MMLI plan. There is no claim in this case that plaintiff wrongfully discriminated between defendant and other Group MMLI plans or hospitals. The evidence sought through testimony is not relevant to any issue raised in the case and therefore it is sought only to harass and oppress.

Further, such information is among the confidential business communications, trade secrets and relationships plaintiff has or necessity for this information.

Subject Matter Area 33. Discounts on MMLI premiums provided by NCRIC to Attending Faculty from 1993 to present, including the discount of about 5% provided for participation in a risk management education program, the history of that discount, and Columbia's knowledge of that discount.

Basis for Protective Order: Plaintiff incorporates herein its response to subject matter 19 (regarding the undue burden of this subject area and defendant's ability to obtain the same information through other, less costly means). Further, the subject area includes a request for information regarding Columbia's knowledge of a discount. This is information solely within the purview of the defendant, and it should not be permitted to question plaintiff about same.

WHEREFORE, plaintiff prays that this Court enter an order protecting it from producing designees to respond to defendant's Notice of 30(b)(6) deposition as it relates to subject matters 19, 21, 24, 31, and 33.

Respectfully submitted,

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

MEMORANDUM OF GROUNDS AND AUTHORITIES

1. SCR 30(b)(6);
2. SCR 26(b)(1); and
2. The record herein.

Roy Niedermayer, Esq. #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on August 14, 2001, a copy of plaintiff's Motion for Protective Order was mailed first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer/DJK

Roy I. Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 00-007308
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next Event: Discovery close 5/12/01
	)
Defendant.	)

ORDER GRANTING MOTION FOR PROTECTIVE ORDER BARRING INQUIRY INTO SUBJECT MATTER AREAS FOR 30(b)(6) DEPOSITION OF PLAINTIFF

This matter came before the Court on plaintiff's Motion for Protective Order Barring Inquiry into Subject Matter Areas for 30(b)(6) Deposition of Plaintiff, and the Court having reviewed the Motion and any opposition thereto, it is this _____ day of _____ _____, 2001

ORDERED that the plaintiff's Motion for Protective Order Barring Inquiry into Subject Matter Areas for 30(b)(6) Deposition of Plaintiff be and the same is hereby GRANTED.

_____
Linda Kay Davis, Superior Court Judge

cc:

Roy Niedermayer, Esq. DC.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Aug 17 6 34 PM '01
ADMINISTRATIVE
DIVISION

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 – Judge Davis Next Event: Deadline for filing motions August 27, 2001

PRAECIPE

Plaintiff NCRIC, Inc. ("NCRIC") and Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby stipulate and agree that the following deadlines, set forth in the Scheduling Order dated May 16, 2001 and the Order dated July 20, 2001, shall be extended by 14 calendar days pursuant to District of Columbia Superior Court Rule 16(b):

	Current Deadline	New Deadline
Deadline for filing motions:	August 27, 2001	September 10, 2001
Damages discovery closes:	September 7, 2001	September 21, 2001
Expert depositions completed:	September 21, 2001	October 5, 2001
Dispositive motions decided:	September 27, 2001	October 11, 2001

(The foregoing deadlines have not previously been extended pursuant to any stipulation.)

NCRIC and Columbia, by counsel, also hereby stipulate and agree that no motions, other than discovery motions, shall be filed or served by the parties prior to August 31, 2001.

NCRIC and Columbia, by counsel, also stipulate and agree that discovery motions may be filed and served up through and including August 21, 2001; that no discovery motions may be filed during the period from August 22, 2001 up through and including August 31, 2001; and that

the date for filing and serving the opposition to any discovery motion filed between the date of this Praecipe and August 22, 2001 shall be September 14, 2001.

NCRIC and Columbia, by counsel, also hereby stipulate and agree that the following deadlines for serving and/or filing papers shall be extended by 14 calendar days:

	Current Date/Deadline	New Date/Deadline
Deadline for Serving Columbia's Opposition to NCRIC's Motion to Compel Discovery By Designation Under SCR 30(b)(6):	August 23, 2001	September 6, 2001
Deadline for Serving Columbia's Opposition to NCRIC's Motion to Compel Privilege Log:	August 30, 2001	September 13, 2001
Deadline for Serving Columbia's Opposition to NCRIC's Motion For Protective Order Barring Inquiry Into 30(b)(6) Subjects:	August 31, 2001	September 14, 2001

NCRIC and Columbia, by counsel, further stipulate and agree that all non-expert, non-party depositions that previously have been properly noticed but not completed shall be rescheduled to take place on dates to be agreed upon by the parties, but not before August 31, 2001 and not after September 14, 2001.

NCRIC and Columbia, by counsel, also stipulate and agree that depositions of additional Rule 30(b)(6) designees for each party, if any, shall be rescheduled to take place on dates to be agreed upon by the parties, but not before August 31, 2001 and not after September 14, 2001. For any witnesses whose designation is compelled by this Court, the deposition shall take place by September 14, 2001 or within 15 days of the entry of an order compelling designation of that witness, whichever is later.

16d-000828

Finally, NCRIC and Columbia, by counsel, hereby stipulate and agree that the expert deposition of Peter Ben Ezra shall be rescheduled for a date to be agreed upon by the parties, but not before August 31, 2001 and not later than October 5, 2001.

DATED: August 17, 2001

Roy I. Niedermayer, D.C. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(301) 951-4456

Attorney for Plaintiff

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for Defendant

16d-000829

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes Aug. 12, 2001
	)	
Defendant.	)	
	)	

AUG 20 2001

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 16th day of August, 2001, I served on opposing counsel, by First Class Mail, postage-prepaid, a copy of Notice of Deposition of William Burgess. I certify that I will retain the original of the aforementioned document in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: August 17, 2001

Respectfully submitted,

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

8/22/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,

Plaintiff/Counter-Defendant,

v.

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant/Counter-Plaintiff.

RECEIVED
Civil Clerk's Office
AUG 22 2001
Superior Court of the District of Columbia
Washington, D.C.

Civil Action No. 00-0007308
Calendar 8 – Judge Davis
Next Event: Deadline for filing motions
September 10, 2001

PRAECIPE

Plaintiff NCRIC, Inc. ("NCRIC") and Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby stipulate and agree that the following deadline for serving and/or filing papers shall be extended by 14 calendar days:

	Current Date/Deadline	New Date/Deadline
Deadline for Serving Columbia's Opposition to NCRIC's Motion to Compel Defendant's Designated Witnesses to Answer Questions Posed at Deposition:	August 23, 2001	September 6, 2001

DATED: August 20, 2001

Roy I. Niedermayer, D.C. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(301) 951-4456

Attorney for Plaintiff

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for Defendant

16d-000831

8/22/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Davis
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Deadline for filing motions
MEDICAL CENTER, INC.,	)	September 10, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

PRAECIPE

Plaintiff NCRIC, Inc. ("NCRIC"), by counsel, having received Defendant Columbia Hospital for Women Medical Center, Inc.'s ("Columbia") privilege log, hereby withdraws without prejudice its Motion to Compel Defendant to Produce Privilege Log, filed on August 13, 2001.

DATED: August 20, 2001

Roy I Niedermayer/JKL

Roy I. Niedermayer, D.C. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(301) 951-4456

Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
AUG 23 7 49 PM '01
CIVIL ACTIVE
DIVISION

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0[illegible]7308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes Aug. 12, 2001
	)	
Defendant.	)	
	)	

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 23rd day of August, 2001, I served on opposing counsel, by First Class Mail, postage-prepaid, copies of Notice of Deposition of William Burgess; Notice of Deposition of Stephen S. Fargis; Notice of Deposition of R. Ray Pate, Jr.; and Notice of Deposition of Eric Hempleman. I certify that I will retain the originals of the aforementioned documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: August 23, 2001

Respectfully submitted,

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
AUG 23 7 49 PM '01
ADMINISTRATIVE DIVISION

NCRIC, INC., Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar 8 -- Judge Davis Next Event: Discovery Closes Aug. 12, 2001

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 23rd day of August, 2001, I served on opposing counsel, by First Class Mail, postage-prepaid, a copy of Notice of Rule 30(b)(6) Deposition of NCRIC, Inc. I certify that I will retain the original of the aforementioned document in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: August 23, 2001

Respectfully submitted,

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

COPY

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
AUG 29 2001
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Deadline for Filing Motions, September 10, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

CONSENT MOTION TO AMEND SCHEDULING ORDER

Plaintiff NCRIC, Inc. ("NCRIC"), and Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by their undersigned counsel, hereby jointly move for the entry of the attached, proposed Second Amended Scheduling Order, and as grounds for such Order state:

1. NCRIC's Amended Complaint and Columbia's Amended Answer and Counterclaims were filed on January 3, 2001.

2. On May 16, 2001, this Court entered a modified scheduling Order (attached hereto as Exhibit A) that transferred the case to Track 4.

3. On July 20, 2001, this Court entered an Order (attached hereto as Exhibit B) granting NCRIC additional time for certain expert-related discovery.

4. On August 17, 2001, the parties filed a Praecipe (attached hereto as Exhibit C) that stayed for 14 days the taking of depositions and the filing of motions; that extended by 14 days all deadlines for responding to pending motions; and that, pursuant to Superior Court Rule 16(b), extended by 14 days certain other deadlines set by the May 16, 2001 and July 20, 2001 Orders, so that the parties could focus their efforts on settlement negotiations.

5. The parties now anticipate that additional time may be necessary for the completion of their settlement negotiations; and further, that, if such negotiations fail, additional time will be necessary for the completion of discovery and the briefing of dispositive motions.

6. The parties desire to modify the current schedule for this lawsuit to allow additional time for settlement negotiations; to save the parties the time and expense of litigating this matter while the settlement negotiations are in progress; to save judicial resources, if the settlement negotiations are successful; and to allow the parties additional time for the completion of discovery and the briefing of dispositive motions, if the settlement negotiations fail.

7. The parties propose to modify the current schedule by amending the deadlines set by the May 16, 2001 and July 20, 2001 Orders, and the August 17, 2001 Praecipe, as follows:

Deadline	**Current**	**Proposed**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	9/14/01	10/5/01
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	9/14/01	10/5/01
Damages discovery closes:	9/21/01	10/5/01
Expert depositions completed:	10/5/01	10/12/01
Dispositive motions filed:	9/10/01	10/19/01
Oppositions to dispositive motions filed:	10 days	11/16/01
Replies to oppositions to dispositive motions filed:	--	12/3/01
Dispositive motions decided:	10/11/01	1/7/02*
Confidential Settlement Statement due:	9/26/01	1/14/02*
ADR:	11/6/01	1/14/02 - 2/14/02*
Pretrial:	30 days	30-60 days*

* Or any other appropriate date set by this Court.

8. The foregoing constitutes good cause for modifying the scheduling Order under Superior Court Rule 16(b).

WHEREFORE, the parties request that the Court enter the proposed Second Amended Scheduling Order.

DATED: August 29, 2001

Respectfully submitted,

Roy I. Niedermayer, D.C. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

EXHIBIT A

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, upon consideration of the points and authorities submitted by the parties, and for good cause shown, Defendant Columbia Hospital for Women Medical Center, Inc.'s Motion to Amend Scheduling Order is hereby GRANTED, and the Scheduling Order dated January 12, 2001 is amended as follows:

1. This case is transferred to Track 4; and

2. the deadlines for this case are amended to state as follows:

Deadline for discovery requests	6/12/01
Exchange witness lists:	6/12/01
Proponent's rule 26(b):	6/26/01
Opponent's rule 26(b):	7/12/01 for Defendant/Counter-Plaintiff and 7/26/01 for Plaintiff/Counter.
Discovery closes:	8/12/01
Deadline for filing motions:	8/27/01
Dispositive motions decided:	9/27/01
ADR:	10/12/01 - 11/12/01
Pretrial:	30~~60~~ days

SO ORDERED.

Judge Linda K. Davis

Dated: 5/16, 2001.

16d-000839

EXHIBIT B

COPY

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	Civil Action No. 0007308-00 Calendar #8 Judge Linda Kay Davis Next Event: Discovery close 8/12/01

ORDER

THIS MATTER Coming on defendant's Motion to Extend Deadline for Proponent's Rule 26(b)(4) Statement and plaintiff's Renewed Motion *in limine* to Preclude Defendant's Expert Testimony and Plaintiff's Alternative Motion for Additional Time To File Opponent's Rule 26 (b)(4) Statement and plaintiff's Alternative Motion for Leave to Complete Discovery on Damages after the Discovery Deadline and plaintiff's Alternative Motion for Leave to Depose Defendant's Experts, the Opposition thereto having been read, heard, and considered, it is thereupon this 27th day of July, 2001, by the Superior Court for the District of Columbia,

ORDERED, that defendant's Motion to Extend Deadline for Proponent's Rule 26(b)(4) Statement be, and hereby is granted; it is further

ORDERED, that plaintiff's Renewed Motion *in limine* be, and hereby is, denied; it is further

ORDERED, that plaintiff's Alternative Motion for Additional Time to File Opponent's Rule 26(b)(4) Statement be, and hereby is, granted with a new deadline of 8/9/01; and it is further

16d-000841

ORDERED, that plaintiff's Alternative Motion for Leave to Complete Discovery on Damages after the Discovery Deadline be, and hereby is, granted with a deadline of 9/7/01; and it is further

ORDERED, that plaintiff's Alternative Motion for Leave to Depose Defendant's Experts be, and hereby is, granted with a deadline of 9/21/01.

Linda Kay Davis, Judge
D.C. Superior Court

SIGNED IN CHAMBERS

copies to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Copies mailed from chambers
on 7-23-01

EXHIBIT C

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Aug 17 6 34 PM '01
ADMINISTRATIVE DIVISION

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 – Judge Davis Next Event: Deadline for filing motions August 27, 2001

PRAECIPE

Plaintiff NCRIC, Inc. ("NCRIC") and Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby stipulate and agree that the following deadlines, set forth in the Scheduling Order dated May 16, 2001 and the Order dated July 20, 2001, shall be extended by 14 calendar days pursuant to District of Columbia Superior Court Rule 16(b):

	Current Deadline	New Deadline
Deadline for filing motions:	August 27, 2001	September 10, 2001
Damages discovery closes:	September 7, 2001	September 21, 2001
Expert depositions completed:	September 21, 2001	October 5, 2001
Dispositive motions decided:	September 27, 2001	October 11, 2001

(The foregoing deadlines have not previously been extended pursuant to any stipulation.)

NCRIC and Columbia, by counsel, also hereby stipulate and agree that no motions, other than discovery motions, shall be filed or served by the parties prior to August 31, 2001.

NCRIC and Columbia, by counsel, also stipulate and agree that discovery motions may be filed and served up through and including August 21, 2001; that no discovery motions may be filed during the period from August 22, 2001 up through and including August 31, 2001; and that

the date for filing and serving the opposition to any discovery motion filed between the date of this Praecipe and August 22, 2001 shall be September 14, 2001.

NCRIC and Columbia, by counsel, also hereby stipulate and agree that the following deadlines for serving and/or filing papers shall be extended by 14 calendar days:

	Current Date/Deadline	New Date/Deadline
Deadline for Serving Columbia's Opposition to NCRIC's Motion to Compel Discovery By Designation Under SCR 30(b)(6):	August 23, 2001	September 6, 2001
Deadline for Serving Columbia's Opposition to NCRIC's Motion to Compel Privilege Log:	August 30, 2001	September 13, 2001
Deadline for Serving Columbia's Opposition to NCRIC's Motion For Protective Order Barring Inquiry Into 30(b)(6) Subjects:	August 31, 2001	September 14, 2001

NCRIC and Columbia, by counsel, further stipulate and agree that all non-expert, non-party depositions that previously have been properly noticed but not completed shall be rescheduled to take place on dates to be agreed upon by the parties, but not before August 31, 2001 and not after September 14, 2001.

NCRIC and Columbia, by counsel, also stipulate and agree that depositions of additional Rule 30(b)(6) designees for each party, if any, shall be rescheduled to take place on dates to be agreed upon by the parties, but not before August 31, 2001 and not after September 14, 2001. For any witnesses whose designation is compelled by this Court, the deposition shall take place by September 14, 2001 or within 15 days of the entry of an order compelling designation of that witness, whichever is later.

16d-000845

Finally, NCRIC and Columbia, by counsel, hereby stipulate and agree that the expert deposition of Peter Ben Ezra shall be rescheduled for a date to be agreed upon by the parties, but not before August 31, 2001 and not later than October 5, 2001.

DATED: August 17, 2001

Roy I. Niedermayer / David Kaminow / JKL

Roy I. Niedermayer, D.C. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(301) 951-4456

Attorney for Plaintiff

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for Defendant

16d-000846

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

SECOND AMENDED SCHEDULING ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Amend Scheduling Order is hereby GRANTED, and the deadlines for this case are hereby amended, as follows:

Deadline	**Current**	**Proposed**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	9/14/01	10/5/01
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	9/14/01	10/5/01
Damages discovery closes:	9/21/01	10/5/01
Expert depositions completed:	10/5/01	10/12/01
Dispositive motions filed:	9/10/01	10/19/01
Oppositions to dispositive motions filed:	10 days	11/16/01
Replies to oppositions to dispositive motions filed:	--	12/3/01
Dispositive motions decided:	10/11/01	_____
Confidential Settlement Statement due:	9/26/01	_____
ADR:	11/6/01	_____
Pretrial:	30 days	_____

SO ORDERED.

_____
Judge Linda K. Davis

Dated: _____, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

16d-000849

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Deadline for Filing Motions, September 10, 2001
	)	
Defendant/Counter-Plaintiff.	)	

CERTIFICATE

I, Joseph K. Leahy, hereby certify that I obtained consent to file this motion from counsel for Plaintiff NCRIC, Inc., by telephone and by facsimile, on August 29, 2001.

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 29th day of August 2001, a copy of the parties Consent Motion to Amend Scheduling Order; Certification, and proposed Second Amended Scheduling Order were served upon the following by first class U.S Mail:

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

In addition, on the same date, a courtesy copy of the aforementioned papers were served on the Chambers of Judge Linda K. Davis by hand delivery.

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 8/12/01
	)	
Defendant.	)	

MOTION TO COMPEL DEFENDANT'S DESIGNATED WITNESSES TO ANSWER QUESTIONS PROPERLY POSED AT DEPOSITION

Plaintiff, NCRIC, Inc., by Roy Niedermayer its attorney, moves this Court pursuant to SCR Rule 37 for an order compelling defendant to produce for deposition designated witnesses to supply information that was requested at previous depositions, but to which answer was refused on counsel's instruction. The basis for this motion is that counsel inappropriately instructed corporate designees not to answer, or to only partially answer, questions, incorrectly asserting a non-applicable attorney work product privilege. Additional facts and argument are provided in the accompanying memorandum of grounds and authorities.

Respectfully submitted,

Roy I. Niedermayer /DJK

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

CERTIFICATION OF GOOD FAITH EFFORTS TO SECURE DISCOVERY AND RESOLVE DISCOVERY DISPUTES WITH DEFENDANT

The undersigned counsel hereby certifies that he made good faith efforts to secure the defendant's answers and to resolve the discovery disputes with defendant by face to face meetings at depositions on June 21, 2001 and June 27, 2001. The meetings took place at plaintiff's offices on 30th Street NW, Washington, D.C.

Roy Niedermayer, Esq. #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on August 6, 2001, a copy of plaintiff's Motion to Compel Discovery was mailed first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 5/12/01
	)	
Defendant.	)	

ORDER GRANTING MOTION TO COMPEL WITNESSES TO ANSWER QUESTIONS PROPERLY POSED AT DEPOSITION

This matter came before the Court on plaintiff's Motion to Compel Witnesses to Answer Questions Properly Posed at Deposition, and the Court having reviewed the Motion and any opposition thereto, it is this _____ day of _____ _____, 2001

ORDERED that the same be, and is hereby GRANTED; and it is further;

ORDERED, that Safa Rifka, M.D. and Larry Wilson will submit for a continuation of their depositions, at which time plaintiff, through counsel, may inquire into those areas to which the witnesses previously refused to answer questions on the basis of attorney work product privilege; and it further

ORDERED that the defendant shall pay plaintiff the sum of $_____ as reasonable attorneys' fees and costs in having to file this Motion and obtaining this Order; and it is further

ORDERED, that if the Court determines that, at the continued depositions, defendant again refuses to answer questions without cause, additional sanctions of _____ will be imposed.

_____
Linda Kay Davis, Superior Court Judge

cc:

Roy Niedermayer, Esq. DC.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 00-007308
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda Kay Davis
	) Next Event: Discovery close 8/12/01
	)
Defendant.	)

MEMORANDUM OF GROUNDS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL DEFENDANT'S DESIGNATED WITNESSES TO ANSWER QUESTIONS PROPERLY POSED AT DEPOSITION

I. BACKGROUND

Plaintiff filed this case on October 3, 2000, and defendant counterclaimed on November 6, 2000 alleging, among other things, defamation and disparagement on the part of plaintiff. Before defendant had even filed its counterclaim, plaintiff, on October 26, 2000, propounded interrogatories seeking "the names and addresses of any individuals who you know or believe have any information or knowledge of any matters concerning the subject matter of . . . (iii) your counterclaims." Interrogatory number 1. Defendant produced a list of witnesses but none was indicated as having knowledge of defendant's claims for defamation and disparagement.

Plaintiff also sought "the method of calculation and factual bases for any monetary damages you claim against defendant by way of counterclaim, setoff, recoupment or otherwise." Interrogatory 6. Defendant answered by objecting and claiming that it did not have the necessary information to answer at that time.

Plaintiff, requiring the information that had been refused in the answers to interrogatories, responded by noting the deposition on March 14, 2001 of defendant's corporate designees, setting forth with particularity 58 subject areas of testimony. Defendant designated, among others, Safa Rifka, M.D. and Larry Wilson.[1/] The depositions were set for June 21, 2001 and June 27, 2001, respectively. By agreement of counsel, Mr. Wilson's deposition was suspended and reconvened. At the depositions, plaintiff's counsel asked questions seeking factual information directly related to defendant's counterclaims.

Defense counsel objected to questions and instructed Dr. Rifka not to answer, or to give only a partial answer, on no less than ten occasions, including to questions calling for straightforward factual answers such as to whom allegedly defamatory statements were made. Deposition transcript at p. 115. On each of the ten occasions, defense counsel claimed attorney work product privilege as the basis for instructing the witness not to answer. Defense counsel instructed Mr. Wilson to either not answer, or to only partially answer, questions on no less than five occasions.

The questions the witnesses refused to answer sought factual information that goes to the very essence of defendant's claims and defenses. **The impressions of counsel were not sought.** Again, Dr. Rifka refused to provide the identities of persons who had allegedly made defamatory statements about defendant. This information is central to defendant's counterclaims for plaintiff's alleged tortious activity. Not only will it

---

[1/] Defendant designated witnesses to testify to only a small portion of the subjects set forth in the deposition notice. This failure is the subject of a separate Motion to Compel.

alert plaintiff to the actual people claimed to be involved, but it will give plaintiff sufficient information to conduct additional formal and informal discovery. Dr. Rifka refused to provide any information that his attorneys had discovered as to identities. Defendant's failure to provide this information severely prejudices plaintiff's ability to defend itself.

The only explanation for this behavior is that it is an attempt by defendant to "hide the ball" and either surprise plaintiff at trial or conceal the absence of any facts on which to base its claims for plaintiff's tortious behavior. If defendant intends to introduce these statements at trial, it would be unfair for plaintiff not to have the opportunity to conduct its own investigation about them. If defendant has no facts on which to support its claims for plaintiff's alleged tortious behavior, those claims should be dismissed.

II. ARGUMENT

A. Defense Counsel's Reliance on the Attorney Work-product Privilege of SCR 26(b)(3) Is Misplaced Because No Documents or Tangible Things Were Requested.

SCR 26(b)(3) only protects "documents and tangible things." Id. The subjects of defense counsel's instructions not to answer were unrelated to any requests for documents or other tangible things. See transcript excerpts, attached hereto as Exhibit "A." Thus, SCR 26(b)(3) does not operate as an appropriate basis in this case to instruct the witnesses not to answer. "Rule 26(b)(3) itself provides protection only for documents and tangible things and ... it does not bar discovery of facts a party may have learned from documents that are not themselves discoverable." CHARLES ALAN WRIGHT, ET AL Federal Practice and Procedure §2024 (1994); Resolution Trust Corp. v. Dabney, 73 F.3d 262 (10th Cir. 1995) (interpreting the substantively identical Federal counterpart to this Rule.)

B. Defense Counsel's Reliance on the Attorney Work-product Privilege of the Common Law Is Also Misplaced Because That Privilege Does Not Protect Facts.

The common law doctrine of attorney work-product privilege was set forth in *Hickman v. Taylor*, 329 U.S. 495 (1947). One holding of that opinion is that "[i]nformation as to facts and witnesses' statements obtained by the adverse party's attorney are not within the common law privilege..." CHARLES ALAN WRIGHT, ET AL Federal Practice and Procedure §2022 (1994). Again, defense counsel's instructions not to answer were in response to questions calling for factual responses, such as the names of persons to whom defamatory statements were made.

C. Discovery of the Facts Should Be Permitted Even If Otherwise Protected by the Attorney Work Product Privilege Because Plaintiff Can Establish a Substantial Need for the Information and Cannot Obtain the Substantial Equivalent by Other Means.

Even if the information is protected by the work-product privilege, it is discoverable if plaintiff can show (a) a substantial need for the information; and (b) undue hardship in obtaining the substantial equivalent by other means. SCR 26(b)(3). Because plaintiff does have a substantial need for the information, and because there is no other way for plaintiff to learn the substantial equivalent, the witnesses should be compelled to answer the questions even if the court finds the information would otherwise have been protected by the work-product privilege.

(a) Plaintiff has been accused of defaming defendant and causing it serious damages, damages estimated in the area of ten million dollars by its corporate

designee.[2/] It is essential that plaintiff discover the substance of the allegedly defamatory statements as well as the makers.

(b) There is no way for plaintiff to learn who defendant contends made the statements without being told by the defendant. The questions were properly asked. They should be answered.

D. Defendant's Actions Are Egregious, and the Court Should Award Sanctions

In the face of simple questions, defense counsel repeatedly and without justification instructed his client not to answer, or to only partially answer. The doctrine of attorney work product privilege is well established and has clear confines. The information sought to be protected is clearly not within those confines. Plaintiff's counsel advised defense counsel of his position that defendant could testify to these facts, but defense counsel refused to yield. Defendant, through its counsel, should not be permitted to flout discovery in this way.

III. CONCLUSION

For the foregoing reasons, plaintiff's Motion to Compel Production of Facts Supporting Defendant's Counterclaims and Defenses should be granted.

WHEREFORE, plaintiff respectfully requests

(1) that it's Motion to Compel Production of Facts Supporting Defendant's Counterclaims and Defenses be granted;

[2/] Mr. Wilson was unable to explain how he calculated this figure or provide the bases therefor.

(2) whatever other and further relief may be required in the interests of justice;

(3) fees and costs associated with filing this motion.

Respectfully submitted,

Roy I. Niedermayer /D.S.K.
Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR
WOMEN MEDICAL CENTER,
INC.,
Defendant.

****

Washington, D.C.
June 21, 2001

Deposition of:
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,
Designated Representative
SAFA RIFKA, M.D.,
called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 9:50 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

Q. Prior to filing the Chapter 11, is there any information the hospital has about rumors or inquiries whether the hospital would be closing?
A. We are not aware of that.
Q. After the hospital filed its Chapter 11 proceedings and prior to August of 2000, were there inquiries or rumors about the hospital closing?
A. Not really.
Q. You didn't hear any.
A. I didn't hear.
Q. You are not aware of any.
A. I am not aware of any.
Q. Is the reputation of the hospital different among different segments of the community or is it uniform through all the segments of the community?
MR. LEAHY: Objection to the form. But you can answer if you understand.
THE WITNESS: I don't know what you mean by segments.

BY MR. NIEDERMAYER:
Q. Okay. Does the medical community have a different perception of the reputation of the hospital than other parts of the community?
A. I don't think so.
Q. Does the staff at the hospital have a different view of the reputation of the hospital than other parts of the community?
A. Prior to August 2000 or --
Q. Yeah. Well, you said it was the same before and after.
A. Reputation is still -- no, they did not have the same good reputation.
Q. They did not have the same reputation?
A. No. They did not have a different opinion. They still had the same good reputation.
Q. That's what I thought you said.
A. Yes. Thank you for correcting me.
Q. What I'm trying to find out is does any particular group in the community, the medical community or the community at large, have

a different opinion about the hospital than the one you reported to me as it being excellent?
A. I'm not aware of that.
Q. Could I ask you to look at Page 30 of Exhibit 2, which is the counterclaims. In Paragraph 158 it refers to "false and defamatory statements that caused damages and harm to the reputation of the hospital." Can you tell me what false and defamatory statements made by NCRIC caused harm to the reputation of the hospital?
*** CERTIFICATION REQUESTED ***
MR. LEAHY: I'm going to object here on the grounds of work product doctrine. You're seeking something that is not necessarily in Columbia's knowledge. Columbia may have some knowledge of it, but this document was obviously created by a lawyer. So to the extent that you can talk about information that is your own knowledge, Columbia's own knowledge, not something that is its lawyer's work product, you may speak to that. But I would direct you not to

answer to the extent that it is something that the lawyer might have developed through interviews with other people, et. cetera. Just speak on Columbia's own knowledge.
MR. NIEDERMAYER: I'm going to object to that. The knowledge of Columbia's lawyers is the knowledge of Columbia.
MR. LEAHY: It's protected by work product. We won't speak to it.
MR. NIEDERMAYER: Just mark that one. We'll bring that up to the judge.
BY MR. NIEDERMAYER:
Q. You may answer to the extent that counsel has permitted you.
A. I think the economic loss somebody else would talk about.
Q. Let me interrupt you. I'm asking you what are the defamatory statements that NCRIC made that harmed the reputation of the hospital.
A. It's our belief that closure of the hospital is not good for its reputation. We believe that not covering physicians who work in

PR and the vice president and some senior management of the hospital. For other specifics, I think Larry Wilson will be able to, the president of the hospital will be able to give you these details.

Q. Have you told me, though, all of the persons whom you know left as a result of the rumors?

A. All the persons that I can currently remember, actually.

Q. Okay. I had asked you to identify the false and defamatory statements that are described, alleged in Paragraph 158 of the counterclaim.

A. Yes, sir.

Q. You told me that there were three statements that were made that you were aware of. The first was that the hospital was going to close; second was that NCRIC would not be covering physicians in the clinic; and the third was that the self-insurance trust was bankrupt. Are there any other statements that are included

within those false and defamatory statements by NCRIC that caused harm to the reputation of the hospital?

MR. LEAHY: Same objection as before.

BY MR. NIEDERMAYER:

Q. Go ahead, you may answer.

A. Can you repeat them, Mr. Niedermayer? I'm sorry.

Q. I believe you testified that there were three statements.

A. Yes, sir.

Q. That the hospital was going to close, that physicians would not be covered by NCRIC insurance for activities in the clinic, and that the self-insurance trust was bankrupt. Are there any other statements made by NCRIC that harmed the reputation of the hospital?

MR. LEAHY: Same objection.

THE WITNESS: I'm not aware of any.

BY MR. NIEDERMAYER:

Q. Tell me who it is that made the statement from NCRIC that the hospital was going

to close.

A. I can't identify the name.

Q. Can you tell me when it occurred?

A. Around towards the NCRIC contract that was not going through, about September 1st.

Q. To whom was it communicated or to whom was that statement made?

MR. LEAHY: I'm going to object here, same objection as before.

THE WITNESS: I'm not aware.

MR. NIEDERMAYER: What is your objection?

MR. LEAHY: My objection is the same objection I made before.

MR. NIEDERMAYER: Well, what is it?

MR. LEAHY: The objection is based on work product, that I will allow him to answer only to the extent that he is talking on behalf of Columbia's knowledge. He is giving you Columbia's knowledge. He's not giving you Columbia's lawyers' knowledge which was gained in interviews with other people which was not

imparted to Columbia which is part of the lawyers' work product. I.e., it was as if you were trying to get a hold of my interview memos. It's the same thing. He's answering only to the extent Columbia, the client, knows, which is what you have a right to, not to the extent that you are requesting work product from the attorney.

MR. NIEDERMAYER: I'm entitled to know the identities of the persons. That is not work product.

MR. LEAHY: If Columbia knows.

MR. NIEDERMAYER: They know if their attorneys know.

MR. LEAHY: Well, that's --

MR. NIEDERMAYER: Work product only covers the content of the interview and only if I can show that I can't get it in another way. I can't get it in another way unless I know the identity of the persons. That is not work product. That is knowledge of the hospital. So therefore, would you please -- let's just be clear.

BY MR. NIEDERMAYER:
Q. Dr. Rifka, do you know the identities of persons to whom the statements by NCRIC that were harmful to the reputation of the hospital were made?
MR. LEAHY: I'm going to object. Are we talking about all the statements?
MR. NIEDERMAYER: Whatever my question asks, yes.
MR. LEAHY: Okay.
THE WITNESS: I have not personally in my ears heard a NCRIC official tell me that.
BY MR. NIEDERMAYER:
Q. Are you aware of the identities of any persons known to any member of the hospital, including its attorneys, to whom NCRIC made the statement that the hospital would close?
A. I am not aware of a NCRIC official who said that in my presence.
Q. Do you know whether your attorneys know of any person to whom that statement was made by --

A. I think you can ask my attorney.
Q. No, I can only ask you. You can ask your attorney.
A. Okay. I will ask my --
MR. LEAHY: I would direct you not to answer to the extent if it would reveal any conversation that we have had.
THE WITNESS: I do not know what all my attorney knows.
BY MR. NIEDERMAYER:
Q. I'm going to ask you to inquire of your attorney whether the identities of such persons are known to the hospital including their attorneys.
MR. LEAHY: You can ask that, but I'm going to object. That's not a question that he can answer at a deposition.
BY MR. NIEDERMAYER:
Q. So the hospital has no knowledge of any person, any NCRIC officer who made the statement that the hospital will close.
A. To my recollection, that's correct.

MR. NIEDERMAYER: I'll give you fair warning that if the testimony of the hospital is it doesn't know anything, that the attorneys know it, that it won't be introduced at trial. I'll make a motion in limine about that.
MR. LEAHY: Okay. Go ahead.
BY MR. NIEDERMAYER:
Q. Do you know which person at NCRIC said that the physicians working in the clinic would not be covered by NCRIC's insurance?
A. Lenny Glassman who is a physician at Columbia and on the Board of NCRIC.
Q. Do you know when he said that?
A. In the cafeteria in front of everybody.
Q. Do you know whether he was authorized to say that by NCRIC?
A. I have no knowledge of that.
Q. Did you assume when you heard he had said that that it was an official statement of NCRIC?
MR. LEAHY: Objection to the

relevance.
THE WITNESS: I know that he is on the Board of NCRIC and when things are said I do not know in what authority did he say it.
BY MR. NIEDERMAYER:
Q. When did a representative of NCRIC say that the self-insurance trust was bankrupt?
A. I've heard that NCRIC was telling the physicians that the self-insurance trust is bankrupt and that's why NCRIC was doing what it was doing.
Q. From whom did the hospital hear that?
MR. LEAHY: I'm going to object to this, the same continuing objection as before, that to the extent you are seeking work product this is impermissible.
BY MR. NIEDERMAYER:
Q. From whom did the hospital hear that?
A. Physicians who are on the hospital staff.
Q. Which physicians?
A. I think it was a collective knowledge

brought about to the -- it was discussed in physician circles and in the executive committee and this about that the self-insurance trust has no money, bankrupt.

Q. Give me the names of some of the physicians who you, the hospital, knows said that NCRIC had said that.

MR. LEAHY: Same objection. This is continuing.

THE WITNESS: I know of some physicians who might have directed the president of the hospital, actually, told me that he had conversations and correspondence from some physicians who says that straightforward. And I have had questions in executive committee meetings of the medical staff that the self-insurance trust is bankrupt.

BY MR. NIEDERMAYER:

Q. My question is who or which physicians stated or told you that NCRIC had said that the self-insurance trust was bankrupt?

A. I think everybody who talked to NCRIC

came up with that impression. And I cannot name who personally because that was a general discussion and a general point of discussion. I think that maybe Larry Wilson will identify these persons. But physicians in correspondence with the hospital and in oral conversation with the hospital have told the hospital that the self-insurance trust is bankrupt. And that's probably after having a conversation with NCRIC.

Q. Tell me which physicians then told the hospital that the self-insurance trust was bankrupt.

A. Everyone that I talked to who have --

Q. Name names. Don't tell me "everyone;" otherwise, I'll go get a list of every member of the hospital and we'll go through every one and you can say yes or no.

A. I'm trying to name. There was an insurance committee that was formed by the medical staff to look after this issue. One of them is Dr. Greenfield. One of them is Kathy Bis or Marty Roberts. One of them is -- I would have

to look at the list, Mr. Niedermayer, and I don't have it with me. And these are the ones who came back from talking to NCRIC with the impression that the self-insurance trust is bankrupt.

Q. So everyone on the insurance committee are the physicians that you are aware of that reported that NCRIC said --

A. Yes, and some who are not on the insurance committee who have said that they would not accept the self-insurance trust covering them because it has no money. And that's Leonard Glassman who said that. And one of the physicians who comes to mind I think could be Heather Johnson. So Leonard Glassman said it. Heather Johnson I think could have wrote it.

Q. I'm only talking about the people who orally communicated it.

A. You asked for specific. I squeezed my memory to five names. I don't know unless if I see a list and I really did not -- this is the medical staff committee and I am on the Board and we are two separate structures. I purposely was

not on the committee. We let the medical staff themselves decide without Board influence.

Q. Is it your testimony that Larry Wilson should know the names of these persons?

A. If there are any further names, he would know them, yes, sir, because they were talking to him about coverage of the clinic.

Q. Let me ask you, if you would, to look at Page 16, Paragraph 69 of the counterclaims. Did you attend the meeting in August of 1998 in which NCRIC made or is alleged to have made the statements in 69?

A. I think I did.

Q. Can you tell me specifically the words that were stated by a representative of NCRIC about the first item that's listed in there that's alleged to have been false?

MR. LEAHY: I'm going to make the same objection here, continuing objection. Answer to the extent Columbia knows you're designated to answer. Well, to the extent this is part of your designation, to the extent it goes to reputation

or whatever, the harms, you may answer on behalf of Columbia. You may not answer anything your attorney knows, if you know what your attorney knows.

MR. NIEDERMAYER: The witness said he attended and he was there, and I asked him what specifically the language was that was said with regard to MIIX, M-I-I-X, remaining in the D.C. Insurance market.

MR. LEAHY: To the extent he has his own memory and he has Columbia knowledge, you go ahead and you answer.

THE WITNESS: 1 of 69, yes, it was said that.

BY MR. NIEDERMAYER:

Q. Was it said exactly in those words?

A. Yes.

Q. That's a quote then. Who said it?

A. I don't recall, but there were people at NCRIC attending it. I think there was Steve Fargis, I think there was Pate, I think there was Joheo, among others -- I don't know them very

well -- with the physicians. And I think it was hosted either here or in a hotel. There were two meetings either in the hotel which is facing the hospital if it's not Bristol Hotel, or here.

Q. Did you attend both meetings?

A. I think I attended both meetings.

Q. Tell me what other physicians were present at the meetings that you recall.

MR. LEAHY: Same objection.

THE WITNESS: A lot of physicians. I cannot tell you exactly who wasn't there and who was there. But it was attended.

BY MR. NIEDERMAYER:

Q. Can you remember the names of any physicians who were there in the meetings you attended?

A. There was one meeting here that I was not invited to.

Q. I'm not asking about the meetings you weren't invited to. I'm asking about the two meetings that you testified to that you did attend. Can you recall the names of any other

physicians that were there?

A. Sure. I was saying there was a meeting here that I was not invited to but I attended anyhow. So there was a bouquet of physicians who were invited. And I am sure NCRIC records since they called the meeting would have who attended. I just went in to listen to what is being said so that I don't hear it secondhand.

And a second meeting I think was in August in a hotel to try to talk to physicians to drum support for NCRIC, both called by the NCRIC group to drum support for them. And the support, the arguments that were floated were the following: That NCRIC, that MIIX, the new company, is a fly-by-night operation. They remained a part of the Hartford company that decided not to underwrite at one year and left physicians hanging. Second, that MIIX does not guarantee the premiums for two years because at that time MIIX was giving less markedly decreased premiums than NCRIC.

NCRIC had to come up with an

explanation how a competitor would come in and give a markedly decreased premium. And the defense was the MIIX is not here to stay, MIIX, there is no guarantee for it to look at the premiums, that MIIX was an unreliable insurance company.

Q. Was it explained what that meant?

A. It meant that it was explained that the physicians cannot rely on it for MIIX to keep insuring them and that MIIX's plan to raise premiums was entered in the District of Columbia, that we are being used as a stepstone for MIIX to go in and once they go in then they start jack up the prices. And their experience is not good, they cut loose and leave while NCRIC, although they charge much more, is here to stay. So the physicians can pay more and stay with a more reliable insurance company rather than pay less and risk their insurance. And that the MIIX was a proposal which would benefit members of the Medical Board of Directors, correct, that was said. It was said actually by some Board members

of the NCRIC, too. And that the Medical Center had lied to it by citing that it could not afford to continue the plan, that is correct.

Q. That is correct that that statement was made.

A. Yes. And that the Medical Center can't afford going with the plan because the plan is the best, and that we are not making much money on the plan and, therefore, the Medical Center is not continuing the plan because financially it cannot do so because it elects not to do so. There was electivity rather than an obligatory thing that we had to face.

Q. Was the word "lied" used in the presentation?

A. "Did not say the truth," I think, or something of the sort. And that the lawyers with whom NCRIC contracted when making a claim would not work with MIIX, that's correct. They said that the lawyers that work with NCRIC, that physicians who are used to the NCRIC lawyers, these lawyers might not work, would not work for

MIIX and, hence, MIIX would bring in with a new set of lawyers and you're used to these ones who are excellent, they are very responsive, they are here, who knows what MIIX will bring.

Q. Was there any visual presentation made at this August 1998 meeting you attended?

A. There was.

MR. LEAHY: Same objection.

THE WITNESS: There was slides.

BY MR. NIEDERMAYER:

Q. Slides.

A. I think.

Q. Do you know what that's called, a PowerPoint show?

A. PowerPoint show, more or less, yes, dog and pony show, yes. Yes, it was a show.

Q. After the meeting was over, did you have any conversation directly with any of the representatives of NCRIC?

MR. LEAHY: Same objection.

THE WITNESS: I forgot. I can't recall.

BY MR. NIEDERMAYER:

Q. Can you tell me any of the names of other physicians who attended the August 1998 meeting?

A. I think there was, I remember -- I think NCRIC would have a better recollection because they probably took attendance. I do not really with accuracy recall who was there.

MR. LEAHY: Can we go off the record for a minute?

MR. NIEDERMAYER: ES.

(Discussion off the record.)

BY MR. NIEDERMAYER:

Q. Dr. Rifka, you then do not recall the names of any physicians at the August 1998 meeting which we've been talking about.

MR. LEAHY: Same continuing objection.

THE WITNESS: Not with certainty.

BY MR. NIEDERMAYER:

Q. Do you recall any with a lack of certainty?

A. Yes. With a lack of certainty, Robert

Greenfield --

MR. LEAHY: Objection.

THE WITNESS: -- Kathleen Bis, Norman Neches.

MR. LEAHY: You got my objection, ma'am, same objection.

THE WITNESS: Martin Dukes. With uncertainty, all of them.

BY MR. NIEDERMAYER:

Q. Did you say Norman Neches?

A. N-e-c-h-e-s.

Q. Dr. Bis?

A. B-i-s.

Q. Did you understand from your attendance at the meeting that NCRIC was making a public relations presentation to convince doctors to stay with it?

MR. LEAHY: Objection to relevance. And same objection.

THE WITNESS: If you insist on that description only at the expense of Columbia Hospital.

BY MR. NIEDERMAYER:
Q. I don't insist on the description. I just want to know whether you agree or understood that it was an effort of NCRIC to market its product.
A. I don't know what was the intent of the meeting because NCRIC called for it. I know the content was an offensive against MIIX and against the hospital and a scare tactic to scare the physicians from going into another route.
Q. Are the statements that are numbered 1, 2, 3, 4, and 7 on Paragraph 69 --
A. 1 --
Q. 2, 3, 4 and 7, defamatory, do you claim, of the hospital?
MR. LEAHY: I'm going to object and tell the witness not to answer. That's a legal conclusion. There is absolutely no reason to ask a lay witness whether a statement is a defamatory statement.
MR. NIEDERMAYER: That's not what I asked. That's not the question I asked, whether

it was defamatory. I asked whether he contended it was defamatory. And that's a perfectly proper question to ask the representative of the hospital who is dealing with harm to its reputation.
THE WITNESS: Yes, because the hospital Board had elected to go with MIIX, and that the reason the hospital Board elected to go with MIIX was because of a variety of financial advantages that we have and to escape from the $1 million deadline that NCRIC imposed on us to come up with while we were in bankruptcy.
So the Board of Directors hurried, spent a lot of time with the administration, got a group called MIIX that made the presentation for the physicians. And that reversing that decision, an attempt by NCRIC to have this campaign to reverse it would hurt the hospital because it will put us under the same bad plan. It would put us, we stand to pay NCRIC $1 million. We will not bust loose of the monopoly and give the physicians an option. And

the reversing a Board decision by pressure, we were under Chapter 11, we thought that this was not something we want to see.
Q. Is it your testimony that while the hospital was in Chapter 11 proceedings that NCRIC made a demand on it to pay $1 million?
A. Yes, a deadline, or else the plan would be switched. Therefore, we hurried and got another insurer for the group. And administration will have the worksheet for that, too.
Q. Who at the hospital had the ultimate decision whether to accept a policy from MIIX or NCRIC?
A. The Board.
Q. Did the attending faculty have any role or authority in making that decision?
A. Through their representative who is the president of the medical staff, and through that they are the customers of the place. And if you end up displeasing your customers while you are in Chapter 11, your dreams of emerging from

Chapter 11 will be shattered under these type of circumstances we were operating. And NCRIC was demanding things that we could not deliver.
Q. In this August '98 meeting you attended was the word "cronyism" used by any representative of NCRIC?
MR. LEAHY: Again, same objection, work product. Answer to the extent you or Columbia knows.
THE WITNESS: It was floated that the MIIX proposal is brought by some members on the Board who stand to gain financial gains from that contract.
BY MR. NIEDERMAYER:
Q. Were those members identified?
MR. LEAHY: Same objection.
THE WITNESS: Not to my knowledge.
BY MR. NIEDERMAYER:
Q. Was it explained what the benefit would be to those members?
MR. LEAHY: Same objection.
THE WITNESS: Not to my knowledge. It

was made, though, the sentence was made that some might be bringing them here for their personal gain.

BY MR. NIEDERMAYER:

Q. At the meeting of August '98 did representatives of NCRIC ask members who attended to dissociate themselves from the Medical Center?

MR. LEAHY: Same objection on work product.

THE WITNESS: Yes.

BY MR. NIEDERMAYER:

Q. Who said that?

A. Upon asked what if the Retro plan is not renewed with Columbia, the NCRIC representative said other hospitals will have a similar plan.

Q. Did any representative of NCRIC say to the physicians, "We suggest, recommend that you move from Columbia to the other hospitals"?

MR. LEAHY: Same objection. You're instructed to answer only to the extent Columbia has knowledge.

THE WITNESS: Not in my presence.

BY MR. NIEDERMAYER:

Q. Were you there continuously throughout the whole meeting?

A. Yes, sir.

Q. May I ask you to look on Page 19 at Paragraph 89 of the counterclaim. Are you familiar with NCRIC making the statements that are described in Paragraph 89 of the counterclaim?

MR. LEAHY: Again, same work product objection.

THE WITNESS: I have received a -- yes, I am aware that they have made that sentence and these accusations.

BY MR. NIEDERMAYER:

Q. How were you made aware of that?

MR. LEAHY: Same objection.

THE WITNESS: Through the same, through the vice president of the hospital, Dwaine Gasser, and through the president of the hospital, Larry Wilson, that physicians have

called NCRIC and they told them all of these things from 1 to 4.

BY MR. NIEDERMAYER:

Q. So it was reported to you by Mr. Gasser and Mr. Wilson that these have been said.

A. Yes, sir.

MR. LEAHY: Same objection.

BY MR. NIEDERMAYER:

Q. Did they report to you when these were said?

MR. LEAHY: Same objection.

THE WITNESS: Probably -- definitely I recall towards the end of August, beginning of September. It was a Friday and I was made aware of it because the vice president have called me, the president was somewhere else, and that physicians have called NCRIC, they're not covered, they're not going to go to the clinic; and that if they are told that the self-insurance trust is covering them, that its bankrupt. And that's part of why NCRIC does not want to get

involved with the hospital any more because there is no self-insurance trust there. And the reason they don't cover, the NCRIC policy does not cover the clinic is because the clinic is a dangerous place to work.

BY MR. NIEDERMAYER:

Q. Dangerous for whom or to whom?

MR. LEAHY: Same objection. You're answering only to the extent Columbia knows.

THE WITNESS: To the extent -- to that I would say that "dangerous" means that the quality of the patients are litigation material and, hence, working in the clinic will expose the physician to a lot of legal issues.

BY MR. NIEDERMAYER:

Q. Was it reported to you that the danger associated with the ambulatory clinic related to working there without insurance coverage?

MR. LEAHY: Same objection.

THE WITNESS: Dangerous includes to me that when physicians asked, "Since I have a NCRIC insurance policy, why am I covered in the

operating room on my patient and I'm not covered in the basement looking after clinic patients?" The answer was that in the clinic it's more dangerous and, therefore, your NCRIC personal policy does not cover you in the clinic of Columbia Hospital. And that's where my sentence came to the vice president saying this is like Nationwide insuring you everywhere except the beltway means the beltway is dangerous place to drive.

BY MR. NIEDERMAYER:

Q. Was it reported to you who made these statements in Paragraph 89?

MR. LEAHY: Same objection.

THE WITNESS: It was reported to me that the physicians who were supposed to cover the clinic on September 1st have made these representations to the vice president of the hospital and, hence, refused to go down to the clinic which produced a huge amount of anarchy there. And I think that the president later, I was told, has tried to call NCRIC to issue a

statement that, no, they are covered. NCRIC never did that.

BY MR. NIEDERMAYER:

Q. My question was was it reported to you who as the representative of NCRIC made these statements?

MR. LEAHY: Same objection.

THE WITNESS: I was not aware of who.

MR. LEAHY: Roy, I am going to start objecting to further questioning because I think we're well beyond any of the topics in which he's been designated here. I just want to warn you I don't see a topic here. I'm going to start objecting and telling him not to answer at all unless you tell me where we are on the subject of the deposition. We have gotten far afield and into other subjects for which he is not designated. And I don't see this on any of our subjects.

MR. NIEDERMAYER: I'll tell you where it is, though I'm not obligated to do so. Count 9 is a count for defamation and libel, and refers

to the fact that NCRIC made false and defamatory statements, including statements in Paragraph 69 and 89. And Paragraph 158 says "As a result of the foregoing false and defamatory statements, the Medical Center suffered harm to its reputation." Therefore, I am asking about the statements which caused the harm. It's well within the ambit which he is designated to testify about.

MR. LEAHY: No, he isn't. He's been asked about the subject, nature and scope of any harm. You have separate topics about what the statements are. You asked about the content of rumors, not defamatory statements. You asked about its reputation and the subject, nature and scope of the harm. The statements themselves are not the scope of the harm.

MR. NIEDERMAYER: I'm not going to argue with you. Just instruct him not to answer. We'll go see the judge on it.

MR. LEAHY: All right.

MR. NIEDERMAYER: You know the rules

on instructing not to answer.

MR. LEAHY: Roy, he's not here on a notice of deposition on himself. So if it's outside the scope, I can certainly instruct him not to answer.

MR. NIEDERMAYER: Off the record.

(Discussion off the record.

MR. NIEDERMAYER: Counsel, I'm going to ask you not to object on the basis of anything other than instructing the witness not to answer privilege or those things that are permitted by the rules, not on relevancy or other matters which you know are improper under the rules to raise as objections, except you may object as to the form of the question.

MR. LEAHY: In a 30(b)(6) deposition I can object to relevance, especially when we have an agreement here that you're not going to ask about other topics. Rather than walk, I'm going to object to relevance. You are breaching our agreement.

MR. NIEDERMAYER: Maybe you're

available right now and we can go see the judge.
MR. LEAHY: Fine. You're breaching your agreement.
MR. NIEDERMAYER: When we're done we'll go see the judge and we'll ask about the question about whether it's a work product about the knowledge of the hospital.
MR. LEAHY: I think that's going to be a paper motion.
BY MR. NIEDERMAYER:
Q. Dr. Rifka, could you tell me, referring to Paragraph 89, what is untrue about the first statement that the policy had expired?
MR. LEAHY: Same work product objection. You are instructed to answer only to the extent Columbia has knowledge.
THE WITNESS: Actually, the policy has been canceled by NCRIC.
BY MR. NIEDERMAYER:
Q. So on the effective date of the cancellation it had expired, hadn't it?
A. Yes.

Q. So that's a true statement?
MR. LEAHY: Same objection.
BY MR. NIEDERMAYER:
Q. You may answer.
A. Yes, it was expired.
Q. So it's a true statement.
A. As far as I can tell.
MR. LEAHY: Same objection.
MR. NIEDERMAYER: Okay.
MR. LEAHY: And legal conclusion objection.
BY MR. NIEDERMAYER:
Q. Is it true that in August of 2000 that the Medical Center's self-insurance trust was insufficiently funded to insure the CPG?
A. It is --
MR. LEAHY: Same objection.
THE WITNESS: It is technically true, but funding of all malpractice legal costs and suits have been paid by the hospital, whether it's from the self-insurance trust or from operations.

BY MR. NIEDERMAYER:
Q. May I ask --
A. Just to explain to you further on the self-insurance trust, during the bankruptcy proceedings we were not allowed to put money there and, hence, up to June 2000 or July 2000 we had no power to go from the bankruptcy estate and put money in the self-insurance trust. Plus, before we went into bankruptcy NCRIC took $1 million out of it. So technically it had insufficient funds for variety of reasons, but the hospital continues to pay its liability from operations.
Q. Let me understand your statement.
A. Yes.
Q. NCRIC doesn't have any authority to remove money from the self-insurance trust, does it?
MR. LEAHY: Same objection.
THE WITNESS: NCRIC demanded before we went into a Chapter 11, way before, came and had a meeting with Jerry Beaulieu, who was then the

president of the hospital, and said that "Although our agreement does not require you to pay money, your tenuous position financially requires that you give us some money which we will put in your name on our books, it will stay for you guys. But either get us a letter of credit or a CD or $1 million." At that time we had no option but to give them the $1 million. Anything less than that we would risk a war with them and, hence, a problem for the hospital.
BY MR. NIEDERMAYER:
Q. Who was it that said those things on behalf of NCRIC?
A. If you name me names --
MR. LEAHY: Same work product objection.
THE WITNESS: If you would name me names, I will tell you. But I know Steve Fargis was there and another gentleman, I can see him by face. If you tell me names of NCRIC, I could help you.
BY MR. NIEDERMAYER:

Q. Was it Mr. Pate?
A. I don't remember that.
Q. Was it Mr. Osborne?
A. Go ahead, next. Other than Osborne.
Q. Mr. Sohm?
A. Mr. who?
Q. Sohm?
A. No. Next?
Q. Let me ask you if you would look at Paragraph 92 of Exhibit 2. Are the statements that it's alleged that NCRIC made to physicians in Paragraph 92 part of the false and malicious statements that hurt the reputation of the hospital?
A. Yes.
MR. LEAHY: Same objection.
BY MR. NIEDERMAYER:
Q. Who made those statements referred to in Paragraph 92, who made them on behalf of NCRIC?
MR. LEAHY: Same objection.
THE WITNESS: Physicians have called

NCRIC here and somebody in NCRIC talked to these physicians and told them about this, the clinic and the coverage there.
BY MR. NIEDERMAYER:
Q. You don't know who that was at NCRIC that said that.
A. No.
MR. LEAHY: Same objection.
BY MR. NIEDERMAYER:
Q. Which physicians were there that called NCRIC?
MR. LEAHY: Same objection.
THE WITNESS: I would know at least of one of them that called, or two. I think either Ed Cook and Heather Johnson, on that September 1st, on that Friday. This I have knowledge of. Others have, too. I'm sure NCRIC would be the best source of who that they received phone calls from.
Q. Do you have any knowledge about the last sentence of Paragraph 92 that there is no justification for the exclusion for the

ambulatory clinic?
MR. LEAHY: Same objection. To the extent Columbia has knowledge of that, you may answer. To the extent Columbia does not have knowledge, you may not.
THE WITNESS: We are bewildered as to why an insurance company will be charging twice to cover the same individual in the same place. And we are bewildered -- sorry.
BY MR. NIEDERMAYER:
Q. No, complete your answer, please.
A. We are bewildered why would the clinic be excluded from coverage under the NCRIC insurance. And we would wonder whether other hospitals are treated similarly or physicians who go to an emergency room and practice, whether NCRIC will cover them or not.
Q. Does the hospital have any information or knowledge about the underwriting justification for the exclusion of physicians practicing in the hospital's clinic?
A. I am not aware of why NCRIC has done

that.
Q. Let me ask you to look at Paragraph 94 of the counterclaim.
A. Yes, sir.
Q. Are the statements in that Paragraph that NCRIC's alleged to have made part of the false and defamatory statements that harmed the reputation of the hospital?
MR. LEAHY: Same work product objection here.
THE WITNESS: Mr. Niedermayer, is this 94 you said?
MR. NIEDERMAYER: Yes.
MR. LEAHY: Take your time.
THE WITNESS: I think that two things have been done is I think NCRIC has established a new discounted plan with GW at that time that ours have expired and has informed physicians of the Sibley plan and, therefore, in an attempt to keep physicians within the NCRIC environment they have structured for them two places to practice, one in GW which is currently structured and I

believe structured at the time when our contract switched off with them, and I believe that they told them of Sibley as another place.

BY MR. NIEDERMAYER:

Q. What information does the hospital have about this GW plan?

A. We understand that we do not have any direct plan from GW, but we know that GW which did not have a discounted plan now does.

Q. Let me see if I understand. You said you have no direct information about what the GW plan is.

A. The contract, I don't have the written document. It's our belief that the physicians who left Columbia and are still with the NCRIC plan have been diverted to Sibley and some to GW which now has an analogous plan which I don't have the document for.

Q. What's the basis of your understanding?

A. Because this is where our physicians went after our contract with NCRIC expired. They

went, the majority, to Sibley and the minority to GW.

Q. So the fact that physicians left or went to each of these hospitals is the basis for your belief that the insurance plans offered by NCRIC at these hospitals were what? Better?

A. I don't know they were offered by NCRIC in GW. I know they are offered by NCRIC in Sibley. They are analogous. They offer the physician a 30 percent discount on her or his malpractice insurance.

Q. Without any direct copy of the document, what is the basis for your understanding about the terms of either the GW or the Sibley plan with NCRIC?

A. I want to ask you that question, what did NCRIC offer in the plans and how did they do it. But I understand from the physicians who left that they have a 30 percent discount on their malpractice wherever they went to.

Q. Who are the physicians that left and went to Sibley?

A. They are the Horowitz-Safran group, a group of five or six physicians. There is the women's group. There is the Roberts-Bis group, Martin Dukes. And there is another lady who is on the Board of NCRIC, I will remember her name. And I think that is all of the people that I know. And some go there a certain number of times just because the contract for them to have a 30 percent discount they have to do so many cases, so they have to go there to satisfy the cases.

Q. Do you know the reasons why the physicians or groups that you just identified who went to Sibley did so?

MR. LEAHY: Same objection with regard to work product. You may answer only to the extent that Columbia has knowledge other than its attorney's knowledge.

THE WITNESS: I think in the newspaper article it was cited as a malpractice insurance financial issue. And that's what they said. I think that they all left within 30 days, 30 to 60

days of the contract termination. To the extent that Sibley now I don't think accepts any new physicians.

BY MR. NIEDERMAYER:

Q. Did any of these physicians or groups that you identified leave Columbia and go to Sibley because of facilities at Sibley?

MR. LEAHY: Same work product instruction and objection.

THE WITNESS: Actually, Sibley has no facilities for obstetrics-gynecology. It's a small hospital for OB-GYN. It's a huge hospital and fantastic for other disciplines of medicine. And there are no facilities. They had to apply for a certificate of need when they had this influx to build a new facility to accommodate the new commerce.

The new commerce did not go to a great facility. They went to a crowded facility to be expanded thereafter. And they went to a place, too, where women in labor below 30 weeks are not allowed or admitted because they do not have an

11-3 nursery. So they went really to a place which is more crowded, to a place that does not deliver the excellent and the complicated care that Columbia delivers and knows how to deliver. And there has to be a reason, which according to the newspaper article they said is for business opportunity or for the malpractice insurance.

BY MR. NIEDERMAYER:

Q. So you are not aware of any other reason that these physicians or groups left to go to Sibley other than the cost of the malpractice insurance?

MR. LEAHY: Same objection.

THE WITNESS: They have said that in public and in private, that if we don't go with NCRIC they're going to go and they're going to go to a place that gives them the same discount. And so they did. Whether they are going to address it to the public any way where it's nearer, no traffic, the air quality is better, that's something different. But the window of time was, all of this happened miraculously at

the time when the contract expired.

BY MR. NIEDERMAYER:

Q. How about the doctors who went to GW, who were they?

A. GW offered another program like, I don't know with who. And these doctors have to deliver or have to do a certain number of cases there. And they are a group of them. One is Norman Neches, Cooper, James Powers and his group, Jim Powers and his group and Marcy Wilkerson and Art Becker, they're in the same group, and Amy Kesselman. Then you have Russ Bridges, Bruce Barnes, Allen Bernquist, Sarah Emershein. That's the extent of my knowledge. They left and they still come to Columbia, these guys, but they have to do a certain number of cases there to be eligible for the discounted plan.

Q. What is your knowledge about the reasons why they left to go to GW and participate in GW's program?

MR. LEAHY: Same objection. You're

instructed not to answer to the extent Columbia doesn't have knowledge.

THE WITNESS: Same reason, for the NCRIC issue.

BY MR. NIEDERMAYER:

Q. Is that the cost of the insurance is the reason?

A. Yes, the financial cost.

Q. Isn't it true that Columbia Hospital now has an insurance program that costs the physicians less than the NCRIC program?

MR. LEAHY: Same answer.

THE WITNESS: Yes, it is.

BY MR. NIEDERMAYER:

Q. If that's the case do you know why these physicians would have left if it was to achieve a lower financial cost?

MR. LEAHY: Same objection.

THE WITNESS: It is not less with the discount, okay? So if you take the discounted Sibley plan and the new plan that we offer through another insurance company, there is not

much difference. So with the 30 percent discount implemented you stay with your own insurance company and the insurance company which gives you the same premium. So the money out-of-pocket is the same. For us, the hospital, we do not share in the risk, we do not shoulder and we do not put our assets on the line.

BY MR. NIEDERMAYER:

Q. With your current policy.

A. Yes.

Q. So it's better than NCRIC's.

A. For the hospital. For the physician it's about the same or a little bit more, because if we offer a 30 percent discount with the present policy then it would be much less compared with the 30 percent discount that is offered. But we do not offer a 30 percent discount. So our full policy is the same as the 30 percent discounted policy of NCRIC. And the premiums are blended premium with NCRIC.

For example, not everybody has the same rate. I used to pay with a 30 percent

00001
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR
WOMEN MEDICAL CENTER,
INC.,
Defendant.

****

Washington, D.C.
June 27, 2001

Deposition of
LARRY WILSON, JR.
a witness, called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 11:34 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

Q. I will come back to that, but what I'm asking you is did NCRIC do anything that you know, you or the hospital know of, that prevented the hospital from performing anything it had to do under the Retro plan?

MR. LEAHY: I'm going to object to the extent that that calls for a legal conclusion. I'm going to instruct you not to answer if and to the extent that the hospital's knowledge would be knowledge gained from its attorney. That would be work product. If you have knowledge that is not knowledge gained through your discussions with your attorney, you may answer.

THE WITNESS: Maybe it's just after lunch. I need to go back. Let me put this in context again. State the question again.

BY MR. NIEDERMAYER:

Q. I'm sorry. Did you want me to state the question?

A. Yes.

Q. I'm asking you whether you know of anything that NCRIC did that stopped or prevented the hospital from doing what it was obligated to do under the Retro plan.

MR. LEAHY: Same objection.

THE WITNESS: Under the Retro plan. Well, if I can, it is my belief that as a result of entering into a new plan, as a result of the termination of the old plan, that NCRIC had something to do with us losing our positions.

BY MR. NIEDERMAYER:

Q. Let's come back to that later. But before we do, do you understand that NCRIC had no right to cancel the program?

MR. LEAHY: Again, objection to the extent it calls for a legal conclusion. And you are directed not to answer to the extent this would involve work product from your attorney, any type of discussion with your attorney.

THE WITNESS: Okay. Then I won't

the hospital that it didn't have to do something under the plan that it was obligated to do?

MR. LEAHY: Object to the extent it calls for a legal conclusion.

MR. NIEDERMAYER: It does not because it is a report of another person to him saying "you don't have to do something you're obligated under the plan to do."

MR. LEAHY: It calls for him to make a judgment with regard to whether or not the plan calls for something and whether he was told not to. I'm going to object. It's just an objection. You can answer.

THE WITNESS: No.

BY MR. NIEDERMAYER:

Q. Are you able to describe for me what damages that the hospital suffered that are being claimed under Count One of the counterclaims?

MR. LEAHY: I'm going to object and instruct you not to answer to the extent

any of your knowledge might come from your attorney and be otherwise solely your attorney's knowledge and not be knowledge of the hospital. I'm also going to object to the extent that any knowledge might come from the expert, because you're not designated as an expert. You may speak to the hospital's knowledge only.

MR. NIEDERMAYER: Let's go off the record a second.

(Discussion off the record.)

BY MR. NIEDERMAYER:

Q. Mr. Wilson, may I have your answer, please?

A. State the question again.

Q. Are you able to describe for me the damages that the hospital is claiming under Count One, breach of contract, in its counterclaims?

MR. LEAHY: I'm going to instruct you not to answer to the extent that there's knowledge that is from your attorney or that's

expert knowledge. You may answer to the extent that Columbia knows what its damages are.

THE WITNESS: I can give you an example of damages.

BY MR. NIEDERMAYER:

Q. Why don't you do that to start with.

A. Okay. Well, in my opinion we've suffered damages in the tens of millions of dollars to the extent that our reputation has been damaged, we've lost volume, we've lost face in the community, and I could go on just as an example of a few.

Q. Some of those have to do with reputation, they are in later counts. This says breach of contract. I just want to know what damages you claim the hospital claims have been suffered as a result of NCRIC's breach of contract. Can you tell me that?

A. Yes. The part of the reputation that goes back to that dim day in August when

A. I think the premiums at Columbia are less.

Q. Let's see if we can go back --

A. That's how we made our comparisons and the rates that were quoted by NCRIC were certainly higher than the ones we had at the time.

Q. Let's go back to Count One. Can you describe for me each type of damage that you claim under Count One has been incurred by the hospital?

MR. LEAHY: I'm going to object and instruct you not to answer to the extent that you got knowledge from work product of your attorney, that it's not Columbia's knowledge. If you have information that's Columbia Hospital's, give it.

THE WITNESS: As you know, this has been discussed with attorneys. So maybe I should not answer that.

MR. NIEDERMAYER: This witness has been proffered as being able to answer these

questions. Are you telling me he can't answer any of these questions?

MR. LEAHY: He's not our expert. To the extent the party has knowledge, the party can answer. To the extent the knowledge is the party's lawyer's knowledge or the expert witness' knowledge, you'll have to depose those people. To the extent the party has information, go ahead and answer. I'm sure the party has some information. But don't answer about what your lawyer knows.

THE WITNESS: Yeah. We contend there were damages as a result. Damage to reputation, damage to lost opportunities, damage to loss of volume.

BY MR. NIEDERMAYER:

Q. Those aren't breach of contract, but tell me how much is the damages for loss of reputation.

A. We haven't been able to quantify that. Considerable.

Q. Who is going to quantify it?

CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR
WOMEN MEDICAL CENTER,
INC.,
Defendant.

****

Washington, D.C.
July 16, 2001

Resumed Deposition of:

LARRY WILSON, JR.

called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 10:00 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

MR. LEAHY: Right, because as I said, I don't think we have any information other than the data dumps themselves. However, if it turns out that there are questions that Larry believes there are other people who have that information, he will answer and say, "Oh, I think this person has that information," or that person. And so that we don't produce someone who doesn't know anything, we'll come back and designate someone else.

MR. NIEDERMAYER: He's also going to be designated on the topic of expenses associated with the delivery of the services and items charged to each patient on the spreadsheets contained on CHW-CD1 and CHW-CD2.

MR. LEAHY: Right, which is the hospital's raw data files.

MR. NIEDERMAYER: Go off the record a second.

(Discussion off the record.)

--Whereupon

LARRY WILSON, JR.

a witness, called for examination, having previously duly sworn (or affirmed), was examined and testified further as follows:

****

EXAMINATION BY MR. NIEDERMAYER

Q. Mr. Wilson, you understand you're still under oath as a continuation of your deposition.

A. Yes, I do.

Q. I just want to confirm with you you're not going to testify on behalf of the hospital as to the calculation of any damages arising out of the miscalculation of additional or return premium. Is that right?

A. That's correct.

Q. That's going to be done by expert witnesses on behalf of the hospital?

MR. LEAHY: Actually with regard to the return premium, that's not going to be done by an expert witness.

MR. NIEDERMAYER: Who are you going to designate to do that? Mr. Wilson?

MR. LEAHY: No. Is that a topic?

MR. NIEDERMAYER: Yes.

MR. LEAHY: That's a purely legal question. So I don't think we're going to have anyone designated for that.

MR. NIEDERMAYER: So you're saying that the calculation of your damages for return premiums is a legal question?

MR. LEAHY: Except for the loss reserve. We'll have an expert for that.

MR. NIEDERMAYER: I'm entitled to know how you calculate your damages.

MR. LEAHY: You can depose our expert.

MR. NIEDERMAYER: You're expert, you just told me, is not going to testify about the return premium.

MR. LEAHY: Our expert is going to be the damages expert with regard to lost profits.

BY MR. NIEDERMAYER:

Q. Mr. Wilson, has anyone made a computation on behalf of the hospital as to the proper amounts of return or additional premium that the hospital is claiming is correct for the years since the inception of the Retro plan?

MR. LEAHY: I'm going to direct you not to answer that on the grounds it infringes on the work product privilege.

MR. NIEDERMAYER: The identity of the person who does it does not infringe on the work product.

MR. LEAHY: We don't have to give up the identity of any consulting experts.

MR. NIEDERMAYER: So you're representing that they're made by consulting experts.

MR. LEAHY: Can we go off the record?

MR. NIEDERMAYER: No, we're not going to go off the record.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

SECOND AMENDED SCHEDULING ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Amend Scheduling Order is hereby GRANTED, and the deadlines for this case are hereby amended, as follows:

Deadline	**Current**	**Proposed**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	9/14/01	10/5/01
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	9/14/01	10/5/01
Damages discovery closes:	9/21/01	10/5/01
Expert depositions completed:	10/5/01	10/12/01
Dispositive motions filed:	9/10/01	10/19/01
Oppositions to dispositive motions filed:	10 days	11/16/01
Replies to oppositions to dispositive motions filed:	--	12/3/01
Dispositive motions decided:	10/11/01	1/25/02
Confidential Settlement Statement due:	9/26/01	2/1/02
ADR:	11/6/01	To be scheduled by the Program Office
Pretrial:	~~30 days~~	To be scheduled by the Trial Judge

SO ORDERED.

Linda K. Davis
Judge Linda K. Davis

Dated: 8/31, 2001.

SIGNED IN CHAMBERS

16d-000889

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

Copies mailed from chambers
on 9-4-01.

16d-000890

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 0007308-00
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 8/12/01
	)	
Defendant.	)	

MOTION TO COMPEL DEFENDANT TO PRODUCE PRIVILEGE LOG

Plaintiff, NCRIC, Inc., by Roy Niedermayer its attorney, moves this Court for an order compelling defendant to produce a privilege log with respect to documents withheld and documents produced in redacted form, and for cause states:

1. Plaintiff propounded its first Request for Production of Documents on October 26, 2001; its second Request for Production of Documents on January 12, 2001; and its third Request on June 12, 2001.

2. In response to these requests, defendant has produced documents in 13 installments, beginning with its first production on December 21, 2000 and continuing through its most recent production on July 23, 2001.

3. The pages that have been produced are numbered sequentially, and it is clear that not all page numbers have been provided. For example, no documents numbered between CHW00014 and CHW00150 have been produced, but some documents with numbers lower than CHW00014 or higher than CHW00151 have been produced. Defendant has admitted that it has withheld some documents on the basis of privilege.

4. Some of the documents that have been produced have redacted portions.

5. Defendant has repeatedly promised to produce a privilege log explaining which documents have been withheld on the basis of an asserted privilege. Copies of correspondence from defendant's counsel dated December 21, 2000; January 12, 2001; April 13, 2001 and July 5, 2001 in which he promises to produce such a log are attached hereto as Exhibit A.

6. Despite promises to the contrary, no appropriate privilege log has been produced.

7. Plaintiff is concerned that defendant may be asserting a privilege as to documents or portions of documents that the Court may determine are not privileged. This concern has been raised in the past, most recently in a Motion to Compel Answers to Deposition Questions, filed August 6, 2001, in which plaintiff argues that defendant has incorrectly asserted attorney work product privilege as a basis for instructing defendant's corporate designees to refuse to answer certain questions at deposition.

8. Plaintiff is entitled to know which documents defendant is refusing to produce and why. Plaintiff is prejudiced by defendant's failure to provide even this minimal information in that it may be determined that certain documents must be produced despite defendant's contention to the contrary.

WHEREFORE, plaintiff respectfully requests:

1. That the Court issue an Order compelling defendant to produce a privilege log as to documents withheld and documents produced in redacted form; and

2. Whatever other and further relief may be required in the interests of justice.

Respectfully submitted,

Roy Niedermayer, DJK

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

CERTIFICATION OF GOOD FAITH EFFORTS TO SECURE DISCOVERY AND RESOLVE DISCOVERY DISPUTES WITH DEFENDANT

The undersigned counsel hereby certifies that he made good faith efforts to secure the defendant's witnesses and to resolve the discovery disputes with defendant through the following actions:

1. Defendant has agreed to produce the log on several occasions, and has simply failed to do so.

Roy Niedermayer, DJK

Roy Niedermayer, Esq. #180380

MEMORANDUM OF GROUNDS AND AUTHORITIES

1. SCR 26;

2. The record herein.

Roy Niedermayer, DJK

Roy Niedermayer, Esq. #180380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on August 13, 2001, a copy of plaintiff's Motion to Compel Defendant to Produce Privilege Log was mailed first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer, Esq. #180380

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 5/12/01
	)	
Defendant.	)	

ORDER GRANTING MOTION TO COMPEL PRIVILEGE LOG

This matter came before the Court on plaintiff's Motion to Compel Defendant to Produce Privilege Log, and the Court having reviewed the Motion and any opposition thereto, it is this _____ day of _____, 2001

ORDERED that the plaintiff's Motion to Compel Defendant to Produce Privilege Log be and the same is hereby GRANTED; and it is further

ORDERED that defendant shall produce a log of all documents withheld or redacted, including the date, type, subject, creator, recipient, and basis for asserted privilege on or before the _____ day of _____, 2001.

_____
Linda Kay Davis, Superior Court Judge

cc:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

December 21, 2000

Roy I. Neidermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Defendant Columbia Hospital for Women Medical Center, Inc. hereby produces to Plaintiff NCRIC, Inc. documents bearing Bates numbers CHWMC 000001 through CHWMC 000889 in response to NCRIC's First Requests for Production of Documents and First Set of Interrogatories. As per your request, the documents are being produced to David Osborn. Forthcoming are (1) a list of the non-responsive documents that were pulled from this Bates range; and (2) a chart reflecting the documents that were withheld on grounds of privilege.

I anticipate that Medical Center will produce additional documents the next few weeks. Further, Medical Center reserves its right to supplement its document productions at any time.

If you have any questions, please do not hesitate to call me at (202) 326-7924.

Sincerely yours,

Joseph K. Leahy

cc: Mr. David Osborn (w/encl.)
By Hand Delivery

RECEIVED

DEC 27 2000

16d-000897

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

January 12, 2001

BY HAND DELIVERY

Roy I. Niedermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Please find enclosed the following:

1. a list of the Bates Numbers of non-responsive documents that were pulled from Medical Center's first (12/21/00) document production to NCRIC;

2. Medical Center's second production of documents (bearing Bates Numbers from CHWMC 000890 to CHWMC 000985) in response to NCRIC's First Requests for Production of Documents and First Set of Interrogatories; and

3. a number of pages that were inadvertently withheld from, and a page that was mistakenly redacted in, Medical Center's first document production to NCRIC (all such pages bear Bates Numbers between CHWMC 000001 to CHWMC 000889).

A log describing the documents that were withheld from the first and second productions on grounds of privilege is forthcoming.

Sincerely,

Joseph K. Leahy

Enclosures

16d-000898

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

April 13, 2001

Roy I. Niedermayer, Esquire
7475 Wisconsin Avenue, Suite 500
Bethesda, Maryland 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Columbia Hospital for Women Medical Center, Inc. hereby makes its fourth production of documents to NCRIC, Inc. This production includes documents bearing Bates numbers ranging from CHW 000151 to CHW 013029, produced in response to NCRIC's First Requests for Production of Documents, Second Requests for Production of Documents and First Set of Interrogatories. In addition, please find enclosed documents bearing Bates numbers CHWMC 000012 - CHWMC 000015, and CHWMC 000969 - CHWMC 00970, which should have been included in Columbia's second and third productions, respectively. As per your request, the documents are being produced to Stephen Fargis of NCRIC.

Forthcoming are a privilege list for all of Columbia's productions to date, and a list reflecting the custodian and file of all documents in this production. The enclosed documents are organized in the order in which they were kept in the ordinary course of business.

Columbia reserves its right to supplement its document productions at any time.

Sincerely yours,

Joseph K. Leahy

cc: Mr. Stephen Fargis (w/encl.)
By Hand Delivery

RECEIVED
APR 16 2001
16d-000899

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

July 5, 2001

By FedEx

Roy I. Niedermayer, Esquire
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Columbia Hospital for Women Medical Center, Inc. hereby makes its eleventh production of documents to NCRIC, Inc. This production consists of documents bearing Bates Numbers CHWMC 0002158 through CHWMC 0002397, being produced in response to NCRIC's First Requests for Production of Documents, Second Requests for Production of Documents, and First Set of Interrogatories. As with prior productions, most of the documents (all Confidential) are being sent to Stephen Fargis of NCRIC. Documents with Bates Numbers CHWMC 0002194 to CHWMC 0002397, however, are being sent to you. These documents are "For Counsel Only."

Columbia reserves its right to supplement its document productions at any time.

Sincerely yours,

Joseph K. Leahy/sls

Joseph K. Leahy

Enclosures

cc: Mr. Stephen Fargis (w/encl.)
By FedEx

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
SEP 06 2001
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Damages Discovery Closes, October 5, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

CONSENT MOTION TO EXTEND TIME FOR COLUMBIA TO OPPOSE NCRIC'S PENDING MOTIONS TO COMPEL

Plaintiff NCRIC, Inc. ("NCRIC"), and Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by their undersigned counsel, hereby jointly move for the entry of the attached, proposed Order, and as grounds for such Order state:

1. In light of the current settlement negotiations, the parties desire to extend the time for briefing NCRIC's Motion to Compel Discovery By Designation Under SCR 30(b)(6) And Appearance at Deposition and Motion to Compel Defendant's Designated Witnesses to Answer Questions Properly Posed at Deposition (collectively, "NCRIC's pending motions to compel").

2. The proposed Order would extend, up through and including September 13, 2001, the time for Columbia to file and serve its oppositions to NCRIC's pending motions to compel.

3. The aforementioned extension will save the parties the time and expense of briefing NCRIC's pending motions to compel while the settlement negotiations are in progress; and will save judicial resources if the settlement negotiations are successful.

4. The foregoing constitutes good cause for modifying the deadline for Columbia to file and serve its oppositions to NCRIC's pending motions to compel.

WHEREFORE, the parties request that the Court grant the Consent Motion to Extend Time for Columbia to Oppose NCRIC's Pending Motions to Compel and enter the proposed Order.

DATED: September 6, 2001

Respectfully submitted,

Roy I Niedermayer | JKL

Roy I. Niedermayer, D.C. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Extend Time for Columbia to Oppose NCRIC's Pending Motions to Compel is hereby GRANTED, and the time for Columbia to file and serve its oppositions to NCRIC's Motion to Compel Discovery By Designation Under SCR 30(b)(6) And Appearance at Deposition and Motion to Compel Defendant's Designated Witnesses to Answer Questions Properly Posed at Deposition is hereby extended up through and including September 13, 2001.

SO ORDERED.

Linda K. Davis

Judge Linda K. Davis

SIGNED IN CHAMBERS

Dated: 9/6, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

Copies mailed from chambers
on 9-6-01

16d-000904

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
SEP 10 2001
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes Aug. 12, 2001
	)	
Defendant.	)	
	)	

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 1st day of September, 2001, I served on opposing counsel, by First Class Mail, postage-prepaid, a copy of Defendant's Objections and Responses to the Request of Plaintiff to Defendant for Production of Documents on Damages. I certify that I will retain the original of the aforementioned document in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: September 7, 2001

Respectfully submitted,

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
SEP 10 2001
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes Aug. 12, 2001
	)	
Defendant.	)	
	)	

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 5th day of September, 2001, I served on opposing counsel, by First Class Mail, postage-prepaid, copies of Defendant's Request to Plaintiff for Supplementation of Responses to Discovery Requests and Notice of Rule 30(b)(6) Deposition of NCRIC, Inc. I certify that I will retain the original of the aforementioned documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: September 7, 2001

Respectfully submitted,

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes Aug. 12, 2001
	)	
Defendant.	)	
	)	

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 30th day of August, 2001, I served on opposing counsel, by First Class Mail, postage-prepaid, copies of Notice of Rule 30(b)(6) Deposition of NCRIC, Inc. and Notice of Deposition of NCRIC Employees. I certify that I will retain the original of the aforementioned documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: September 7, 2001

Respectfully submitted,

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

SEP 13 4 13 PM '01

ADMINISTRATIVE DIVISION

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Damages Discovery Closes, October 5, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

CONSENT MOTION TO EXTEND TIME FOR COLUMBIA TO OPPOSE NCRIC'S PENDING MOTIONS TO COMPEL

Plaintiff NCRIC, Inc. ("NCRIC") and Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by their undersigned counsel, hereby jointly move for the entry of the attached proposed Order, and as grounds for such Order state:

1. The parties' settlement negotiations are continuing in good faith.

2. In light of the continued settlement negotiations, the parties desire to further extend the time for Columbia to file and serve its oppositions to NCRIC's Motion to Compel Discovery By Designation Under SCR 30(b)(6) and Appearance at Deposition and Motion to Compel Defendant's Designated Witnesses to Answer Questions Properly Posed at Deposition (collectively, "NCRIC's pending motions to compel"). The proposed Order would extend, up through and including September 24, 2001, the time for Columbia to file and serve its oppositions to NCRIC's pending motions to compel.

3. In light of the current settlement negotiations, the parties also desire to further extend the time for Columbia to file and serve its opposition to NCRIC's Motion for Protective Order Barring Inquiry into Subject Matter Areas for 30(b)(6) Deposition of Plaintiff ("NCRIC's

pending motion for protective order"). The proposed Order would extend, up through and including September 25, 2001, the time for Columbia to file and serve its opposition to NCRIC's pending motion for protective order.

4. The aforementioned extensions of time will save the parties the time and expense of briefing NCRIC's pending motions while the settlement negotiations are in progress; and further, will save judicial resources if the settlement negotiations are successful.

5. The parties have previously agreed to extend the time for Columbia to file and serve its opposition to NCRIC's pending motions to compel on two occasions: (1) in a Praecipe (filed on August 17, 2001 and supplemented on August 22, 2001); and (2) in a Consent Motion to Extend Time for Columbia to Oppose NCRIC's Pending Motions to Compel (filed on September 6, 2001). The parties have previously agreed to extend the time for Columbia to file and serve its opposition to NCRIC's pending motion for protective order once, in a Praecipe (filed on August 17, 2001).

6. The parties contemplate that aforementioned extensions of time are consistent with the current scheduling order. If more time is necessary for settlement negotiations, the parties expect to file a new motion to amend the scheduling order or a motion to stay this case.

7. The foregoing constitutes good cause for modifying the deadline for Columbia to file and serve its oppositions to NCRIC's pending motions to compel.

WHEREFORE, the parties ask the Court to grant the Consent Motion to Extend Time for Columbia to Oppose NCRIC's Pending Motions to Compel and enter the proposed Order.

DATED: September 13, 2001

Respectfully submitted,

Roy I. Niedermayer, D.C. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Extend Time for Columbia to Oppose NCRIC's Pending Motions to Compel is hereby GRANTED, and

FURTHER, the time for Columbia to file and serve its oppositions to NCRIC's Motion to Compel Discovery By Designation Under SCR 30(b)(6) And Appearance at Deposition and Motion to Compel Defendant's Designated Witnesses to Answer Questions Properly Posed at Deposition is hereby extended up through and including September 24, 2001; and

FURTHER, the time for Columbia to file and serve its opposition to NCRIC's Motion for Protective Order Barring Inquiry Into Subject Matter Areas for 30(b)(6) Deposition of Plaintiff is hereby extended up through and including September 25, 2001.

SO ORDERED.

_____
Judge Linda K. Davis

Dated: _____, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

16d-000912

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 13th day of September 2001, a copy of the parties Consent Motion to Extend Time for Columbia to Oppose NCRIC's Pending Motions to Compel; Certification, and proposed Order were served upon the following by regular mail:

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

In addition, on the same date, a courtesy copy of the aforementioned papers were served on the Chambers of Judge Linda K. Davis by hand delivery.

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

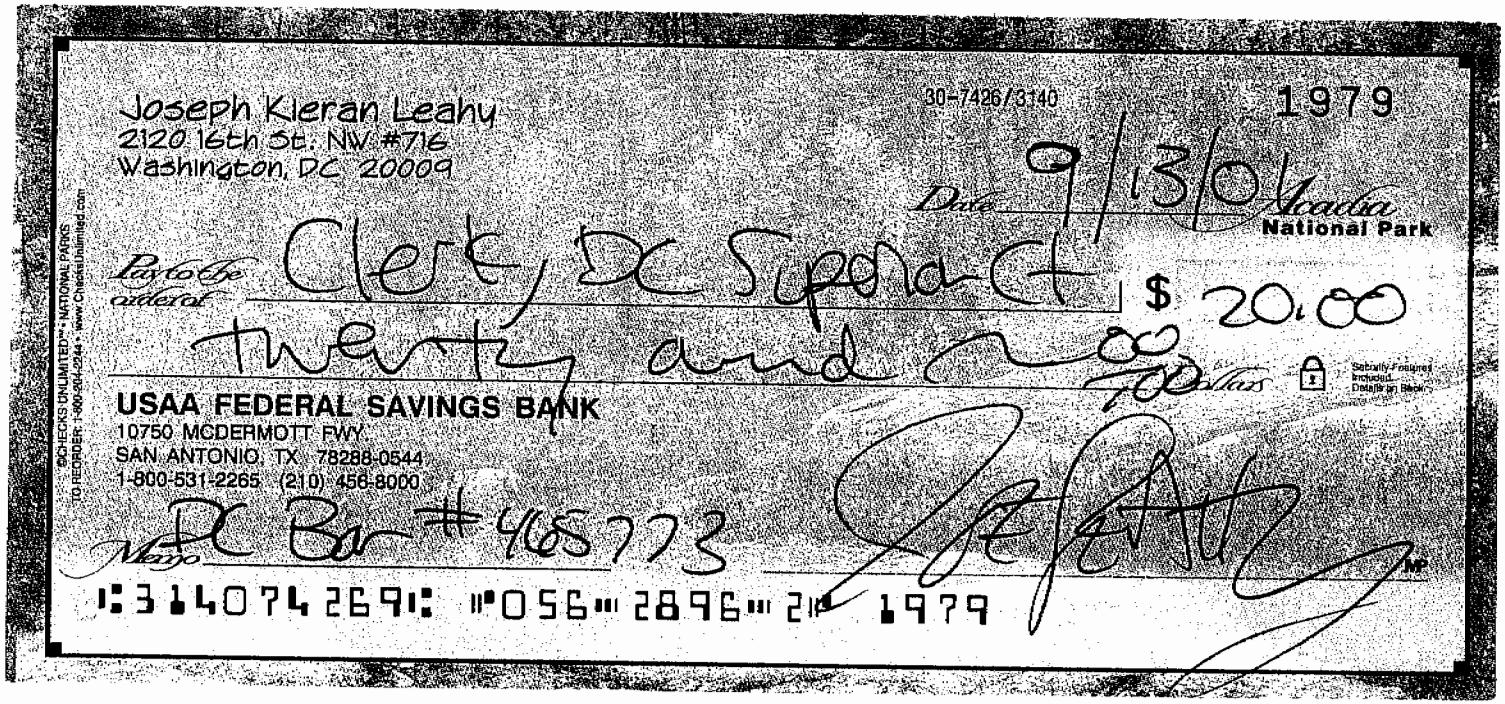
NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Damages Discovery Closes, October 5, 2001
	)	
Defendant/Counter-Plaintiff.	)	

CERTIFICATE

I, Joseph K. Leahy, hereby certify that I obtained consent to file this motion from counsel for Plaintiff NCRIC, Inc., by telephone, on September 13, 2001.

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.



Joseph Kieran Leahy
2120 16th St. NW #716
Washington, DC 20009

30-7426/3140

1979

Date 9/13/10

Acadia National Park

Pay to the order of Clerk, DC Superior Ct

$ 20.00

twenty and no 100 Dollars

Security Features Included. Details on Back.

USAA FEDERAL SAVINGS BANK
10750 MCDERMOTT FWY
SAN ANTONIO, TX 78288-0544
1-800-531-2265 (210) 456-8000

Memo DC Bar #465773

Joseph Leahy

⑈314074269⑈ ⑆056⑆ 2896⑆ 21 1979

©CHECKS UNLIMITED™ • NATIONAL PARKS
TO REORDER: 1-800-500-2944 • www.ChecksUnlimited.com

RECEIVED

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

SEP 13 4 13 PM '01

ADMINISTRATIVE DIVISION

NCRIC, INC.,	
Plaintiff/Counter-Defendant,	
v.	Civil Action No. 00-0007308
	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Damages Discovery Closes, October 5, 2001
Defendant/Counter-Plaintiff.	

CONSENT MOTION TO EXTEND TIME FOR COLUMBIA TO OPPOSE NCRIC'S PENDING MOTIONS TO COMPEL

Plaintiff NCRIC, Inc. ("NCRIC") and Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by their undersigned counsel, hereby jointly move for the entry of the attached proposed Order, and as grounds for such Order state:

1. The parties' settlement negotiations are continuing in good faith.

2. In light of the continued settlement negotiations, the parties desire to further extend the time for Columbia to file and serve its oppositions to NCRIC's Motion to Compel Discovery By Designation Under SCR 30(b)(6) and Appearance at Deposition and Motion to Compel Defendant's Designated Witnesses to Answer Questions Properly Posed at Deposition (collectively, "NCRIC's pending motions to compel"). The proposed Order would extend, up through and including September 24, 2001, the time for Columbia to file and serve its oppositions to NCRIC's pending motions to compel.

3. In light of the current settlement negotiations, the parties also desire to further extend the time for Columbia to file and serve its opposition to NCRIC's Motion for Protective Order Barring Inquiry into Subject Matter Areas for 30(b)(6) Deposition of Plaintiff ("NCRIC's

pending motion for protective order"). The proposed Order would extend, up through and including September 25, 2001, the time for Columbia to file and serve its opposition to NCRIC's pending motion for protective order.

4. The aforementioned extensions of time will save the parties the time and expense of briefing NCRIC's pending motions while the settlement negotiations are in progress; and further, will save judicial resources if the settlement negotiations are successful.

5. The parties have previously agreed to extend the time for Columbia to file and serve its opposition to NCRIC's pending motions to compel on two occasions: (1) in a Praecipe (filed on August 17, 2001 and supplemented on August 22, 2001); and (2) in a Consent Motion to Extend Time for Columbia to Oppose NCRIC's Pending Motions to Compel (filed on September 6, 2001). The parties have previously agreed to extend the time for Columbia to file and serve its opposition to NCRIC's pending motion for protective order once, in a Praecipe (filed on August 17, 2001).

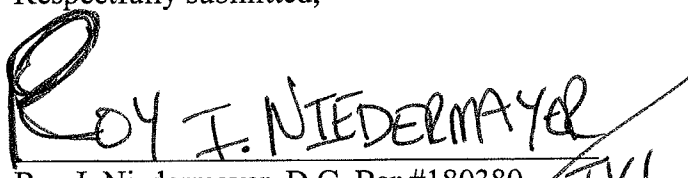
6. The parties contemplate that aforementioned extensions of time are consistent with the current scheduling order. If more time is necessary for settlement negotiations, the parties expect to file a new motion to amend the scheduling order or a motion to stay this case.

7. The foregoing constitutes good cause for modifying the deadline for Columbia to file and serve its oppositions to NCRIC's pending motions to compel.

WHEREFORE, the parties ask the Court to grant the Consent Motion to Extend Time for Columbia to Oppose NCRIC's Pending Motions to Compel and enter the proposed Order.

DATED: September 13, 2001

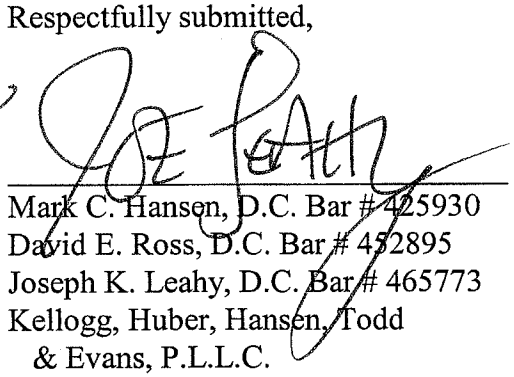
Respectfully submitted,



Roy I. Niedermayer, D.C. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Extend Time for Columbia to Oppose NCRIC's Pending Motions to Compel is hereby GRANTED, and

FURTHER, the time for Columbia to file and serve its oppositions to NCRIC's Motion to Compel Discovery By Designation Under SCR 30(b)(6) And Appearance at Deposition and Motion to Compel Defendant's Designated Witnesses to Answer Questions Properly Posed at Deposition is hereby extended up through and including September 24, 2001; and

FURTHER, the time for Columbia to file and serve its opposition to NCRIC's Motion for Protective Order Barring Inquiry Into Subject Matter Areas for 30(b)(6) Deposition of Plaintiff is hereby extended up through and including September 25, 2001.

SO ORDERED.

_____
Judge Linda K. Davis

Dated: _____, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 13th day of September 2001, a copy of the parties Consent Motion to Extend Time for Columbia to Oppose NCRIC's Pending Motions to Compel; Certification, and proposed Order were served upon the following by regular mail:

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

In addition, on the same date, a courtesy copy of the aforementioned papers were served on the Chambers of Judge Linda K. Davis by hand delivery.

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

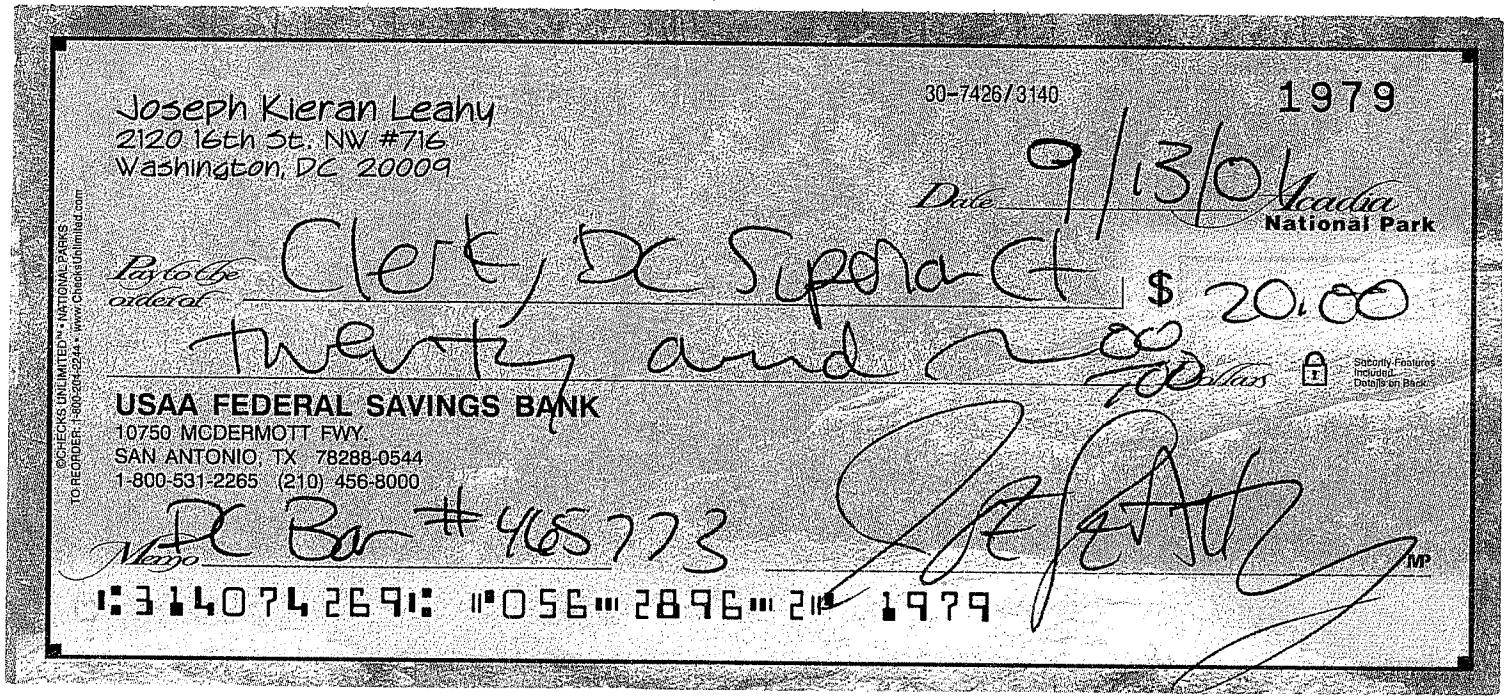
NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Damages Discovery Closes, October 5, 2001
	)	
Defendant/Counter-Plaintiff.	)	

CERTIFICATE

I, Joseph K. Leahy, hereby certify that I obtained consent to file this motion from counsel for Plaintiff NCRIC, Inc., by telephone, on September 13, 2001.

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.



Joseph Kieran Leahy
2120 16th St. NW #716
Washington, DC 20009

30-7426/3140

1979

Date 9/13/04

Acadia National Park

Pay to the order of Clerk, DC Superior Ct

$ 20.00

twenty and no/100 Dollars

Security Features Included Details on Back

USAA FEDERAL SAVINGS BANK
10750 MCDERMOTT FWY.
SAN ANTONIO, TX 78288-0544
1-800-531-2265 (210) 456-8000

Memo DC Bar #465773

⑈314074269⑈ ⑆056⑆ 2896⑆ 21⑈ 1979

©CHECKS UNLIMITED® • NATIONAL PARKS
TO REORDER: 1-800-204-5244 • www.ChecksUnlimited.com

16d-000923

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Damages Discovery Closes, October 5, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

SEP 25 5 43 PM '01

CONSENT MOTION TO TEMPORARILY STAY PROCEEDINGS AND AMEND SCHEDULING ORDER

Plaintiff NCRIC, Inc. ("NCRIC") and Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by their undersigned counsel, hereby jointly move for the entry of the attached proposed Order temporarily staying this action, and as grounds for such Order state:

1. The parties' settlement negotiations are continuing in good faith. Progress has been made, but additional time is necessary to complete the negotiations.

2. In light of the continued settlement negotiations (and in an effort to avoid continuing to extend deadlines a week or two at a time), the parties hereby agree that all discovery and other proceedings in this action (including but not limited to all deadlines for oppositions to NCRIC's pending motions) should be stayed for 45 days, from September 24, 2001 until and up through November 8, 2001.

3. The parties also agree that, to avoid delaying the litigation in the event that the discovery negotiations fail, the stay may be lifted without further order of the Court if, prior to November 1, 2001, *either* party files a Praecipe certifying that the settlement discussions are at an impasse. The parties further agree that, to provide the opposing party with sufficient advance

notice, a stay being lifted in this manner shall end effective *five* business days after the Praecipe is served (with three days added, pursuant to S.C.R 6(a), if the Praecipe is served by mail).[1]

4. The parties further agree that, if the stay is lifted, to save litigation expenses and conserve judicial resources, all deadlines set forth in the Second Amended Scheduling Order (August 31, 2001) should be amended automatically to adjust for the passage of time during the stay, *plus seventeen calendar days*, and all deadlines set forth in the most recent Consent Order (September __, 2001) should be amended automatically to adjust for the passage of time during the stay, *plus seven calendar days*.

Accordingly, the he parties agree that:

a. if the stay ends as scheduled on November 8, 2001, the Second Amended Scheduling Order and the most recent Consent Order should be amended by extending deadlines stated therein by 62 days, as follows:

Deadline in Second Amended Scheduling Order	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	10/5/01	12/6/01
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	10/5/01	12/6/01
Damages discovery closes:	10/5/01	12/6/01
Expert depositions completed:	10/12/01	12/13/01
Dispositive motions filed:	10/19/01	12/20/01
Oppositions to dispositive motions filed:	11/16/01	1/17/02
Replies to oppositions to dispositive motions filed:	12/3/01	2/4/02
Dispositive motions decided:	1/25/02	3/28/02
Confidential Settlement Statement due:	2/1/02	4/8/02

[1] For example, if one party filed and served a Praecipe by mail on October 19, 2001, the stay would end effective on Monday, October 29, 2001 (eight days – three for mail service plus five under paragraph 3 – after October 19, is Saturday, October 27, so S.C.R. 6(a) is applied).

ADR:	T.B.D.[2]	T.B.D.
Pretrial:	T.B.D.	T.B.D.

b. and, if the stay ends as scheduled on November 8, 2001, the most recent Consent Order should be amended by extending deadlines stated therein by 52 days, as follows:

Deadline in Most Recent Consent Order	**Current**	**As Amended**
Columbia's Opposition to NCRIC's Pending Motions To Compel Rule 30(b)(6) Witnesses & Designations	9/24/01	11/15/01
Columbia's Opposition to NCRIC's Pending Motion For Protective Order From Rule 30(b)(6) Subjects	9/25/01	11/16/01

c. The parties also agree that, if the stay does not last until November 8, 2001, but rather is lifted as described in paragraph 3, the Second Amended Scheduling Order shall be amended by extending all deadlines set forth therein by the number of calendar days from (and including) September 24, 2001 to (and including) the effective date on which the stay was lifted (including the five-day notice period and any time added for service by mail), *plus seventeen calendar days*.

d. The parties also agree that, if the stay does not last until November 8, 2001, but rather is lifted as described in paragraph 3, the most recent Consent Order shall be amended by extending all deadlines set forth therein by the number of calendar days from (and including) September 24, 2001 to (and including) the effective date on which the stay was lifted (including the five-day notice period and any time added for service by mail), *plus seven calendar days*.[3]

---

[2] To be determined by the Assignment Office.

[3] For example, if a party filed and served a Praecipe by mail on October 19, 2001, the deadlines in the Second Amended Scheduling Order would be automatically extended, pursuant to paragraph 4c, by 52 days (the number of calendar days from September 24, 2001 to October 29, 2001, see supra n.1, plus seventeen calendar days), and the deadlines in the most recent Consent Order would be automatically extended, pursuant to paragraph 4d, by 42 days (the number of calendar days from September 24, 2001 to October 29, 2001, plus seven calendar days).

16d-000926

e. The parties also agree that, if the stay is lifted by the filing of a Praecipe, a consent Praecipe setting forth all the deadlines, as automatically amended, should be filed seven days after the effective date on which the stay ends.

5. The requested temporary stay will save the parties the time and expense of litigating this matter while the settlement negotiations continue; further, the requested automatic amendments to the Second Amended Scheduling Order and the August 31 Consent Order will save judicial resources.

6. The parties have previously agreed to extend the time for Columbia to file and serve its opposition to NCRIC's pending motions to compel on two occasions, see Praecipe (August 17, 2001); Consent Motion to Extend Time for Columbia to Oppose NCRIC's Pending Motions to Compel ["Consent Motion to Extend"] (September 13, 2001); the parties have previously agreed to extend the time for Columbia to file and serve its opposition to NCRIC's pending motion for protective order twice, see Praecipe (August 25, 2001); Consent Motion to Extend; and the parties have previously agreed to extend the scheduling order in this case twice, see Amended Scheduling Order (May 16, 2001); and Consent Motion to Extend Scheduling Order (August 28, 2001).

7. The foregoing constitutes good cause for temporarily staying discovery and all other proceedings in this action, as described above, and for automatically amending the scheduling order and other deadlines stated in the most recent Consent Order.

WHEREFORE, the parties ask the Court to grant the Consent Motion to Temporarily Stay Proceedings and Amend Scheduling Order and enter the proposed Order.

16d-000927

DATED: September 26, 2001

Respectfully submitted,

Roy I. Niedermayer, D.C. Bar #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000928

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Temporarily Stay Proceedings and Amend Scheduling Order is hereby GRANTED, and all discovery and other proceedings in this action (including but not limited to all deadlines for oppositions to NCRIC's pending motions) shall be stayed until and up through November 8, 2001; and

FURTHER, the stay shall be lifted without further order of the Court if, prior to November 1, 2001, *either* party certifies in a Praecipe, filed with the Court, that the settlement discussions are at an impasse; and

FURTHER, if the stay is lifted by the filing of a Praecipe with the Court, the stay shall end effective *five* business days after said Praecipe is served on the opposing party; and

FURTHER, if the stay ends as scheduled on November 8, 2001, the most recent Consent Order shall be amended by extending the deadlines stated therein by 52 days as follows:

Deadline in Most Recent Consent Order	**Current**	**As Amended**
Columbia's Opposition to NCRIC's Pending Motions To Compel Rule 30(b)(6) Witnesses & Designations	9/24/01	11/15/01
Columbia's Opposition to NCRIC's Pending Motion For Protective Order From Rule 30(b)(6) Subjects	9/25/01	11/16/01

And, FURTHER, if the stay ends as scheduled on November 8, 2001, the current Scheduling Order shall be amended by extending all deadlines stated therein by 62 days as follows:

Deadline in Second Amended Scheduling Order	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	10/5/01	12/6/01
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	10/5/01	12/6/01
Damages discovery closes:	10/5/01	12/6/01
Expert depositions completed:	10/12/01	12/13/01
Dispositive motions filed:	10/19/01	12/20/01
Oppositions to dispositive motions filed:	11/16/01	1/17/02
Replies to oppositions to dispositive motions filed:	12/3/01	2/4/02
Dispositive motions decided:	1/25/02	3/28/02
Confidential Settlement Statement due:	2/1/02	4/8/02
ADR:	T.B.D.[1]	T.B.D.
Pretrial:	T.B.D.	T.B.D.

And, FURTHER, if the stay is lifted by the filing of a Praecipe with this Court, the Second Amended Scheduling Order shall be amended by extending all deadlines set forth therein by the number of calendar days from September 24, 2001 up to (and including) the effective date on which the stay was lifted (including the five-day notice period and any time added for service by mail) *plus seventeen calendar days*; and

FURTHER, if the stay is lifted by the filing of a Praecipe with this Court, the most recent Consent Order shall be amended by extending the deadlines set forth therein by the number of calendar days from September 24, 2001 up to (and including) the effective date on which the stay

[1] To be determined by the Assignment Office.

was lifted (including the five-day notice period and any time added for service by mail) *plus seven calendar days*; and

FURTHER, if the stay is lifted by the filing of a Praecipe with this Court, the parties shall file a consent Praecipe setting forth all the new deadlines, as automatically amended, within seven days after the date on which the stay ends.

SO ORDERED.

_____

Judge Linda K. Davis

Dated: _____, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

16d-000931

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 26th day of September 2001, a copy of the parties Consent Motion to Temporarily Stay Proceedings and Amend Scheduling Order; Certification, and proposed Order were served upon the following by regular mail:

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

In addition, I certify that on the same date, a courtesy copy of the aforementioned papers will be served on the Chambers of Judge Linda K. Davis by hand delivery.

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Damages Discovery Closes, October 5, 2001
	)	
Defendant/Counter-Plaintiff.	)	

CERTIFICATE

I, Joseph K. Leahy, hereby certify that I obtained consent to stay this case for up to 45 days, from counsel for Plaintiff NCRIC, Inc., by telephone, on September 24, 2001; I then obtained consent to file this motion from said counsel, by telephone and email, on September 25 and 26, 2001.

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN	)	
MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Temporarily Stay Proceedings and Amend Scheduling Order is hereby GRANTED, and all discovery and other proceedings in this action (including but not limited to all deadlines for oppositions to NCRIC's pending motions) shall be stayed until and up through November 8, 2001; and

FURTHER, the stay shall be lifted without further order of the Court if, prior to November 1, 2001, *either* party certifies in a Praecipe, filed with the Court, that the settlement discussions are at an impasse; and

FURTHER, if the stay is lifted by the filing of a Praecipe with the Court, the stay shall end effective *five* business days after said Praecipe is served on the opposing party; and

FURTHER, if the stay ends as scheduled on November 8, 2001, the most recent Consent Order shall be amended by extending the deadlines stated therein by 52 days as follows:

Deadline in Most Recent Consent Order	**Current**	**As Amended**
Columbia's Opposition to NCRIC's Pending Motions To Compel Rule 30(b)(6) Witnesses & Designations	9/24/01	11/15/01
Columbia's Opposition to NCRIC's Pending Motion For Protective Order From Rule 30(b)(6) Subjects	9/25/01	11/16/01

And, FURTHER, if the stay ends as scheduled on November 8, 2001, the current Scheduling Order shall be amended by extending all deadlines stated therein by 62 days as follows:

Deadline in Second Amended Scheduling Order	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	10/5/01	12/6/01
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	10/5/01	12/6/01
Damages discovery closes:	10/5/01	12/6/01
Expert depositions completed:	10/12/01	12/13/01
Dispositive motions filed:	10/19/01	12/20/01
Oppositions to dispositive motions filed:	11/16/01	1/17/02
Replies to oppositions to dispositive motions filed:	12/3/01	2/4/02
Dispositive motions decided:	1/25/02	3/28/02
Confidential Settlement Statement due:	2/1/02	4/8/02
ADR:	T.B.D.[1]	T.B.D.
Pretrial:	T.B.D.	T.B.D.

And, FURTHER, if the stay is lifted by the filing of a Praecipe with this Court, the Second Amended Scheduling Order shall be amended by extending all deadlines set forth therein by the number of calendar days from September 24, 2001 up to (and including) the effective date on which the stay was lifted (including the five-day notice period and any time added for service by mail) *plus seventeen calendar days*; and

FURTHER, if the stay is lifted by the filing of a Praecipe with this Court, the most recent Consent Order shall be amended by extending the deadlines set forth therein by the number of calendar days from September 24, 2001 up to (and including) the effective date on which the stay

[1] To be determined by the Assignment Office.

was lifted (including the five-day notice period and any time added for service by mail) *plus seven calendar days*; and

FURTHER, if the stay is lifted by the filing of a Praecipe with this Court, the parties shall file a consent Praecipe setting forth all the new deadlines, as automatically amended, within seven days after the date on which the stay ends.

SO ORDERED.

Judge Linda K. Davis

SIGNED IN CHAMBERS

Dated: 9/28, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

Copies mailed from chambers on 9-28-01

16d-000936

9/28/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN	)	
MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Temporarily Stay Proceedings and Amend Scheduling Order is hereby GRANTED, and all discovery and other proceedings in this action (including but not limited to all deadlines for oppositions to NCRIC's pending motions) shall be stayed until and up through November 8, 2001; and

FURTHER, the stay shall be lifted without further order of the Court if, prior to November 1, 2001, *either* party certifies in a Praecipe, filed with the Court, that the settlement discussions are at an impasse; and

FURTHER, if the stay is lifted by the filing of a Praecipe with the Court, the stay shall end effective *five* business days after said Praecipe is served on the opposing party; and

FURTHER, if the stay ends as scheduled on November 8, 2001, the most recent Consent Order shall be amended by extending the deadlines stated therein by 52 days as follows:

Deadline in Most Recent Consent Order	**Current**	**As Amended**
Columbia's Opposition to NCRIC's Pending Motions To Compel Rule 30(b)(6) Witnesses & Designations	9/24/01	11/15/01
Columbia's Opposition to NCRIC's Pending Motion For Protective Order From Rule 30(b)(6) Subjects	9/25/01	11/16/01

And, FURTHER, if the stay ends as scheduled on November 8, 2001, the current Scheduling Order shall be amended by extending all deadlines stated therein by 62 days as follows:

Deadline in Second Amended Scheduling Order	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	10/5/01	12/6/01
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	10/5/01	12/6/01
Damages discovery closes:	10/5/01	12/6/01
Expert depositions completed:	10/12/01	12/13/01
Dispositive motions filed:	10/19/01	12/20/01
Oppositions to dispositive motions filed:	11/16/01	1/17/02
Replies to oppositions to dispositive motions filed:	12/3/01	2/4/02
Dispositive motions decided:	1/25/02	3/28/02
Confidential Settlement Statement due:	2/1/02	4/8/02
ADR:	T.B.D.[1]	T.B.D.
Pretrial:	T.B.D.	T.B.D.

And, FURTHER, if the stay is lifted by the filing of a Praecipe with this Court, the Second Amended Scheduling Order shall be amended by extending all deadlines set forth therein by the number of calendar days from September 24, 2001 up to (and including) the effective date on which the stay was lifted (including the five-day notice period and any time added for service by mail) *plus seventeen calendar days*; and

FURTHER, if the stay is lifted by the filing of a Praecipe with this Court, the most recent Consent Order shall be amended by extending the deadlines set forth therein by the number of calendar days from September 24, 2001 up to (and including) the effective date on which the stay

[1] To be determined by the Assignment Office.

was lifted (including the five-day notice period and any time added for service by mail) *plus seven calendar days*; and

FURTHER, if the stay is lifted by the filing of a Praecipe with this Court, the parties shall file a consent Praecipe setting forth all the new deadlines, as automatically amended, within seven days after the date on which the stay ends.

SO ORDERED.

Linda K. Davis

Judge Linda K. Davis

SIGNED IN CHAMBERS

Dated: 9/28, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorney for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

Copies mailed from chambers
on 9-28-01.

SUPERIOR COURT
OF THE
DISTRICT OF COLUMBIA

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

Nov 15 4 40 PM '01

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Certain Depositions Completed, December 6, 2001
	)	
Defendant/Counter-Plaintiff.	)	

RECEIVED
CIVIL ACTIONS BRANCH
CIVIL DIVISION

PRAECIPE

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by its counsel, hereby states, in accordance with S.C.R. 16(b), that counsel for Plaintiff NCRIC, Inc. ("NCRIC"), has consented to extend, by two business days, the following deadlines in the current scheduling Order, so that Columbia may respond to NCRIC's current settlement offer:

Deadline In Current Scheduling Order	Order Date	New Date
Columbia's Opposition to NCRIC's Pending Motions to Compel Rule 30(b)(6) Witnesses & Designations:	11/15/01	11/19/01
Columbia's Opposition to NCRIC's Pending Motions to For Protective Order From Rule 30(b)(6) Subjects:	11/16/01	11/20/01

DATED: November 15, 2001

Respectfully submitted,

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 15th day of November 2001, a copy of the attached Praecipe was served upon the following by facsimile and regular mail:

Rodney F. Page, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

In addition, on the same date, a courtesy copy of the aforementioned Praecipe was served on the Chambers of Judge Linda K. Davis by hand delivery.

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Nov 19 11 56 PM '01

ADMINISTRATIVE
DIVISION

NCRIC, INC.,	
Plaintiff/Counter-Defendant,	
v.	Civil Action No. 00-0007308
	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Certain Depositions Completed, December 6, 2001
Defendant/Counter-Plaintiff.	

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTIONS TO COMPEL

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby opposes Plaintiff NCRIC, Inc.'s ("NCRIC") Motion to Compel Discovery By Designation Under SCR 30(b)(6) and Appearance at Deposition ("*Motion to Compel Designation*") and Motion to Compel Defendant's Designated Witnesses to Answer Questions Properly Posed at Deposition ("*Motion to Compel Answers*"), in support such opposition states as follows:

Preliminary Statement

In its *Motion to Compel Designation*, NCRIC argues that Columbia must name corporate designees to testify on twenty different topics. Of these topics, four are moot (Point I.A, *infra*) and nine call for legal conclusions (Point I.B, *infra*). The remaining seven topics constitute an illegitimate attempt to circumvent the work-product privilege and take a *de facto* deposition of Columbia's *trial counsel* (Point I.C, *infra*). In its *Motion to Compel Answers*, NCRIC insists that two of Columbia's corporate designees were improperly instructed not to answer, and did not answer, questions posed at their depositions. In fact, the designees answered the questions fully,

so there is nothing to compel and the motion is moot (Point II.A, *infra*). Further, since the witnesses were instructed to hold back only privileged information that they had learned from counsel, the instructions were proper (Point II.B, *infra*). Hence, both motions should be denied.

Factual Background

This lawsuit arose out of an extremely complicated contract (the "Retro Plan"), and the fiduciary relationship that resulted from it. The central issue in the case is how to interpret the Plan's complex retrospective rating formula, which determines how much premium is owed by whom. NCRIC, which sued Columbia for allegedly breaching the Plan, interprets the formula one way, and Columbia, which countersued on contract and tort theories, interprets it another.[1]

NCRIC propounded a massive Rule 30(b)(6) deposition notice, listing 57 broad topics. Columbia designated witnesses for most of the topics, *see* Letter from Joseph K. Leahy to Roy I. Niedermayer, at 3 (Jun. 13, 2001) ("*Designee Letter*") (attached as part of Exhibit A hereto)[2], but objected to others, *see* Defendant's Objections to Plaintiff's Notice of Deposition Pursuant to Superior Court Rule 30(b)(6) (Apr. 5, 2001) ("*Objections*") (attached as Exhibit B hereto). In particular, Columbia objected that topics requiring its designees to summarize its contentions were improper because, *inter alia*, they violated the work product privilege. *See, e.g.*, *id.* at 1-2.

Before the Rule 30(b)(6) deposition commenced, opposing counsels met and conferred regarding whether NCRIC would refrain from asking about topics to which Columbia objected. NCRIC's counsel refused. In order to avoid litigating the issue and move forward with the depositions, Columbia initially designated witnesses for topics to which it did not object, and

---

[1] For purposes of this memorandum, Columbia assumes that this Court is familiar with the procedural history of, and substantive legal issues raised by, this case.

[2] *See also* Letter from Joseph K. Leahy to Roy I. Niedermayer, at 1 (July 12, 2001); Electronic Mail from Joseph K. Leahy to Roy I. Niedermayer, at 1 (Jun. 20, 2001) (both part of Exhibit A).

16d-000943

NCRIC's counsel promised not to ask about topics for which they were not designated. *See, e.g.*, Electronic Mail from Roy I. Niedermayer to Joseph K. Leahy, at 1 (June 20, 2001) (promising not to ask about topics for which witness was not designated) (attached as Exhibit C hereto).[3] In reliance on this promise, Columbia did not seek a protective order.

Soon after the deposition began, NCRIC's counsel violated his promise not to ask about topics for which witnesses were designated. *See* Transcript of Deposition of Safa Rifka, M.D. ("*Rifka Dep.*") at 142-45 (June 21, 2001) (attached to *Motion to Compel Answers*); *see also* Transcript of Deposition of Larry Wilson, Jr. ("*Wilson Dep.*"), at 305-06 (June 27, 2001) (attached hereto as Exhibit D). Rather than stop the deposition, Columbia's counsel instructed the witnesses not to answer the improper questions *only to the extent that* their knowledge derived from Columbia's counsel – *i.e.*, to the extent that their answers might reflect work product. *See Rifka Dep.* at 95-96, 142-45 (attached to *Motion to Compel Answers*, along with other examples); *Wilson Dep.* at 133-34, 139-41 (same). So instructed, the designees answered the questions. *See, e.g.*, *Rifka Dep.* at 95-96, 142-45; *Wilson Dep.* at 133, 139-41. Indeed, since Columbia's counsel had not provided the witnesses with any information that was responsive to the questions he instructed them not to answer, *see* Affidavit of Joseph K. Leahy, Esq. ("*Leahy Aff.*"), at 1 (attached hereto as Exhibit E), both witnesses answered those questions fully.

Due to scheduling conflicts, Columbia's Rule 30(b)(6) deposition was repeatedly continued by agreements between opposing counsel in June and July of 2001. In rescheduling, NCRIC served superceding Rule 30(b)(6) deposition notices (one of which is attached as Exhibit

[3] Although NCRIC's counsel made this promise in writing only with respect to designee Safa Rifka, M.D., counsel also repeated the promise orally and Columbia's counsel reasonably understood that the promise extended to all of Columbia's 30(b)(6) witnesses.

16d-000944

F hereto) for some, but not all, of the rescheduled dates.[4] Columbia's designees continued to appear as scheduled throughout the summer.[5] Columbia *never* failed to designate a witness for, or attend, *any* of the scheduled deposition dates – much less a properly-noticed one.

In mid-July 2001, opposing counsels repeatedly discussed designation of additional Rule 30(b)(6) witnesses by Columbia. In these negotiations, Columbia's counsel *never* refused to designate more witnesses. To the contrary, Columbia's counsel *agreed*, at a meeting on July 16, 2001, to designate witnesses on additional topics.[6] After the Court granted NCRIC's motion to depose Columbia's experts on July 20, 2001, Columbia also agreed to designate its damages expert on damage-related topics. Yet, again due to scheduling conflicts, the deposition of the additional designees was continued. *See* Letter from Roy I. Niedermayer to Joseph K. Leahy, at 2 (July 19, 2001) (attached hereto as Exhibit G). Further, depositions by Columbia consumed the rest of the discovery period. As such, no new deposition dates were agreed upon, no new deposition notices were served – and Columbia had no cause to designate further witnesses.

In August 2001, the parties agreed that depositions noticed before the (then) discovery cutoff of August 14, 2001 could be held afterwards, if necessary. Yet, despite knowing that more depositions would occur, and despite that no unadjourned deposition notice was

---

[4] The new notices added topic 58; Columbia served written objections to each new notice.

[5] Larry Wilson, Jr. was deposed on June 27, 2001 and July 16, 2001; Safa Rifka, M.D. was deposed on June 21, 2001; Charles D. Gasser was deposed on July 9, 2001; Nabil Asterbadi, M.D. was deposed on July 11, 2001; and Gerald Beaulieu was deposed on July 18, 2001. Pursuant to a supplemental Rule 30(b)(6) deposition notice (which requested additional detail regarding, *inter alia*, topic 4), Elnora Johnson was deposed on July 18, 2001.

[6] For example, Columbia informed NCRIC that it would designate witnesses for topics 41, 42, 43, & 45. Subsequently, however, Columbia determined that it could not, despite diligent efforts, locate any current or former managing agents to designate for these topics. *See* Letter from Joseph K. Leahy to Roy I. Niedermayer, at 3 (July 20, 2001) (attached as Exhibit H hereto).

16d-000945

outstanding, NCRIC moved to compel Columbia to designate additional witnesses. NCRIC also moved to compel Dr. Rifka and Mr. Wilson to answer some questions for a second time.

This case was stayed for settlement negotiations from August 17, 2001 to November 8, 2001. After the stay ended, Columbia offered to designate witnesses on some remaining topics in the Rule 30(b)(6) notice *to the extent that* Columbia, not its counsel, had information about those topics. Columbia also offered to provide NCRIC with names of persons who Columbia, including counsel, believed had knowledge about the defamation claims. NCRIC accepted neither offer. NCRIC has not, to date, re-noticed the Rule 30(b)(6) deposition.

Argument

I. The Twenty Topics in NCRIC's 30(b)6) Deposition Notice Are Improper

A. Four Topics Are Moot or Irrelevant

NCRIC moves to compel Columbia to name designees to testify on topics 1-14, 28-29, 51-52, and 56-57 in the Rule 30(b)(6) notice. *See Motion to Compel Designation* at 1. However, Columbia already designated witnesses on topics 4, 9, and 29, *see Designee Letter* at 3, so to that extent the motion is moot. Further, the "information concerning [Columbia's prayer for] attorneys' fees" sought by topic 57, *Motion to Compel Designation* at 1, is no longer relevant because the prayer for attorneys fees was dismissed. *See NCRIC, Inc. v. Columbia Hosp. for Women Med. Ctr., Inc.*, No. 00-007308, Mem. Op. at 12 (July 3, 2001). NCRIC's motion therefore must be denied with respect to these four topics.

B. Nine Topics Improperly Call For Legal Conclusions

Of the remaining topics, nine – 1-3, 8, 11-12, 14, 28 and 51– are improper because they seek legal opinions. Seven of these nine – 1-3, 11, 12, 14 and 28 – concern the calculation of

16d-000946

premium under the Retro Plan.[7] This calculation is governed entirely by a formula set forth in the Plan,[8] *see* Columbia Hospital for Women Medical Center, Inc.'s Amended Answer and Counterclaims ¶¶ 27-36 & Exh. 1 at 8-11 ("*Counterclaims*") (Retrospective Rating Formula), and applying the formula is interpreting the Plan. Such contract interpretation is a pure matter of law for the Court to decide. *See Brown v. Union Station Venture Corp.*, 727 A.2d 878, 881 (D.C. 1999) (citing *1901 Wyo. Ave. Coop. Ass'n v. Lee*, 345 A.2d 456, 461 n.8 (D.C. 1975) (interpretation of an unambiguous, integrated contract is to be determined "as a matter of law")). Therefore, it is an inappropriate subject for deposition questions. *See Nickens v. Labor Agency of Metro. Wash.*, 600 A.2d 813, 819 (D.C. 1991) ("Matters of law are to be determined by the court; consequently, a question calling for a conclusion of law is improper."); *Serv. Parking Corp. v. Trans-Lux Radio City Corp.*, 47 A.2d 400, 403 (D.C. App. 1946) (holding that question regarding interpretation of a lease, which called for a legal conclusion, was improper).

Two other deposition topics call for legal analysis, rather than factual information: topic 8, which requires Columbia's designee to discuss the law of fiduciary relationships,[9] and topic

---

[7] *See* Exh. F at 1 (topic 1) (requesting the basis for Columbia's claim that NCRIC's calculation of the amount of premium Columbia owed to it "fail[ed] to comply with the terms, provisions or formulas of the contract"); *id.* (topic 2) (requesting the "correct amounts . . . to comply with the terms, provisions or formulas of the contract" and "reasons why these . . . are the proper amounts . . . to be used . . . under the contract"); *id.* (topic 3) (requesting the "amounts of premium that should have been charged in each of the contract"); *id.* at 2 (topic 11) (requesting information concerning "calculation of loss reserves . . . and each element of the formula . . . for [calculating premium due] under the Plan"); *id.* (topic 12) (requesting an explanation of NCRIC's errors in applying the formula set forth in the Plan); *id.* (topic 14) (same); *id.* at 3 (topic 28) (requesting the amount of premium due under the formula set forth in the Plan).

[8] All factual data used in the formula is in NCRIC's sole possession. *See Counterclaims* ¶ 28.

[9] *See* Exh. F at 2 (topic 8) (requesting an explanation of the "source, substantive, nature, duties and responsibilities of NCRIC as fiduciary and actions constituting breach of the duty").

16d-000947

51, which asks about Columbia's affirmative defenses to NCRIC's contract claim.[10] Both subjects are therefore improper. *See Nickens*, 600 A.2d at 819.[11]

C. Seven Topics Constitute an Illegitimate Attempt Shift NCRIC's Discovery Burden onto Columbia and Circumvent the Work Product Doctrine by Taking a *De Facto* Deposition of Columbia's *Trial Counsel.*

The seven remaining topics – 5-7, 10, 13, 52 and 56 – all relate to events where Columbia was not present and to facts it was in no position to know. This information "is not currently in the possession of or reasonably obtainable by Columbia . . . , but rather, is in the possession of counsel for Columbia and/or non-party witnesses." *Objections* at 2;. As such, these topics request Columbia's *contentions*, not its evidence – and, they would require Columbia's counsel to "marshal all of its factual proof" and provide it to the 30(b)(6) designee. *United States v. Dist. Council*, No. 90 Civ. 5722, 1992 WL 208284, at *15 (S.D.N.Y. Aug. 18, 1992). This is improper, for three related reasons.

First, in a complex case, stating contentions involves more than just testifying to objective facts; it requires careful analysis of the *legal consequences* of the facts.[12] A lay witness simply is not qualified for this task. *See* Kent Sinclair & Roger P. Fendrich, *Discovering Corporate Knowledge and Contentions: Rethinking Rule 30(b)(6) and Alternative Mechanisms*, 50 Ala. L. Rev. 651, 709 (1999). The proper way to inquire about contentions in a complex case like this one is by propounding *written* interrogatories, which are drafted by counsel. *See, e.g.*, *Lance, Inc. v. Ginsburg*, 32 F.R.D. 51, 53 (E.D. Pa. 1962) (holding that contentions were

---

[10] *See* Exh. F at 5 (topic 51) (requesting an information regarding "[p]erformances under the Plan prevented, excused or waived by" NCRIC).

[11] Further, to the extent that these topics request contentions, they are improper. *See infra* § I.C.

[12] *See, e.g.*, *Rifka Dep.* at 171-72 (asking for Columbia's contention regarding whether NCRIC had properly canceled contract) (attached hereto as Exhibit I); *id.* at 133-34 (asking what specific statements by NCRIC Columbia contended were defamatory).

properly requested in interrogatories, not depositions); *Morelli*, 143 F.R.D. at 47 (same); *Rifkind v. Superior Ct.*, 27 Cal. Rptr. 2d 822, 825 (Cal. Ct. App. 1994) (same); *Davis v. Lower Bucks Hosp.*, 56 F.R.D. 21, 22 (E.D. Pa. 1972) (same);[13] *compare also* Sup. Ct. R. 33(c) (explicitly permitting contention interrogatories) *with* Sup. Ct. R. 26, 30 (making no mention whatsoever of contention-style questions at depositions).

Second, contention-style depositions are especially problematic under Rule 30(b)(6), which requires that a witness who is not knowledgeable about his designated topic be briefed on it. With contentions, *trial counsel's* knowledge necessarily must be used to brief to the designee, especially when the events were witnessed by third parties. In such case, the 30(b)(6) deposition is effectively an indirect deposition of counsel. Since deposing counsel directly is rarely permitted, *Nguyen v. Excel Corp.*, 197 F.3d 200, 207-08 (5th Cir. 1999); *Am. Cas. Co. v. Krieger*, 160 F.R.D. 582, 585 (S.D. Cal. 1995), deposing counsel indirectly by way of a Rule 30(b)(6) deposition is similarly disfavored, *see, e.g., EEOC v. HBE Corp.*, 157 F.R.D. 465, 466-67 (E.D. Mo. 1994) (Rule 30(b)(6) deposition notice was an improper attempt to depose counsel, who was the only corporate representative with relevant information).

---

[13] Contention-style depositions are particularly inappropriate when the information sought is available from other sources. *See Dist. Council*, 1992 WL 208284, at *15. Here, NCRIC has not deposed any third-party witnesses to its defamatory statements, despite that Columbia provided it with the names of third-party witnesses who may have relevant information. *See* Defendant's Objections and Responses to Plaintiff's First Set of Interrogatories, at 3-7 (Nov. 27, 2000) (naming witnesses with knowledge about section of *Counterclaims* entitled "Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy," which contained defamation allegations, *see Counterclaims* at 89, 80-103) (attached as Exhibit J hereto); *Rifka. Dep.* at 119, 122-24 (naming some witnesses to NCRIC's defamatory statements). NCRIC's claim that Columbia failed to provide it with such information is simply false.

Indeed, if questions about contentions were allowed in Rule 30(b)(6) depositions, the adversary process as we know it would be threatened. *See* Sinclair & Fendrich, *supra*, at 699-728. If counsel were required to provide all his evidence to the 30(b)(6) designee, he undoubtedly would forgo traditional (and expensive) evidence gathering techniques, and rely on opposing counsel to build the case. *See id.* at 727 (asking, rhetorically, why counsel would take ever take more than a *single* deposition if contention interrogatories were allowed in 30(b)(6) depositions); *Dist. Council*, 1992 WL 208284, at *16 (to same effect). This is *not* the purpose of the Rule, *see* Sinclair & Fendrich, *supra*, at 708, 717-18, and therefore, contention-style 30(b)(6) deposition topics are inappropriate, *see, e.g., In re Indep. Serv. Orgs. Antitrust Litig.*, 168 F.R.D. 651, 654 (D. Kan. 1996) (quashing Rule 30(b)(6) deposition designed as verbal contention interrogatories); *McCormick-Morgan, Inc. v. Teledyne Indus., Inc.*, 134 F.R.D. 275, 286-87 (N.D. Cal.) (holding that the proper method for learning contentions was interrogatories, not a 30(b)(6) deposition), *rev'd on other grounds*, 765 F. Supp. 611 (N.D. Cal. 1991).

Third, Rule 30(b)(6) "contention depositions" undermine the work-product privilege. Preparing a witness to state contentions *necessarily* requires counsel to review written work product, summarize the material facts for each claim, and provide his legal analysis to the designee. Requiring trial counsel to orally summarize work-product in this way would render the privilege meaningless. *See SEC v. Morelli*, 143 F.R.D. 42, 47-48 (S.D.N.Y. 1992) (30(b)(6) deposition notice requesting contentions was an impermissible attempt to depose counsel to ascertain mental processes and strategies); *Am. Nat'l Red Cross v. Travelers Indem. Co.*, 896 F. Supp. 8, 13-14 (D.D.C. 1995) (upholding witness's refusal to answer contention-style 30(b)(6) questions on work product grounds); *see also infra* § II.B.

16d-000950

II. NCRIC's Motion To Compel Answers Is Moot And Non-meritorious

A. NCRIC's Motion Is Moot Because Columbia Held Back No Information

NCRIC states that Columbia designees Dr. Safa Rifka and Larry Wilson, Jr. did not answer certain questions put to them by NCRIC's counsel. In fact, both witnesses answered the questions to the full extent of their knowledge. *See Leahy Aff.*, at 1 (explaining that Columbia's counsel did not provide the witnesses with factual information regarding the questions that they were instructed, in part, not to answer). Since the designees held back no information, NCRIC could obtain no additional information by calling them back to testify, and the motion is moot.

B. Columbia's Counsel's Instructions Not To Answer Were Proper Because NCRIC's Counsel's Questions Requested Privileged Work Product.

Yet, even if Columbia's designees had held back information, they would have been justified in doing so. Columbia's counsel instructed Dr. Rifka and Mr. Wilson not to answer *only to the extent that* their knowledge derived from counsel. This instruction was appropriate in response to contention-style questions, because any information the witnesses obtained from counsel that was responsive to such questions *necessarily* revealed counsel's mental impressions (e.g., his evaluation of what facts were material to each claim). *See HBE Corp.*, 157 F.R.D. at 466 (rejecting contention-style deposition questions because the "selection and compilation of the relevant facts is 'at the heart of the work product doctrine'"); *American Nat. Red Cross*, 896 F. Supp. at 13 (same); *Morelli*, 143 F.R.D. at 47 (to same effect).

Further, NCRIC's argument that privileged work product somehow loses its protected status when summarized verbally is simply wrong. *See Nesse v. Pittman*, 202 F.R.D. 344, 355 (D.D.C. 2001) ("The work product privilege protects intangible work product."); 8 C. Wright & R. Marcus, *Federal Practice & Procedure* § 2024 (1994) (*Hickman v. Taylor*, 329 U.S. 495, 511 (1947), protects "work product . . . that is not embodied in tangible form"); *see e.g., Hickman,*

329 U.S. at 512-13 (affording work-product protection to witness statements in the form of "mental impressions or memoranda"); *American Nat. Red Cross*, 896 F. Supp. at 14 (deposition testimony constituted protected work product); *Morelli*, 143 F.R.D. at 47 (same).

Moreover, even to the extent (if any) that NCRIC counsel's questions requested purely factual information, that information was privileged because it was *not known to Columbia at the outset of the litigation* and gathered by Columbia's counsel *from third parties*.[14] *See* Sup. Ct. Rule 26(b)(3) (covering factual materials developed in anticipation of litigation). Nor is *Hickman*, which NCRIC argues denied work-product protection to "underlying facts," to the contrary. The question in *Hickman* was whether a party *overcame* the privilege due to a *substantial need* for those facts, not whether the privilege applied in the first place. *See Hickman*, 329 U.S. at 394 (reasoning that facts are not protected if they lie "hidden" in counsel's file, and facts may be produced when "witnesses are no longer available"; holding that witness statements were not discoverable because opposing counsel made "no showing of necessity").

Here, NCRIC's purported "need" for Columbia's facts is decidedly not a showing of "substantial need" and "undue hardship," as required by *Hickman* and Superior Court Rule 26(b)(3). *Compare Motion to Compel Answers* at 4-5 (explaining that facts Columbia's designees purportedly withheld are relevant to NCRIC's defense, and it could not obtain its contentions from anyone other than Columbia) *with* Wright & Miller, *supra* § 2025 & n.17 (explaining that "substantial need" means "more than mere relevance" and showing of "undue hardship" means more than mere inconvenience or the expense from taking depositions).

---

[14] There is no question here that NCRIC sought factual information from Columbia's attorney. *See Motion to Compel Answers* at 3 (arguing that it was improper for Dr. Rifka to "refuse to provide any information that his attorneys had discovered"); *id.* (arguing further that Dr. Rifka should have provided NCRIC with any "statements" from witnesses he did not identify).

16d-000952

NCRIC's failure to take *any* depositions of the third parties that Columbia indicated may have relevant knowledge, *see supra, note* 13, is fatal to its claim of substantial need/undue hardship. *See Hickman*, 329 U.S. at 512-13 ("naked, general demand" was not sufficient to show substantial need); *see, e.g, Hendrick v. Avis Rent-A-Car Sys.*, 916 F. Supp. 256, 260-61 (W.D.N.Y. 1996) (party failed to show substantial need because it failed to undertake any effort to obtain "needed" item). Moreover, NCRIC could have obtained Columbia's contentions in contention interrogatories, either at the outset of the lawsuit or just recently, but failed to do so.

Conclusion

WHEREFORE, for the reasons set forth above, Columbia respectfully requests that NCRIC's Motion to Compel Designation and Motion to Compel Answers be denied.

DATED: November 19, 2001

Respectfully submitted,

Joseph K. Leahy /dc

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-000953

EXHIBIT A

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

June 13, 2001

BY FACSIMILE

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Enclosed please find a list of the designees who will testify on Columbia's behalf with regard to certain topics listed in NCRIC's Rule 30(b)(6) deposition notice, on the dates that we discussed. Columbia will name designees to testify regarding other topics in a separate letter.

Please confirm the deposition dates for these designees, and let me know the time (I suggest 9:30 a.m.) and location for each deposition, at your earliest convenience.

Thank you.

Sincerely yours,

Joseph K. Leahy s/s

Joseph K. Leahy

16d-000955

Designees to Testify on Behalf of Columbia Hospital for Women, Inc.

Columbia hereby designates the following witnesses to testify on the following dates, concerning the following topics listed on NCRIC's Rule 30(b)(6) deposition notice:

Date	Designee	Designated Topics
June 21, 2001	Safa Rifka, M.D.	19, 20, 21, 24, 50
June 27, 2001	Larry Wilson, Jr.	9, 17, 19, 23, 25, 26, 27, 29, 31, 32, 33, 34, 37, 38, 39, 46, 47, 53
June 28, 2001	Nabil Asterbadi, M.D.	35, 36, 37, 48
July 9, 2001	Dwaine Gasser	4, 18, 22, 23, 25, 33, 35, 47, 49*

*NOTE: Dwaine Gasser left the employ of Columbia Hospital for Women, Inc. in September 2000. For all topics of the 30(b)(6) deposition for which Mr. Gasser is designated, except topic 35, Larry Wilson, Jr. is Columbia's designee for the period after Mr. Gasser left Columbia. For topic 35, Dr. Asterbadi is Columbia's designee for the period after Mr. Gasser left Columbia.

FAXED

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, DC 20036
---
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

FACSIMILE TRANSMISSION

TO: Roy I. Niedermayer **FAX NO.:** (301) 951-0585

FROM: Joseph K. Leahy **CLIENT NO.:** 00198

PHONE: (202) 326-7924

DATE: June 13, 2001

MESSAGE: Please see attached.

TOTAL NUMBER OF PAGES: 3 **(INCLUDING THIS SHEET)**

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US IMMEDIATELY OR CONTACT OUR COPY SERVICE CENTER:

(202) 326-7949
or Sylena Slaughter: (202) 367-7733

THE INFORMATION CONTAINED IN THIS FACSIMILE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. PERSONS RESPONSIBLE FOR DELIVERING THIS COMMUNICATION TO THE INTENDED RECIPIENT ARE HEREBY NOTIFIED NOT TO READ THE ATTACHED AND THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND PLEASE RETURN THE ORIGINAL MESSAGE TO US AT OUR LETTERHEAD ADDRESS VIA THE U.S. POSTAL SERVICE.

** TX CONFIRMATION REPORT ** AS OF JUN 13 '01 16:48 PAGE. 1

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	STATUS
001	6/13	16:47	7733001983019510585	EC--S	00'44"	003	OK

16d-000958

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

July 12, 2001

BY FACSIMILE

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

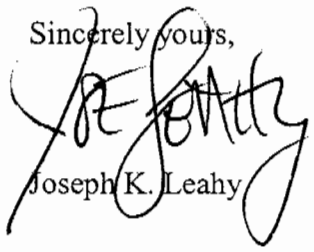
Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

Columbia hereby designates Gerald Beaulieu to testify on Columbia's behalf, with regard to topics 15, 44, 54, and 58 listed in NCRIC's Rule 30(b)(6) deposition notice, concerning only events that occurring during while he was Acting CEO of Columbia. Mr. Beaulieu is available to testify beginning at approximately 12:30 p.m. on July 18, 2001.

Please confirm the date and time for Mr. Beaulieu's deposition at your earliest convenience. Thank you.

Sincerely yours,



Joseph K. Leahy

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, DC 20036
---
(202) 326-7900
FACSIMILE:
(202) 326-7999

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

FACSIMILE TRANSMISSION

TO: Roy I. Niedermayer **FAX NO.:** (301) 951-0585

FROM: Joseph K. Leahy **CLIENT NO.:** 00198

PHONE: (202) 326-7924

DATE: July 10, 2001

MESSAGE: Please see attached.

TOTAL NUMBER OF PAGES: 2 (INCLUDING THIS SHEET)

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US IMMEDIATELY OR CONTACT OUR COPY SERVICE CENTER:

(202) 326-7949
or Sylena Slaughter: (202) 367-7733

THE INFORMATION CONTAINED IN THIS FACSIMILE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. PERSONS RESPONSIBLE FOR DELIVERING THIS COMMUNICATION TO THE INTENDED RECIPIENT ARE HEREBY NOTIFIED NOT TO READ THE ATTACHED AND THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND PLEASE RETURN THE ORIGINAL MESSAGE TO US AT OUR LETTERHEAD ADDRESS VIA THE U.S. POSTAL SERVICE.

Joseph K. Leahy

From: Joseph K. Leahy
Sent: Tuesday, July 10, 2001 6:59 PM
To: Roy I. Niedermayer (E-mail)
Subject: Additional Designation

Roy:

Columbia hereby designates Dr. Nabil Asterbadi with regard to Topic 16 on NCRIC's 30(b)(6) notice, in addition to the other topics for which he has been designated.

Thank you,
Joe Leahy

Joseph K. Leahy
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street NW, Suite 400
Washington, DC 20036
(202) 326-7924
(202) 326-7999 (fax)

PRIVILEGED AND CONFIDENTIAL
Attorney-Client Privileged Material and/or Attorney Work Product

This message and any attached documents contain information that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then destroy the original and any copies or printouts of this message or any attached documents.

****
*** TX REPORT ***
****

FAXED

TRANSMISSION OK

TX/RX NO	3522
CONNECTION TEL	7949001983019510585
SUBADDRESS	
CONNECTION ID	
ST. TIME	07/10 18:13
USAGE T	00'38
PGS.	2
RESULT	OK

FAXED

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, DC 20036
---
(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

FACSIMILE TRANSMISSION

TO: Roy I. Niedermayer **FAX NO.:** (301) 951-0585

FROM: Joseph K. Leahy **CLIENT NO.:** 00198

PHONE: (202) 326-7924

DATE: July 10, 2001

MESSAGE: Please see attached.

TOTAL NUMBER OF PAGES: 2 **(INCLUDING THIS SHEET)**

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US IMMEDIATELY AT

EXHIBIT B

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Discovery Closes, May 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S NOTICE OF DEPOSITION PURSUANT TO SUPERIOR COURT RULE 30(b)(6)

Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby objects as follows to the Notice of Rule 30(b)(6) Deposition of Defendant ("Notice") served by Plaintiff/ Counter-Defendant NCRIC, Inc. ("NCRIC"), for a deposition noticed for April 10, 2001.

GENERAL OBJECTIONS

These General Objections apply to each and every one of the deposition subjects listed in NCRIC's Notice ("deposition subjects") and form an integral part of Columbia's Objections:

1. Columbia objects to the deposition subjects to the extent they seek information protected by the attorney-client privilege, work product privilege, or any other applicable privilege that would make the information sought immune from discovery in whole or in part. "Privilege" as hereinafter used shall include all the above-named privileges and any other rule of law, privilege, or confidentiality provided by law. By designating a witness to testify on a given topic, it is not intended to be, or in any way may it be deemed, a waiver of any such available privilege to which Columbia is entitled.

2. Columbia objects to NCRIC's deposition subjects to the extent that they seek to impose obligations upon Columbia beyond those permitted by, or different from those required by, the District of Columbia Superior Court Rules of Civil Procedure.

3. Columbia objects to NCRIC's deposition subjects to the extent that they are vague, overly broad, unduly burdensome, or seek information that is not relevant to any claim or defense of a party or is not reasonably calculated to lead to the discovery of admissible evidence.

4. Columbia objects to NCRIC's deposition subjects to the extent that they relate to information that is already, or solely, in NCRIC's possession.

5. Columbia objects to NCRIC's deposition subjects to the extent that they relate to information not in Columbia's possession.

6. Columbia objects to NCRIC's deposition subjects to the extent that they relate to Columbia attorneys' fees in this action.

7. It should not be inferred from the form or substance of any objections contained herein that information responsive to any particular subject exists.

8. By designating a witness to testify on any subject, Columbia does not concede the relevance or admissibility of the information sought.

SPECIFIC OBJECTIONS

Subject No. 1: The facts and reasons forming the basis for defendant's claims that any of the calculations or numbers in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) are incorrect or fail to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant.

Objections to Subject No. 1: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that the Subject requests information that is solely in NCRIC's possession and/or to

the extent that the Subject requests information already provided to NCRIC in Columbia's responses to NCRIC's interrogatories. Columbia also objects this Subject to the extent it seeks testimony that is properly in the realm of expert testimony, and as such, constitutes an improper attempt to elicit Columbia's testimony expert without permission of the Court, in violation of District of Columbia Superior Court Rule 26(b)(4). Columbia objects further to this Subject to the extent that relates to pure matters of law, including interpretation of the agreement between the parties, and therefore, is not properly the subject of a deposition of a lay witness.

Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege. Columbia also objects to this Subject to the extent that it calls for information that is not currently currently in the possession of or reasonably obtainable by Columbia or any of its managing agents, but rather, is in the possession of counsel for Columbia and/or non-party witnesses. In effect, this Subject requires counsel for Columbia to marshal all of its factual proof and legal analysis regarding the subject, provide it to Columbia's 30(b)(6) designee, and then provide it to NCRIC. For this reason, Columbia objects that this Subject is not properly the subject of a 30(b)(6) deposition. Instead, this Subject is properly the subject of a contention interrogatory (the deadline for service of which passed on March 12, 2001, prior to service of NCRIC's 30(b)(6) deposition notice).

Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 1.

Subject No. 2: The correct amounts that should be used or inserted in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant; and facts and reasons why these numbers are the proper amounts and calculations to be used in calculating the amount of premium due plaintiff under the

contract.

Objections to Subject No. 2: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 2.

Subject No. 3: The amounts of premium that should have been charged to defendant in each year of the contract and the amount, year, and method of calculation of any refund of premium defendant claims was due it.

Objections to Subject No. 3: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 3.

Subject No. 4: The identity, terms, and facts concerning any contract, business relationship, or business expectancy between defendant and each of the doctors identified in paragraph 14-18 and 124 of defendant's amended counterclaims.

Objections to Subject No. 4: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it requests information that is solely in NCRIC's possession. Further, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 5: The specific actions and acts of plaintiff constituting the interference with the contracts between defendant and the doctors identified in paragraph 124 of defendant's amended counterclaims.

Objections to Subject No. 5: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but

not limited to the work-product privilege. Columbia also objects to this Subject to the extent that it requests information that is solely in NCRIC's possession. Further, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents, but rather, is in the possession of counsel for Columbia and/or non-party witnesses. In effect, this Subject requires counsel for Columbia to marshal all of its factual proof and legal analysis regarding the subject, provide it to Columbia's 30(b)(6) designee, and then provide it to NCRIC. For this reason, Columbia objects that this Subject is not properly the subject of a 30(b)(6) deposition. Instead, this Subject is properly the subject of a contention interrogatory (the deadline for service of which passed on March 12, 2001, prior to service of NCRIC's 30(b)(6) deposition notice).

Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 5.

Subject No. 6: Acts or statements of plaintiff exhibiting malice toward defendant.

Objections to Subject No. 6: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 6.

Subject No. 7: Acts or statements of plaintiff exhibiting any wanton or reckless disregard of the rights of defendant.

Objections to Subject No. 7: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 7.

Subject No. 8: Source, substance, nature, duties and responsibilities of NCRIC as fiduciary for defendant and actions constituting breach of any fiduciary duty.

Objections to Subject No. 8: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 8.

Subject No. 9: Identify, description, and calculation of damages suffered by acts alleged in each amended counterclaim count.

Objections to Subject No. 9: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to Subject No. 9 in that its investigation is continuing, and to the extent that its damage calculations are not completed at this time. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 9 at this time.

Subject No. 10: Defamatory actions or statements by plaintiff about defendant.

Objections to Subject No. 10: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 10.

Subject No. 11: The matters concerning calculation of loss reserves, adjustments of loss reserves, positive loss experiences of defendant under the Plan, use of additional years in calculating premiums, and each element of the formula or requirements for reconciliation of premiums due under the Plan.

Objections to Subject No. 11: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are

incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 11.

Subject No. 12: Allegations of errors by plaintiff made in paragraphs 38-41, 49 (second sentence), and 53 (second sentence) of the Amended counterclaims.

Objections to Subject No. 12: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 12.

Subject No. 13: The bases for the allegations of plaintiff's knowledge about defendant's financial situation as alleged in paragraph 43 of the Amended counterclaims.

Objections to Subject No. 13: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 13.

Subject No. 14: The specific errors, miscalculations and overstatements in the bill from plaintiff alleged in paragraphs 72 and 101 including the reasons and bases for the errors, and corrections required to make the bill accurate.

Objections to Subject No. 14: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 14.

Subject No. 15: The facts supporting or related to the allegations of paragraph 73 that plaintiff attempted to gain leverage over defendant.

Objections to Subject No. 15: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Further, Columbia objects to Subject No. 15

to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 16: The search for new or replacement MMLI insurance with companies other than plaintiff during the period 1993 to date.

Objections to Subject No. 16: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege and the attorney-client privilege. Further, Columbia objects to Subject No. 16 to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 17: The negotiations and events between plaintiff and defendant alleged in paragraphs 83-88 including the factual bases for defendant's allegations of cancellation without justification, retaliation, and reneging.

Objections to Subject No. 17: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege and the attorney-client privilege. Further, Columbia objects to Subject No. 17 to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 18: The events and statements described in paragraph 89 of the Amended counterclaims.

Objections to Subject No. 18: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege. Columbia also objects to this Subject to the extent that

the subject requests information that is solely in NCRIC's possession. Further, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents, but rather, is in the possession of counsel for Columbia and/or non-party witnesses. Moreover, Columbia objects to this Subject to the extent that it requires counsel for Columbia to marshal its factual proof and legal analysis regarding the Subject and provide it to Columbia's 30(b)(6) designee, and then provide it to NCRIC. To this extent, Columbia objects that this Subject is properly the subject of a contention interrogatory, not a 30(b)(6) deposition.

Subject No. 19: The substance, nature, and scope of any harm caused to the defendant's reputation in the community caused by the action of plaintiff including the nature, bases, and calculation of any monetary damages sustained as a result of the harm.

Objections to Subject No. 19: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that the subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents. Columbia also objects to this Subject in that its investigation is continuing, and to the extent that its damage calculations are not completed at this time. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 19 at this time.

Subject No. 20: The content of the rumors alleged in paragraphs 91 and 98 of the Amended counterclaims as well as the identities of the staff members originating and circulating the rumors.

Objections to Subject No. 20: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia objects to this Subject to the extent that it calls for the disclosure of information protected by Privilege, including but not limited to the work-product privilege and the attorney-client privilege. Further, Columbia objects to the

16d-000972

extent that the Subject requests information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 21: Defendant's reputation in the medical community and community at large.

Objections to Subject No. 21: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 22: The facts and events described in paragraph 92 of the Amended counterclaims.

Objections to Subject No. 22: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 18, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 23: Identities of the physicians, staff, nurses, and executives described in paragraphs 91, 93, 96, and 98 of the amended counterclaims and the reasons for the actions of these persons described in those paragraphs.

Objections to Subject No. 23: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 24: Local media communications with defendant's personnel, doctors, staff, nurses, and executives in 1999-2000 concerning defendant's financial condition, loss of doctors and patients, closing of defendant's operations, and similar topics.

Objections to Subject No. 24: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. In addition, Columbia objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 25: Recruitment of physicians and staff during 1990-2000.

16d-000973

Objections to Subject No. 25: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 26: Damages and injury to defendant's business and property as alleged in paragraphs 109-110, 116-117, 122, 128, 134, 138, 146, 153, 158, 163, and 168 of the amended counterclaims.

Objections to Subject No. 26: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 19, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 26 at this time.

Subject No. 27: Loss of revenue due to loss of patient referrals, including the numbers of patients and source of patients lost, the amount of revenue lost, the services, materials, supplies that would have been charges the lost patients, the gross and net profit on each item of service, material or supply which would have been provided to the lost patients.

Objections to Subject No. 27: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 19, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 27 at this time.

Subject No. 28: The amount and calculation of defendant's claim of Return Premium due it from plaintiff from 1993 to date.

Objections to Subject No. 28: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 28.

Subject No. 29: Causes of defendant's current insolvency and financial problems.

Objections to Subject No. 29: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Further, Columbia objects to this Subject to

16d-000974

Objections to Subject No. 34: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 35: Identity of and reason for loss of physicians and staff from defendant from 1990 to date, including who, when, and why physicians and staff left or disassociated with defendant.

Objections to Subject No. 35: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 36: MMLI rates for OB/GYN physicians in D.C., Maryland, and Virginia from 1993 to date.

Objections to Subject No. 36: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 37: Actual patient referrals to defendant from 1993 to date identified by referring physician.

Objections to Subject No. 37: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 38: Expected numbers of patients referred by physicians and anticipated revenues from such patients for 1993 to date, including any studies, projections, or estimates made.

Objections to Subject No. 38: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 39: Actual revenues from patients described in subject matter paragraphs 37-38.

Objections to Subject No.39: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 40: Basis for allegations of MMLI market domination by plaintiff in 1993 and thereafter.

Objections to Subject No. 40: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 41: Communications between defendant and plaintiff described in paragraphs 21 and 36 of the amended counterclaims.

Objections to Subject No. 41: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 42: Representations of plaintiff described in paragraphs 24, 29, 126, 142, 148, and 155 of the amended counterclaims including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

Objections to Subject No. 42: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 43: Basis for allegations of plaintiff's knowledge described in paragraphs 21, 43, 125, and 131 of the amended counterclaims.

Objections to Subject No. 43: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 44: Audit requests by defendant to plaintiff and refusals by plaintiff to

permit audits or provide information including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

Objections to Subject No. 44: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 45: Actions exhibiting defendant's reliance on plaintiff as alleged in paragraphs 30, 36, and 42 of the amended counterclaims.

Objections to Subject No. 45: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 46: Factual basis for allegations in paragraph 92 of the amended counterclaims regarding underwriting justifications.

Objections to Subject No. 46: See General Objections, which are incorporated by reference in this Objection as if stated fully herein.

Subject No. 47: Hiring and loss of staff from 1990 to date including facts and reasons for loss of each physician and staff member, including facts of difficulty in hiring and maintaining staff.

Objections to Subject No. 47: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 48: Morale of physicians and staff from 1993 to date.

Objections to Subject No. 48: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

16d-000977

Subject No. 49: Identities of senior executives leaving defendant from 1993 to date and the reasons/cause for the departures.

Objections to Subject No. 49: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 50: Communications between defendant and print, radio, television, or other electronic media and defendant, including officers, employees, and directors from 1993 to date.

Objections to Subject No. 50: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 51: Performances under the Plan prevented, excused or waived by plaintiff.

Objections to Subject No. 51: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 51.

Subject No. 52: Facts concerning plaintiff's intent or intentional conduct as alleged in paragraphs 121, 126, 132, 151, and 161 of the amended counterclaims.

Objections to Subject No. 52: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 52.

Subject No. 53: Nature, scope, and duration of defendant's business expectancies or advantages alleged in paragraph 130 of the amended counterclaims.

Objections to Subject No. 53: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 54: Actions of defendant to audit, verify, or check the accuracy of plaintiff's accountings or reconciliations.

Objections to Subject No. 54: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. Columbia also objects to this Subject to the extent that it calls for information that is not currently in the possession of or reasonably obtainable by Columbia or any of its managing agents.

Subject No. 55: Industry standards for Loss Reserves.

Objections to Subject No. 55: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 1, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 55.

Subject No. 56: Concealment of facts by plaintiff from defendant including the identity and substance of the facts concealed, method/means/acts or concealment, persons concealing, and reasons for concealment.

Objections to Subject No. 56: See General Objections, which are incorporated by reference in this Objection as if stated fully herein. See Objections to Subject No. 5, which are incorporated by reference in this Objection as if stated fully herein. Based on the foregoing objections, Columbia will not designate a witness to testify on Subject No. 56.

Subject No. 57: Attorneys' fees claimed, expended, and incurred, in the action, including the terms of all legal or other fee agreements, amounts billed, amounts paid, and amounts accrued or accounts payable by defendant.

CERTIFICATE OF SERVICE

I, Sylena L. Slaughter, hereby certify that on this 5th day of April, 2001, a copy of Defendant's Objections to Plaintiff's Notice of Deposition Pursuant to Superior Court Rule 30(b)(6) was served upon the following by hand delivery:

Roy I. Niedermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814

Sylena L. Slaughter

EXHIBIT C

Leahy, Joseph K.

From: Roy Niedermayer, Esq. [rin@rinlaw.com]
Sent: Wednesday, June 20, 2001 4:13 PM
To: Leahy, Joseph
Subject: Deposition of Rifka

Joe:

With the understanding that Dr. Rifka will be returning in July and available for a personal deposition, if needed, during the later weeks of July or first week of August, I will limit the deposition to the topics on which he has been designated representative of defendant per the 30 (b) (6) notice.

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
301-951-4456
rin@rinlaw.com

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, forwarding, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone, and delete the original message immediately. Thank you.

EXHIBIT D

MR. LEAHY: I'm going to object. He's not designated on this topic.

BY MR. NIEDERMAYER:

Q. You may answer.

A. Yes. One physician said to me that a representative, I can't remember exactly who it was at the moment, said to me that a representative from NCRIC had stated that the self-insurance trust was not adequately funded and there was no coverage.

Q. In August or September of 2000 was the self-insurance trust underfunded for its contingent liabilities?

MR. LEAHY: Objection; asked and answered.

THE WITNESS: It was underfunded.

MR. NIEDERMAYER: Off the record.

(Recessed from 11:36 a.m. to 11:57 a.m.)

BY MR. NIEDERMAYER:

Q. Mr. Wilson, do you know whether or do you have any evidence that NCRIC knew that

the statements in Paragraph 69 were not true when it made them?

MR. LEAHY: Object to the scope.

THE WITNESS: No, I don't have any evidence one way or the other. I just don't.

BY MR. NIEDERMAYER:

Q. Paragraph 70 talks about urging members of attending faculty to disassociate themselves from the Medical Center. Do you have any knowledge of which attending faculty members were urged to disassociate themselves by NCRIC?

MR. LEAHY: Same objection. Go ahead.

THE WITNESS: I do not personally.

BY MR. NIEDERMAYER:

Q. Does anyone at Columbia Hospital know?

A. I don't know that.

Q. Do you contend that the statements that were made in August of 1998 to physicians to disassociate themselves caused damage to

EXHIBIT E

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Certain Depositions Completed, December 6, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

AFFIDAVIT OF JOSEPH K. LEAHY

DISTRICT OF COLUMBIA) ss.

JOSEPH K. LEAHY, being duly sworn, deposes and says:

1. I am an associate at the firm Kellogg, Huber, Hansen, Todd & Evans, which serves as trial counsel for Defendant in the matter of NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc. ("Columbia"), Civ. Action No. 00-0007308.

2. I performed the primary investigation for Columbia in the aforementioned matter.

3. Safa Rifka, M.D. and Larry Wilson, Jr. both were Rule 30(b)(6) designees on Columbia's in the aforementioned matter. I prepared both witnesses for these depositions, and also defended the depositions. At each deposition, on several occasions, I instructed the witness not to answer to the extent that their information came from myself.

4. I have reviewed the complete transcripts for Dr. Rifka's and Mr. Wilson's depositions in this matter, and all of the questions that I instructed them not to answer (in part).

5. I did not, prior to Dr. Rifka's deposition, provide him with any information that was responsive to any question that I instructed him not to answer.

6. I did not, prior to Mr. Wilson's deposition, provide him with any information that was responsive to any question that I instructed him not to answer.

I hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge and belief.

Joseph K. Leahy

Joseph K. Leahy

Subscribed and sworn to before me
this 19th day of November, 2001.

Sylena L. Slaughter

Sylena L. Slaughter, Notary Public

My Commission Expires January 31, 2002

16d-000988

EXHIBIT F

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 8/12/01
	)	
Defendant.	)	

NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT

Please take notice that NICRIC, Inc., plaintiff, by Roy Niedermayer, its attorney, hereby notices the deposition upon oral examination of an officer(s) or managing agent(s) of defendant pursuant to SCR 30(b)(6) at the offices of NCRIC, Inc., 1115 30th Street, N.W., Washington, DC 20007 beginning at 9:30 a.m. on July 16, **2001 and continuing from day to day thereafter until completed**.

The designated persons shall be prepared to testify on the following subjects:

1. The facts and reasons forming the basis for defendant's claims that any of the calculations or numbers in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) are incorrect or fail to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant.

2. The correct amounts that should be used or inserted in Columns A-E, lines 1-20 of the Exhibit A (attached to defendant's Answer to Interrogatories and Responses to Requests for Admissions) to comply with the terms, provisions, or formulas of the contract between the plaintiff and defendant; and facts and reasons why these numbers are the proper amounts and calculations to be used in calculating the amount of premium due plaintiff under the contract.

3. The amounts of premium that should have been charged to defendant in each year of the contract and the amount, year, and method of calculation of any refund of premium defendant claims was due it.

4. The identity, terms, and facts concerning any contract, business relationship, or business expectancy between defendant and each of the doctors identified in paragraph 14-18 and 124 of defendant's amended counterclaims.

5. The specific actions and acts of plaintiff constituting the interference with the contracts between defendant and the doctors identified in paragraph 124 of defendant's amended counterclaims.

6. Acts or statements of plaintiff exhibiting malice toward defendant.

7. Acts or statements of plaintiff exhibiting any wanton or reckless disregard of the rights of defendant.

8. Source, substance, nature, duties and responsibilities of NICRIC as fiduciary for defendant and actions constituting breach of any fiduciary duty.

9. Identify, description, and calculation of damages suffered by acts alleged in each amended counterclaim count.

10. Defamatory actions or statements by plaintiff about defendant.

11. The matters concerning calculation of loss reserves, adjustments of loss reserves, positive loss experiences of defendant under the Plan, use of additional years in calculating premiums, and each element of the formula or requirements for reconciliation of premiums due under the Plan.

12. Allegations of errors by plaintiff made in paragraphs 38-41, 49 (second sentence), and 53 (second sentence) of the Amended counterclaims.

13. The bases for the allegations of plaintiff's knowledge about defendant's financial situation as alleged in paragraph 43 of the Amended counterclaims.

14. The specific errors, miscalculations and overstatements in the bill from plaintiff alleged in paragraphs 72 and 101 including the reasons and bases for the errors, and corrections required to make the bill accurate.

15. The facts supporting or related to the allegations of paragraph 73 that plaintiff attempted to gain leverage over defendant.

16. The search for new or replacement MMLI insurance with companies other than plaintiff during the period 1993 to date.

17. The negotiations and events between plaintiff and defendant alleged in paragraphs 83-88 including the factual bases for defendant's allegations of cancellation without justification, retaliation, and reneging.

18. The events and statements described in paragraph 89 of the Amended counterclaims.

19. The substance, nature, and scope of any harm caused to the defendant's reputation in the community caused by the action of plaintiff including the nature, bases, and calculation of any monetary damages sustained as a result of the harm.

20. The content of the rumors alleged in paragraphs 91 and 98 of the Amended counterclaims as well as the identities of the staff members originating and circulating the rumors.

21. Defendant's reputation in the medical community and community at large.

22. The facts and events described in paragraph 92 of the Amended counterclaims.

23. Identities of the physicians, staff, nurses, and executives described in paragraphs 91, 93, 96, and 98 of the amended counterclaims and the reasons for the actions of these persons described in those paragraphs.

24. Local media communications with defendant's personnel, doctors, staff, nurses, and executives in 1999-2000 concerning defendant's financial condition, loss of doctors and patients, closing of defendant's operations, and similar topics.

25. Recruitment of physicians and staff during 1990-2000.

26. Damages and injury to defendant's business and property as alleged in paragraph 109-110, 116-117, 122, 128, 134, 138, 146, 153, 158, 163, and 168 of the amended counterclaims.

27. Loss of revenue due to loss of patient referrals, including the numbers of patients and source of patients lost, the amount of revenue lost, the services, materials, supplies that would have been charges the lost patients, the gross and net profit on each item of service, material or supply which would have been provided to the lost patients.

28. The amount and calculation of defendant's claim of Return Premium due it from plaintiff from 1993 to date.

29. Causes of defendant's current insolvency and financial problems.

30. The relationship between the actions of plaintiff and any damages claimed to have been sustained by defendant.

31. Losses or damages proximately caused by harm to defendant's reputation.

32. Loss of revenues from the departure of Attending Faculty described in paragraph 97.

33. Identities of Attending Faculty of defendant for 1993 to date.

34. Physicians who0 had privileges at defendant but who have ceased referring patients to defendant or who have given up, abandoned, or relinquished their privileges from 1990 to date.

35. Identity of and reason for loss of physicians and staff from defendant from 1990 to date, including who, when, and why physicians and staff left or disassociated with defendant.

36. MMLI rates for OB/GYN physicians in D.C., Maryland, and Virginia from 1993 to date.

37. Actual patient referrals to defendant from 1993 to date identified by referring physician.

38. Expected numbers of patients referred by physicians and anticipated revenues from such patients for 1993 to date, including any studies, projections, or estimates made.

39. Actual revenues from patients described in subject matter paragraphs 37-38.

40. Basis for allegations of MMLI market domination by plaintiff in 1993 and thereafter.

41. Communications between defendant and plaintiff described in paragraphs 21 and 36 of the amended counterclaims.

42. Representations of plaintiff described in paragraphs 24, 29, 126, 142, 148, and 155 of the amended counterclaims including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

43. Basis for allegations of plaintiff's knowledge described in paragraphs 21, 43, 125, and 131 of the amended counterclaims.

44. Audit requests by defendant to plaintiff and refusals by plaintiff to permit audits or provide information including substance of representation, means of communication, author/speaker, recipient, and circumstances of communication.

45. Actions exhibiting defendant's reliance on plaintiff as alleged in paragraphs 30, 36, and 42 of the amended counterclaims.

46. Factual basis for allegations in paragraphs 92 of the amended counterclaims regarding underwriting justifications.

47. Hiring and loss of staff from 1990 to date including facts and reasons for loss of each physician and staff member, including facts of difficulty in hiring and maintaining staff.

48. Morale of physicians and staff from 1993 to date.

49. Identities of senior executives leaving defendant from 1993 to date and the reasons/cause for the departures.

50. Communications between defendant and print, radio, television, or other electronic media and defendant, including officers, employees, and directors from 1993 to date.

51. Performances under the Plan prevented, excused or waived by plaintiff.

52. Facts concerning plaintiff's intent or intentional conduct as alleged in paragraphs 121, 126, 132, 151, and 161 of the amended counterclaims.

53. Nature, scope, and duration of defendant's business expectancies or advantages alleged in paragraph 130 of the amended counterclaims.

54. Actions of defendant to audit, verify, or check the accuracy of plaintiff's accountings or reconciliations.

55. Industry standards for Loss Reserves.

56. Concealment of facts by plaintiff from defendant including the identity and substance of the facts concealed, method/means/acts or concealment, persons concealing, and reasons for concealment.

57. Attorneys' fees claimed, expended, and incurred in the action, including the terms of all legal or other fee agreements, amounts billed, amounts paid, and amounts accrued or accounts payable by defendant.

58. Negotiations and discussions resulting in the Addenda and amendment of the contract between the parties in 1996, 1998, 1999, and 2000.

Roy J. Niedermayer, Esq. D.C. Bar #180380
7475 Wisconsin Avenue, Suite 500

Bethesda, MD 20814
Telephone: (301) 951-4456

Attorney for Plaintiff

16d-000995

EXHIBIT G

LAW OFFICES OF
ROY I. NIEDERMAYER

3 BETHESDA METRO CENTER, SUITE 430
BETHESDA, MARYLAND 20814

TELEPHONE: 301-951-4456
TELECOPIER: 301-951-0585

E-MAIL: RIN @ RINLAW.COM
HTTP://www.lawyers.com/RINLAW

July 19, 2001

BY TELECOPY AND
FIRST CLASS MAIL

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Re: Depositions: CHW designees

Dear Joe:

As you were leaving the deposition of Beaulieu, you mentioned something about further depositions of CHW designees on Friday. I am now about the leave the office for the day at 2:30 p.m. and will not be in Washington this evening. Therefore, since I have not heard from you about these depositions, they can no longer take place since I will not have time to prepare exhibits, etc.

If you have further designees, then we will have to take them on other days, including nights and weekends, if necessary.

Sincerely yours,

Roy I. Niedermayer

RIN:

EXHIBIT H

July 20, 2001

VIA FACSIMILE

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Roy:

I write in regard to your letter dated July 19, 2001. I regret that we were unable to schedule any of Columbia's designees before you left the office yesterday afternoon. I am willing to schedule any additional designees for another day, but not for nights or weekends.

At present, there are several additional topics on NCRIC's Rule 30(b)(6) deposition notice – topics 41, 42, 43, & 45 – to which Columbia would not object to producing a witness. However, Columbia has no managing agents who are knowledgeable about the events to which these topics relate. As such, the information available to Columbia regarding these topics is contained solely in documents in its files. Further, Columbia has produced to NCRIC documents relating to topics 41, 42, 43, & 45, dating back to the date of the Retro Plan. As a result, any witness that Columbia may designate will have no more information other than can be gleaned – or surmised – from documents that Columbia already has produced to NCRIC.

Accordingly, I see no reason for Columbia to designate a witness to testify on these topics. If you wish, however, for Columbia to designate a witness to testify that, in fact, it does not currently have any knowledge about the documents it has produced to NCRIC, please let me know by close of business on July 23, so that I may prepare a witness to testify as such.

Thank you.

Sincerely yours,

Joseph K. Leahy

EXHIBIT I

Q. -- does the hospital contend that NCRIC did not have the right to cancel the policy?

MR. LEAHY: Again, this is a legal conclusion. We've made an allegation in the complaint. I don't know why you are asking this. I'm going to -- I'm sorry. I take it back, take the objection back. Go ahead.

THE WITNESS: I think Columbia has been, the policy on the clinic has been an insurance company dream. And if you cancel your dream you have to be doing it for retaliation. I think, yes, we think this has been done unfairly, unjustified, unmotivated other than as a retaliation for us not renewing the Retro plan or for succumbing to NCRIC's demand to help settle the Retro plan.

BY MR. NIEDERMAYER:

Q. Am I to understand your answer to the question is then that NCRIC didn't have a right to do that?

MR. LEAHY: Objection to the extent

16d-001001

that that is a legal question.

MR. NIEDERMAYER: I'm only asking what his contention is. I asked what his contention was whether NCRIC had a right to do that. I'm asking whether his answer was meant to convey to me that NCRIC did not have a right to cancel the policy.

THE WITNESS: I do not think they have the right. When they are the major insurer company in Washington and they have chased all insurance companies out of the market, they cannot suddenly drop a hospital that is not-for-profit that serves the community from any insurance coverage while they have suffered no claims.

BY MR. NIEDERMAYER:

Q. So it's a moral obligation?

MR. LEAHY: Objection, relevance.

THE WITNESS: I think it's an obligation. In medicine obligations are obligations, whether they are moral or otherwise.

BY MR. NIEDERMAYER:

EXHIBIT J

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Diaz
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Court Event: Initial Conf., Jan. 1, 2001
	)	
Defendant.	)	

DEFENDANT'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

COMES NOW Defendant, Columbia Hospital for Women Medical Center, Inc. ("Medical Center"), by and through its attorneys, Mark C. Hansen, Esquire, Steven F. Benz, Esquire, Joseph K. Leahy, Esquire, and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., and in response to Plaintiff's First Set of Interrogatories ("Plaintiff's Interrogatories"), propounded by Plaintiff NCRIC, Inc. ("NCRIC"), states as follows:

GENERAL OBJECTIONS

The following General Objections apply to each and every interrogatory and form an integral part of Medical Center's response to each interrogatory:

1. Defendant Medical Center objects to Plaintiff's Interrogatories insofar as they seek disclosure of information protected by the peer review privilege, the attorney-client privilege, the work-product privilege, the party-communication privilege or the investigative privilege. Medical Center further objects to Plaintiff's Interrogatories insofar as they call for information otherwise protected under the District of Columbia Superior Court Rules of Civil Procedure or any other

applicable law. Medical Center does not intend by these responses or objections, or by the inadvertent production of any privileged documents, to waive any protection to which it is entitled.

2. Medical Center objects to the numbering of Plaintiff's Interrogatories insofar as some of the interrogatories have "subparts" that constitute more than one interrogatory as defined by District of Columbia Superior Court Rules of Civil Procedure 33(a).

3. Medical Center objects to Plaintiff's Interrogatories insofar as the information sought by such interrogatories is more appropriate for disclosure in deposition and can be more efficiently and less burdensomely obtained thereby.

4. Medical Center objects to Plaintiff's Interrogatories to the extent that they are vague, ambiguous, overly broad, burdensome, harassing, and/or not reasonably calculated to lead to the discovery of admissible evidence in this action.

5. Medical Center objects to Plaintiff's Interrogatories insofar as they seek information that is already in NCRIC's possession.

6. Medical Center objects to Plaintiff's Interrogatories insofar as they seek information not in Medical Center's possession.

7. Medical Center has not yet completed its investigation relating to the litigation and anticipates that as the litigation proceeds, further information may be discovered. Medical Center reserves the right to modify or supplement its objections and responses based on such pertinent information as it may subsequently discover.

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1: State the names and addresses of any individuals who you know or believe have any information or knowledge of any matters concerning the subject matter of (i) this action, (ii) your defenses to plaintiff's claims, and (iii) your counterclaims, including as to each individual: what that information is (or you believe it to be), and whether the individual was an eye-witness or claims to have been eye-witnesses to the event(s) which is the subject of this litigation.

RESPONSE TO INTERROGATORY NO. 1: See General Objections. Medical Center specifically objects to Interrogatory No. 1, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client privilege and/or the work-product privilege. Medical Center also objects to this Interrogatory insofar as it is vague and ambiguous. This interrogatory is vague and ambiguous because, among other reasons, it is not clear what event or events this Interrogatory refers to as "the subject of this litigation."

Subject to and without waiving the foregoing objections, Medical Center responds that it knows or believes that the following people possess knowledge or information concerning NCRIC's claim, Medical Center's defenses thereto, and/or Medical Center's counterclaims:

Persons Believed to Possess Information or Knowledge	**Subjects About Which Person Is Believed to Possess Information or Knowledge**
Mr. Larry Wilson, Jr. President and CEO Columbia Hospital for Women Medical Center 2425 L Street, N.W. Washington, D.C. 20037 (202) 293-6500	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • NCRIC's Negligent and Improper Administration of the Plan • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Robert T, Greenfield, Jr., M.D. 3300 Pennsylvania Avenue, SE Washington, DC 20020 (202) 479-2800	• 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

Melinda Murray 3331 Stuyvesant Place Washington, DC 20015 [no forwarding number]	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • 1996 Amendments and Renewal • January 1998 Renewal
Ann Gaffey 1937 N. Utah Street Arlington, VA 22207 (703) 841-5122	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • January 1998 Renewal • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Gerald Beaulieu 1639 Park Road, NW #2 Washington, DC 20010 (202) 216-2347	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • January 1998 Renewal • September 1998 Renewal
Dwaine Gasser 6203 Glenshawn Row Alexandria, VA 22315	• September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Susan Hansen 6925 Scotforth Rd. Philadelphia, PA 19119 [no known number]	• NCRIC's Obligations Under the Plan • 1996 Amendments and Renewal
James Rodgers, President The CIMA Companies 316 South Peyton Street Alexandria, VA 22314 (703) 739-9300	• Background to the Plan • NCRIC's Proposal and Representations to Medical Center • Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan
Dana Serafin Carey, R.N. Vice Pres., Health Care Practice Aon Risk Services 1120 20th Street, NW, Suite 600 Washington, DC 20036	• Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

Michael R. Feldman, Senior Vice President Riggs, Counselman, Michaels and Downes, Inc. 555 Fairmont Avenue Baltimore, MD 221286 (410) 583-5443	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • Medical Entity Policy • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Nabil Asterbadi, M.D. 2440 M Street, NW -- Suite 703 Washington, DC 20037 (202) 822-8368	• NCRIC's Obligations Under the Plan • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Safa Rifka, M.D. 2440 M Street, NW -- Suite 401 Washington, DC 20037 (202) 293-2042	• NCRIC's Obligations Under the Plan • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Daryl A. Chamblee Steptoe & Johnson LLP 1330 Connecticut Avenue, N.W. Washington, DC 20036 (202) 429-3000	• September 1998 Renewal
Lynn L. Petersons Nichols & Associates, Inc. 1800 John F. Kennedy Boulevard Philadelphia, PA 19103 (215) 587-1200	• September 1998 Renewal
Patrick E. Kane, (former President & CEO) 1806 Merrifields Drive Silver Spring, MD 20906 (301) 598-6422	• Background to the Plan • Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan

David K. Little, (former President) NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• Background to the Plan • Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan
Jeffrey Marsh NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• NCRIC's Obligations Under the Plan • 1996 Amendments and Renewal • September 1998 Renewal • Medical Entity Policy
Grant Sohn, Director of Underwriting NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Steve Fargis, President, and David Osborne, Vice President NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • NCRIC's Negligent and Improper Administration of the Plan • 1996 Amendments and Renewal • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

INTERROGATORY NO. 2: Identify any individuals you intend to call at the trial of this matter and state the subject matter and information known as to each.

RESPONSE TO INTERROGATORY NO. 2: See General Objections. Medical Center specifically objects to Interrogatory No. 2 insofar as it is premature at this early stage of the litigation. Subject to and without waiving the foregoing objections, Medical Center responds as follows: Medical Center has not presently identified any of the witnesses it expects to call at

trial. The information sought by this Interrogatory will be provided at the time and in the form compliant with District of Columbia Superior Court Rule of Civil Procedure 16.

INTERROGATORY NO. 3: Provide the name, address, title and phone number of all persons who investigated for you the matters concerning the subject matter of (i) this action, (ii) your defenses to plaintiff's claims, and (iii) your counterclaims, the dates of the investigation and describe what each person did. In the event that you claim any privilege exempts these from production, provide the information requested in Instruction 3.

RESPONSE TO INTERROGATORY NO. 3: See General Objections. Medical Center specifically objects to Interrogatory No. 3, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client privilege and/or the work-product privilege. Medical Center also objects to this Interrogatory insofar as it is vague and ambiguous.

Subject to and without waiving the foregoing objections, Medical Center responds as follows: The investigation on behalf of Medical Center was performed by counsel.

INTERROGATORY NO. 4: State the name and address of each and every expert whom you expect to call as an expert witness at trial, and as to each state:

(a) the subject matter on which the expert is expected to testify;
(b) the substance of the facts and opinions to which the expert is expected to testify; and
(c) a summary of the grounds for each opinion.

RESPONSE TO INTERROGATORY NO. 4: See General Objections. Medical Center objects to Interrogatory No. 4 insofar as it is premature at this stage of the litigation.

Subject to and without waiving the foregoing objections, Medical Center responds as follows: Medical Center has not presently identified which experts, if any, it expects to call as witnesses at trial. The information sought by this Interrogatory will be provided at the time and in the form compliant with District of Columbia Superior Court Rule of Civil Procedure 16.

INTERROGATORY NO. 5: Describe all of your oral communications with plaintiff and its agents or representatives concerning the subject matter of (i) this action, (ii) your defenses to plaintiff's claims, and (iii) your counterclaims.

RESPONSE TO INTERROGATORY NO. 5: See General Objections. Medical Center specifically objects to Interrogatory No. 5 insofar as it seeks information that is more appropriately disclosed in a deposition and can be more efficiently and less burdensomely obtained thereby. Medical Center also objects to this Interrogatory insofar as it seeks information in NCRIC's possession, and insofar as it seeks information not in Medical Center's possession.

Subject to and without waiving the foregoing objections, Medical Center will respond by producing selected non-privileged, business records pursuant to District of Columbia Superior Court Rule of Civil Procedure Rule 33(d).

INTERROGATORY NO. 6: State the method of calculation and factual bases for any monetary damages you claim against defendant by way of counterclaim, setoff, recoupment or otherwise.

RESPONSE TO INTERROGATORY NO. 6: See General Objections. Medical Center specifically objects to Interrogatory No. 6, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client privilege and/or the work-product privilege. Medical Center also objects to this Interrogatory insofar as it seeks information in NCRIC's possession, and insofar as it seeks information not in Medical Center's possession.

Subject to and without waiving the foregoing objections, Medical Center responds as follows: At this early point in the litigation, Medical Center has not yet completed the process of assessing and calculating its damages. At present, Medical Center is unable to accurately assess and calculate its damages because, among other reasons, it does not possess the data necessary to determine the exact amount NCRIC owes Medical Center pursuant to the alleged agreement

between the parties ("the Plan"). Upon information and b1elief, this data is solely in NCRIC's possession. After Medical Center obtains this data, it will assess and calculate its damages, and supplement its response to this Interrogatory.

INTERROGATORY NO. 7: Identify by reference to interrogatory number they support, all documents which support your answers.

RESPONSE TO INTERROGATORY NO. 7: See General Objections. Medical Center specifically objects to Interrogatory No. 7, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client privilege and/or the work-product privilege. Medical Center also objects to this Interrogatory insofar it is vague, ambiguous, overly broad and unduly burdensome. This Interrogatory is unclear because, without limitation: (1) it is not clear to what "answers" the Interrogatory refers and (2) the language "documents which support your answers" is unintelligible.

Subject to and without waiving the foregoing objections, Medical Center will respond by producing non-privileged documents that Medical Center or its representatives consulted or reviewed in the process of preparing these Interrogatories.

INTERROGATORY NO. 8: Identify each amount shown on the attached Exhibit A by reference to row/line and column which you contend is incorrect, overstated, or not accurate or the true amounts in any way (collectively defined as "incorrect").

RESPONSE TO INTERROGATORY NO. 8: See General Objections. Medical Center specifically objects to this Interrogatory insofar as it is unduly burdensome, and insofar as it is vague and ambiguous. The Interrogatory is vague and ambiguous because, without limitation: it is not clear whether the Interrogatory seeks verification that the amounts shown on Exhibit A correctly reflect (1) the amounts that NCRIC represented to Medical Center were

determined by the Plan and/or (2) the actual amounts set by the Plan. Medical Center also objects to this Interrogatory insofar as it requests information not in Medical Center's possession, but rather, in NCRIC's possession. For example, upon information and belief, the data necessary to calculate most of the amounts shown on Exhibit A is in NCRIC's sole possession.

Medical Center also objects insofar as this Interrogatory is premature at this early stage in the litigation. Medical Center has not yet completed its investigation relating to this litigation, and has not yet received any discovery from NCRIC. Accordingly, Medical Center reserves the right to modify or supplement its response to this Interrogatory at any time, based on pertinent information it may subsequently discover in its continuing investigation.

Subject to and without waiving the foregoing objections, Medical Center responds as follows: Attached hereto as Exhibit 1 is a photocopy of Exhibit A, overlaid by a grid to set off each column and row. The columns are labeled 1 through 20; the rows are labeled A through F. Each column except F corresponds to a one-year period that the Plan was in operation (e.g., Column A, which is labeled "Y94-95," corresponds to the period between September 1, 1994 to and August 31, 1995); Column F corresponds to the five-year period from September 1, 1994 to August 31, 1999. Each row corresponds to a specific term defined in the Plan or concept contemplated by the Plan (e.g., Row 2 corresponds to the term "Deposit Premium," as defined in the Plan; Row 5 corresponds to the concept of indemnity reserves contemplated by the Plan).

Medical Center contends that, for Columns B through F of Row 2; for Columns C through E in Row 12 ("Development Factor"); for each Column in Rows 13 ("Retrospective Premium"), 14 ("Return Premium" or "Additional Premium" due), and 16 (total "Return Premium" or "Additional Premium" less funds deposited by Medical Center); and for Column A of Rows 17

("Maximum Premium"), 18 ("Minimum Premium"), 19 (Maximum Premium multiplier) and 20 (Minimum Premium multiplier), the amount shown on Exhibit 1 is *not* the correct amount set by the Plan, for the term or concept corresponding to that row and the period corresponding to that column. Further, upon information and belief, for each column of Rows 5, 6 (corresponding to the concept of ALAE reserves), 7 (corresponding to the term "Loss Reserves") and 11 (Paid Losses plus Loss Reserves), the amount shown on Exhibit 1 is *not* the correct amount, for the term or concept corresponding to that row and the period corresponding to that column.

INTERROGATORY NO. 9: For each amount identified in your answer to Interrogatory No. 8, state:

a. The factual bases for your contention;
b. How or in what manner the amount is incorrect;
c. The correct amount for the amount you claim is incorrect; and
d. The method of calculation of the amount you claim is correct.

RESPONSE TO INTERROGATORY NO. 9: See General Objections. Medical Center specifically objects to this Interrogatory insofar as it is vague and ambiguous. Medical Center objects to this Interrogatory insofar as it requests information not in Medical Center's possession, but rather, in NCRIC's possession. Upon information and belief, the data necessary to calculate most of the amounts shown on Exhibit A is in NCRIC's sole possession.

Medical Center also objects to this Interrogatory insofar as it is premature at this early stage in the litigation. Medical Center has not yet completed its investigation relating to this litigation, and has not yet received any discovery from NCRIC. Accordingly, Medical Center reserves the right to modify or supplement its response to this Interrogatory at any time, based on pertinent information it may subsequently discover in its continuing investigation.

Subject to and without waiving the foregoing objections, Medical Center responds, based on the facts presently known to it, as follows:

(1) For Medical Center's factual bases for contending, in its response to Interrogatory No. 8, that certain amounts shown on Exhibit 1 are incorrect, see Medical Center's Answer and Counterclaims, including inter alia paragraphs 27 through 43 and 46 through 54 thereof.

(2) For each column of Rows 1, 2, 4, 5 through 11, 13, 14, 16, 17 and 18 of Exhibit 1, Medical Center does not possess the data necessary to calculate the correct amount, set by the Plan, for the term or concept corresponding to the row and the period corresponding to the column. Upon information and belief, such data is in NCRIC's sole possession. Until Medical Center obtains this data, it cannot determine how and in what manner the amounts referred to in its response to Interrogatory No. 8 are incorrect.

(3) The correct amount, set by the Plan, for the term corresponding to Row 12 of Exhibit 1 is: "80%" for the period corresponding to Column C; "65%" for the period corresponding to Column D; and "55%" for the period corresponding to Column E. Under the Plan, the correct amount for the term corresponding to Row 19, for the period corresponding to Column A, is "1.33"; for that same period, the correct amount for the term corresponding to Row 20 is ".60". For each column of Rows 1, 2, 4, 5 through 11, 13, 14, 16, 17 and 18 of Exhibit 1, Medical Center does not possess the data necessary to calculate the correct amount, set by the Plan, for the term or concept corresponding to the row and the period corresponding to the column.

(4) Despite lacking the data necessary to calculate many amounts set by the Plan, Medical Center determined that NCRIC's miscalculations of some amounts shown on Exhibit 1 resulted in

part from its improper application of the retro formula under the Plan. See Medical Center's Answer and Counterclaims, including inter alia paragraphs 39 through 41, and 45 through 54.

NCRIC's miscalculations of the retro formula include, without limitation:

(a) The Plan dictates that the amount for the term corresponding to Row 2 must be calculated by applying a multiplier. The proper multiplier is .67 for the periods corresponding to Columns C through F, and ((.81 * 1/3) +(.67 * 2/3)) for the period corresponding to Column B. NCRIC applied an incorrect multiplier, approximately .62, when calculating all the amounts in Columns B through F of Row 2, thereby miscalculating each corresponding amount in Row 2. As a result, NCRIC also improperly calculated the amounts in Column F of Rows 14 and 16, which are all based in part on the miscalculated amounts in Columns B through F of Row 2.

(b) The Plan dictates that the amount for the term corresponding to Rows 13 and 14 must be calculated by applying a multiplier corresponding to Row 12. As set forth above, the multiplier shown in Columns C through E of Row 12 is incorrect. NCRIC applied this incorrect multiplier in calculating each amount in Columns C through E of Rows 13 and 14, thereby miscalculating each such amount. As a result, NCRIC also improperly calculated the amount in Column F of Rows 13, 14 and 16, which are all based in part on the miscalculated amounts in Rows 13 and 14.

(c) The Plan dictates that the amounts for the term corresponding to Row 17 must be calculated by applying a multiplier corresponding to Row 19, and that the amounts for the term corresponding to Row 18 must be calculated by applying a multiplier corresponding to Row 20. As set forth above, the multiplier shown in Column A of Rows 19 and 20 is incorrect. NCRIC applied this incorrect multiplier in calculating each amount in Column A of Rows 17 and 18, and thereby miscalculated each such amount. As a result, NCRIC also improperly calculated the

amounts in Column F of Row 13, 14, 16, 17 and 18, all of which are based in part on the amounts in Column A of Rows 17 and 18.

(d) The Plan dictates that the amount for the term corresponding to Column F of Row 16 must be calculated based in part on data from the period between September 1, 1993 and August 31, 1994. NCRIC did not include such data (which is not shown on Exhibit 1) in its calculations of Column F of Row 16. As a result, NCRIC miscalculated that amount.

INTERROGATORY NO. 10: State the factual bases supporting any denial by you of any allegation of the complaint and identify any documents on which you rely to support your denial.

RESPONSE TO INTERROGATORY NO. 10: See General Objections. Medical Center specifically objects to Interrogatory No. 10, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client privilege and/or the work-product privilege. Medical Center also objects to this Interrogatory insofar it is vague, ambiguous, overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Medical Center responds by referring NCRIC to the detailed allegations set forth in Medical Center's Answer and Counterclaims, including but not limited to the allegations set forth in Paragraphs 20 through 55. Medical Center also will respond by producing non-privileged documents that Medical Center or its representatives consulted or referred to in preparing its Answer and Counterclaims.

INTERROGATORY NO. 11: State the factual bases supporting and related to any affirmative defense you raise in your answer to the complaint.

RESPONSE TO INTERROGATORY NO. 11: See General Objections. Medical Center specifically objects to Interrogatory No. 11 insofar it is vague, ambiguous, overly broad

and unduly burdensome. Medical Center also objects to this Interrogatory insofar as it requests information that is not in Medical Center's possession, and insofar as it requests information that is in NCRIC's possession.

Subject to and without waiving the foregoing objections, Medical Center responds by referring NCRIC to the detailed allegations set forth in Medical Center's Answer and Counterclaims, including but not limited to the allegations set forth in Paragraphs 20 through 63.

INTERROGATORY NO. 12: State the factual bases for each allegation made by you, and identify all documents supporting, concerning or related to, any counterclaim, setoff, or recoupment you assert or allege against plaintiff.

RESPONSE TO INTERROGATORY NO. 12: See General Objections. Medical Center specifically objects to Interrogatory No. 12 insofar it is vague, ambiguous, overly broad and unduly burdensome.

Medical Center also objects insofar as this Interrogatory is premature at this early stage in the litigation. Medical Center has not yet completed its investigation relating to this litigation, and has not yet received any discovery from NCRIC. Accordingly, Medical Center reserves the right to modify or supplement its response to this Interrogatory at any time, based on pertinent information it may subsequently discover in its continuing investigation.

Subject to and without waiving the foregoing objections, Medical Center responds by referring NCRIC to the detailed allegations in Medical Center's Answer and Counterclaims. Medical Center also will respond by producing selected non-privileged, business records pursuant to District of Columbia Superior Court Rule of Civil Procedure Rule 33(d).

INTERROGATORY NO. 13: If you contend that you do not owe the amount of money claimed by plaintiff in the complaint, describe each and every factual or legal basis for your contention.

RESPONSE TO INTERROGATORY NO. 13: See General Objections. Medical Center specifically objects to Interrogatory No. 13 insofar it is vague, ambiguous, overly broad and unduly burdensome. Medical Center also objects to this Interrogatory insofar as it requests information not in Medical Center's possession, but rather, in NCRIC's possession.

Medical Center also objects insofar as this Interrogatory is premature at this early stage in the litigation. Medical Center has not yet completed its investigation relating to this litigation, and has not yet received any discovery from NCRIC. Accordingly, Medical Center reserves the right to modify or supplement its response to this Interrogatory at any time, based on pertinent information it may subsequently discover in its continuing investigation.

Subject to and without waiving the foregoing objections, Medical Center responds by referring NCRIC to the detailed allegations in Medical Center's Answer and Counterclaims.

INTERROGATORY NO. 14: Describe each and every factual basis for your denial of any admission requested of you by plaintiff.

RESPONSE TO INTERROGATORY NO. 14: See General Objections. Medical Center specifically objects to Interrogatory No. 14 insofar it is vague, ambiguous, overly broad and unduly burdensome. Medical Center also objects to this Interrogatory insofar as it requests information not in Medical Center's possession, but rather, in NCRIC's possession.

Medical Center also objects insofar as this Interrogatory is premature at this early stage in the litigation. Medical Center has not yet completed its investigation relating to this litigation, and has not yet received any discovery from NCRIC. Accordingly, Medical Center reserves the right to modify or supplement its response to this Interrogatory at any time, based on pertinent information it may subsequently discover in its continuing investigation.

Subject to and without waiving the foregoing objections, Medical Center responds by referring NCRIC to the detailed allegations set forth in Medical Center's Answer and Counterclaims and to its Objections and Response to Plaintiff's First Request for Admissions.

INTERROGATORY NO. 15: Describe all of your oral communications with persons other than plaintiff and its agents or representatives, including Michael Feldman, concerning the subject matter of (i) this action, (ii) your defenses to plaintiff's claims, and (iii) your counterclaims.

RESPONSE TO INTERROGATORY NO. 15: See General Objections. Medical Center specifically objects to Interrogatory No. 15, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client and/or the work-product privileges.

Subject to and without waiving the foregoing objections, Medical Center will respond by producing selected non-privileged, business records pursuant to District of Columbia Superior Court Rule of Civil Procedure Rule 33(d).

DATED: November __, 2000

Respectfully submitted,

Mark C. Hansen
D.C. Bar No. 425930
Steven F. Benz
D.C. Bar No. 428026
Joseph K. Leahy
D.C. Bar No. 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-001020

DISTRICT OF COLUMBIA) ss.

I, Larry A. Wilson, Jr., of Columbia Hospital for Women Medical Center, Inc., being duly sworn on behalf of Columbia Hospital for Women Medical Center, Inc. ("Medical Center"), Defendant in the above-entitled action, depose and say that I am the President and Chief Executive Officer of Medical Center, that I am authorized to respond to Plaintiff's First Set of Interrogatories ("Plaintiff's Interrogatories") on behalf of Medical Center, that I have read Plaintiff's Interrogatories and know the contents thereof, and that the same is true of my own knowledge, except as to the matters that are stated on information and belief, and, as to those matters, that I believe them to be true.

Larry A. Wilson, Jr.

Subscribed and sworn to before me
this 27th day of November 2000.

Notary Public

My commission expires: J. TERRELL
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires October 31, 2005

** TOTAL PAGE.002 **

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, upon consideration of the points and authorities submitted by the parties, Plaintiff NCRIC, Inc.'s Motion to Compel Discovery By Designation Under SCR 30(b)(6) And Appearance at Deposition and its Motion to Compel Defendant's Designated Witnesses to Answer Questions Properly Posed at Deposition are hereby DENIED; and

Topics 1-14, 28-29, 51-52, and 56-57 listed in each of NCRIC's Notices of Rule 30(b)(6) Deposition to Defendant are hereby QUASHED.

SO ORDERED.

_____
Judge Linda K. Davis

Dated: _____, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 19th day of November, 2001, a copy of Defendant Columbia Hospital for Women Medical Center Inc.'s Memorandum in Opposition to Motion to Compel Designation and in Support of Motion for a Protective Order was served upon the following by first class United States mail:

Rodney F. Page, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on 20th day of November, 2001, a courtesy copy of the aforementioned memorandum will be served upon the Chambers for Judge Linda K. Davis by hand delivery.

Joseph K. Leahy /sls
Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
NOV 29 2001
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Certain Depositions Completed, December 6, 2001
	)	
Defendant/Counter-Plaintiff.	)	

CONSENT MOTION TO STAY PROCEEDINGS
TO FINALIZE SETTLEMENT AGREEMENT

Plaintiff NCRIC, Inc. ("NCRIC") and Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by their undersigned counsel, hereby jointly move for the entry of the attached proposed Order temporarily staying this action, and as grounds for such Order state:

1. The parties have made great strides towards settling the above-captioned action. The parties are in the process of drafting a Settlement Agreement, and expect that they will need one week from the date of this motion to finalize the Settlement Agreement.

2. In light of the parties' strides towards settlement, they hereby agree that all discovery and other proceedings in this action should be stayed for one week, effective immediately, so that they may focus their efforts on reaching a settlement.

3. The parties also agree that, once the stay expires, each date listed in the current scheduling Order (September 28, 2001) that relates to discovery (*i.e.*, all dates up through and including December 13, 2001) should be amended automatically by adding one week; and that, once the stay expires, every other date listed in the current scheduling Order (*i.e.*, all dates on or after December 20, 2001) should be amended automatically by adding two weeks.

4. The requested temporary stay will save the parties the time and expense of litigating this matter while the settlement agreement is drafted; and will save judicial resources.

5. The foregoing constitutes good cause for temporarily staying discovery and all other proceedings in this action, as described above, and for amending the current scheduling Order as described above.

WHEREFORE, the parties ask the Court to grant the Consent Motion to Stay Proceedings To Finalize Settlement Agreement and enter the proposed Order.

DATED: December 1, 2001

Respectfully submitted,

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Respectfully submitted,

Scott M. Badami/JKL by permission

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Attorneys for.
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

16d-001028

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Stay Proceedings To Finalize Settlement Agreement is hereby GRANTED, and all discovery and other proceedings in this action shall be stayed until and up through December 7, 2001; and

WHEREFORE, once the stay ends on December 7, 2001, the current scheduling Order shall be amended by extending all deadlines stated therein as follows:

Deadline in current scheduling Order	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/6/01	12/13/01
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/6/01	12/13/01
Damages discovery closes:	12/6/01	12/13/01
Expert depositions completed:	12/13/01	12/20/01
Dispositive motions filed:	12/20/01	1/3/02
Oppositions to dispositive motions filed:	1/17/02	1/31/02
Replies to oppositions to dispositive motions filed:	2/4/02	2/18/02
Dispositive motions decided:	3/28/02	4/11/02
Confidential Settlement Statement due:	4/8/02	4/22/02
ADR:	T.B.D.[1]	T.B.D.

[1] To be determined by the Assignment Office.

Deadline in current scheduling Order	**Current**	**As Amended**
Pretrial:	T.B.D.	T.B.D.

SO ORDERED.

_____

Judge Linda K. Davis

Dated: _____, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Certain Depositions Completed, December 6, 2001
	)	
Defendant/Counter-Plaintiff.	)	

CERTIFICATE

I, Joseph K. Leahy, hereby certify that I obtained consent to file this motion from Scott M. Badami, Esq., counsel for Plaintiff NCRIC, Inc., on November 30, 2001.

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

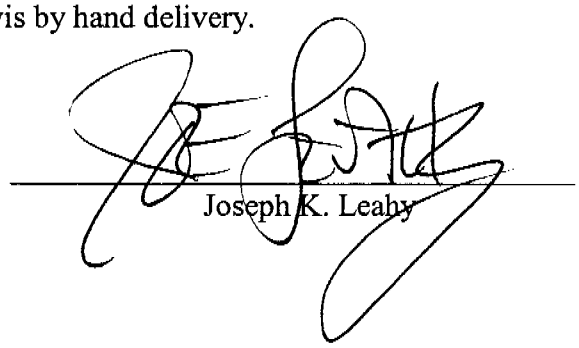
CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 3rd day of December, 2001, a copy of the parties' Consent Motion to Stay Proceedings To Finalize Settlement Agreement, and proposed Order, were served upon the following by facsimile and regular mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

In addition, I certify that on the same date, a courtesy copy of the aforementioned papers was served on the Chambers of Judge Linda K. Davis by hand delivery.



Joseph K. Leahy

11/28/01 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

This case is set for an ADR session at the time and date shown. Review the Mediation and Case Evaluation procedures you received at the scheduling conference for attendance requirements and the Confidential Settlement Statement (CSS) form. If you have a conflict with the scheduled date, call the Civil Assignment Office (202-879-1751) before the CSS Return date on this notice. With consent the date may be changed. Attorneys receiving this notice are deemed counsel of record; if you disagree, you must provide the Civil Clerk's Office with proper documentation.

CASE NUMBER: 00ca007308
NCRIC, Inc. vs Columbia Hospital for

CSS RETURN: 1/18/02

MEDIATION: 2/28/02 11:00am
check-in for 9:00am cases at 8:45am
check-in for 11:00am cases at 10:45am.

TO:
00ca007308 D001 PRT.0118bsw 194
Mark C. Hansen, Esq.
1615 M ST., N.W.
Suite #400
Washington, D.C.
20036

REPORT TO: Room 112, 1st floor; 515 5th Street, NW
PLEASE BRING THIS NOTICE WITH YOU WHEN YOU APPEAR.

11/28/01

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

This case is set for an ADR session at the time and date shown. Review the Mediation and Case Evaluation procedures you received at the scheduling conference for attendance requirements and the Confidential Settlement Statement (CSS) form. If you have a conflict with the scheduled date, call the Civil Assignment Office (202-879-1751) before the CSS Return date on this notice. With consent the date may be changed. Attorneys receiving this notice are deemed counsel of record; if you disagree, you must provide the Civil Clerk's Office with proper documentation.

CASE NUMBER: 00ca007308
NCRIC, Inc. vs Columbia Hospital for

CSS RETURN: 1/18/02

MEDIATION: 2/20/02 11:00am
check-in for 9:00am cases at 8:45am
check-in for 11:00am cases at 10:45am
TO:
00ca007308 D001 PRT.0118bsw 195
Joseph K Leahy
1615 M Street NW
Ste 400
Washington, DC
20036

REPORT TO: Room 112, 1st floor; 515 5th Street, NW
PLEASE BRING THIS NOTICE WITH YOU WHEN YOU APPEAR.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
NOV 29 2001
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Certain Depositions Completed, December 6, 2001
	)	
Defendant/Counter-Plaintiff.	)	

CONSENT MOTION TO STAY PROCEEDINGS
TO FINALIZE SETTLEMENT AGREEMENT

Plaintiff NCRIC, Inc. ("NCRIC") and Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by their undersigned counsel, hereby jointly move for the entry of the attached proposed Order temporarily staying this action, and as grounds for such Order state:

1. The parties have made great strides towards settling the above-captioned action. The parties are in the process of drafting a Settlement Agreement, and expect that they will need one week from the date of this motion to finalize the Settlement Agreement.

2. In light of the parties' strides towards settlement, they hereby agree that all discovery and other proceedings in this action should be stayed for one week, effective immediately, so that they may focus their efforts on reaching a settlement.

3. The parties also agree that, once the stay expires, each date listed in the current scheduling Order (September 28, 2001) that relates to discovery (*i.e.*, all dates up through and including December 13, 2001) should be amended automatically by adding one week; and that, once the stay expires, every other date listed in the current scheduling Order (*i.e.*, all dates on or after December 20, 2001) should be amended automatically by adding two weeks.

4. The requested temporary stay will save the parties the time and expense of litigating this matter while the settlement agreement is drafted; and will save judicial resources.

5. The foregoing constitutes good cause for temporarily staying discovery and all other proceedings in this action, as described above, and for amending the current scheduling Order as described above.

WHEREFORE, the parties ask the Court to grant the Consent Motion to Stay Proceedings To Finalize Settlement Agreement and enter the proposed Order.

DATED: December 1, 2001

Respectfully submitted,

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Respectfully submitted,

Scott M. Badami/JKL By Permission

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Attorneys for.
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

16d-001037

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Stay Proceedings To Finalize Settlement Agreement is hereby GRANTED, and all discovery and other proceedings in this action shall be stayed until and up through December 7, 2001; and

WHEREFORE, once the stay ends on December 7, 2001, the current scheduling Order shall be amended by extending all deadlines stated therein as follows:

Deadline in current scheduling Order	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/6/01	12/13/01
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/6/01	12/13/01
Damages discovery closes:	12/6/01	12/13/01
Expert depositions completed:	12/13/01	12/20/01
Dispositive motions filed:	12/20/01	1/3/02
Oppositions to dispositive motions filed:	1/17/02	1/31/02
Replies to oppositions to dispositive motions filed:	2/4/02	2/18/02
Dispositive motions decided:	3/28/02	4/11/02
Confidential Settlement Statement due:	4/8/02	4/22/02
ADR:	T.B.D.[1]	T.B.D.

[1] To be determined by the Assignment Office.

Deadline in current scheduling Order	**Current**	**As Amended**
Pretrial:	T.B.D.	T.B.D.

SO ORDERED.

_____

Judge Linda K. Davis

Dated: _____, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Certain Depositions Completed, December 6, 2001
	)	
Defendant/Counter-Plaintiff.	)	

CERTIFICATE

I, Joseph K. Leahy, hereby certify that I obtained consent to file this motion from Scott M. Badami, Esq., counsel for Plaintiff NCRIC, Inc., on November 30, 2001.

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

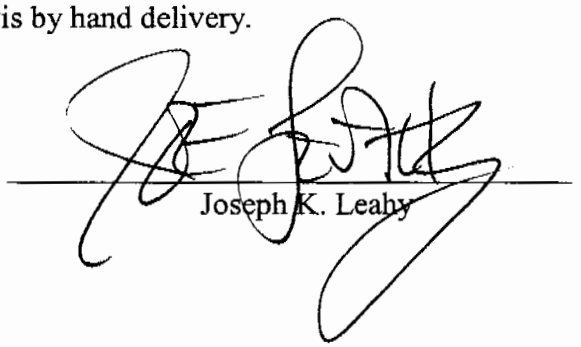
CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 3rd day of December, 2001, a copy of the parties' Consent Motion to Stay Proceedings To Finalize Settlement Agreement, and proposed Order, were served upon the following by facsimile and regular mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

In addition, I certify that on the same date, a courtesy copy of the aforementioned papers was served on the Chambers of Judge Linda K. Davis by hand delivery.



Joseph K. Leahy

DC SUPERIOR COURT
WASHINGTON, DC

12/03/2001 3:21PM

Case #
00CA007308

MOTION	20.00
Total	20.00
Check # 2070	20.00
Change	0.00

Oper BW Z0267677 CREG04
Civil Action

Please Save This Receipt.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Stay Proceedings To Finalize Settlement Agreement is hereby GRANTED, and all discovery and other proceedings in this action shall be stayed until and up through December 7, 2001; and

WHEREFORE, once the stay ends on December 7, 2001, the current scheduling Order shall be amended by extending all deadlines stated therein as follows:

Deadline in current scheduling Order	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/6/01	12/13/01
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/6/01	12/13/01
Damages discovery closes:	12/6/01	12/13/01
Expert depositions completed:	12/13/01	12/20/01
Dispositive motions filed:	12/20/01	1/3/02
Oppositions to dispositive motions filed:	1/17/02	1/31/02
Replies to oppositions to dispositive motions filed:	2/4/02	2/18/02
Dispositive motions decided:	3/28/02	4/11/02
Confidential Settlement Statement due:	4/8/02	4/22/02
ADR:	T.B.D.[1]	T.B.D.

[1] To be determined by the Assignment Office.

Deadline in current scheduling Order	Current	As Amended
Pretrial:	T.B.D.	T.B.D.

SO ORDERED.

Judge Linda K. Davis

SIGNED IN CHAMBERS

Dated: 12/4, 2001.

Copies mailed from chambers
on 12-4-01.

16d-001045

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.	
Plaintiff,	
vs.	**Civil Action No. 00-0007308**
	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Judge Linda Kay Davis**
Defendant.	

PRAECIPE

Please enter the appearance of the undersigned counsel as additional Counsel for Plaintiff in this matter.

Respectfully Submitted,

Rodney F. Page (D.C. Bar No. 37994)
Scott M. Badami (D.C. Bar No. 435375)
BRYAN CAVE LLP
700 Thirteenth Street, N.W., Suite 700
Washington, D.C. 20005
Telephone: (202) 508-6000
Facsimile: (202) 508-6200

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praecipe was served this 10th day of December 2001 via first class mail, postage prepaid, to:

Roy I. Niedermayer, Esquire
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff

Joseph K. Leahy, Esquire
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

Counsel for Defendant

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Certain Depositions Completed, December 13, 2001
	)	
Defendant/Counter-Plaintiff.	)	

RECEIVED
Civil Clerk's Office
DEC 13 2001
District of Columbia

CONSENT MOTION TO AMEND SCHEDULING ORDER

Plaintiff NCRIC, Inc. ("NCRIC") and Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by their undersigned counsel, hereby jointly move for the entry of the attached proposed Third Amended Scheduling Order, and as grounds for such order state:

1. The parties have not been able to finalize a settlement agreement at this time. The parties continue to work towards finalizing a settlement, but agree that the above-captioned action must move forward in case a settlement cannot be reached.

2. The parties agree that, due to their ongoing settlement negotiations (which continued in earnest beyond the period set by the most recent stay), the current scheduling order does not provide sufficient time to complete all currently-scheduled depositions and related discovery. As such, the parties agree that the current scheduling order should be amended.

3. The parties agree that the following schedule will provide sufficient time for all currently-scheduled depositions and related discovery, and for continued settlement negotiations:

Deadline	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/13/01	1/17/02
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/13/01	1/17/02
Expert depositions completed:	12/20/01	1/17/02

Deadline	Current	As Amended
All discovery closes:	12/20/02	1/24/02
Dispositive motions filed:	1/3/02	1/31/02
Oppositions to dispositive motions filed:	1/31/02	2/28/02
Replies to oppositions to dispositive motions filed:	2/18/02	3/18/02
Dispositive motions decided:	4/11/02	5/9/02
Confidential Settlement Statement due:	4/22/02	5/19/02
ADR:	T.B.D.[1]	T.B.D.
Pretrial:	T.B.D.	T.B.D.

4. The foregoing constitutes good cause for amending the current scheduling order.

WHEREFORE, the parties ask the Court to grant the Consent Motion to Amend Scheduling Order and enter the proposed Order.

DATED: December 13, 2001

Respectfully submitted,

Joseph K. Leahy/sls

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Respectfully submitted,

Scott M. Badami/SKL by permission/sls

Rodney F. Page, D.C. Bar # 37994
Scott M. Badami, D.C. Bar # 435375
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Attorneys for.
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

[1] To be determined by the Assignment Office.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Amend Scheduling Order is hereby GRANTED, and the current scheduling order shall be amended as follows:

Deadline	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/13/01	1/17/02
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/13/01	1/17/02
Expert depositions completed:	12/20/01	1/17/02
All discovery closes:	12/20/01	1/24/02
Dispositive motions filed:	1/3/02	1/31/02
Oppositions to dispositive motions filed:	1/31/02	2/28/02
Replies to oppositions to dispositive motions filed:	2/18/02	3/18/02
Dispositive motions decided:	4/11/02	5/9/02
Confidential Settlement Statement due:	4/22/02	5/19/02
ADR:	T.B.D.[1]	T.B.D.
Pretrial:	T.B.D.	T.B.D.
ADR:	T.B.D.	T.B.D.
Pretrial:	T.B.D.	T.B.D.

[1] To be determined by the Assignment Office.

SO ORDERED.

_____

Judge Linda K. Davis

Dated: _____, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, M.D. 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Certain Depositions Completed,
MEDICAL CENTER, INC.,	)	December 13, 2001
	)	
Defendant/Counter-Plaintiff.	)	

CERTIFICATE

I, Joseph K. Leahy, hereby certify that I obtained consent to file this motion from Scott M. Badami, Esq., counsel for Plaintiff NCRIC, Inc., on December 13, 2001.

Joseph K. Leahy /SCS

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 13th day of December, 2001, a copy of the parties' Consent Motion to Amend Scheduling Order, and proposed Order, were served upon the following by first class, United States mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

In addition, I certify that on the same date, a courtesy copy of the aforementioned papers was served on the Chambers of Judge Linda K. Davis by hand delivery.

Joseph K. Leahy /sks
Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Amend Scheduling Order is hereby GRANTED, and the current scheduling order shall be amended as follows:

Deadline	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/13/01	1/17/02
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/13/01	1/17/02
Expert depositions completed:	12/20/01	1/17/02
All discovery closes:	12/20/01	1/24/02
Dispositive motions filed:	1/3/02	1/31/02
Oppositions to dispositive motions filed:	1/31/02	2/28/02
Replies to oppositions to dispositive motions filed:	2/18/02	3/18/02
Dispositive motions decided:	4/11/02	5/9/02
Confidential Settlement Statement due:	4/22/02	5/19/02
ADR:	T.B.D.[1]	T.B.D.
Pretrial:	T.B.D.	T.B.D.
ADR:	T.B.D.	T.B.D.
Pretrial:	T.B.D.	T.B.D.

[1] To be determined by the Assignment Office.

SO ORDERED.

Judge Linda K. Davis

SIGNED IN CHAMBERS
Copies mailed from chambers
on 12-21-01.

Dated: 12/20, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, M.D. 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

16d-001055

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC., Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar # 8 – Judge Davis Next Event: Certain Depositions Completed 1/17/01

NCRIC'S REPLY IN SUPPORT OF ITS MOTION FOR A PROTECTIVE ORDER

Plaintiff NCRIC, Inc. ("NCRIC") submits this Reply Brief in Support of its Motion for a Protective Order. NCRIC seeks a Protective Order barring Defendant, Columbia Hospital for Women Medical Center, Inc. ("Columbia"), from deposing NCRIC's corporate designees with regard to certain subject matters identified in Columbia's Rule 30(b)(6) notice of deposition. Notwithstanding Columbia's protestations, the subject matters at issue are inappropriate, irrelevant, and unduly burdensome. Specifically, NCRIC responds to Columbia's Opposition with respect to each subject matter at issue as follows:

I. Subject Matter 19 -- Seeking Premiums for Each individual Attending Faculty Member

Subject Matter 19 is duplicative of prior discovery and requires an unduly burdensome amount of preparation for NCRIC to provide a designee to testify regarding the premiums and discounts for each individual Attending Faculty physician for the past nine years -- from 1993 to the present. NCRIC has already produced numerous underwriting files for each Attending Faculty member, thus providing Columbia with all the information requested in this

subject matter. In addition, as Columbia admits, NCRIC has produced a compilation spreadsheet calculating the Subject Premium. See Columbia's Opp. at 2. Any testimony by a designee on this topic would be repetitive and basically consist of a word-for-word recitation of the contents of the documents already produced to Columbia. It is just not physically possible to prepare a NCRIC corporate designee to be capable to intelligently discuss the individual premiums and discounts for each physician for the past nine years -- particularly when documents containing this information have already been produced.

In its Opposition, Columbia contends that subject matter 19 is not unduly burdensome because it seeks merely an explanation of the files previously produced and an inquiry into whether any other compilations of individual premiums exist. Id. First, the plain language of the Rule 30(b)(6) notice does not request an explanation of the individual underwriting files, but testimony specifically regarding the amount of the premiums, discounts, and amounts billed to each individual Attending Faculty member. If Columbia seeks a designee who can testify as to how the information in the underwriting files is compiled and maintained, it should specifically designate such a topic so that NCRIC may make the appropriate designation, and objections if needed.

Finally, as illustrated in the deposition testimony of Mr. Fargis attached to the Opposition as Exhibit B, Columbia has already inquired into the existence of other documents which compile individual premium information, and requested production of any such documents which exist on NCRIC's computer system. See Fargis Dep. at 516-17. This line of questioning is duplicative not only of written discovery produced to Columbia, but also deposition testimony by Mr. Fargis, in which Columbia had an opportunity to explore this subject. Therefore, there remains no legitimate basis for this subject matter as a deposition topic.

II. Subject Matters 21 and 24 -- Seeking Industry Standards for the Application of Development Factors and Calculation of Loss Reserves

Columbia's arguments do not negate NCRIC's grounds for a protective order with respect to subject matter 21. Columbia's Opposition states that "if NCRIC possess information related to topic 21...that information is discoverable." See Columbia Opp. at 3. Columbia may indeed be technically correct, but the point for purposes of this motion, is that this information regarding industry standards for the application of development factors under other retrospective rating plans is simply not within the knowledge of NCRIC for which it could designate a witness to testify. As explained in NCRIC's motion, this information will be the subject of an expert witness which Columbia may choose to depose. It is improper and impractical to require NCRIC to designate a corporate representative to testify as to an area which he or she is not necessarily competent.

Subject matter 24 also seeks information about industry standards, this time regarding the calculation of loss reserves. However, this subject matter goes a step further and seeks information regarding "rules, regulations, guidelines, standards or procedures governing the calculation of loss reserves by insurance companies in the District of Columbia." In addition to the objections above with regard to subject matter 21 which also apply here, this request clearly seeks testimony of a legal nature.

NCRIC's compliance with D.C. law regarding the calculation of loss reserves is a question of law, not a topic appropriate for a Rule 30(b)(6) deposition. This topic effectively requires NCRIC to designate a legal officer to testify as to his or her professional legal opinion on these matters. Even if such a designation could be made, and NCRIC doubts it could effectively do so, any effort to attempt to educate such a designee would compromise the

attorney-client privilege, such that any such knowledge would be protected from disclosure to Columbia.

Columbia argues in its Opposition that NCRIC would not have to provide legal analysis in response to this subject matter and suggests that, for example, NCRIC could testify only as to its own corporate understanding of what laws govern such calculations. See Columbia Opp. at 3. Yet, a legal analysis is required to reach an understanding of what laws govern NCRIC's calculation of loss reserves. Moreover, Columbia's obligation to provide specific topics for NCRIC to designate appropriate individuals for testimony requires more notice than simply an example of what testimony could be required. In order for NCRIC to designate a witness and properly object where needed, Columbia must more specifically explain what testimony it seeks. Subject matter 24 is inappropriate as it seeks legal analysis and opinion.

III. Subject Matter 31 -- Seeking Information Regarding Other Locations For Which NCRIC has Refused to Provide or Canceled Insurance Coverage

Subject matter 31 seeks information wholly outside the scope of NCRIC's relationship with Columbia and requests testimony regarding NCRIC's confidential relationships with other business partners. Columbia's Opposition contends that such information is relevant to show that NCRIC discriminated against physicians practicing at Columbia's clinic. See Columbia's Opp. at 3-4. Notably, however, there is no discrimination claim at issue in this case. Columbia's link to its breach of fiduciary duty claim is too attenuated to outweigh the interests in protecting confidential business information and trade secrets of non-parties in this action. NCRIC's duties to maintain the confidentiality of the information negotiated with these third party business partners warrants a protective order on subject 31.

IV. Subject Matter 33 -- Seeking Information Regarding Discounts on Premiums Provided to Attending Faculty Members

Subject matter 33 overlaps with subject matter 19 to the extent both seek testimony regarding individual discounts on premiums for Attending Faculty members. NCRIC's arguments regarding the repetitive and burdensome nature of subject matter 19 apply equally here. Columbia puts forward that information regarding the five-percent discount is relevant to an alleged motive for NCRIC to misapply the Deposit Premium factor. See Columbia's Opp. at 4. However, NCRIC has not sought a protective order on the grounds that this topic is irrelevant. NCRIC's motion is warranted based upon the undue burden of attempting to prepare a corporate designee to testify concerning a subject area and the fact that this information has previously been provided to Columbia. Moreover, Columbia's designation seeking information regarding "Columbia's knowledge of that discount" makes no sense, as NCRIC cannot be expected to designate a witness to testify to Columbia's knowledge.

For the foregoing reasons, this Court should grant NCRIC's Motion for a Protective Order and prevent NCRIC from being required to put forward designees on Columbia's subject matters 19, 21, 24, 31 and 33.

Respectfully Submitted,

Rodney F. Page (D.C. Bar No. 37994)
Scott M. Badami (D.C. Bar No. 435375)
Margaret G. Perl (D.C. Bar No. 472003)
BRYAN CAVE LLP
700 Thirteenth Street, N.W., Suite 700
Washington, D.C. 20005
Telephone: (202) 508-6116
Facsimile: (202) 508-6200

16d-001060

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

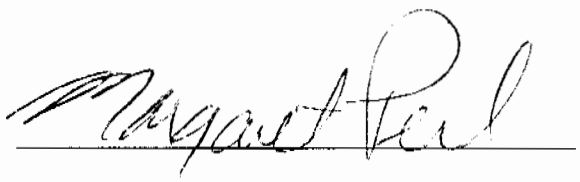
16d-001061

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NCRIC's Reply in Support of its Motion for a Protective Order was served this 21st day of December 2001 via first class mail, postage prepaid, to:

Joseph K. Leahy, Esquire
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.



16d-001062

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC., Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar # 8 – Judge Davis Next Event: Certain Depositions Completed 1/17/01

NCRIC'S REPLY IN SUPPORT OF ITS MOTIONS TO COMPEL DESIGNATIONS AND DEPOSITION TESTIMONY

Plaintiff NCRIC, Inc. ("NCRIC") submits this Reply in Support of its Motions to Compel Rule 30(b)(6) Designations and Deposition Testimony. The opposition filed by Columbia Hospital for Women Medical Center, Inc. ("Columbia") fails to provide a legally sufficient reason why it should be excused from designating witnesses to testify about discoverable issues raised in its own counterclaim and why work-product protection should shield factual issues from NCRIC that are absolutely discoverable during a deposition. NCRIC responds to Columbia's Opposition to both motions jointly in this Reply Brief.

I. NCRIC's Motion to Compel Discovery by Designation under SCR 30(b)(6) and Appearance at Deposition.

A. Topics Designated for Testimony are not Impermissible "Contention" Questions.

Columbia's Opposition argues it is relieved from designating witnesses for topics 5-7, 10, 13, 52 and 56 contained in NCRIC's Rule 30(b)(6) deposition notice because NCRIC seeks "Columbia's *contentions*, not its evidence," which impermissibly treads upon the work

product privilege. See Columbia's Opp. at 7 (emphasis in original). Despite Columbia's attempt to fashion a rule barring such inquiries during a Rule 30(b)(6) deposition, there is no governing law in D.C. which precludes such questioning. Moreover, the particular topics at issue in this case seek no more than underlying facts which are not protected by the work product privilege. These topics are proper for a Rule 30(b)(6) deposition for which Columbia must designate a witness or witnesses competent to testify.

Columbia argues that these topics are "contention-style" inquiries which necessarily require testimony about the legal consequences of facts, and therefore these inquiries have been held inappropriate for Rule 30(b)(6) depositions. See Columbia's Opp. at 7-9. This argument fails for many reasons. D.C. courts have never created a rule which bars the use of contention-style questions in depositions. Columbia relies on flawed logic when it infers such a prohibition because Rule 33 explicitly permits contention interrogatories, while Rule 26 and 30 are silent on the issue of "contention-style" questions in depositions. See Columbia's Opp. at 8. The only D.C. case cited by Columbia, American National Red Cross v. Travelers Indemnity Company, 896 F. Supp. 8 (D.D.C. 1995), involved the deposition of an attorney where the court held general questions requesting the *attorney* to identify "all facts and documents" which supported defendant's defenses were properly objectionable on the basis of the work product privilege. Id. at 8. Nowhere in this case does the court rely upon, or even mention, a *per se* rule against "contention-style" depositions in D.C. Thus, Columbia's argument that these questions are *per se* prohibited fails.

Even if this Court were to look upon the cases cited by Columbia as persuasive authority from other jurisdictions, these cases themselves do not apply a blanket prohibition against "contention-style" questioning at Rule 30(b)(6) depositions. Instead, these courts

evaluated the specific facts and circumstances of their cases to determine whether a particular line of questioning regarding a party's allegations was more properly presented through interrogatories as opposed to Rule 30(b)(6) deposition testimony. See, e.g., Exxon Research and Engineering Co. v. U.S., 44 Fed. Cl. 597, 601 (Fed. Cl. 1999) ("Whether a 30(b)(6) deposition or contention interrogatories are more appropriate is decided on the facts of each case."). The cases cited by Columbia held that, *in those cases,* contention interrogatories were more appropriate than "contention-style" deposition questioning - not that such deposition questions were *per se* improper. Many of these cases involved the deposition of counsel for the party involved where privilege and work product concerns must be balanced against the availability of the information through other means. See, e.g., SEC v. Morelli, 143 F.R.D. 42, 47 (S.D.N.Y. 1992) (refusing to allow deposition of SEC attorney); EEOC v. HBE Corp., 157 F.R.D. 465, 466 (E.D. Mo. 1994) (refusing to allow 30(b)(6) deposition of EEOC attorneys); U.S. v. District Council of New York City, No. 90 CIV 5722, 1992 WL 208284, *12 (S.D.N.Y. August 18, 1992) (refusing to compel testimony of FBI agent under 30(b)(6) notice to U.S. Attorney's Office). NCRIC does not seek to depose Columbia's counsel, nor are there other unique circumstances in this case which would dictate the use of contention interrogatories in place of deposition questioning.

Moreover, topics 5-7, 10, 13, 52 and 56 seek specific facts from the corporate deponent, not open-ended, all encompassing, questions such as those at issue as "contention-style" inquiries in the cases cite by Columbia. See, e.g., McCormick-Morgan, Inc. v. Teledyne Industries, 134 F.R.D. 275, 286 (N.D. Cal. 1991) (refusal to answer 30(b)(6) designation which would require one witness to testify to all evidence that tended to support party's case). For example, NCRIC is entitled to ask a fact witness about the alleged specific acts which interfered with the relationship between Columbia and its doctors (topic 5), alleged malicious acts taken by

16d-001065

NCRIC (topic 6), alleged defamatory statements made by NCRIC as well as acts taken by NCRIC (topic 10), and what facts were allegedly concealed from Columbia (topic 56). These questions do not seek the legal analysis and legal theory which Columbia's counsel might use to show these facts constitute a legal wrong, just simply the underlying occurrences which give rise to the dispute between the parties. See Protective Nat'l Ins. Co. v. Commonwealth Ins. Co., 137 F.R.D. 267, 281-83 (D. Neb. 1989) (granting motion to compel 30(b)(6) witness to testify as to what facts supported particular allegations in an answer and counterclaim and refusing to require contention interrogatories instead). As explained below in Section II, such underlying facts are not protected by the work product privilege and are the proper subject of deposition questioning for fact witnesses. In this case, there is no danger of impinging upon that privilege as was present in the cases cited by Columbia in its Opposition.

NCRIC has an absolute right to obtain in discovery the facts which support Columbia's counterclaims in order to prepare a meaningful defense. Columbia has not provided such information in its interrogatories, as the response to an interrogatory requesting the factual basis for the counterclaims simply referred NCRIC to the allegations in Columbia's Answer and Counterclaim.[1/] See Defendant's Objections and Responses to Plaintiff's Interrogatories at 15, Interrogatory No. 12 (attached to Columbia's Opp. as Exhibit J). Columbia's argument against "contention-style" questioning is just another deliberate attempt to avoid testifying as to their own counterclaims. Columbia wields allegations of malice, breach of fiduciary duty and bad

[1/]Columbia's interrogatories failed to adequately provide NCRIC with the identities of third party witnesses who had information regarding the allegedly defamatory statements. The general phrase "Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy" does not notify NCRIC that any such individuals have knowledge of the allegedly defamatory statements. If Columbia is now stating that individuals so designated do have such information, NCRIC will proceed with noticing their depositions.

faith, but thwarts NCRIC's attempts to discover the factual basis for these claims. These questions are proper for a 30(b)(6) witness to testify about, and such testimony should be compelled.

B. The Remaining Topics in the Motion to Compel are Proper

Columbia argues that the remaining topics listed in NCRIC's Motion to Compel are either moot or seek legal conclusions and are therefore improper. Columbia is mistaken.[2/]

With regard to topics 1-3, 8, 11-12, 14, 28 and 51, these topics seek merely the basis for Columbia's claims for damages in the counterclaim, not legal conclusions or opinions. For example, NCRIC has a right to ask for an explanation of a chart provided by Columbia in response to an interrogatory (topics 1-2), and ask follow up factual questions regarding other interrogatory responses which state that NCRIC committed errors in calculations of bills and premiums (topics 11-12, 14). Moreover, topics 8 and 51 do not seek legal analysis or contractual interpretation, but merely testimony as to the parties' understanding of the terms of the contracts. Such is a clearly permissible area of inquiry for a corporate fact witnesses who can testify to negotiations and discussions surrounding the understandings of the terms of the contract between the parties.

II. NCRIC's Motion to Compel Columbia's Designated Witnesses to Answer Questions Properly Posed at Deposition

A. NCRIC's Motion to Compel Testimony is Not Moot

As a threshold matter, Columbia argues in its Opposition that NCRIC's motion is moot because, despite the work product objections and instructions issued by counsel at the

[2/] NCRIC acknowledges that Columbia's claim for attorneys' fees was dismissed by this Court; thus it agrees that the Motion to Compel a designee on topic 57 is moot.

depositions, the witnesses have in fact testified fully. See Columbia's Opp. at 10. The alleged basis of Columbia's work product objections and instructions at the depositions was that any information the witnesses might have obtained from counsel was protected by the work product privilege. See Columbia's Opp. at 10. However, Columbia's counsel's affidavit states that he, as the investigating attorney and the attorney who prepared the 30(b)(6) witnesses for deposition, never provided the witnesses with any information or facts on the questions objected to during the opposition. See Leahy Aff. at 1 (attached to Columbia's Opp. as Exhibit E). Such a statement suggests that the objections made during the deposition were not made in good faith and that no grounds for asserting the work product privilege exist. If this is the case, then NCRIC's motion should be granted, as any concerns about work product privilege are alleviated per counsel's affidavit.

Additionally, the motion is not moot, as NCRIC has a right to ask the deponents these questions and receive an answer without objection and instructions by counsel. If the deponents answer that they have no knowledge of the facts inquired about, then that is the sworn answer that NCRIC will accept as move for summary judgment on that basis. Columbia cannot hide behind these apparently groundless objections raised in previous depositions to avoid questions which go directly to its own claims.

B. Work Product Privilege Does Not Protect Underlying Facts.

If NCRIC's motion is not granted on the basis of Columbia's counsel's effective admission that the work product privilege objections during the depositions were baseless, the law of work product clearly states that the types of questions objected to in this case are not protected by the privilege and must be answered in deposition. Courts have repeatedly interpreted Hickman v. Taylor, 329 U.S. 495 (1947), as not supporting a work product objection

16d-001068

to inquiries regarding facts underlying a party's allegations. See, e.g., Lance v. Ginsburg, 32 F.R.D. 51, 52 (E.D. Pa. 1962) ("It is no answer to say that the facts constituting the basis for the conclusionary [sic] allegations are within the knowledge of counsel."); U.S. v. District Council of New York City, No. 90 CIV 5722, 1992 WL 208284, *11 (S.D.N.Y. August 18, 1992) (holding "facts relevant to the claims which are known by a party and the identity of persons and documents with information relevant to the issues" are not protected by the work product doctrine). Columbia cannot refuse to answer on the basis that the underlying facts are protected by the work product protection if the attorney communicates those facts to a witness during preparation for a deposition. See O'Donnell v. Breuninger, 9 F.R.D. 245, 246 (D.D.C. 1949) ("no immunity exists which enables a plaintiff to refuse to answer a material and relevant question of fact put by opposing counsel, merely on the ground that his information came from or through his attorney."); Protective Nat'l Ins. Co. v. Commonwealth Ins. Co, 137 F.R.D. 267, 280 (D. Neb. 1989) ("there is simply nothing wrong with asking for facts from a deponent even though those facts may have been communicated to the deponent by deponent's counsel.").[3/]

As illustrated by the deposition testimony excerpts attached to NCRIC's motion, the questions to which Columbia's counsel asserted work product privilege did not seek any insight into counsel's mental impressions or strategy in the case. These questions asked the witness to identify the substance of what statements were made by NCRIC (e.g. Rifka Dep. at 95), to whom such statements were made (e.g. Rifka Dep. at 115), the content of statements made by NCRIC at a meeting to which the deponent personally attended (e.g. Rifka Dep. at 124),

---

[3/] Again, Columbia asserts that such a work product privilege objection is appropriate in the face of "contention-style" deposition questions. However, as discussed in Section I above, these questions are acceptable and do not impinge upon any privilege.

16d-001069

the names of physicians attending a particular meeting (e.g. Rifka Dep. at 131), a description of damages suffered by Columbia (e.g. Wilson Dep. at 140), and other such basic factual questions. These are facts which Columbia must present and prove at trial with non-privileged testimony in order to succeed on its counterclaims. NCRIC is entitled to pursue this information in discovery in order to present an adequate defense at trial. Columbia's work product objection is without merit and the deponents should be compelled to testify.

NCRIC must be allowed to prosecute its case and defend against the myriad of counterclaims alleged by Columbia by deposing Columbia's witnesses regarding the facts which form the basis for their claims and the alleged damages at issue. There is no work product privilege concern which precludes Columbia's answering of these questions. The Motions to Compel should be granted.

Respectfully Submitted,

Rodney F. Page (D.C. Bar No. 37994)
Scott M. Badami (D.C. Bar No. 435375)
Margaret G. Perl (D.C. Bar No. 472003)
BRYAN CAVE LLP
700 Thirteenth Street, N.W., Suite 700
Washington, D.C. 20005
Telephone: (202) 508-6116
Facsimile: (202) 508-6200

Roy I. Niedermayer, Esquire (D.C. Bar #180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

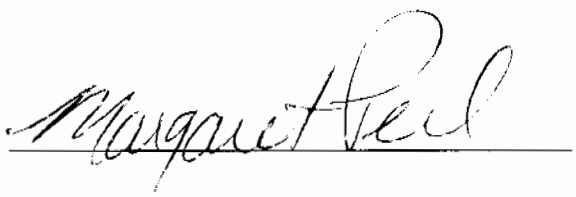
16d-001070

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NCRIC's Reply in Support of its Motions to Compel Designations and Deposition Testimony was served this 21st day of December 2001 via first class mail, postage prepaid, to:

Joseph K. Leahy, Esquire
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Womens Medical Center, Inc.



IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RECEIVED
Civil Division
Clerk's Office
JAN 11 2001
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,

Plaintiff,

v.

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant.

Civil Action No. 00-0007308
Calendar 8 -- Judge Davis

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 8th day of January 2002, I served on opposing counsel, by First Class Mail, postage-prepaid, a copy of Notice of Rule 30(b)(6) Deposition of NCRIC, Inc. I certify that I will retain the original of the aforementioned documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: January 9, 2002

Respectfully submitted,

Joseph K. Leahy /8s

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-001072

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RECEIVED
Civil Division
Clerk's Office
JAN 11 2001
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,

Plaintiff,

v.

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant.

Civil Action No. 00-0007308
Calendar 8 -- Judge Davis

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 8th day of January 2002, I served on opposing counsel, by First Class Mail, postage-prepaid, a copy of Notice of Rule 30(b)(6) Deposition of NCRIC, Inc. I certify that I will retain the original of the aforementioned documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: January 9, 2002

Respectfully submitted,

Joseph K. Leahy /8s

Joseph K. Leahy, D.C. Bar #465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburn-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Certain Depositions Completed, December 6, 2001
	)	
Defendant/Counter-Plaintiff.	)	

FILED
CLERK OF THE SUPERIOR COURT
JAN 2 5 2002
DISTRICT OF COLUMBIA

PRAECIPE

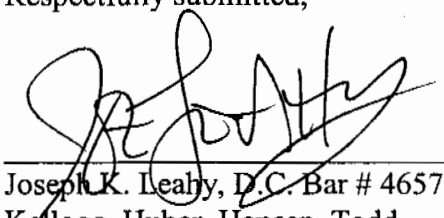
Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by its counsel, hereby states, in accordance with Superior Court Rule 16(b), that counsel for Plaintiff NCRIC, Inc. ("NCRIC"), has consented to extend, by approximately one week, the following deadlines in the current scheduling order, for the mutual benefit of the parties:

Deadline In Current Scheduling Order	Order Date	New Date
Non-expert, non-party depositions first noticed prior 8/13/01 discovery deadline shall be completed:	1/17/01	1/25/02
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	1/17/01	1/25/02
All discovery closes:	1/24/02	1/31/02
Dispositive motions filed:	1/31/02	2/07/02

The parties also hereby agree that the aforementioned deadlines, as stated in the current scheduling order, have not previously been modified. Accordingly, the parties' modification of these deadlines by stipulation pursuant to Superior Court Rule 16(b) is valid.

DATED: January 15, 2001

Respectfully submitted,



Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-001075

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 15th day of January 2002, a copy of the attached Praecipe was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

In addition, on the same date, a courtesy copy of the aforementioned Praecipe was served on the chambers of Judge Blackburn-Rigsby by hand delivery.

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburn-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

NOTICE OF DEPOSITION OF NCRIC EMPLOYEES

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the District of Columbia Superior Court Rules of Civil Procedure, Defendant Columbia Hospital for Women Medical Center, Inc., by counsel, shall take the deposition of the following employees of Plaintiff NCRIC, Inc., whose business address is 1115 30th Street, N.W., Washington, D.C., 20007, on the following dates, and continuing from day to day until completed:

NCRIC Employee	Date of Deposition
R. Ray Pate, Jr.	January 25, 2002

Each deposition shall be held at the law offices of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Sumner Square, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036, commencing at 1:00 p.m. on the appointed date. The deposition shall be conducted before an officer authorized to administer oaths by the laws of the District of Columbia, and shall be recorded by sound and stenographic means.

You are invited to attend and cross-examine.

DATED: January 24, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburn-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

NOTICE OF DEPOSITION OF NCRIC EMPLOYEES

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the District of Columbia Superior Court Rules of Civil Procedure, Defendant Columbia Hospital for Women Medical Center, Inc., by counsel, shall take the deposition of the following employees of Plaintiff NCRIC, Inc., whose business address is 1115 30th Street, N.W., Washington, D.C., 20007, on the following dates, and continuing from day to day until completed:

NCRIC Employee	Date of Deposition
William Burgess	January 29, 2002

Each deposition shall be held at the law offices of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Sumner Square, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036, commencing at 9:30 a.m. on the appointed date. The deposition shall be conducted before an officer authorized to administer oaths by the laws of the District of Columbia, and shall be recorded by sound and stenographic means.

You are invited to attend and cross-examine.

DATED: January 24, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-001080

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 24th day of January, 2002, a copy of Defendant Columbia Hospital for Women Medical Center Inc.'s Notices of Deposition of NCRIC Employees were served upon the following by facsimile and first class U.S. mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Joseph K. Leahy

RECEIVED

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

FEB 7 11 55 PM '02

ADMINISTRATIVE DIVISION

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 -- Judge Blackburn-Rigsby Next Event: Dispositive Motions Filed, February 7, 2002

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Comes now Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), and moves this Court for summary judgment with respect to Count I (Breach of Contract), the sole count of the Amended Complaint for Damages filed by Plaintiff NCRIC, Inc. ("NCRIC"). In particular, Columbia moves this court to:

1. Enter judgment as a matter of law for Columbia on NCRIC's sole claim, Count I (Breach of Contract) of the Amended Complaint for Damages;

2. Grant summary judgment with respect to Count I (Breach of Contract) of Defendant's Amended Answer and Counterclaims; and set this case for trial on damages; and

3. Grant partial summary judgment on Count I of the Amended Complaint and Count I of the Amended Answer, with respect to the calculation of the Minimum Premium factor, the Deposit Premium factors, and the application of the Development Factors.

A Memorandum in support of this Motion and a proposed Order are attached hereto.

DATED: February 7, 2002

ORAL HEARING REQUESTED

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-001083

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,

Plaintiff/Counter-Defendant,

v.

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant/Counter-Plaintiff.

FEB 7 11 55 AM '02

ADMINISTRATIVE DIVISION

Civil Action No. 00-0007308
Calendar 8 -- Judge Blackburn-Rigsby
Next Event: Dispositive Motions Filed, February 7, 2002

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby states as follows in support of Defendant's Motion for Summary Judgment:

Preliminary Statement

Plaintiff NCRIC, Inc, a wealthy insurance company that recently steered a large group of doctors away from Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), has filed a multi-million dollar breach of contract lawsuit against Columbia, in an apparent effort to drive the struggling not-for-profit hospital out of business. But NCRIC's claim is belied by the unambiguous language of the contract at issue, the Retrospective Rating Plan Agreement ("Retro Plan" or "Plan"), as well as by NCRIC's own conduct.

Columbia does not owe NCRIC *any* money under the Retro Plan because, as NCRIC freely admits, the parties subsequently agreed that neither party would owe premium except for "closed" years – and, the only closed years are those for which *NCRIC* owes premium. As such, NCRIC owes money to Columbia (Point I, *infra*). Even in the absence of that agreement,

Columbia would not be required to pay any money because NCRIC, the Plan's bookkeeper, failed to notify Columbia of the amount of premium due, as required by the Plan (Point II, *infra*). Finally, NCRIC's demand is overstated because NCRIC misapplied several terms defined in the Plan (Point III, *infra*). Hence, this Court should enter an order granting summary judgment for Columbia, both on its contract claim and on NCRIC's contract claim. Alternatively, this Court should enter an order limiting how NCRIC may calculate any premium owed by Columbia.

Factual Background

A. Retro Plan

Columbia, a non-profit hospital specializing in care for women, and NCRIC, a provider of malpractice liability insurance to physicians in the District of Columbia, entered into the Retro Plan on or about October 23, 1993. *See* Defendant's Statement of Material Facts Not In Dispute ("SMF") ¶¶ 1-3. As originally drafted by NCRIC, *see id.* ¶ 4, the Plan ran for three years, from September 1, 1993 to September 1, 1996. *See id.* ¶ 5. According to NCRIC, three addenda to the Plan – with effective dates of September 1, 1996, September 1, 1998 and September 1, 1999, respectively – extended the Plan through September 1, 2000. *See id.* ¶ 8.

The Retro Plan allows Columbia and NCRIC to share the risk of sponsoring a discount on medical malpractice liability insurance for physicians who practice at Columbia ("Attending Faculty"). Under the Plan, Attending Faculty members receive a substantial discount, each year, on their premiums for $500,000 in NCRIC medical malpractice liability coverage. *See id.* ¶ 10. NCRIC, the Plan's bookkeeper, then calculates the total cost of providing the relevant level of malpractice insurance coverage (*i.e.*, including administrative costs, defending malpractice claims, payment for judgments or settlements, and setting aside reserves to pay future claims) to the Attending Faculty. This calculation is retrospective because, each year, NCRIC recalculates

the cost for *every* preceding year (except the most recent), and compares that cost to the amount of premium NCRIC received from the Attending Faculty. If the cost of providing the malpractice insurance to the Attending Faculty exceeds the total amount of premium NCRIC received, Columbia must pay the difference, up to a set maximum. If the Attending Faculty paid NCRIC more than it cost to provide them with the malpractice coverage, NCRIC must pay Columbia a refund, as limited by a set minimum. *See generally* SMF Exh. 1, at Exh. A.

B. Reconciliations

The Retro Plan requires NCRIC to perform its retrospective calculation – known as a Reconciliation – once each year, as of the Reconciliation Date, September 1. Reconciliations are to occur annually from September 1, 1996 until all claims for all years of the Plan are closed. *See* SMF ¶ 17. For the purposes of a Reconciliation, each year of the Plan is assessed separately to determine whether, for that year, Columbia owes NCRIC money or vice versa. *See id.* ¶ 18. The amount due for each individual year is listed on a spreadsheet, and all of the years are tallied to reach a cumulative total. *See id.* NCRIC is to notify Columbia in writing, within 60 days of each Reconciliation Date, of any amount that Columbia owes. *See id.* This amount is due and payable 30 days from the date that Columbia receives such notice. *See id.*

C. Terms

To perform each Reconciliation, NCRIC must apply a number of terms defined in the Plan, including those explained below. Three terms – Minimum Premium, Deposit Premium and Development Factors – are the focus of the contractual dispute between Columbia and NCRIC.[1]

[1] Columbia also contests NCRIC's calculation of several other terms, including Subject Premium and Loss Reserves. These terms are expected to be an issue at trial.

16d-001086

Subject Premium is "the total of the undiscounted premiums that would be charged to physician[s] for coverage limits of $500,000 each claim . . . if the physician[s] were not Plan Participants." SMF ¶ 20. For reasons unimportant to this discussion, all premiums under the Retro Plan are calculated by applying multipliers to the Subject Premium.

Attending Faculty discount is the percent discount on the premium for $500,000 in medical malpractice liability coverage (*i.e.*, the Subject Premium). At the outset of the Plan, the discount was 19% of the Subject Premium. *See id.* ¶ 11. The discount was later increased to 33% of the Subject Premium, effective September 1, 1995. *See id.* ¶ 12.[2] (The increase was explicitly *not* retroactive, *see id.* ¶ 13 – meaning, Attending Faculty members did not obtain a refund from NCRIC for premium they had paid during the previous two years.)

Deposit Premium is currently is "the Subject Premium multiplied by sixty-seven (67%)." *See id.* ¶ 24. In a Reconciliation, the Deposit Premium for each Experience Period represents the total amount that the Attending Faculty "deposit" with NCRIC under the Plan. This means that the multiplier used to calculate the Deposit Premium is *necessarily the inverse* of the Attending Faculty discount. In the original version of the Plan, the Attending Faculty discount was 19% of the Subject Premium, so the Deposit Premium was 81% of the Subject Premium. *See id.* ¶ 25. Later, when the Retro Plan was amended, effective September 1, 1995, to increase the Attending Faculty discount to 33%, the Deposit Premium was changed to 67%.[3] *See id.* ¶ 24.

---

[2] A later amendment, effective September 1, 1998, confirmed that the new discount was 33%, and further, that the change did not apply to "to the first two years of the Plan." SMF ¶ 13.

[3] The Deposit Premium actually changed in January 1996. However, the change was applied in a way that its effect was the same as if it had occurred in September 1995. *See* SMF ¶¶ 25-28.

Retrospective Premium ("Retro Premium") represents, for each Experience Period, the total cost of providing $500,000 in malpractice insurance coverage to all the Attending Faculty. As such, the Retro Premium is subtracted from the Deposit Premium to determine how much is owed (and by whom) for each year. Each year, the Retro Premium for each Experience Period is recalculated, as of each Reconciliation Date, by applying the Retrospective Rating Premium Formula ("Retro Formula"), set forth in the Plan. This formula involves application of multipliers (e.g., the Deposit Premium factor, the Minimum Premium factor, and the Development Factors), to numbers based on hard data (e.g., Loss Reserves). *See id.* ¶ 31 (stating Retro Formula).

Minimum Premium is the minimum Retro Premium for a particular Experience Period, currently, "sixty percent (60%) of the Subject Premium." *See id.* ¶ 32. In the original Plan, the Minimum Premium was 75% of the Subject Premium. *See id.* ¶ 33. It was changed to 60% effective September 1, 1996. *See id.* ¶ 34. The language of the Plan does not limit the applicability of the Minimum Premium to any particular Experience Period(s). *See id.* ¶ 32.

Maximum Premium is the maximum Retro Premium for a particular Experience Period, currently "one hundred and thirty-three percent (133%) of the Subject Premium." *See id.* ¶ 33. In the original Plan, the Maximum Premium was 115% of the Subject Premium, but was changed to 133% effective September 1, 1996. *See id.* The Plan's language does not limit the applicability of the Maximum Premium to any particular Experience Period(s). *See id.*

Additional Premium is any positive balance (*i.e.*, in NCRIC's favor), either for an individual Experience Period or cumulative for the entire Plan. Additional Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is *greater* than the Deposit Premium. *See id.* ¶ 36.

16d-001088

Return Premium is any negative balance (*i.e.*, in Columbia's favor), either for an individual Experience Period or cumulative for the entire Plan. Return Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is *less* than the Deposit Premium. *See id.* ¶ 37.

Experience Period. Each year of the Plan, beginning on September 1, 1993, is a separate Experience Period. *See id.* ¶ 38. The total Retro Premium and Deposit Premium for each Experience Period is recalculated *every year* until all claims for that year are closed. *See id.* ¶¶ 19, 39. The original Plan called for three Experience Periods, from 1993-94 through 1995-96; NCRIC claims that four were added by amendment, through 1999-2000. *See id.* ¶¶ 15-16. Experience Periods have not been added since September 1, 2000. However, NCRIC has performed Reconciliations since that date. *See id.* ¶¶ 36, 22 and Exh. 10 (September 1, 2000 Reconciliation spreadsheet created by NCRIC).

Loss Reserves are the money that NCRIC sets aside to pay medical malpractice claims against the Attending Faculty, as well as to pay any expenses for defending those claims.[4] *See id.* ¶ 40.

Development Factors are "the factors by which Loss Reserves are multiplied for purposes" of calculating the Retro Premium. *See id.* ¶ 41. Essentially, the Development Factors are a schedule of multipliers that increase as Experience Periods progress, and as a claim matures, to reflect NCRIC's growing level of certainty regarding the accuracy of its Loss Reserves. The effect of the steady increase in Development Factors over time is that, even in the

[4] In its Reconciliations, NCRIC lists both Indemnity Reserves and Expense Reserves ("ALAE Reserves"). These two categories are tallied to obtain the total Loss Reserves. *See* SMF ¶ 40.

16d-001089

(unlikely) event that total Loss Reserves for a particular Experience Period remain exactly the same over the course of several Reconciliations, the developed losses will steadily increase.

Over time, the Plan has been amended to change the value of – but *not* the procedure for applying – the Development Factors. *See id.* ¶¶ 42-45. Originally, the Development Factors were:

Year 1 Reconciliation	-	88.5%
Year 2 Reconciliation	-	87.5%
Year 3 Reconciliation	-	90.5%
Year 4 Reconciliation	-	96.0%
Year 5 Reconciliation	-	100.0%
All Subsequent Reconciliations	-	100.0%

Id. ¶ 39. Effective September 1, 1996, the Development Factors were lowered:

Year 1 Reconciliation	-	55.0%
Year 2 Reconciliation	-	65.0%
Year 3 Reconciliation	-	80.0%
Year 4 Reconciliation	-	105.0%
Year 5 Reconciliation	-	105.0%
All Subsequent Reconciliations	-	100.0%

Id. ¶ 40. In 1999, the parties added interim Development Factors:

Months	Factor
12	0.55 (unchanged)
. . . .	. . . .
24	0.65 (unchanged)
. . . .	. . . .
36	0.81 (unchanged)
. . . .	. . . .
48+	1.05 (unchanged)

Id. ¶ 44. The interim Development Factors were solely for informational purposes, to be used in NCRIC's quarterly updates. Introduction of the interim factors did not change the amount of the existing yearly Development Factors in any way. Nor did it have any effect on the manner in which the Development Factors were applied by NCRIC. *See id.* ¶ 45.

Exhibit E to the Plan, an "Example of Operation of the Plan," indicates that Development Factors are to be applied the relevant number of months *after* the end of an Experience Period, not that number of months *before* the end of an Experience Period. *See id.* ¶¶ 46-48. To apply the current Development Factors in this way, the 12-month Factor (55%), not the 24-months Factor (65%), is applied to an Experience Period the first time it is reconciled. *See id.* ¶ 46.

No language in the Plan limits the use of the new Development Factors to Experience Periods beginning in or after 1996. *See id.* ¶ 49. Yet, NCRIC applies the new Development Factors to all Experience Periods currently being reconciled. *See, e.g., id.* Exh. 10.

B. NCRIC's Reconciliations

In performing Reconciliations, NCRIC applies certain terms in ways that find no support in the Plan. First, NCRIC uses a Deposit Premium multiplier of 62% for Experience Periods from 1995-96 to the present. *See id.* ¶¶ 50-51. It is undisputed, however, that the Plan, as amended, currently states that the applicable Deposit Premium factor is 67%. *See id.* ¶ 30.

Second, NCRIC applies the current, 60% Minimum Premium multiplier only for Experience Periods beginning after September 1, 1995. For the first two Experience Periods (one of which it treats as closed) NCRIC uses the old 75% Minimum Premium multiplier. *See id.* ¶ 53. NCRIC admits, however, that the amended definition of Minimum Premium does not limit application of the 60% multiplier to any particular Experience Period(s). *See id.* ¶ 34.

Third, NCRIC applies each Development Factor the relevant number of months after an Experience Period *begins*, not the relevant number of months after an Experience Period *ends*. This contradicts the clear guidance of Exhibit E to the Plan. *See id.* ¶ 54.

NCRIC last performed a yearly Reconciliation of the lawsuit on September 1, 2000. NCRIC did not provide Columbia with a September 1, 2001 Reconciliation – if it even performed one. *See id.* ¶¶ 55-57.

C. Oral Agreement

Although the written language of the Plan envisioned an exchange of the *cumulative* Additional Premium or Return Premium for all reconciled Experience Periods, *every* year, the Plan was never operated that way. In November 1996, NCRIC and Columbia mutually agreed that neither party would pay premium for any Experience Period until it was "closed" (*i.e.*, all the claims for that Period were closed as defined in the Plan). *See id.* ¶¶ 59-63. When the agreement was made, NCRIC represented to Columbia, and Columbia understood, that the arrangement was to remain in effect until *all* Experience Periods were closed. *See id.* ¶¶ 60-61. NCRIC never indicated that the arrangement would end if the Plan were discontinued. *See id.* ¶ 62.

As a result of their oral agreement, the parties only exchanged premium once in four years: In November 1998, NCRIC paid Columbia $172,815 in Return Premium for the 1993-94 Experience Period, which NCRIC deemed closed.[5] *See id.* ¶¶ 72-73. As a result of the parties' oral agreement, NCRIC did not pay Columbia after either the September 1, 1996 and September 1, 1998 Reconciliations, despite that in both cases the relevant Reconciliation spreadsheet

[5] Soon after the September 1, 1997 Reconciliation, NCRIC demanded, as a condition for adding the 1997-98 Experience Period to the Plan, a payment of $1 million from Columbia to secure contingent future liabilities under the Plan. *See* SMF ¶¶ 65-67. Columbia paid this amount in early 1998 in four installments of $250,000 each. *See id.* ¶ 68. This $1 million payment, NCRIC admits, was an exception to the parties' oral agreement. *See id.* As such, at the September 1, 1998 Reconciliation – which showed a $670,000 balance in Columbia's favor – NCRIC continued to hold Columbia's $1 million on deposit instead of paying Return Premium. *See id.* ¶¶ 70-71.

showed a cumulative balance of Return Premium was due. *See id.* ¶¶ 64, 70-71. Further, NCRIC did not demand any premium from Columbia after the September 1, 1999 Reconciliation, although the Reconciliation showed that cumulative Additional Premium was due. *See id.* ¶ 74. As of the September 1, 2000 Experience Period, one additional Experience Period – 1994-95 – was deemed closed by NCRIC. *See id.* ¶ 77. As NCRIC admits, this Experience Period showed a balance of Return Premium due – yet, NCRIC did not pay Columbia. *See id.* ¶ 77.

Argument

Standard of Review

Summary judgment is proper where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Super. Ct. R. Civ. P. 56(c).

"Whether a contract is ambiguous is a question of law for the court to determine." *Dodek v. CF 16 Corp.*, 537 A.2d 1086, 1093 (D.C. 1988) (internal citations omitted). If a contract is unambiguous, summary judgment is appropriate "since, absent such ambiguity, a written contract duly signed and executed speaks for itself and binds the parties without the necessity of extrinsic evidence." *Id.* at 1092. Further, interpretation of a contract is a matter of law if, "only one view is reasonable – notwithstanding [any] facial ambiguity." *See Urban Masonry Corp. v. N & N Contractors, Inc.*, 676 A.2d 26, 32 (D.C. 1996) (internal citations omitted).

I. Columbia Does Not Owe NCRIC Any Money At This Time

A. No Experience Periods For Which Columbia Owes Premium Are Closed

Columbia does not owe NCRIC any premium at this time due to the parties' November 1996 oral agreement that neither party would pay any premium for any Experience Period until it was "closed." *See supra*, p 9. NCRIC freely admits that this agreement occurred. *See* SMF

¶¶ 62, 58-60. Further, the parties' actions throughout the term of the Plan confirm that the agreement remained in effect after each renewal and amendment. First, the parties did not, in response to either the 1996, 1997 or 1998 Reconciliations, exchange the cumulative total amount of Additional Premium or Return Premium that was due. *See supra*, p 9. Second, after the 1998 Reconciliation, NCRIC paid Columbia Return Premium for just the closed, 1993-94 Experience Period (about $172,815), instead of paying the cumulative Return Premium (about $670,000).[6] *Id.*

Due to the parties' oral agreement, NCRIC cannot demand payment at this time. Currently, according to NCRIC's own calculations, only the first (1993-94) and second (1994-95) Experience Periods are closed; every other Experience Period has open claims. *See id.* ¶ 80. Further, Columbia does not owe NCRIC Return Premium for 1993-94 or for 1994-95. *See id.* ¶ 72, 77. Accordingly, although NCRIC's Reconciliation(s) indicate that a *cumulative* balance of Additional Premium is due, Columbia does not owe NCRIC any money.

B. NCRIC Owes Columbia Return Premium for the Closed 1994-95 Experience Period

In fact, due to the parties' oral agreement, NCRIC owes Columbia Return Premium. According to NCRIC's own calculations, NCRIC owes Columbia Return Premium for the two Experience Periods that are closed. NCRIC has paid Columbia $172,815 for the first Experience Period, *see id.* ¶¶ 72-73, but it has paid Columbia nothing for the second Experience Period, *see id.* ¶ 77. Accordingly, even under NCRIC's own interpretation of the terms in the Retro Plan, NCRIC currently owes Columbia $177,806.

---

[6] NCRIC also continued to hold Columbia's $1 million on deposit at this time.

16d-001094

But even that amount understates NCRIC's liability to Columbia. As explained below, in its Reconciliations, NCRIC employs the wrong Minimum Premium factor for the 1993-94 and 1994-95 Experience Periods. *See infra*, Part III.A. When the correct Minimum Premium factor is applied (assuming all of NCRIC's other calculations are correct), NCRIC owes Columbia $587,569 (less $172,815 it already paid) for the 1993-94 Experience Period and $350,594 for the 1994-95 Experience Period, for a total of $765,346.

II. Columbia Owes No Additional Premium At This Time Because NCRIC Failed To Provide the September 2001 Reconciliation to Columbia

Even absent the parties' oral agreement, Columbia does not owe NCRIC the amount of Additional Premium that NCRIC demands at this time, because NCRIC failed to perform its duties under the Plan. Under the Plan, NCRIC must provide to Columbia, "within 60 days" of a Reconciliation Date, notice of any Additional Premium that is due. *See id.* ¶ 21. Yet, NCRIC *never* provided Columbia with notice of the amount of Additional Premium due following the September 1, 2001 Reconciliation. *See id.* ¶ 56. This failure to provide Columbia with the contractually-required notice constitutes a failure to perform a condition precedent of Columbia's payment – which is "due and payable within thirty (30) days" *after* it receives NCRIC's notice. *See id.* ¶ 22. As a result, Columbia's 2001 payment is not yet due. *See Steele v. Isikoff*, 130 F. Supp. 2d 23, 32 (D.D.C. 2000) (applying D.C. law) ("'[I]t is a condition of each party's remaining duties to render performances . . . that there be no uncured material failure by the other party to render any such performance due at an earlier time'"; "'an absence of performance, operates as the non- occurrence of a condition [which] discharg[es] the [other party's corresponding] duty when the condition can no longer occur.'") (quoting *Restatement (Second) of Contracts* § 237 & cmt. a (1981); *Restatement (Second) of Contracts* § 225 (1979)

(performance of a duty subject to an express condition "cannot become due unless the condition occurs").

III. In Performing Its Reconciliations, NCRIC Misapplies the Minimum Premium Factor, the Deposit Premium Factor, and the Development Factors

A. The 60% Minimum Premium Multiplier Applies to All Experience Periods

As explained above, the Minimum Premium factor for the Plan originally was 75%, but it was amended to be 60% effective September 1, 1996. *See supra*, p. 5. Yet, NCRIC refuses to apply the new, 60% Minimum Premium multiplier to calculate the minimum Retro Premium due for every Experience Period. Instead, for two Experience Periods, 1993-94 (which NCRIC treats as closed) and 1994-95, NCRIC still applies the old, 75% Minimum Premium multiplier.

There is simply no basis for employing two different Minimum Premium factors in each Reconciliation. Rather, the language of the Plan is clear: there is only one Minimum Premium factor. *See id.* ¶ 32 (Minimum Premium "shall be equal to sixty percent (60%) of the Subject Premium"). Indeed, NCRIC even admits that no language in the Plan limits the application of the new, 60% Minimum Premium multiplier to certain Experience Periods. *See id.* ¶ 33.

NCRIC's application of the 60% Minimum Premium factor to certain Experience Periods but not others is inconsistent with its application of other terms in the Plan. In performing yearly Reconciliations, if a term is not restricted in its application to particular Experience Periods, NCIRC applies that term to *all* Experience Periods. For example, NCRIC applies the terms Basic Premium and Discount Factor, neither of which have any restrictions upon their use, to *all* Experience Periods. *See id.* ¶¶ 44-45. This also is the logical approach, as it involves using the current terms of the Plan, not former terms of the Plan, to perform the current Reconciliation.

Additionally, if NCRIC – which drafted the amendment that changed the Minimum Premium factor, and the amendment the confirmed that change – had intended to use the old

75% Minimum Premium factor for the first two Experience Periods, it could have added restrictive language in *either* of those two amendments to effectuate its purpose. NCRIC definitely knew how to do this, since in the latter amendment, NCRIC used restrictive language to clarify that the Attending Faculty discount was to be applied only to certain Experience Periods. *See* SMF ¶¶ 13.

By using the wrong Minimum Premium multiplier for the first two Experience Periods, NCRIC substantially affects the bottom line: since the Retro Premium for the 1993-94 and 1994-95 Experience Periods falls well below the 75% Minimum Premium multiplier NCRIC uses for those Periods, Columbia is owed far more money for those Periods that for which it is given credit. When the proper Minimum Premium is applied to the first two Experience Periods, the Return Premium for those periods increases drastically: from $172,815 to $587,569 for 1993-94, and from $177,806 to $350,594 for 1994-95. *See id.* Exh. 11. As such, when the proper Minimum Premium is applied to any of NCRIC's Reconciliations, the cumulative amount of Additional Premium that Columbia owes is substantially decreased. *See id.* For example, when the Minimum Premium factor in NCRIC's September 1, 2000 Reconciliation is changed to 60%, the cumulative amount due plunges from $1,286,524 to $698,983. *See id.*

B. The Correct Deposit Premium Multiplier is 67%, Not 62%

As described above, in performing Reconciliations, NCRIC uses a Deposit Premium multiplier of approximately 62% for all Experience Periods beginning after 1995-96.[7] *See supra*, p. 4. There is simply no basis in the current version of the Plan for this 62% factor. Indeed, NCRIC admits that the Plan states that the Deposit Premium factor is 67%. *See* SMF ¶ 29.

[7] Neither party disputes that NCRIC used the proper Deposit Premium multiplier, 81%, for the first two Experience Periods. *See* SMF ¶ 28.

16d-001097

NCRIC's basis for using 62% as the Deposit Premium factor is unclear, particularly since NCRIC drafted the amendment to the Plan that changed the Deposit Premium multiplier to 67%, and also drafted the subsequent amendment that reaffirmed the new multiplier. *See id.* ¶ 8.

By employing the wrong Deposit Premium factor NCRIC credits Columbia with 5% less Deposit Premium than it should for *each* of the five most recent Experience Periods. As a result, when the Deposit Premium is subtracted from the Retro Premium for each Experience Period, Columbia is billed substantially more than required by the Plan. For example, when the correct Deposit Premium factor is applied in NCRIC's September 1, 2000 Reconciliation (leaving all other terms the same), the cumulative amount due drops from $1,286,524 to $627,304. *See id* Exh. 12.

C. NCRIC Improperly Applies Each Development Factor the Relevant Number of Months After an Experience Period *Begins*, Rather Than After It *Ends*.

As explained above, NCRIC applies the first Development Factor (55%) at the Reconciliation 12 months after an Experience Period *begins*. *See supra*, p. 8. Using this method, NCRIC always applies the second Development Factor (65%) at the Reconciliation 24 months after the next oldest Experience Period *begins*, the third Development Factor (80%) at the Reconciliation 36 months after the next oldest Experience Period *begins*, and the fourth Development Factor (105%) at the Reconciliation 48 months (and more) after the next oldest Experience Period begins. This is the wrong way to apply the Development Factors.

In fact, the 55% Development Factor should be applied at the Reconciliation 12 months after an Experience Period *ends*; the 65% Development Factor should be applied at the Reconciliation 24 months after an Experience Period *ends*, the 80% Development Factor should be applied at the Reconciliation 36 months after an Experience Period *ends*, and the 105% Development Factor should be applied at the Reconciliation 48 months (and more) after an

16d-001098

Experience Period *ends*. On this point, the Plan is clear: Development Factors must be applied the relevant number of months after an Experience Period *ends*. To do otherwise conflicts with Exhibit E to the Plan, "Example of Operation of the Plan," – which shows Development Factors being applied twelve months *after* the end of an Experience Period. *See* SMF ¶ 46. Since the clear intent of Exhibit E was to serve as a guide for applying the Retro Formula, *see id.*, NCRIC's current method of applying the Development Factors must be rejected.

NCRIC's application of the Development Factors also is inconsistent with well-established canons of construction. First, NCRIC's application of the 55% Development Factor 12 months after an Experience Period *begins*, means that Factor will *never* have *any* effect on the amount of Additional Premium Columbia owes – because Experience Periods are not added to Reconciliations until 12 months after they *end*, *see* SMF ¶ 39; *see, e.g.*, *id.* Exh. 8 (September 1, 1999 Reconciliation) (applying 55% Development Factor to latest Experience Period, which would not be properly added to the Reconciliation under the Plan as written); *id.* Exh. 9 (September 1, 1998 Reconciliation) (same).[8] By contrast, if the 55% Development Factor is applied 12 months after an Experience Period *ends*, it will *always* factor into the cumulative Additional Premium. Since NCRIC's interpretation renders the 55% Development Factor superfluous, it is disfavored. *See, e.g.*, *Intercounty Constr. Corp. v. District of Columbia*, 443 A.2d 29, 32 (D.C. 1982); *accord Restatement (Second) of Contracts* § 203, cmt. b (1979).

Second, NCRIC's interpretation increases the percentage of Loss Reserves that are considered part of the Retro Premium and increases the Additional Premium due – thereby

[8] NCRIC's inclusion of these Experience Periods on these yearly Reconciliation spreadsheets, although inconsistent with the Plan as written, was consistent with the parties' oral agreement. Since under the oral agreement Columbia owed Additional Premium only for closed Experience Periods, the cumulative total was provided to Columbia simply for informational purposes. It was "not an invoice," *see* SMF ¶ 74 – which it would have been under the Plan as written.

favoring it over Columbia. Since NCRIC drafted the Plan, the opposite should be true. *See, e.g.*, *Affordable Elegance Travel, Inc. v. Worldspan, L.P.*, 774 A.2d 320, 328 (D.C. 2001). As such, Columbia's interpretation should govern.

When the Development Factors are applied properly, they reduce the amount of money Columbia owes. For example, when the correct factors are applied to NCRIC's September 1, 2000 Reconciliation (leaving all other terms the same), the cumulative Additional Premium drops drastically, from $1,286,524 to $686,961. *See* SMF Exh. 13.

Finally, when the correct Minimum Premium and Deposit Premium are applied, and the Development Factors are applied properly, to NCRIC's September 1, 2000 Reconciliation, the cumulative amount of Additional Premium due becomes Return Premium: $1,286,524 becomes $559,798. *See id.* Exh. 14. In short, when *all three* terms are applied properly, NCRIC owes Columbia money, not vice versa.

Conclusion

WHEREFORE, for the foregoing reasons, Columbia's Motion for Summary Judgment should be granted in its entirety.

DATED: February 7, 2002

ORAL ARGUMENT REQUESTED

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburn-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Dispositive Motions Filed, February 7, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

WHEREFORE, upon consideration of the points and authorities submitted by the parties, and any oral argument presented by the parties, Defendant's Motion for Summary Judgment is hereby GRANTED, and it is hereby ORDERED that:

1. As to Count I (Breach of Contract), the sole count of Plaintiff NCRIC's Amended Complaint for Damages, judgment is hereby entered in favor of Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia").

2. And FURTHER, in any future Reconciliations of the Retrospective Rating Plan Agreement, the following terms have been adjudicated to have the following meanings:

   a. the Deposit Premium multiplier shall be 67% for all Experience Periods;

   b. the Minimum Premium multiplier shall be 60% for all Experience Periods;

   c. each Development Factor shall be applied to an Experience Period the relevant number of months after the Experience Period ends.

3. And FURTHER, as to Count I (Breach of Contract) of Defendant's Amended Answer and Counterclaims, judgment is entered in favor of Columbia as to liability alone. Damages will be determined at the close of this case.

SO ORDERED.

_____
Judge Anna Blackburn-Rigsby

Dated: _____, 2002.

Copies to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburn-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Dispositive Motions Filed, February 7, 2002
	)	
Defendant/Counter-Plaintiff.	)	

RULE 12-I(A) CERTIFICATE

I, Joseph K. Leahy, hereby certify that I spoke with counsel for Plaintiff NCRIC, Inc. ("NCRIC"), Scott M. Badami, Esq. at a deposition held on January 11, 2002 at my office. At this time, I asked for NCRIC's consent to summary judgment with respect to the relief sought in the instant motion. Mr. Badami informed me that NCRIC would not consent.

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

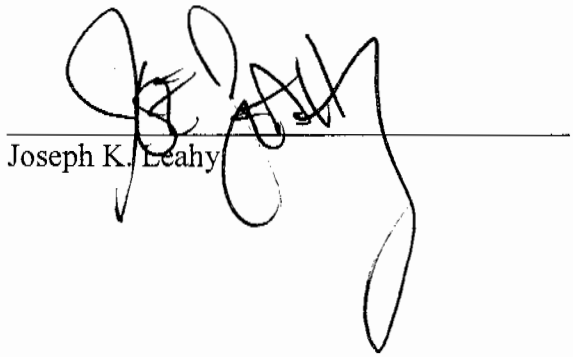
Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 7th day of February, 2002, a copy of Defendant's Motion for Summary Judgment; Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment; and Proposed Order were served upon the following by first class United States mail:

Rodney F. Page, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on the 8th day of February, 2001, a courtesy copy of all of the aforementioned papers will be served upon the Chambers for Judge Anna Blackburn-Rigsby by hand delivery.



Joseph K. Leahy

2/7/02

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburn-Reilly
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Dispositive Motions Filed, February 7, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

AFFIDAVIT OF DR. SAFA RIFKA IN SUPPORT OF DEFENDANT' MOTION FOR SUMMARY JUDGMENT

Dr. Safa Rifka, being first duly sworn, deposes and says:

1. I am Chairman of the Board of Columbia Hospital for Women Foundation, Inc., the corporate parent of Columbia Hospital for Women Medical Center, Inc. ("Columbia"). I make this affidavit in support of Columbia's Motion for Summary Judgment.

I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. I attended several Board meetings in November and December of 1996 where representatives of NCRIC, including Steve Fargis and Bill Burgess, made presentations concerning the Retrospective Rating Plan Agreement ("Retro Plan").

3. At one of these meetings, a November 7, 1996 meeting of the Finance Committee, NCRIC's representatives, including Mr. Fargis, informed Columbia that NCRIC currently owed Columbia approximately $150,000 for the first year of the Retro Plan. However, based on NCRIC's current calculations, Columbia would likely owe NCRIC money for the next year. As

I understood it, as the Plan was written, its status was to be evaluated, and payments were to be made, every year, until all claims were closed for all years of the Plan.

4. At the November 7, 1996 meeting, NCRIC's representatives, including Mr. Fargis, proposed that NCRIC not pay Columbia the $150,000 at this time. Instead of NCRIC paying Columbia this year, and Columbia paying NCRIC next year, it was proposed that the parties would wait to exchange money, for any year of the Plan, until all claims for that year of the Plan were closed. As it was presented to me, the result would be a single settlement for each year of the Plan.

5. At this meeting, representatives of Columbia, including myself, agreed to the NCRIC proposal that the parties would wait to exchange money, for any year of the Plan, until all claims for that year of the Plan were closed. Further, since the parties were in negotiations concerning possibly renewing or extending the Retro Plan, we agreed with NCRIC that the agreement not to exchange money for any year of the Plan, until all claims for that year of the Plan were closed, also would extend to any future renewals or extensions of the Plan.

6. As I recall, this agreement was discussed at other meetings in November and December of 1996. Each time it was discussed, NCRIC's representatives, including Mr. Fargis, indicated, and Columbia's representatives, including myself, understood that the parties would wait to exchange money for any year of the Plan, until all claims for that year of the Plan were closed. At no point did any NCRIC representative, including Mr. Fargis, suggest that, under any circumstances, the parties would exchange money for any year of the Plan, until all claims for that year of the Plan were closed.

7. It is my understanding that the parties were still operating under the above-mentioned oral agreement as of September 1, 2000. As Chairman of the Board, I would have been known if the agreement had changed or ended.

I swear that the foregoing is true and accurate to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Dr. Safa Rifka

Sworn to and signed before me
this 7th day of ~~September~~ February 2002.

Notary Public

My commission expires:

J. TERRELL
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires October 31, 2005

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Motions Deadline -- February 7, 2002**
Defendant.	

MOTION FOR SUMMARY JUDGMENT OF PLAINTIFF NCRIC, INC.

Plaintiff NCRIC, Inc. ("NCRIC"), pursuant to District of Columbia Superior Court Rules of Civil Procedure 12-I(e) and 56, and for reasons expressed in the accompanying Memorandum in Support, moves this Court for the entry of summary judgment against defendant Columbia Hospital for Women Medical Center ("Columbia") in the above-captioned action.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

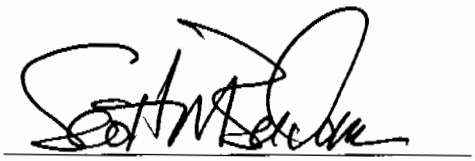
Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: February 7, 2002.

CERTIFICATION REQUIRED BY D.C. SUPERIOR COURT RULE 12-I(A)

Counsel for NCRIC and Columbia have discussed the instant motion for summary judgment at various times in person and over the telephone during the past two months. Given the dispositive nature of summary judgment, neither side would consent to the entry of summary judgment. In addition to our conversations, I sent counsel for Columbia a letter last week further inviting him to discuss the instant summary judgment motion.



Scott M. Badami

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC., Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar #8 Judge Blackburne-Rigsby Next Event: Motions Deadline -- February 7, 2002

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT FILED BY PLAINTIFF NCRIC, INC.

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: February 7, 2002.

TABLE OF CONTENTS

PAGE(S)

I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

A. Background And a Primer on The Retro Plan 2

B. Calculations Under The Retro Plan 4

C. The Retro Plan is Amended and Renewed In 1996 5

D. The Reconciliation Process 5

E. Columbia's Well Known and Well Publicized Financial Difficulties 6

F. Following Columbia's Solicitation of Other Insurance Companies, The Retro Plan is Amended and Renewed in 1998 7

G. Negotiation of The Medical Entity Policy 8

H. 1999 Renewals of The Retro Plan And Medical Entity Policy 9

I. Ending of The Retro Plan in 2000 9

J. Ending of The Medical Entity Policy 10

K. Current Status of The Parties 11

III. LEGAL STANDARD FOR SUMMARY JUDGMENT 11

IV. NCRIC HAS NOT HARMED COLUMBIA'S BUSINESS REPUTATION OR ITS BUSINESS RELATIONSHIPS 12

A. Columbia's Claims For Defamation and Injurious Falsehood Fail as a Matter of Law (Counts Nine & Ten) 12

1. Columbia's Defamation and Injurious Falsehood Claims are Based on Unsupported Allegations 13

16d-001114

2. Alleged Statements in August 1998 that do not Concern Columbia Cannot Disparage Columbia 15

3. Columbia Cannot Prove Defamation or Injurious Falsehood Based on True Statements 16

4. Columbia Cannot Establish that NCRIC Acted with Actual Malice 18

B. Columbia's Tortious Interference Claims Fail As A Matter Of Law (Counts Four & Five) 20

1. Columbia Cannot Prove NCRIC Caused any Physicians to Terminate their Relationship with the Hospital 21

2. Columbia Cannot Prove NCRIC had the Requisite Intent to Establish a Tortious Interference Claim 22

3. NCRIC Cannot Tortiously Interfere with Speculative Business Relationships (Count V) 24

V. COLUMBIA'S RETRO PLAN BASED CLAIMS FAIL AS A MATTER OF LAW 26

A. Columbia Has No Credible Evidence That NCRIC Breached The Retro Plan or That Columbia Has Suffered Compensable Damages (Count One) 26

1. NCRIC was not Required to Maintain Loss Reserves According to any "Insurance Industry Standard" 26

2. NCRIC Properly Calculated the Retro Premium 27

3. NCRIC Properly Reported Loss Reserves 28

4. Columbia has not Suffered any Damages Based on NCRIC's Conduct 29

B. NCRIC Did Not Breach The Implied Duty of Good Faith and Fair Dealing in its Administration of The Retro Plan (Count Two) 29

C. Columbia's Fiduciary Duty Claim Fails as The Parties are Sophisticated Business Entities Whose Relationship is Governed by The Terms of The Retro Plan (Count Three) 31

16d-001115

D. Columbia Has Failed To Prove Any Fraudulent Or Negligent Misrepresentations By NCRIC (Counts Seven & Eight) 33

1. NCRIC's Representations to Columbia were True 34

a. Loss Reserve Statements 35

b. Calculations of Retro Premium 35

2. NCRIC had no Intent to Deceive Columbia 36

3. There is no Confidential Relationship Between NCRIC and Columbia to Support a Constructive Fraud Claim 37

4. NCRIC's Representations Were Not Negligent 39

E. Columbia's Claim For Conversion Fails Because It Is No More Than a Demand For Payment Under The Retro Plan (Count Eleven) 39

VI. ALL OF COLUMBIA'S CLAIM FAILS AS A MATTER OF LAW AS ITS DAMAGES ARE SPECULATIVE 41

VII. NCRIC IS ENTITLED TO SUMMARY JUDGMENT ON THE AMENDED COMPLAINT 44

A. Summary Judgment is Appropriate for Insurance Contract Cases in Which The Contract Language is Clear and Unambiguous 44

B. Summary Judgment in Favor Of NCRIC on Liability is Proper 45

VIII. CONCLUSION 46

IX. ORAL ARGUMENT REQUEST 47

16d-001116

TABLE OF AUTHORITIES

CASES **PAGE(S)**

Alexis v. District of Columbia,
77 F. Supp. 2d 35 (D.D.C. 1999) 16

Alger Corp. v. Wesley,
355 A.2d 794 (D.C. 1976) 45

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986) 12

Art-Metal-U.S.A., Inc. v. United States,
753 F.2d 1151 (D.C. Cir. 1985) 12, 15

Atlantic States Construction Co. v. Robert E. Lee & Co.,
406 F.2d 827 (4th Cir. 1969) 12

Beard v. Goodyear Tire & Rubber Co.,
587 A.2d 195 (D.C. 1991) 12, 13

Bennett Enterprises, Inc. v. Domino's Pizza, Inc.,
45 F.3d 493 (D.C. Cir. 1995) 22, 24

Bennett v. Kiggins,
377 A.2d 57 (D.C. 1977) 37

Braden v. News World Communications, Inc.,
No. CA-10689'89, 1991 WL 161497 (D.C. Super. Mar. 1, 1991) 18, 19, 20

Burns v. City of Minneapolis,
No. 00-577 ADM/AJB, 2001 WL 1589619 (D. Minn. Dec. 11, 2001) 14

Byrd v. Allstate Insurance Co.,
622 A.2d 691 (D.C. 1993) 44

CACI International, Inc. v. Pentagon Technologies International, Ltd.,
Nos. 94-2058, 94-2220, 1995 WL 679952 (4th Cir. Nov. 16, 1995) 25

Cameron v. USAA Property & Casualty Insurance Co.,
733 A.2d 965 (D.C. 1999) 44, 45

Carr v. Brown ,
395 A.2d 79 (D.C. 1978) 24

16d-001117

Celotex Corp. v. Catrett,
477 U.S. 317 (1986) 12, 41

Citylink Group, Ltd. v. Hyatt Corp.,
729 N.E.2d 869 (Ill. App. Ct. 2000) 25

Coles v. Washington Free Weekly, Inc.,
881 F. Supp. 26 (D.D.C. 1995), aff'd, 1996 WL 303588, 319 U.S. App. D.C. 215, 88 F.3d 1278 (D.C. Cir. 1996) (text available in Westlaw) 15-16, 18

Columbus Properties, Inc. v. O'Connell,
644 A.2d 444 (D.D.C. 1994) 43

Curaflex Health Services, Inc. v. Bruni,
877 F. Supp. 30 (D.D.C. 1995) 39, 40

Democratic State Committee of the District of Columbia v. Bebchick,
706 A.2d 569 (D.C. 1998) 25

District of Columbia v. Barriteau,
399 A.2d 563 (D.C. 1979) 43

Executive Sandwich Shoppe, Inc. v. Carr Realty Corp.,
749 A.2d 724 (D.C. 2000) 41

Farrington v. Bureau of National Affairs, Inc.,
596 A.2d 58 (D.C. 1991) 17

Ford Motor Credit Co. v. Holland,
367 A.2d 1311 (D.C. 1977) 20

Fowler v. A&A Co.,
262 A.2d 344 (D.C. 1970) 41

Furash & Co. v. McClave,
130 F. Supp. 2d 48 (D.D.C. 2001) 40

Genetic System Corp. v. Abbott Laboratories,
691 F. Supp. 407 (D.D.C. 1988) 21, 22, 23

Golden Palace, Inc. v. NBC,
386 F. Supp. 107 (D.D.C. 1974), aff'd, 174 U.S. App. D.C. 242, 530 F.2d 1094 (D.C. Cir. 1976) 15, 17

Goldman v. Bequai,
19 F.3d 666 (D.C. Cir. 1994) 38

Granite Partners, L.P. v. Bear, Stearns & Co.,
17 F. Supp. 2d 275 (S.D.N.Y. 1998) 22

Guilford Transportation Industries, Inc. v. Wilner,
760 A.2d 580 (D.C. 2000) 18

Hall v. Ford Enterprises, Ltd.,
445 A.2d 610 (D.C. 1982) 34

Ibrahim v. University of the District of Columbia,
742 A.2d 879 (D.C. 1999) 41

Ives v. Guilford Mills, Inc.,
3 F. Supp. 2d 191 (N.D.N.Y. 1998) 13

Joseph v. Xerox Corp.,
594 F. Supp. 330 (D.D.C. 1984) 19

Keefe Co. v. Americable International, Inc.,
755 A.2d 469 (D.C. 2000) 28

Lakeshore Community Hospital, Inc. v. Perry,
538 N.W.2d 24 (Mich. Ct. App. 1995) 19

Lawson v. Commonwealth Land Title Insurance Co.,
518 A.2d 174 (Md. Ct. Spec. App. 1986) 40

Lucas v. United States Army Corps of Engineers,
789 F. Supp. 14 (D.D.C. 1992) 44

M.J.& K Co. v. Matthew Bender & Co.,
631 N.Y.S.2d 938 (App. Div. 1995) 23

Martin Marietta Corp. v. Evening Star Newspaper, Co.,
417 F. Supp. 947 (D.D.C. 1976) 19

National Life Insurance Co. v. Phillips Publishing, Inc.,
793 F. Supp. 627 (D. Md. 1992) 19

Neurotron, Inc. v. American Ass'n of Electrodiagnostic Medicine,
No. CIV. A. WMN-00-514, 2001 WL 1662089 (D. Md. Aug. 13, 2001) 19

Obelisk Corp. v. Riggs National Bank,
668 A.2d 847 (D.C. 1995) 42

Paul v. Howard University,
754 A.2d 297 (D.C. 2000) 28, 29

Pinto v. Internationale Set, Inc.,
650 F. Supp. 306 (D. Minn. 1986) 15

Q International Courier, Inc. v. Seagraves,
No. 95-1554 (RMU), 1999 WL 1027034 (D.D.C. Feb. 26, 1999) 15

Railan v. Katyal,
766 A.2d 998 (D.C. 2001) 34

Roberts-Douglas v. Meares,
624 A.2d 405 (D.C. 1992), modified, 624 A.2d 431 (D.C. 1993) 38

Sacks v. Rothberg,
569 A.2d 150 (D.C. 1990) 44, 45

Sheppard v. Dickstein, Shapiro, Morin & Oshinsky,
59 F. Supp. 2d 27 (D.D.C. 1999) 25

Sherman v. Adoption Center of Washington, Inc.,
741 A.2d 1031 (D.C. 1999) 11, 39

Smalls v. State Farm Mutual Automobile Insurance Co.,
678 A.2d 32 (D.C. 1996) 45

Steele v. Isikoff,
130 F. Supp. 2d 23 (D.D.C. 2000) 29, 31, 32

Szot v. Allstate Insurance Co.,
161 F. Supp. 2d 596 (D. Md. 2001) 14

United Educational Distributors, LLC v. Educational Testing Service,
No. 3436, 2001 WL 1719324 (S.C. Ct. App. Jan. 22, 2002) 23, 25

Van Dorn Retail Management, Inc. v. Sovran Bank/D.C. National, Inc.,
No. CIV. A. 90-2974 (JHG), 1991 WL 222061 (D.D.C. Oct. 9, 1997) 39-40

Witherspoon v. Phillip Morris, Inc.,
964 F. Supp. 455 (D.D.C. 1997) 34, 38

MISCELLANEOUS

D.C. Superior Court Rule 56(c) 45

D.C. Superior Court Rule of Civil Procedure 56(e) 11

Restatement (Second) of Torts § 649 (1977) 15

16d-001121

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC., Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar #8 Judge Blackburne-Rigsby Next Event: Motions Deadline -- February 7, 2002

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT FILED BY PLAINTIFF NCRIC, INC.

Pursuant to District of Columbia Superior Court Rules of Civil Procedure 12-I(e) and 56, plaintiff NCRIC, Inc. ("NCRIC") submits this memorandum of law in support of its motion for summary judgment against defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") in the above-captioned case.

I. INTRODUCTION

In October 2000, NCRIC filed a two page complaint against Columbia to recover amounts owed under a professional medical liability insurance program that Columbia and NCRIC had established in 1993 for physicians practicing medicine at Columbia. This program, the Retrospective Rating Plan ("the Retro Plan"), governs the relationship between the parties. Columbia responded with an eleven count counterclaim, seeking to hold NCRIC responsible for seemingly all of the financial problems at the hospital over the past few years. Columbia proffers nothing but speculation and conjecture to support its claim that NCRIC is responsible

for any physician deciding to admit patients elsewhere or that NCRIC is otherwise responsible for Columbia's related claims. Summary judgment for NCRIC is proper.

Columbia's participation in the community as a provider of medical services (primarily for women and children) over the past 130 years is well documented. Columbia cannot, however, be permitted to trade on its legacy to avoid its responsibility to NCRIC under the terms of the Retro Plan and to shift responsibility for its highly publicized financial problems to NCRIC.

In drafting its claims and in opposing NCRIC's motion to dismiss, Columbia used an abundance of florid language in an effort to cast itself as the unwitting victim in this case. When pressed for facts to support these claims during discovery, Columbia was forced to retreat. In fact, discovery revealed that Columbia's counterclaims are nothing more than its contract claim repackaged and restated.

Columbia also failed to provide any evidence concerning all but one category of damages, or to produce any evidence to contradict NCRIC's Retro Plan reconciliation calculations. Columbia even withdrew its designated expert on the issue of setting of loss reserves for medical malpractice claims in the District of Columbia. In short, even if Columbia could prove liability with respect to its counterclaims, Columbia still cannot prove damages. NCRIC is entitled to summary judgment on its Amended Complaint as well.

II. STATEMENT OF FACTS

A. BACKGROUND AND A PRIMER ON THE RETRO PLAN

In approximately 1993, Columbia requested that NCRIC work with it to create a malpractice insurance program for the physicians at the hospital to help reduce the cost to physicians through a sharing of malpractice risk between the hospital and physicians. See Fargis

Declaration, attached as Exhibit 2 ¶ 5. Columbia hoped this program would make physicians loyal to its facility and result in increased patient admissions. See Fargis Decl. ¶ 6.

NCRIC has not previously required, nor does it today require, a physician to admit patients at a particular hospital. That choice is strictly the decision of each physician. See Fargis Decl. ¶ 6.

The original three-year Retro Plan was administered and insured by NCRIC. See Exhibit 4. The Retro Plan provided a 19% (later increased to 30%) discount to physicians on their malpractice premiums. Columbia agreed to pay the amount of such discount should losses from claims under the Retro Plan reach a certain level. See Fargis Decl. ¶ 7.

A retrospective rating plan requires a "reconciliation" that looks back over the term of each year to compare the premiums to the claims to determine: (1) if additional premium amounts are due to the insurance company, because losses under the plan exceeded the physician premiums by a predetermined calculated amount ("Additional Premium"); or (2) if a return of premium is due the hospital, should losses have been less than the predetermined calculated amount ("Return Premium"). See Fargis Decl. ¶ 8.

Thus, the Retro Plan is driven by two key financial factors: (1) the premiums paid by the physicians; and (2) the claimed losses incurred by the physicians. See Fargis Decl. ¶ 13.[1]

The reconciliation includes setting a "reserve" amount for claims that represents the potential liability and the associated expenses of handling the claims, such as attorneys' fees and costs. NCRIC and Columbia agreed to defer making actual payments to one another until all claims arising in a certain year reached final resolution, i.e., until all of the pending claims were

1 The specific formula for calculating the Retro Plan premiums is included in paragraphs 14(a) through 17(c) of the Fargis Declaration.

closed. This was largely because the parties expressly recognized that reserve amounts could change, which would cause fluctuations in the reconciliation that could result in payments being made simultaneously between the parties at the time of a reconciliation. See Fargis Decl. ¶ 10.

Every three months, a reconciliation is made for each year of the Retro Plan to determine the amount of the Additional Premium or Return Premium. This is called the Retro Premium. Those calculations are, in part, based on open claims, and are correct to the best of NCRIC's knowledge. See Burgess Declaration, attached as Exhibit 1 ¶ 15. If an error is discovered during a subsequent calculation, that error would be corrected. See Fargis Decl. ¶ 20. To the extent an error is uncovered during a quarterly reconciliation of the Retro Plan, such an error would not impact Columbia because NCRIC and Columbia agreed not to pay any Additional Premium or Return Premium until the claims were closed. See Fargis Decl. ¶ 21.

To determine if the appropriate amount of premium was collected to pay losses under the Retro Plan, the Retro Premium (as calculated based on a preset formula and described further in the Fargis declaration as referenced in footnote 1) is then compared to the "Deposit Premium." If the Retro Premium is less than the Deposit Premium, Return Premium is due to Columbia. If the Retro Premium is more than the Deposit Premium, Columbia owes NCRIC Additional Premium to pay against the losses.[2] See Fargis Decl. ¶ 17.

B. CALCULATIONS UNDER THE RETRO PLAN

The Retro Plan originated as a three-year plan, beginning September 1, 1993. At that time, the plan provided that NCRIC would provide a 19% discount on malpractice insurance

[2] A "floor" and a "ceiling" are set to financially protect both Columbia and NCRIC from large swings in risk. To illustrate, if total losses were exorbitant (130% of total), then this would cap Columbia's risk. If losses were extremely favorable (60% of total), then NCRIC is protected. See Fargis Decl. ¶ 17(c).

premiums to physicians at Columbia. In December 1995, at the end of the second year of the Retro Plan, the reconciliation revealed it was expected that Columbia was due to be paid some Return Premium for the first year (1993-94) of the program. See Fargis Decl. ¶ 9.

C. THE RETRO PLAN IS AMENDED AND RENEWED IN 1996

In late 1995, Columbia requested that the Retro Plan be amended to increase the physicians' premium discount to 30%. See Ex. 5. NCRIC and Columbia negotiated the accompanying changes to the Deposit Premium, from 81% to 62%, to accommodate the increased discount. See Ex. 5. The parties amended the Retro Plan to reflect the revised discount and Deposit Premium in effect beginning January 1, 1996. See Ex. 6. The parties also agreed to renew the Retro Plan for one year effective September 1, 1996. See Fargis Deposition dated July 31, 2001, attached as Exhibit 45 ("Fargis II") at 416-17, 450.

D. THE RECONCILIATION PROCESS

In November 1996, NCRIC representatives met twice with Columbia's Finance Committee to present and explain the first reconciliation under the Retro Plan and to explain the 1996 revisions to the discount and premium calculations. See Ex. 7; Fargis Deposition dated July 30, 2001, attached as Exhibit 44 ("Fargis I") at 210-17. During these meetings, the NCRIC representatives explained that a Return Premium of approximately $159,000 was due to Columbia for the first year (1993-94), but Additional Premiums of approximately $417,000 were due to NCRIC for the next two years (1994-95 and 1995-96). See Ex. 7.

Because claims from these periods were still pending, these years were not yet "closed-out" and the calculations were subject to change with each subsequent reconciliation. See Fargis Dep. I at 211-12. NCRIC and Columbia recognized that if payments were exchanged at the time of each reconciliation as described in the Retro Plan, NCRIC and Columbia would

continuously exchange checks as the calculations changed up to the time that the year "closed-out." Id. The parties agreed to avoid such interim payments by exchanging money only when a year was "closed-out" under the plan. See Ex. 7; Fargis Dep. I at 214-15. Therefore, neither NCRIC nor Columbia made any payments under the Retro Plan as a result of the fall 1996 reconciliation.

E. COLUMBIA'S WELL KNOWN AND WELL PUBLICIZED FINANCIAL DIFFICULTIES

It cannot be reasonably disputed that the late 1990s were tough years for Columbia. In 1997, the hospital faced a crisis when its Board of Directors "imploded" in the midst of a conflict of interest and financial kickback scandal and the hospital was put into receivership. See Ben Ezra Deposition, attached as Exhibit 42, at 34-36. Columbia was also fighting a lawsuit by one of its largest creditors, The Bank of Tokyo-Mitsubishi, regarding Columbia's line of credit. See id. at 39. In early 1998, Columbia filed for reorganization under Chapter 11 of the United States Bankruptcy Code, in large part to stem a seizure of assets by the Bank of Tokyo. See id. at 38-39.

Media coverage in 1998 and 1999 recounted the history of Columbia's financial difficulties throughout the decade. See Ex. 11. The hospital dealt with increased pressures from the rise of managed care and competition from suburban hospitals, which resulted in decreased revenues at Columbia. See Ex. 11; Beaulieu Deposition, attached as Exhibit 41, at 78-80; Gasser Deposition, attached as Exhibit 48, at 66-68. Such competition was only set to increase as other local hospitals planned to expand their facilities. See Ex. 11.

Columbia emerged from bankruptcy in 1999, but continues to have financial difficulties. See Ben Ezra Dep. at 75-77. As a result of Columbia's cost-saving measures,

doctors at Columbia faced shortages of supplies and inadequate staffing. See Asterbadi Deposition, attached as Exhibit 40, at 133-35; Gasser Dep. at 120-21, 140; Ben Ezra Dep. at 176-77; Ex. 12. Columbia's admissions also continued to be lower than projected. See Ex. 21.

F. FOLLOWING COLUMBIA'S SOLICITATION OF OTHER INSURANCE COMPANIES, THE RETRO PLAN IS AMENDED AND RENEWED IN 1998

In 1997, Columbia and NCRIC began negotiations regarding the possible renewal of the Retro Plan. These negotiations were challenging due to Columbia's financial difficulties. Because of Columbia's impending bankruptcy, NCRIC and Columbia negotiated financial security for NCRIC of $1 million to cover part of Columbia's then-current liability under the Retro Plan. See Ex. 8; Ex. 9; Beaulieu Dep. at 45-47. Following approval by the D.C. Insurance Commission, NCRIC treated the $1 million payment as premium and credited Columbia with $1 million in paid premium on future Retro Plan calculations. See Ex. 33 & 37; Fargis Dep. I at 278.

Although the Retro Plan technically expired by its terms on September 1, 1997, NCRIC continued in good faith to provide physicians in the Retro Plan with the premium discount while NCRIC and Columbia negotiated renewal terms. The renewal was ultimately signed in January 1998. See Fargis Dep. II at 430-31. The 1996 changes also were reflected in this Addendum to the Retro Plan signed in January 1998 which extended the expiration of the Retro Plan to September 1, 1998. See Ex. 10. The modifications to the Retro Plan applied the revised 30% discount for claims in 1996, 1997 and 1998 and made appropriate mathematical changes to the Retro Premium calculations for those years. See id. at 5.

During 1998, while Columbia was in bankruptcy, Columbia's administration sought proposals from various insurance brokers regarding possible alternatives to a renewal of the Retro Plan. See Ex. 15. After reviewing the proposals, the Columbia Board of Directors

16d-001128

approved an insurance plan supplied by Medical Inter-Insurance Exchange ("MIIX") in August 1998. See Ex. 13. This program was presented to Columbia's medical staff.

In response to the MIIX proposal, NCRIC requested the opportunity to explain the relative benefits of a renewal of the Retro Plan over the MIIX proposal. Similar to presentations made to Columbia personnel by MIIX, NCRIC made a series of presentations to the Medical Staff at Columbia and the Board of Directors in late September and early October 1998 regarding a continuation of the Retro Plan. See Beaulieu Dep. at 94-95. At these meetings, NCRIC explained the history and operation of the Retro Plan and compared the various costs and benefits between the MIIX proposal and a renewal of the Retro Plan. See Ex. 14.

The Columbia Board of Directors subsequently withdrew its endorsement of the MIIX proposal (Ex. 17), in part, because many physicians at the hospital contacted the Board and stated that they wanted the hospital to renew a plan with NCRIC. See Beaulieu Dep. at 19-20. Most doctors cited long-standing relationships with NCRIC and a hesitancy to switch to a new carrier. See Beaulieu Dep. at 34-35. Columbia and NCRIC signed an amendment in December 1998 which renewed the Retro Plan until September 1, 1999. See Ex. 20.

In August 1998, NCRIC performed a reconciliation calculation that resulted in a Return Premium due to Columbia after the closure of all the claims from the first year of the program (1993-94). Because this year was now "closed out," NCRIC paid Columbia a Return Premium of $172,815 for 1993-94. See Ex. 18.

G. NEGOTIATION OF THE MEDICAL ENTITY POLICY

In October 1998, Columbia asked NCRIC to provide a proposal for a separate insurance policy which would cover doctors working in the ambulatory clinic at Columbia (the "Clinic") who were then covered under Columbia's Self Insured Trust. See Ex. 16. Following

negotiations, NCRIC issued the "Medical Entity Policy" effective December 1, 1998 to December 1, 1999. See Ex. 19. This policy was a standard group insurance policy which covered the physicians practicing medicine at Columbia's Clinic for professional liability in return for the payment of a set premium each year. See id.

H. 1999 RENEWALS OF THE RETRO PLAN AND MEDICAL ENTITY POLICY

In the fall of 1999, NCRIC and Columbia renewed both the Retro Plan and the Medical Entity Policy until September 1, 2000 and December 1, 2000, respectively. See Ex. 23; Sohm Deposition, attached as Exhibit 52, at 123.

I. ENDING OF THE RETRO PLAN IN 2000

During the spring of 2000, Columbia requested NCRIC propose a transitional plan to replace the Retro Plan with a new program which did not require retroactively calculated premiums. NCRIC proposed a method of "closing out" the Retro Plan and converting the program to a guaranteed cost contract which would discontinue the retroactive calculations from previous years of the Retro Plan. The parties negotiated the one-time cost that Columbia would have to pay to accomplish such a close out throughout the spring and summer of 2000. See Ex. 24. In July 2000, Columbia rejected NCRIC's condition of a close out payment of $750,000. See Ex. 25. Because negotiations appeared at an impasse, NCRIC informed Columbia that the Retro Plan would expire on its contractual end date of September 1, 2000. Id. Although both parties continued to negotiate a possible renewal of the Retro Plan in good faith, these discussions also failed to resolve the disagreements between the parties. See Ex. 29. NCRIC informed its insured physicians that the Retro Plan would expire on September 1, 2000. See Ex. 32.

As obligated under the Retro Plan, NCRIC performed a yearly reconciliation and sent the calculations with a request for payment of the Additional Premium due from Columbia on September 1, 2000. See Ex. 33. Since September 1, 2000, NCRIC has continued to provide Columbia with the proper quarterly and yearly calculation statements required by the Retro Plan, including a yearly reconciliation statement and request for Additional Premium due as of November 2001. See Ex. 37.

J. ENDING OF THE MEDICAL ENTITY POLICY

During the first half of 2000, NCRIC became aware that Columbia's Self-Insurance Trust Fund, which was responsible for paying Columbia's share of claims, was severely underfunded and could not support Columbia's financial obligations for these claims. See Wilson Deposition dated July 16, 2001, attached as Exhibit 54 ("Wilson II") at 305; Fargis Deposition dated January 10, 2002, attached as Exhibit 46 ("Fargis III") at 551, 830. As a result, on June 30, 2000, NCRIC notified Columbia that it would exercise its right to cancel the Medical Entity Policy effective August 15, 2000. See Ex. 26.

Columbia appealed the cancellation of the Policy to the D.C. Commissioner of Insurance. See Ex. 27. The D.C. Insurance Commission concluded that NCRIC legally canceled the policy. See Ex. 35. The Commission did provide an extension on the date of cancellation to September 15, 2000. See id.

Due to the underwriting and financial risks associated with Columbia's depleted Self-Insurance Trust Fund, on October 1, 2000, NCRIC issued an endorsement to the individual insurance policies of all doctors practicing at the Clinic. See Ex. 34. The endorsement excluded from coverage any activities in the Clinic after November 15, 2000. Id. Columbia again appealed to the D.C. Insurance Commission for reconsideration of its decision upholding the

16d-001131

cancellation of the Medical Entity Policy and challenging the validity of the individual exclusionary endorsements issued. The D.C. Insurance Commission ruled that NCRIC provided a proper and valid cancellation of the policy and was within its regulatory authority to issue the exclusionary endorsement. See Ex. 36.

K. CURRENT STATUS OF THE PARTIES

Columbia has not paid NCRIC any of the Additional Premium owed to NCRIC under the terms of the Retro Plan since September 1, 2000. See Rifka Deposition dated January, 21, 2002, attached as Exhibit 51 ("Rifka II") at 255. Based on the most recent calculation, Columbia owes NCRIC approximately $2.1 million, after applying the $1 million premium payment made by Columbia to secure continuation of the program in 1998. See Fargis Decl. ¶ 18; Ex. 37. At the expiration of the Retro Plan, Columbia provided its physicians with an insurance plan from another company which provides lower premiums for each doctor than did the Retro Plan. See Ex. 31; Fargis Decl. ¶ 19.

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when the moving party demonstrates that there is no genuine issue of material fact as to an element essential to the non-movant's case, and further, that the law as applied to those facts by the Court will render judgment in favor of the movant. D.C. Superior Court Rule of Civil Procedure 56(e). A party may succeed on its motion for summary judgment where: (1) taking all reasonable inferences in the light most favorable to the nonmoving party; (2) a reasonable juror, acting reasonably, could not find for the non-moving party; (3) under the appropriate burden of proof. Sherman v. Adoption Ctr. of Washington, Inc., 741 A.2d 1031, 1035 (D.C. 1999). The party against whom summary judgment is sought must then come forward with specific facts that demonstrate a genuine issue

16d-001132

with respect to that party's case, and on which that party will bear the burden at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

"The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). The party opposing summary judgment may not rest upon mere allegations or conclusory statements, but must set forth specific facts showing there is a genuine issue for trial. Beard v. Goodyear Tire & Rubber Co., 587 A.2d 195, 198-99 (D.C. 1991). "It is not the office of Rule 56 to preserve speculative issues of fact for trial." Atlantic States Constr. Co. v. Robert E. Lee & Co., 406 F.2d 827, 829 (4th Cir. 1969).

IV. NCRIC HAS NOT HARMED COLUMBIA'S BUSINESS REPUTATION OR ITS BUSINESS RELATIONSHIPS

A. COLUMBIA'S CLAIMS FOR DEFAMATION AND INJURIOUS FALSEHOOD FAIL AS A MATTER OF LAW (COUNTS NINE & TEN)

There is not a single material disputed issue of fact that prevents the Court from entering summary judgment in favor of NCRIC on Columbia's claims for defamation and injurious falsehood.[3] See Counterclaims ¶¶ 154-64. Columbia's inability to conclusively identify any NCRIC representative alleged to have made the statements is fatal to its claims. Moreover, even if the statements could be attributed to NCRIC, summary judgment for NCRIC as a matter of law is still required because: (1) the statements do not even concern Columbia; (2)

3 Columbia titles Count Ten "Trade Libel/Commercial Disparagement/Injurious Falsehood." See Counterclaim ¶¶ 159-64. As these are simply different names for the same claim, see Art-Metal-U.S.A., Inc. v. United States, 753 F.2d 1151, 1156 (D.C. Cir. 1985), NCRIC references the claim as injurious falsehood for simplicity.

16d-001133

they are true; (3) they are constitutionally protected opinions; and (4) there is no clear and convincing evidence that NCRIC acted with actual malice.

1. Columbia's Defamation and Injurious Falsehood Claims are Based on Unsupported Allegations

Relying solely on conclusory assertions and speculation, Columbia claims that NCRIC defamed Columbia based on alleged statements made in September 2000.[4] See Counterclaims ¶¶ 89, 154-58. Columbia further asserts that these statements, as well as others made in August 1998, give rise to a claim for injurious falsehood. Id. ¶¶ 159-64. Columbia has not identify a single NCRIC representative who allegedly made these statements. See, e.g., Rifka Deposition dated June 21, 2001, attached as Exhibit 50 ("Rifka I") at 113-17, 148-50; Rifka Dep. II at 223-25; Wilson Deposition dated June 27, 2001 attached as Exhibit 53 ("Wilson I") at 165-66; Gasser Dep. at 110-13.[5] This failure is fatal at summary judgment. See Beard v. Goodyear Tire & Rubber Co., 587 A.2d 195, 198 (D.C. 1991) ("[c]onclusory allegations by the nonmoving party are insufficient to establish a genuine issue of material fact or to defeat the entry of summary judgment"); Ives v. Guilford Mills, Inc., 3 F. Supp. 2d 191, 199 (N.D.N.Y.

4 Columbia's defamation claim based on the alleged 1998 statements is barred under the statute of limitations. See Memorandum Opinion dated July 3, 2001 at 5.

5 Dr. Asterbadi testified that NCRIC's Ray Pate specifically told him that Columbia's Self-Insurance Trust was insufficiently funded. See Asterbadi Dep. at 102-04. Similarly, Columbia's Mr. Wilson testified that Mr. Pate told him that if the Retro Plan were not in effect, Columbia would lose all of its physicians. See Wilson Dep. I at 168-69. As discussed below, these alleged statements can neither defame nor disparage Columbia because the former was a true statement (as Dr. Asterbadi himself acknowledges), see Asterbadi Dep. at 102-04, and the latter is no more than an opinion which cannot constitute defamation or injurious falsehood. Additionally, even if Mr. Pate made these statements, as he allegedly did in the privacy of Dr. Asterbadi's and Mr. Wilson's office, there is no evidence either defamed or disparaged Columbia.

16d-001134

1998) (dismissing defamation claim for failure to identify who at defendant company made the alleged statements).[6]

Columbia also claims that "rumors" in September of 2000, regarding the possibility of Columbia closing, caused harm to its reputation, and accordingly give rise to a claim for defamation and injurious falsehood. Again, there is no evidence that these rumors regarding the possible closure of Columbia were initiated by any NCRIC representative. Significantly, Dr. Rifka, testifying as a corporate representative on behalf of Columbia, admitted that "we don't know who started the rumors." See Rifka Dep. I at 40-41, 45, 118; Rifka Dep. II at 197-99; Wilson Dep. I at 172-73; Wilson Dep. II at 332-33. "Plaintiffs' vague allegations that . . . rumors about them were circulated around town are insufficient to state a claim for defamation." Burns v. City of Minneapolis, No. 00-577 ADM/AJB, 2001 WL 1589619, at *3 (D. Minn. Dec. 11, 2001); see also Szot v. Allstate Ins. Co., 161 F. Supp. 2d 596, 608 (D. Md. 2001) ("Plaintiff's references to the "rumor mill" . . . without more, is insufficient to establish a claim of defamation.").[7]

---

6 Dr. Rifka identified Dr. Glassman, a Columbia physician and NCRIC Board member, as a NCRIC individual who stated that physicians working in the clinic were not covered by NCRIC's insurance and that Columbia was going to close. See Rifka Dep. I at 119-20; Rifka Dep. II at 199-203. Dr. Asterbadi further identifies Dr. Glassman as stating that Columbia was going to close. See Asterbadi Dep. at 109-12. Both Dr. Rifka and Dr. Asterbadi were unable to identify a single physician to whom these words were spoken; and accordingly, there was no "publication" to a third person. Id. Moreover, both individuals admitted that they did not know if Dr. Glassman was even speaking on behalf of NCRIC; and, in fact, there is no evidence to even support an inference that he was. See Rifka Dep. I at 119; Rifka Dep. II at 201; Asterbadi Dep. at 110-12. Rather, all reasonable inferences support a finding that Dr. Glassman was speaking in his role as a Columbia physician. Dr. Glassman is alleged to have made both of these statements in the hospital cafeteria, hallways and/or Columbia's X-Ray department. Indeed, all inferences suggest that Dr. Glassman was working in his capacity as a Columbia physician during an ordinary work day at the hospital. There are simply no facts to support he was speaking as a NCRIC representative. See Rifka Dep. II at 152-53, 200-01.

7 Dr. Rifka admits that Columbia's allegations that NCRIC started these rumors are pure speculation, based on the mere fact that the rumors simply happened to surface at the same time that the NCRIC policy expired. See Rifka Dep. I at 40-44, 49.

2. Alleged Statements in August 1998 that do not Concern Columbia Cannot Disparage Columbia

Even if the Court considers the substance of the alleged statements made in August 1998, Columbia's injurious falsehood claim still fails as a matter of law. Columbia must demonstrate that NCRIC published false statements concerning Columbia's property or product. See Q Int'l Courier, Inc. v. Seagraves, No. 95-1554 (RMU), 1999 WL 1027034, at *7 (D.D.C. Feb. 26, 1999). Columbia asserts that in August 1998, NCRIC told the Columbia physicians:

> (1) MIIX would not remain in the District of Columbia insurance market; (2) that MIIX would not stand by its guarantee not to raise premiums for two years; (3) that MIIX was an unreliable insurance company; (4) that MIIX planned to raise premiums once it cornered the District of Columbia MMLI market; (5) that the MIIX proposal was a cronyism which would benefit members of [Columbia Board as opposed to] Attending Faculty; (6) that [Columbia] had lied to the Attending Faculty by stating that it could not afford to continue the Plan; and (7) that the lawyers with whom NCRIC contracted to defend physicians against medical malpractice claims would not work with MIIX.

See Counterclaim ¶ 69. Statements 1, 2 , 3 , 4 , 5 and 7 (listed above) do not even concern Columbia, but rather, MIIX, an unrelated third party.[8] Accordingly, as a matter of law, these statements cannot disparage any aspect of *Columbia's* business because they do not concern Columbia's business reputation.[9] See Golden Palace, 386 F. Supp. at 108; see also Coles v.

---

8 Moreover, not one of the alleged statements concern a "product or service" that Columbia provides. For example, there is no allegation that NCRIC made disparaging statements regarding the quality of Columbia's patient care or the quality of the Columbia physicians. Columbia's attempt to put forth these alleged statements as a basis for its claim for injurious falsehood simply does not fit the claim and must be rejected. See, e.g., Golden Palace, Inc. v. NBC, 386 F. Supp. 107, 108 (D.D.C. 1974), aff'd, 174 U.S. App. D.C. 242, 530 F.2d 1094 (D.C. Cir. 1976) (characterizing tort of injurious falsehood as a disparagement of the "quality of property"); Art-Metal, 753 F.2d at 1155 n.6 (tort protects against false statements that disparage the plaintiff's interest in "land, chattels, or intangibles"); Pinto v. Internationale Set, Inc., 650 F. Supp. 306, 309 (D. Minn. 1986) ("Plaintiffs do not allege that defendant has libeled their products, but that it has defamed their reputations as business people. This is not trade libel, but slander.").

9 Additionally, NCRIC cannot be liable for injurious falsehood for the alleged statements regarding MIIX because the statements are subject to a conditional privilege of competitors. See Restatement (Second) of Torts § 649 (1977) ("A competitor is conditionally privileged to make an unduly favorable comparison of the quality of his own . . . things, with the quality of the competing . . . things of a rival competitor . . if the comparison does not contain false

16d-001136

Washington Free Weekly, Inc., 881 F. Supp. 26, 32 (D.D.C. 1995) (no defamation where statements do not describe plaintiff), aff'd, 1996 WL 303588, 319 U.S. App. D.C. 215, 88 F.3d 1278 (D.C. Cir. 1996) (text available in Westlaw).

The alleged statements to physicians that the MIIX proposal was a cronyism which would benefit members of Columbia's Board, and that Columbia lied about its ability to afford to continue the Plan, do not constitute injurious falsehood. The minimal evidence concerning these statements could only support a finding that, even if spoken, the statements were directed at Dr. Asterbadi and Dr. Rifka in their individual capacities. Dr. Rifka acknowledged that these alleged statements concerned Dr. Asterbadi, a Columbia board member, and the implication that Dr. Asterbadi would benefit individually from the MIIX proposal because of a familial connection. See Rifka Dep. II at 149-54; Asterbadi Dep. at 55, 61, 92-93. Applicable law requires more. "Defamation is personal . . . [and] [a]llegations of defamation by an organization or a group and its members are not interchangeable." Alexis v. District of Columbia, 77 F. Supp. 2d 35, 40 (D.D.C. 1999). The same is true for injurious falsehood. There can be no disparagement because the alleged statements were not even directed at Columbia. The August 1998 statements, taken individually or as a whole, do not support Columbia's injurious falsehood claim.

3. Columbia Cannot Prove Defamation or Injurious Falsehood Based on True Statements

The statements alleged to have been made in 2000 do not support a claim for defamation or injurious falsehood because, even if Columbia could prove they were published by

---

assertions of specific unfavorable facts regarding the rival competitor's things."). NCRIC's presentations to the Columbia Medical Staff and Board of Directors simply compared the various costs and benefits between the it and its competitor, MIIX. The alleged statements are clearly privileged communications. constitute injurious falsehood.

a NCRIC representative, they are true -- a complete defense to Columbia's claims. See Farrington v. Bureau of Nat'l Affairs, Inc., 596 A.2d 58 (D.C. 1991) (defamation); Golden Palace, 386 F. Supp. at 108 (injurious falsehood). Columbia alleges that in September 2000, NCRIC made the following statements:

> (1) that the [Medical Entity] Policy had expired; (2) that CPG physicians ... were not covered by NCRIC's [individual insurance] policy while practicing at the [ambulatory clinic]; (3) that [Columbia's] self-insurance trust was insufficiently funded to insure the [physicians], and (4) that [Columbia's] ambulatory clinic was a dangerous place to work.

See Counterclaim ¶ 89. It is undisputed that the Medical Entity Policy was no longer in effect after September 15, 2000. See Counterclaim ¶¶ 86; see also Rifka Dep. I at 145-46; Wilson Dep. II at 310-11. In addition, all of the evidence in the record establishes that Columbia's Self-Insurance Trust was, in fact, insufficiently funded. See Ben Ezra Dep. at 126-27; Wilson Dep. II at 305; Rifka Dep. I at 146; see also Ex. 30 ("The depletion of the Reserve Fund did have a direct ominous [e]ffect on the medical staff."). Accordingly, these statements were truthful at the time they were allegedly made and do not give rise to a claim of defamation or injurious falsehood.

Additionally, despite perhaps the doubts and dissatisfaction of certain Columbia individuals, it is undisputed that individual NCRIC insurance policies did not cover the CPG physicians for care provided in the ambulatory clinic under the endorsements issued for these policies. See Rifka Dep. I at 47-48; Rifka Dep. II at 218-19; Hempelman Deposition, attached as Exhibit 49, at 36-37; Ex. 34. Again, apart from unsupported assertions, Columbia has not put forth any evidence to the contrary. See Wilson Dep. I at 153; Gasser Dep. at 95-97.

Finally, Columbia alleges that in September 2000, NCRIC told physicians that Columbia's ambulatory clinic was a "dangerous" place to work. See Counterclaim ¶ 89. It is

16d-001138

undisputed that Columbia uses "dangerous" not to refer to whether the clinic was a "safe" place to work, but rather to the fact that Columbia physicians would be uninsured for providing care there. See Rifka Dep. I at 140-41. There is no evidence that any representative from NCRIC actually stated that the clinic was a dangerous place to work. See, e.g., Gasser Dep. at 110-111; Rifka Dep. I at 142; Rifka Dep. II at 225; Wilson Dep. I at 165-66; Wilson Dep. II at 309-10. Rather, Columbia infers that the statement was made, based upon its belief that NCRIC stated that the Self-Insurance Trust was insufficiently funded, plus the fact that the NCRIC policy did not cover the Columbia physicians for care provided in the Clinic. See Wilson Dep. II at 302-03. As discussed above, both of the underlying statements were true. Accordingly, even if an inference could be construed as a statement made by NCRIC, it still does not support a claim for defamation or injurious falsehood.[10]

4. Columbia Cannot Establish that NCRIC Acted with Actual Malice

Even if Columbia can overcome each and every hurdle discussed above, Columbia's defamation and injurious falsehood claims fail because there is no evidence that NCRIC acted with malice in making the alleged statements. See Braden v. News World Comm., Inc., No. C.A.-10689'89, 1991 WL 161497, at *10 (D.C. Super. Mar. 1, 1991) (malice is a question of law). It is well-established that where a plaintiff claiming either defamation or injurious falsehood is a public figure, it bears the burden of proving, by clear and convincing

10 Yet another basis for awarding summary judgment in favor of NCRIC on Columbia's defamation claim is that the alleged statements are simply opinions that do not contain or imply a provable false fact and are not capable of bearing a defamatory meaning. See Coles, 881 F. Supp. at 33 ("'[A]n alleged defamatory remark must be more than unpleasant or offensive; the language must make the plaintiff appear "odious, infamous, or ridiculous'") (citation omitted); Guilford Transp. Indus., Inc. v. Wilner, 760 A.2d 580 (D.C. 2000). Whether a challenged statement is capable of being proven true or false is a question of law for the Court. See Coles, 881 F. Supp. at 31 n.5 (citation omitted).

evidence, that the defendant made the statements with actual malice. Braden, 1991 WL 161497, at *10; Neurotron, Inc. v. American Ass'n of Electrodiagnostic Med., No. Civ. A. WMN-00-514, 2001 WL 1662089, at *5 (D. Md. Aug. 13, 2001) (injurious falsehood). Determination of whether the plaintiff is a public figure is also a question of law for the Court to decide. See Braden, 1991 WL 161497, at *8.

Columbia is a public figure. Dr. Rifka testified, as a corporate representative, that:

> [Columbia] attract[s] patients from everywhere, overseas, across the continents, across the beltway, point in fact, across the country. People from the Midwest come and do procedures with [Columbia] . . . [Columbia is only] one out of four remaining hospitals for women in the country.

See Rifka Dep. I at 65-68. Because Columbia's reputation reaches beyond its local community, and it is nationally recognized for the care it provides in such areas as high-risk pregnancy and infertility, id., it is a public figure. See Martin Marietta Corp. v. Evening Star Newspaper, Co., 417 F. Supp. 947, 955-56 (D.D.C. 1976) (it is not necessary to establish that the plaintiff corporation is a "household word" to be a public figure); see also Lakeshore Community Hosp., Inc. v. Perry, 538 N.W.2d 24, 28 (Mich. Ct. App. 1995) (hospital is "public figure" where it "assumed the role of being a prominent and critical component of the health care delivery system in the community").[11]

11 Even if the Court determines that Columbia is not a public figure, it cannot be disputed that Columbia is a "limited public figure" which similarly requires a showing, by clear and convincing evidence, that NCRIC acted with actual malice. See Joseph v. Xerox Corp., 594 F. Supp. 330 (D.D.C. 1984). In determining whether Columbia is a limited public figure, the Court must decide (1) whether a public controversy existed; (2) whether Columbia thrust itself into the forefront; and (3) whether the alleged defamation concerned Columbia's role in the controversy. See id. at 332; Martin Marietta, 417 F. Supp. at 955-57. The alleged defamatory statements certainly concern an issue of public controversy, i.e. whether Columbia physicians were covered by medical malpractice insurance, an issue which Columbia cannot dispute it was intimately and pervasively involved. See National Life Ins. Co. v. Phillips Publ'g, Inc., 793 F. Supp. 627 (D. Md. 1992) (holding insurance company to be limited public figure required to establish malice in defamation action).

16d-001140

Because Columbia is a public figure, it must establish, by clear and convincing evidence, that NCRIC acted with malice -- that it knew the statements were false when made or acted with reckless disregard of whether the statements was true or not. Braden, 1991 WL 161497, at *10 (actual malice required regardless of whether defendant is a media or non-media defendant).

Even if the Court determines that a disputed issue of material fact exists as to whether the alleged statements were false, there is no evidence that NCRIC knew this at the time they were allegedly published. See Wilson Dep. II at 305-06, 319; Rifka Dep. II at 213. Columbia has clearly not met its burden in demonstrating, by clear and convincing evidence, that NCRIC acted with actual malice at the time it made the alleged statements. See Ford Motor Credit Co. v. Holland, 367 A.2d 1311 (D.C. 1977) (recognizing that the burden is upon the plaintiff to prove malice whenever it is a necessary element in a defamation action). This is not a case of knowing falsity or reckless disregard for the truth. It is at best a case of harsh opinion on truth, and mere harsh opinion does not result in liability for defamation. Counts Nine and Ten must fail.

B. COLUMBIA'S TORTIOUS INTERFERENCE CLAIMS FAIL AS A MATTER OF LAW (COUNTS FOUR & FIVE)

Columbia asserts that NCRIC tortiously interfered with its business relationships with Columbia's attending faculty,[12] as well as Columbia's expectancy of relationships with

---

12 Columbia alleges that NCRIC interfered with the business relationships of "certain physicians" associated with Columbia. See Counterclaims ¶¶ 112-28. There can be no dispute that these alleged relationships include only those with attending faculty. While Mr. Wilson attempts to include non-attending faculty members in this category, see Wilson Dep. II at 244-45, there is absolutely no evidence that non-attending faculty ceased referring patients to the hospital as a result of anything NCRIC was alleged to have done. Indeed, the only damages Columbia claims are based on alleged interference with the relationships of attending faculty. See Expert Report of Peter Ben Ezra, attached as Exhibit 39.

16d-001141

"resulting patient referrals." See Counterclaim ¶¶ 123-28 ("Tortious Interference with Business Relations") and ¶¶ 129-34 ("Tortious Interference with Prospective Business Advantage"). Both of these claims are based on (1) the alleged defamatory statements disputed above; (2) conclusory assertions that NCRIC urged physicians to leave Columbia; and (3) the simple fact that NCRIC decided not to renew the Retro Plan. There is absolutely no evidence that NCRIC caused any member of Columbia's attending faculty (and consequently, any prospective patients of these faculty members) to terminate their business relationships with Columbia. Moreover, even if Columbia can establish a material issue of disputed fact as to causation, Columbia cannot prove that NCRIC acted with the requisite intent to interfere with these relationships. Finally, Columbia's claim for tortious interference with prospective business advantage should also be dismissed because the underlying expectancy is speculative. There are no material issues of disputed facts as to any of these issues and therefore, the Court should grant NCRIC judgment as a matter of law on both of Columbia's tortious interference claims.

1. Columbia Cannot Prove NCRIC Caused any Physicians to Terminate Their Relationship With the Hospital

In order to succeed on a claim for tortious interference with business relations or prospective business advantage, Columbia must prove:

> (1) the existence of a valid business relationship or expectancy; (2) knowledge of the relationship or expectancy on the part of [NCRIC]; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage.

See Genetic Sys. Corp. v. Abbott Labs., 691 F. Supp. 407, 422-23 (D.D.C. 1988). Columbia attempts to hold NCRIC responsible for any physician who may have left Columbia from September 2000 through September 2001 -- irrespective of the physician's motivation. There is

not a single piece of evidence demonstrating that any physician terminated his or her relationship with Columbia because of the alleged defamatory statements discussed above. See Wilson Dep. I at 204-06; Wilson Dep. II at 273-75 (no knowledge as to whether physicians left Columbia based on alleged defamatory statements); Rifka Dep. I at 96-97 (speculating that physicians left Columbia based on alleged defamatory statements); Asterbadi Dep. at 165-66 (same). See also Granite Partners, L.P. v. Bear, Stearns & Co., 17 F. Supp. 2d 275, 293 (S.D.N.Y. 1998) (finding that conclusory allegation without any relevant supporting facts insufficient for tortious interference claim).

Additionally, contrary to Columbia's bare assertions, there is no evidence that Columbia physicians left because NCRIC representatives urged them to do so or because NCRIC decided not to renew the Retro Plan. Again, all the record reveals is repeated speculation. See Asterbadi Dep. at. 132-33; Gasser Dep. at 59, 155-56; Wilson Dep. I at 195-98; Rifka Dep. II at 238-45. Summary judgment in favor of NCRIC is warranted.

2. Columbia Cannot Prove NCRIC had the Requisite Intent to Establish a Tortious Interference Claim

Even if Columbia can establish a material issue of disputed fact regarding causation, Columbia's tortious interference claims fail because there is no evidence that NCRIC engaged in the type of "egregious" conduct required under the law. See Genetic Sys., 691 F. Supp. at 423. "'A general intent to interfere or knowledge that conduct will injure the plaintiff's business dealings is insufficient to impose liability.'" Bennett Enters., Inc. v. Domino's Pizza, Inc., 45 F.3d 493, 499 (D.C. Cir. 1995) (citation omitted). Rather, Columbia must prove that NCRIC's conduct was "more egregious, for example, it must involve libel, slander, physical coercion, fraud, misrepresentation, or disparagement." Genetic Sys., 691 F. Supp. at 423.

As a threshold, because Columbia's defamation and injurious falsehood claims fail as a matter of law, so too must its tortious interference claims to the extent they rely on those alleged statements. See pp. 12-20 above. Any statements that can be attributed to NCRIC (which, as discussed above, Columbia has clearly not established) would constitute truthful disclosures and statements in the regular course of business which do not serve as a basis for tortious interference. See M.J.& K Co. v. Matthew Bender & Co., 631 N.Y.S.2d 938, 940 (App. Div. 1995) ("mere contentions that third parties canceled contracts with them because of the alleged defamatory remarks made by [defendant's] representatives, offered with no factual basis to support the allegations," insufficient to state a claim for tortious interference).

As discussed above, Columbia further alleges that NCRIC tortiously interfered with the business relationships between Columbia and its physicians based on allegations that NCRIC urged members of Columbia's attending faculty to move their practices from Columbia to a competitor. Even if NCRIC did "urge" Columbia physicians to move to competitors, this is clearly not the type of "egregious conduct" that has been held sufficient for a tortious interference claim. The law requires more. See Genetic Sys., 691 F. Supp. at 423; accord United Educ. Distribs., LLC v. Educational Testing Serv., No. 3436, 2001 WL 1719324 (S.C. Ct. App. Jan. 22, 2002) (no intentional interference absent evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with third parties).

Even if urging physicians to leave Columbia was held to constitute the type of egregious conduct required, there is still not a shred of evidence demonstrating that NCRIC engaged in such behavior. See, e.g., Gasser Dep. at 117. Columbia fails to identify a single NCRIC representative who urged any physician to leave Columbia. See Asterbadi Dep. at 130. In fact, as discussed above, there is no evidence to demonstrate the precise reasons any

16d-001144

physicians may have left Columbia. See Wilson Dep. II at 307-08, 320-21. "Nothing in the evidence supports more than the rankest speculation that [NCRIC] or anyone acting on its behalf harbored any ill motive or intent to disrupt [Columbia's] economic advantage." Bennett Enters., Inc., 45 F.3d at 499.

Finally, NCRIC's decision to let the Retro Plan end cannot serve as a basis for a tortious interference claim because it is not a tortious act, and certainly not an "egregious" act. It is undisputed that NCRIC was not legally obligated to renew the Retro Plan. See Wilson Dep. I at 199-201; Wilson Dep. II at 407. Failure to renew the Retro Plan was a perfectly appropriate and lawful act that does not, in any way, amount to the egregious type of conduct required for a tortious interference claim. Perhaps even more significant is the undisputed fact that, failure to renew the Retro Plan did nothing to prevent doctors from continuing to admit at Columbia. See Fargis Decl. ¶ 6. The decision not to renew the Retro Plan did not tortiously interfere with either Columbia's relationships with its physicians or the resulting referrals by those physicians.

3. NCRIC Cannot Tortiously Interfere with Speculative Business Relationships (Count Five)

Columbia also asserts that NCRIC tortiously interfered with the expectancy of business relations with patients who would be referred by Columbia physicians. These speculative business expectancies are not enough to establish a claim for tortious interference with prospective business advantage. Specifically, D.C. law requires Columbia establish to that the expectancies are "commercially reasonable to anticipate." Carr v. Brown, 395 A.2d 79, 84 (D.C. 1978) (holding that expectancies must be based upon "business experience on the basis of which it is possible to estimate with some fair amount of success both the value of what has been lost and the likelihood that plaintiff would have received it had the defendant not interfered")

(citation omitted); see also Democratic State Comm. of the District of Columbia v. Bebchick, 706 A.2d 569 (D.C. 1998) (rejecting claim for interference with prospective business advantage where expectancies claimed were too remote).

To illustrate, in Sheppard v. Dickstein, Shapiro, Morin & Oshinsky, 59 F. Supp. 2d 27 (D.D.C. 1999), the Court rejected a claim for tortious interference with prospective business advantage where the plaintiff only proved "that defendants may have interfered with business expectations associated with his current employer relationship," but did not have evidence of "a specific, future relationship with Dickstein." Id. at 34; see also United Education, 2001 WL 1719324, at **3-4 (citing cases requiring plaintiff to identify future agreements or contracts that "must be a close certainty").

Similarly, Columbia cannot demonstrate that NCRIC interfered with a "specific, future relationship." Rather, as discussed above, Columbia cites to speculative future business expectancies with patients that certain physicians (who were not hospital employees) might refer to Columbia.[13] See CACI Int'l, Inc. v. Pentagon Techs. Int'l, Ltd., Nos. 94-2058, 94-2220, 1995 WL 679952, at *5 (4th Cir. Nov. 16, 1995) (finding no reasonable expectancy because the plaintiff failed to show "at best, speculative contractual expectations"); Citylink Group, Ltd. v. Hyatt Corp., 729 N.E.2d 869, 877 (Ill. App. Ct. 2000) (rejecting tortious interference claim, in part, based on, plaintiffs' failure to "allege that any other clearly identified group was 'contemplating prospective contractual arrangements' with plaintiffs") (citation omitted).

---

13 Moreover, because Columbia cannot cite to any specific future business expectancy, it cannot establish that NCRIC had knowledge of that expectancy, which is another element of Columbia's tortious interference claim. See pp. 25-26 above.

Columbia's claimed expectancy is too remote under the law, and NCRIC is entitled to judgment on Columbia's claim of tortious interference with prospective advantage.

V. COLUMBIA'S RETRO PLAN BASED CLAIMS FAIL AS A MATTER OF LAW

A. COLUMBIA HAS NO CREDIBLE EVIDENCE THAT NCRIC BREACHED THE RETRO PLAN OR THAT COLUMBIA HAS SUFFERED COMPENSABLE DAMAGES (COUNT ONE)

1. NCRIC was not Required to Maintain Loss Reserves <u>According to any "Insurance Industry Standard"</u>

Columbia's repeated assertion that NCRIC was required to set and maintain loss reserves "according to the insurance industry standard" is incorrect and, therefore, as a matter of law, this cannot form the basis of a breach of the Retro Plan. <u>See</u> Counterclaim ¶¶ 35, 38, 142, 148. The Retro Plan requires that NCRIC set loss reserves in the "normal and ordinary course of the Company's business," without consideration of the physician's status as a Retro Plan participant. <u>See</u> Ex. 4 ¶ 7. There is no language in the Retro Plan (or in any amendments) which requires NCRIC to abide by some amorphous and unstated "industry standard." Columbia does not allege that NCRIC treated Retro Plan physicians less favorably in setting loss reserves for claims than NCRIC treated claims under other insurance policies. <u>See</u> Gaffey Deposition dated August 7, 2001 attached as Exhibit 47, at 73-75. Columbia cannot base its breach of contract claim on NCRIC's alleged disregard of "industry standards" when such conduct is simply not required by the Retro Plan as negotiated by the parties. Indeed, Columbia admits that no individual at NCRIC told Columbia that "industry standards" would be used when calculating loss reserves. <u>See</u> Wilson Dep. II at 321-22.

However, even if the Court looks past the language of the Retro Plan and finds a disputed issue of material fact regarding whether NCRIC was to set loss reserves by the use of

16d-001147

"industry standards," Columbia's claim still fails because the undisputed evidence supports a finding that NCRIC did so. Indeed, the only credible evidence concerning this issue is the testimony and declaration of William Burgess, NCRIC's Senior Vice-President for Claims and Risk Management, who testified at length as to the process of setting loss reserves and the fact that NCRIC's loss reserves were set properly. See Burgess Deposition dated August 8, 2001 attached as Exhibit 43, at 57-61; Burgess Declaration, attached as Exhibit 1 ¶¶ 6-13. Because Columbia cannot set forth any specific facts to counter this evidence, and withdrew the expert witness designated to testify on this point, summary judgment in favor of NCRIC is proper.

2. NCRIC Properly Calculated the Retro Premium

Columbia also alleges NCRIC breached the Retro Plan based upon a series of alleged mistakes in the calculation of the Retro Premium in the quarterly reports and annual reconciliation. Columbia alleges that NCRIC used a "greater percentage of its Loss Reserves" than it was allowed to consider (Counterclaim ¶ 39), "added extra years" of the Plan and/or "reconcil[ed] too few years" in its calculations (Counterclaim ¶ 40), did not apply the corrected Deposit Premium (Counterclaim ¶¶ 41, 49), and did not apply the proper Minimum Premium (Counterclaim ¶¶ 41, 53).

NCRIC has demonstrated that each reconciliation was properly calculated.[14] See Fargis Decl. ¶¶ 20-21; Burgess Decl. ¶ 15. Columbia, however, lacks any evidence -- documents, lay testimony, or expert testimony-- to prove that NCRIC miscalculated any of these factors in breach of contract. While Columbia lists the problems it perceives with

14 As discussed above, mistakes in calculation which might have occurred would not rise to the level of a material breach of contract because they were corrected or compensated for in the course of the cumulative reporting of the Retro Plan before any money changed hands.

the calculations, there is simply no fact in the record to show how NCRIC improperly made the calculations, or facts to show how any miscalculation prejudiced or damaged Columbia. Mere unsupported assertions by Columbia witnesses that they think the numbers were wrong do not create a material issue of fact which precludes summary judgment. See Paul v. Howard Univ., 754 A.2d 297, 305 (D.C. 2000).

3. NCRIC Properly Reported Loss Reserves

Columbia further contends that NCRIC breached the Retro Plan by refusing to provide Columbia with reports concerning the loss reserves as required under the Plan. See Counterclaim ¶ 37. The undisputed facts demonstrate that NCRIC provided Columbia with quarterly reports reflecting the current status of claims under the Retro Plan.[15] See Ex. 22; Burgess Deposition, attached as Exhibit 43, at 74-76. These reports contained information on claims filed in each year including: (1) any actual amounts of indemnity or expenses paid; (2) total indemnity and expenses reserves; and (3) the status of each of those claims. See Ex. 22. Indeed, it was at Columbia's request that the parties did not always meet to discuss the quarterly reports which NCRIC provided.[16] See Burgess Dep. at 98-99.

15 Columbia also complains that NCRIC refused to provide reports of loss reserves for individual claims. See Wilson Dep. II at 399; Gaffey Dep. at 62, 66. The Retro Plan, however, only requires that NCRIC provide the "aggregate amount of losses reserved," not the reserves for each case. See Ex. 4 ¶ 10.

16 Even if Columbia could produce credible evidence that NCRIC failed to provide these reports was a breach of the Retro Plan, this Court should find, as a matter of law, that NCRIC's failure was not material. The Retro Premium was calculated on an interim basis using the aggregate loss reserves for each year. Information about individual loss reserves would simply allow Columbia to check NCRIC's addition, but would not materially affect the performance of contractual duties by either party or frustrate the purpose of the contract. See Keefe Co. v. Americable Int'l, Inc., 755 A.2d 469, 475 (D.C. 2000). Moreover, any final payment of Retro Premium was based upon actual losses, not loss reserves. See Burgess Decl. ¶ 16; Fargis Decl. ¶ 21.

16d-001149

4. Columbia has not Suffered any Damages Based on NCRIC's Conduct

Even assuming Columbia can put forth a material disputed fact as to whether NCRIC improperly set reserves, somehow violated industry standards, or made mistakes in the Retro Premium calculations, its breach of contract claim still fails as a matter of law because there is no dispute that Columbia cannot prove damages resulting from these alleged breaches. Columbia's assertion that it was forced to file bankruptcy based on an alleged overpayment of Additional Premium (Counterclaim ¶ 109), is contradicted by its own witnesses who testified that the reasons for the Chapter 11 filing were not based on any actions by NCRIC. See Ben Ezra Dep. at 38-39; Beaulieu Dep. at 74; Gasser Dep. at 73-74; Wilson Dep. II at 325-26. Moreover, loss reserves and interim miscalculations could not cause any damages to Columbia as the parties agreed to delay any payment until all claims were closed-out in the subject year. See pp. 3-4, footnote 16 above. No reasonable juror could find that NCRIC breached the contract, or, even if it did, that Columbia suffered damages as a result. Summary judgment in favor of NCRIC on Columbia's breach of contract claim is proper.

B. NCRIC DID NOT BREACH THE IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING IN ITS ADMINISTRATION OF THE RETRO PLAN (COUNT TWO)

Columbia alleges that NCRIC has acted "unfairly and in bad faith" in breach of its implied duty of good faith and fair dealing. See Counterclaim ¶ 114-15. Under D.C. law, a party to a contract breaches an implied duty of good faith and fair dealing in a contract only by "'evading the spirit of the contract, willfully rendering imperfect performance or interfering with the other party's performance.'" See Steele v. Isikoff, 130 F. Supp. 2d 23, 32 (D.D.C. 2000) (citation omitted); Paul v. Howard Univ., 754 A.2d 297, 310 (D.C. 2000). Columbia's claim

fails as a matter of law because there is not a shred of evidence that NCRIC acted in such a manner.

NCRIC has presented the Court with credible evidence that it properly performed its obligations under the Retro Plan. As discussed above, NCRIC provided the required reports to Columbia, properly maintained all loss reserves, and properly calculated the Retro Premium. See pp. 27-29 above; Fargis Decl. ¶¶ 20-21; Burgess Decl. ¶ 15. Columbia has no evidence to support its assertions that NCRIC's calculations "grossly overstate[d]" the amount of Additional Premium projected when NCRIC asked for $1 million financial security before Columbia filed for bankruptcy in 1998. See Counterclaim ¶¶ 57, 58, 115. Indeed, Columbia's own testimony shows that the $1 million payment was negotiated between the parties. See Beaulieu Dep. at 44-49. Additionally, there is no evidence that NCRIC forced Columbia to renew the Retro Plan at any time. See id. at 26, 32-34. There is simply no proof that NCRIC willfully rendered imperfect performance in contempt of the implied duty of good faith and fair dealing.[17]

There is also no evidence that NCRIC failed to provide the negotiated discounted insurance premiums to Columbia physicians under the Retro Plan and, as such, Columbia cannot claim NCRIC "evaded the spirit of the contract." Indeed, NCRIC even extended the discount while renewal negotiations were pending as a show of good faith. See p. 7 above. NCRIC also accommodated Columbia's precarious financial situation by agreeing to wait until years were closed-out to charge Columbia with any Additional Premium under the Retro Plan. See pp. 5-6

17 To the extent that Columbia relies upon its allegations that the NCRIC's cancellation of the Medical Entity Policy and issuance of endorsements regarding coverage in the Columbia Clinic were "retaliatory" in support of its claims for breach of contract, breach of the implied duty of good faith, and/or breach of fiduciary duty, such reliance is misplaced. As stated above, the Medical Entity Policy was a wholly separate negotiated contractual arrangement between the parties which did not affect the Retro Plan. See p. 9 above. Moreover, the D.C. Insurance Commission has repeatedly upheld NCRIC's actions as valid and within NCRIC's legal rights. See pp. 10-11 above.

above. Such a modification of payment terms indeed reflected the spirit of the contract to limit Columbia's payments to actual losses for claims filed under the Retro Plan. There is no evidence to suggest otherwise.

Even if NCRIC's actions could be characterized as "heavy handed" as Columbia suggests, they did not rise to the level of the implied duty under D.C. law. See Wilson Dep. I at 135-39 (acknowledging that NCRIC did not interfere with Columbia's performance under the Retro Plan). Again without facts to support its allegations, Columbia's claim alleging a breach of the implied duty of good faith and fair dealing fails as a matter of law.

C. COLUMBIA'S FIDUCIARY DUTY CLAIM FAILS AS THE PARTIES ARE SOPHISTICATED BUSINESS ENTITIES WHOSE RELATIONSHIP IS GOVERNED BY THE TERMS OF THE RETRO PLAN (COUNT THREE)

Columbia alleges that NCRIC breached an alleged fiduciary duty to Columbia under the Retro Plan because: (1) NCRIC had responsibility for bookkeeping functions; (2) Columbia placed "trust and reliance" on NCRIC to administer the plan; (3) Columbia relied on NCRIC to perform reconciliations to accurately calculate Additional or Return Premium; and (4) Columbia depended on NCRIC for certain information necessary to perform calculations under the Plan. See Counterclaim ¶ 119.

These purported bases for a finding of fiduciary duty fail as a matter of law because they merely reflect contractual terms negotiated at arms length. D.C. law does not provide for the creation of a fiduciary duty in this context. "The mere existence of a contractual relationship is ordinarily insufficient to give rise to a fiduciary duty." Steele, 130 F. Supp. 2d at 36. All that exists in this case between NCRIC and Columbia is a contractual relationship -- no

16d-001152

other duties or obligations have been undertaken, and it is inappropriate to impute a fiduciary relationship in this context.

Although some D.C. courts have noted that "the existence of a fiduciary or confidential relationship 'is a fact intensive question,'" Steele, 130 F. Supp. 2d at 37 (citation omitted), this Court "need not accept inferences drawn from [a party] if such inferences are not supported by the facts set out in the [counterclaim]." Id. This Court also "'need not accept legal conclusions cast in the form of factual allegations.'" Id. (citation omitted).

Any allegation that the Retro Plan is a contract that embodied a fiduciary responsibility due to the purported "trust" that Columbia had to place in NCRIC is similarly ill-based and merely a legal conclusion cast in the form of a factual allegation. All obligations between the parties were contained wholly within the contract. See Rifka Dep. II at 14-15. The text of the contract demonstrates that NCRIC and Columbia were provided the opportunity to meet quarterly to review the status of the Retro Plan and to share information concerning the status of claims, as well as any Additional Premium or Return Premium that might be owed by either party. See Ex. 4 ¶ 10. Far from creating a relationship of trust, the clear evidence reveals give and take reporting obligations for both sides. See id. ¶¶ 9-10. In fact, NCRIC's obligations specifically contemplate requiring NCRIC to provide information to Columbia "for purposes of cross reference and confirmation." Id. ¶ 10(a). Columbia did not have to merely trust this information: Columbia had every opportunity to verify and confirm NCRIC's information independently. The fact that it may have chosen not to (until now) cannot be used against NCRIC.

Similarly, a fiduciary relationship did not result from any alleged unequal bargaining position. It cannot be reasonably disputed that both NCRIC and Columbia are

sophisticated corporate entities. Columbia even initiated the negotiation of the 1996 amendments to the Retro Plan. See Ex. 5. Moreover, Columbia had a choice among malpractice insurers. See Ex. 15. NCRIC is not (and was not) the exclusive insurer willing to underwrite professional malpractice insurance policies for physicians in the District of Columbia. See Fargis Decl. ¶ 19. As Columbia admits in its counterclaim, the hospital did, in fact, negotiate with other insurance companies, including Medical Inter-Insurance Exchange ("MIIX") (Counterclaim ¶ 65) and The Medical Protective Company ("MedPro") (Counterclaim ¶ 81), as well as others. See Ex. 17 (TVIR) and Ex. 31 (The Doctors Company). Therefore, any allegation of unequal bargaining power creating a fiduciary relationship has no merit. NCRIC is entitled to summary judgment on Count Three.

D. COLUMBIA HAS FAILED TO PROVE ANY FRAUDULENT OR NEGLIGENT MISREPRESENTATIONS BY NCRIC (COUNTS SEVEN & EIGHT)

Columbia alleges actual (or constructive) fraud and negligent misrepresentation regarding the loss reserves and the reconciliation calculations of Additional or Return Premium. See Counterclaim ¶¶ 139-53. Similar to Columbia's claims for breach of contract and bad faith in administering the Retro Plan discussed above, there is no evidence of any fraudulent, or even negligent, misrepresentations. Moreover, even if some statements by NCRIC could be construed as misrepresentations, summary judgment is still proper because Columbia has not established the required legal elements of actual fraud, constructive fraud, or negligent misrepresentation by clear and convincing evidence.

In order to establish fraud, Columbia must prove by clear and convincing evidence: (1) a false representation; (2) in reference to a material fact; (3) made with knowledge of its falsity; (4) with the intent to deceive; (5) reliance upon the representation; and (6) resulting

16d-001154

provable damages. See Railan v. Katyal, 766 A.2d 998, 1009 (D.C. 2001). Columbia's fraud claim fails because the only evidence demonstrates that: (1) NCRIC's representations were true; (2) NCRIC had no intent to deceive; and (3) Columbia cannot prove that it relied on the representations resulting in damages.

In order to state a claim for constructive fraud, Columbia must also prove a "confidential relationship" between NCRIC and Columbia. See Witherspoon v. Phillip Morris, Inc., 964 F. Supp. 455, 461 (D.D.C. 1997). D.C. law defines such a relationship as "a relationship in which one party has gained the 'trust and confidence' of the other, enabling the first party to exercise extraordinary influence over the other." Id. Count Seven fails because, as discussed above with respect to alleged breach of fiduciary duty, no such relationship between the parties here exists.

Finally, a claim for negligent misrepresentation requires (1) the negligent communication of false information, (2) which defendant intended or should have recognized that plaintiff would take actions in reliance upon, and (3) reasonable detrimental reliance. See Hall v. Ford Enters., Ltd., 445 A.2d 610, 612 (D.C. 1982). Count Eight fails because NCRIC's representations were true and Columbia has no proof of detrimental reliance.

1. NCRIC's Representations to Columbia Were True

Columbia's claims of actual or constructive fraud and negligent misrepresentation all depend upon the falsity of the alleged NCRIC representations at issue. Drawing all reasonable inferences in Columbia's favor, at most the hospital alleges two false representations by NCRIC: (1) the loss reserves were maintained in accordance with "industry standards" and (2) the amount of Additional or Return Premium due after each Reconciliation were properly calculated. See Counterclaim ¶¶ 142, 148.

16d-001155

a. Loss Reserve Statements

Columbia's allegations regarding NCRIC's representations concerning loss reserves are identical to its claims in Counts One and Two. As discussed above, the Retro Plan did not require NCRIC to use "industry standards" in setting loss reserves. See Ex. 4 ¶ 7. Instead, NCRIC was only required to set loss reserves in the "normal and ordinary course" of its business. Id. Columbia cannot identify any NCRIC representative who stated that "industry standards" would be used. See p. 27 above. Thus, because there was no representation by NCRIC that industry standards would be used, Columbia cannot maintain the actions for fraudulent or negligent misrepresentation in Counts Seven and Eight on the basis of this alleged "statement."

Even assuming for purposes of summary judgment that NCRIC did make a representation that it would set loss reserves in accordance with "industry standards," again Columbia has no evidence that NCRIC did not do so. See Burgess Decl. ¶¶ 6-13; see also p. 27 above. Furthermore, Columbia withdrew its proposed witness who was to testify concerning industry standards for setting loss reserves. NCRIC's testimony on this point is not refuted.

b. Calculations of Retro Premium

Columbia's allegation that NCRIC falsely represented the Additional Premium due on each quarterly and annual reconciliation also fails as a matter of law. As discussed above, there can be no dispute that the quarterly calculations were only an estimate of Retro Premium and, therefore, any allegation that NCRIC misrepresented these numbers is disingenuous at best. See Fargis Decl. ¶¶ 10, 21; Burgess Decl. ¶ 16. Because these quarterly calculations were just estimates, and did not require money to change hands, it must be held that, as a matter of law, NCRIC would not have reasonably believed Columbia would rely on these calculations to its

16d-001156

detriment. Moreover, Columbia cannot argue that the annual reconciliations were false as there is no evidence to refute NCRIC's testimony that the calculations were correct. See Fargis Decl. ¶ 20; Burgess Decl. ¶ 15.

2. NCRIC had no Intent to Deceive Columbia

Even assuming NCRIC's representations regarding the setting of loss reserves and the amount due from Columbia after reconciliation are construed as false, Columbia's fraud claim still fails because it cannot meet its burden of providing clear and convincing evidence of NCRIC's motive or intent to deceive. First, Columbia has no testimonial or documentary evidence illustrating an intent by NCRIC to deceive Columbia regarding the methodology of setting loss reserves. The Retro Plan expressly required NCRIC to calculate the reserves in the "normal and ordinary course of the Company's business." See Ex. 4 ¶ 7.

The only evidence is that NCRIC did set the Retro Plan loss reserves using its normal business methodology. Columbia argues that NCRIC's intent to deceive is evidenced by its refusal to provide Columbia individual loss reserves and actuarial verifications of the loss reserves. Again, there are no facts to support this allegation. In each quarterly report, NCRIC provided the aggregate loss reserves as required by the Retro Plan. See Ex. 4 ¶ 10(i). It is uncontested that the reason NCRIC did not provide Columbia with individual case loss reserves was because of the strategic and confidentiality implications surrounding the release of such information. As Columbia's risk manager Ann Gaffey testified, Columbia was often the co-defendant with the NCRIC insured physician in the malpractice claims. See Gaffey Dep. at 69-71; see also p. 27 note 16 above. Thus, this refusal does not provide clear and convincing evidence that NCRIC was intending to deceive Columbia by misrepresenting that the loss reserves were proper.

Nor does Columbia have any evidence that NCRIC intended to deceive Columbia with regard to the Retro Premium calculations. As discussed above, the calculations in the various quarterly reports were statements of what Columbia might owe when the year "closed-out" based upon present indicators. Estimates or predictions of events which are expected to occur in the future are not fraudulent representations unless "the promisor had knowledge that the events would not occur" and had the intent to mislead. Bennett v. Kiggins, 377 A.2d 57, 60-61 (D.C. 1977). NCRIC explained to the Columbia Finance Committee that any reconciliations performed for years which were not "closed-out" would not necessarily reflect the final amount due by either party as these numbers could change when claims closed. See Fargis Dep. I at 211-12.

NCRIC's calculations and requests for payments from Columbia starting with the fall 2000 reconciliation were made in good faith and did not preclude NCRIC later paying Return Premium to Columbia after future years closed. Columbia has no evidence that NCRIC will not remit such payments in the future if they are due to Columbia. Indeed, NCRIC did pay Return Premium to Columbia for the 1993-1994 year as soon as it closed out in 1998. See Ex. 18. Assertions of evil motive by Columbia's witnesses without factual basis are merely speculative inferences which do not equal clear and convincing evidence of intent to deceive; therefore, Count Seven fails as a matter of law. See Bennett, 377 A.2d at 60 (no viable fraud claim when "[f]raud could only be discerned, if at all, by means of impermissible speculation").

3. There Is No Confidential Relationship Between NCRIC And Columbia To Support A Constructive Fraud Claim

Columbia's alternative constructive fraud claim depends upon the proof of a "confidential relationship" between NCRIC and Columbia – a "difficult burden." See

Witherspoon, 964 F. Supp. at 461; Goldman v. Bequai, 19 F.3d 666, 674 (D.C. Cir. 1994). D.C. cases analyzing constructive fraud claims usually involve individuals claiming to be defrauded by a defendant with superior knowledge or skill.[18] Columbia cannot prove such a confidential relationship.

As explained with respect to Columbia's breach of fiduciary duty claim above, the Retro Plan was negotiated between sophisticated parties at arms-length and it governs the relationship between Columbia and NCRIC. Columbia's sophistication is evidenced by its numerous boards and committees of professionals who were familiar with the insurance industry. There is no evidence that NCRIC wielded "extraordinary influence" over Columbia either at the time of the Retro Plan's creation or during its administration. Columbia repeatedly dictated terms to be changed in the various renewals and negotiated with other insurance providers for competing bids during both the 1998 and 2000 renewal periods. Columbia's witnesses have testified that NCRIC did not "force" or intimidate Columbia into renewing the Retro Plan. See Beaulieu Dep. at 32-34. NCRIC did not enjoy the "trust and confidence" of Columbia any more than that of a commercial vendor who either was, or was not, providing services which satisfied Columbia. There was no special "confidential relationship" between these two sophisticated business parties. Columbia's claim of constructive fraud must fail.

---

18 See Witherspoon, 964 F. Supp. at 461 (widower of smoker claiming constructive fraud against tobacco company); Goldman, 19 F.3d at 674 (widow claiming fraud against attorney handling financial assets after husband's death); Roberts-Douglas v. Meares, 624 A.2d 405 (D.C. 1992) (individuals claiming fraud against clergyman and church regarding donations to church), modified, 624 A.2d 431 (D.C. 1993).

16d-001159

4. NCRIC's Representations Were Not Negligent

Columbia claims that, even if NCRIC did not intend to make fraudulent representations with respect to loss reserves and Retro Premium, NCRIC is still liable for its negligence in making those representations. Even assuming that the representations regarding the loss reserves and premium calculations were false, Columbia's claim for negligent misrepresentation requires that NCRIC should have known the representations were false. See Sherman, 741 A.2d at 1037. However, Columbia has presented no evidence that NCRIC was negligent in its calculations of the Retro Plan. The only evidence in the record demonstrates that NCRIC used due care when calculating Retro Premiums and corrected any minor miscalculations immediately. See Fargis Decl. ¶ 20; Burgess Decl. ¶ 15. The law does not require NCRIC to be absolutely perfect in all calculations over eight years in order to avoid a finding of negligence. Columbia has no evidence that NCRIC disregarded standard procedures or in any way neglected to perform the calculations in good faith to the best of its ability such that NCRIC should have know the calculations presented to Columbia were false. Therefore, Count Eight for negligent misrepresentation fails.

E. COLUMBIA'S CLAIM FOR CONVERSION FAILS BECAUSE IT IS NO MORE THAN A DEMAND FOR PAYMENT UNDER THE RETRO PLAN (COUNT ELEVEN)

In 1997 Columbia agreed to pay $1 million on a balance of approximately $1.7 million due to NCRIC under the Retro Plan. See Exs. 8, 9, 28. Columbia now alleges that NCRIC's failure to return this money constitutes conversion to the extent it was owed Return Premium. See Counterclaims ¶¶ 57, 60, 165-68. Columbia is flat wrong. "[A] cause of action for conversion . . . may not be maintained to enforce a mere obligation to pay money." Curaflex Health Servs., Inc. v. Bruni, 877 F. Supp. 30, 32 (D.D.C. 1995); Van Dorn Retail Mgmt., Inc. v.

16d-001160

Sovran Bank/DC Nat'l, Inc., No. Civ. A. 90-2974, 1991 WL 222061, at *7 (D.D.C. Oct. 9, 1991). This is precisely what Columbia has alleged -- that NCRIC owes Columbia money based on a perceived overpayment under the Retro Plan.

There can be no dispute that the $1 million payment was intended as a premium applied against the total amount due under the Retro Plan. Indeed, following approval by the D.C. Insurance Commission, NCRIC treated the $1 million as paid premium and credited Columbia with the amount on all future Retro Plan calculations. See Fargis Dep. III at 638; Beaulieu Dep. at 38-39; Rifka Dep. II 104-05; Fargis Dep. I at 374-75; Ex. 28 (describing the $1 million payment as part of the "outstanding balance" of the Retro Plan). While the parties differ as to whether the $1 million payment was intended to be labeled a "deposit" or a "premium," the dispute does not concern a material fact and clearly does not preclude judgment in favor of NCRIC.

In Lawson v. Commonwealth Land Title Insurance Co., 518 A.2d 174 (Md. Ct. Spec. App. 1986), the Court held that where a plaintiff sent a check for more money [than] he owed defendant, and defendant cashed the check, and no longer had any identifiable proceeds from the check, the action was nothing more than a contract claim to recover a debt and not a cognizable claim for conversion. Id. at 177. This case is indistinguishable. Columbia has not, and cannot, point to a "specific," "identical" or "identifiable" set of proceeds. See Curaflex, 877 F. Supp. at 32. Columbia's assertion today, that it did not owe the $1 million payment, does not translate into a conversion claim. Count Eleven must be dismissed as a matter of law.[19]

---

19 Moreover, because NCRIC's initial possession of the funds allegedly converted was lawful, Columbia must make a demand for return in order to establish the adverse nature of the possession required for a conversion claim. See Furash & Co. v. McClave, 130 F. Supp. 2d 48, 58 (D.D.C. 2001). Columbia never made such a demand, and there is nothing in the record to suggest otherwise. See Wilson Dep. I at 126-29 (discussing that Columbia

16d-001161

VI. ALL OF COLUMBIA'S CLAIMS FAIL AS A MATTER OF LAW AS ITS DAMAGES ARE SPECULATIVE

Each of Columbia's claims require damages as an essential element. As such, it is incumbent upon Columbia to put forward evidence of damages which were proximately caused by NCRIC's conduct. Columbia has not, and cannot, do so. To phrase it another way, NCRIC is entitled to summary judgment if it can demonstrate Columbia's inability to prove any of the elements of its tort claims, including damages. See Celotex Corp., 477 U.S. at 322.

While it is true that "'damages are not required to be proven with mathematical certainty, there must be some reasonable basis on which to estimate damages.'" Executive Sandwich Shoppe, Inc. v. Carr Realty Corp., 749 A.2d 724, 737 (D.C. 2000) (citation omitted). Summary judgment is appropriate where a party fails to offer proof of more than speculative damages. Ibrahim v. University of the District of Columbia, 742 A.2d 879, 881 n. 2 (D.C. 1999). See, e.g. Fowler v. A&A Co., 262 A.2d 344, 349 (D.C. 1970) ("[T]rial court cannot award damages on speculation and properly denied recovery of this claim.").

In its Rule 26(b)(4) statement, Columbia informed NCRIC and this Court that its proposed expert damages witness would provide testimony:

> with regard to the calculation of damages proximately caused by NCRIC's torts, including (1) the economic effects, such as lost revenue from decreased patient volume, of certain practice groups moving their practices from Columbia to competing hospitals, and any reputational harms stemming from related events; (2) the lost revenue resulting from the non-occurrence of specific fundraising activities and events; and (3) the loss of specific sources of financing and partnership opportunities that otherwise would have been available to Columbia.
>
> The substance of the facts and opinions to which Mr. Ben Ezra is expected to testify is: that, as a proximate result of NCRIC's torts, Columbia has suffered and will suffer economic harm including loss of revenue, damaged reputation in the community, and loss of good will....

---

suggested the payment be credited towards a new Retro Plan and that there were "discussions" about remittance of the amount, not a demand).

16d-001162

See Columbia's Rule 26(b)(4) statement, attached as Exhibit 38.

Contrary to Columbia's representation, Peter Ben Ezra[20] did little analysis or calculating. Specifically, Mr. Ben Ezra admitted that he did no damage calculations and had no conclusions (and did no investigation) resulting from NCRIC's alleged torts concerning: (1) loss of good will (Ben Ezra Dep. at 10-11); (2) damaged reputation in the community (Ben Ezra Dep. at 11); (3) loss of specific sources of financing and partnership opportunities (Ben Ezra Dep. at 11); and (4) lost revenue from the non-occurrence fundraising activities and events (Ben Ezra Dep. at 10-14).

With respect to the single damage claim for which he attempted to establish a number (estimated lost cashflow), Mr. Ben Ezra: (a) simply accepted as true the representation of counsel with respect to the doctors who allegedly left Columbia (Ben Ezra Dep. at 140); (b) did no analysis or investigation why doctors left Columbia (Ben Ezra Dep. at 140); (c) did no analysis or research to determine causation (Ben Ezra Dep. at 133);[21] (d) presumed that each doctor would work until he or she turned age 65 without reviewing any studies or analysis concerning the retirement age of physicians (Ben Ezra Dep. at 154-55); and (e) assumed a 20

---

20 Mr. Ben Ezra is not the typical disinterested proposed expert witness. Mr. Ben Ezra is the Chairman of the Board of Columbia. See Ben Ezra Dep. at 23. Indeed, in the event any of Columbia's claims survive summary judgment, NCRIC will move to strike or exclude Mr. Ben Ezra's testimony as he simply accepted Columbia's counsel's representations concerning the doctors involved as true, presumed causation, performed no analysis or investigation related to the other factors which may have been involved in a doctor's decision to leave or reduce the number of patients he or she admitted to Columbia, and cannot be considered objective. See, e.g., Obelisk Corp. v. Riggs Nat'l Bank, 668 A.2d 847, 855 n.5 (D.C. 1995) ("We do agree with the trial judge, however, that the testimony of an independent expert might have made [the party's] lost future earnings claim less speculative.").

21 "Question: 'I just want to make clear, you don't have any information with respect to causation? You're not here for that purpose, are you?' Answer: 'No. I was just given a list and ran my analysis.' " (Ben Ezra Dep. at 133).

year damage projection without offering any facts as to why he selected that time period (Ben Ezra Dep. at 151-153).

As the declaration of Mary Woodford, a director at PriceWaterhouseCoopers confirms, Mr. Ben Ezra's damage calculations are so flawed as to be rank speculation unable to survive scrutiny of a summary judgment motion. Specifically, Mr. Ben Ezra's damage report rests on pure speculation in that: (1) it provides no analysis as to which physicians left, or reduced, their patient admissions to Columbia; (2) it makes long term projections based on only one year of data; (3) it relies on inaccurate data; (4) it assumes lost cash flow would accrue for a long period of time; (5) it assumes the marginal cost of providing hospital services is 30%; and (6) it lacks any independent inquiry. See Woodford Declaration, attached as Exhibit 3, ¶¶ 6-26.

It is well settled in the District of Columbia that "'expert testimony is required ... when the subject matter at issue is 'so distinctly related to some science, profession, business or occupation as to be beyond the ken of the average layman.'"" Columbus Props, Inc. v. O'Connell, 644 A.2d 444, 447 (D.C. 1994) (citations omitted). Indeed, "where the existence of substantial future economic loss becomes an issue, the use of expert testimony likely would be necessary since seldom will lay witnesses possess the requisite background to testify on a matter such as this one not likely to be within the common knowledge of the average layman. In sum, 'the complexities of economics, no less than those of medicine, merit the assistance of expert testimony, so important to an adequate assessment of plaintiff's damages.'" District of Columbia v. Barriteau, 399 A.2d 563, 568-69 (D.C. 1979) (citation omitted).[22]

22 Columbia recognized that damages concerning complex issues such as loss of income related to physicians changing hospitals, loss of goodwill, damage to reputation, and loss of other economic opportunities are beyond the testimony of lay witnesses when it filed its Rule 26(b)(4) report. Any subsequent effort by Columbia to use lay testimony in an effort to rehabilitate what it failed to do during discovery must be rejected as improper speculation.

16d-001164

In Lucas v. United States Army Corps of Engineers, 789 F. Supp. 14 (D.D.C. 1992), the plaintiff's alleged "loss of goodwill and diminution in their professional reputation" was based on the alleged wrongful acts of the defendant. In rejecting such damage claims at summary judgment, the court held that such concerns are "merely speculative" and even if the plaintiffs could show some actionable breach, "plaintiffs' theory that this alleged breach caused substantive damage is purely speculative." Id. at 18-19. As discussed above, Columbia has failed to provide any facts demonstrating that NCRIC caused any doctor to leave Columbia, and provided only raw speculation relating to only one category of alleged damages. Without proof of damages, Columbia's tort counterclaims in Counts Four, Five, Nine and Ten fail on summary judgment.

VII. NCRIC IS ENTITLED TO SUMMARY JUDGMENT ON THE AMENDED COMPLAINT

A. SUMMARY JUDGMENT IS APPROPRIATE FOR INSURANCE CONTRACT CASES IN WHICH THE CONTRACT LANGUAGE IS CLEAR AND UNAMBIGUOUS

District of Columbia law is clear that where contract language is not ambiguous, summary judgment is appropriate because "'a written contract duly signed and executed speaks for itself and binds the parties without the necessity of extrinsic evidence.'" Byrd v. Allstate Ins. Co., 622 A.2d 691, 693 (D.C. 1993) (citation omitted). See also Cameron v. USAA Prop. & Cas. Ins. Co., 733 A.2d 965, 968 (D.C. 1999) (affirming summary judgment in favor of an insurance company based on a dispute as to contract language). Indeed, a court need not deem a contract "ambiguous 'merely because the parties do not agree on the interpretation of the contract provisions in question.'" Id. at 968 (citation omitted). "[W]hether or not a contract is ambiguous is a question of law." Sacks v. Rothberg, 569 A.2d 150, 154 (D.C. 1990).

16d-001165

In reviewing a contract for ambiguity, the court is to make such a determination on the "'face of the language itself, giving that language its plain meaning, without reference to any rules of construction.'" Id. (citation omitted). When an insurance contract is clear and unambiguous, it will be enforced by the courts as written, so long as it does not violate a statute or public policy. Smalls v. State Farm Mut. Auto. Ins. Co., 678 A.2d 32, 35 (D.C. 1996); Cameron, 733 A.2d at 968.

Summary judgment is appropriate here because the Retro Policy language is unambiguous, there is no evidence that NCRIC acted contrary to any language in the policy, and the unrebutted evidence is that NCRIC set loss reserves at an appropriate rate. See Burgess Decl. ¶¶ 6-14.

B. SUMMARY JUDGMENT IN FAVOR OF NCRIC ON LIABILITY IS PROPER

Even if this Court were to hold that the amount of damages suffered by NCRIC is reasonably contested, the fact that Columbia breached the Retro Plan is not. It is well established in D.C. that summary judgment on the issue of liability alone is proper, even if there is a genuine issue as to the amount of damages. See D.C. Sup. Ct. R. 56(c); see also Alger Corp. v. Wesley, 355 A.2d 794 (D.C. 1976). Because NCRIC fully performed all of its obligations under the Retro Plan, Columbia's failure to perform constitutes a breach.

This case is about Columbia's attempt to escape its obligation of payment under the Retro Plan. Columbia attempts to distract the Court's attention by raising a myriad of counterclaims, which as discussed above, are nothing but unsupported conclusions. The evidence in this case boils down to one simple fact -- that NCRIC fully and properly performed its obligations under the Retro Plan and Columbia did not. For example, as discussed above, there

is no dispute that NCRIC performed the quarterly estimations and annual reconciliations required under the Retro Plan. See Fargis Decl. ¶ 9, 20; Ex. 37. Those calculations are based upon the predetermined formulas negotiated between the parties. If an error was discovered during a subsequent calculation, that error was corrected. See Fargis Decl. ¶ 20. Columbia's assertions that NCRIC failed to perform the reconciliations properly should be disregarded because they are not supported by any facts in the record.

NCRIC was obligated to notify Columbia of the Retro Premium calculations within 60 days of each reconciliation date. Columbia does not provide any evidence that NCRIC failed to provide the required notice. NCRIC also set the loss reserves in the ordinary course of its business, precisely what it was required to do under the Retro Plan. See Ex. 4 ¶ 7; Burgess Decl. ¶ 14. In short, NCRIC fully performed under the Retro Plan. As a matter of law, Columbia's failure to pay is a breach. NCRIC is entitled to summary judgment on liability.

VIII. CONCLUSION

For the reasons detailed in this memorandum and in the attached declarations and exhibits, summary judgment should be granted to NCRIC on all the remaining counts in Columbia's Amended Counterclaim and summary judgment should be granted to NCRIC on its Amended Complaint.

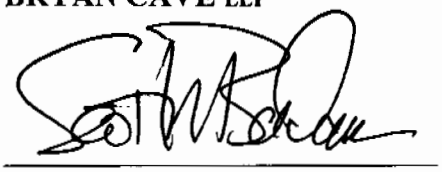
16d-001167

IX. ORAL ARGUMENT REQUEST

Pursuant to Rule 12-I (f), NCRIC requests oral argument on its summary judgment motion.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for NCRIC, Inc.

Dated: February 7, 2002.

16d-001168

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Motions Deadline -- February 7, 2002
Defendant.	

NCRIC'S STATEMENT OF MATERIAL FACTS

Pursuant to D.C. Superior Court Rule 12-I(k), Plaintiff NCRIC, Inc. ("NCRIC") submits this statement of material facts as to which there are no genuine issues in support of its motion for summary judgment against Columbia Hospital for Women Medical Center, Inc. ("Columbia"):

1. In approximately 1993, Columbia requested that NCRIC work with them to create a malpractice insurance program for the physicians at the hospital to help reduce the cost to physicians through a sharing of malpractice risk between the hospital and physician. (Fargis Declaration ¶ 5, attached as Exhibit 1 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

2. Columbia hoped this program would make physicians loyal to its facility and that resulting patient admissions might increase. (Fargis Declaration ¶ 5).

3. NCRIC has not previously, nor does it today, restrict a physician to admitting patients at a particular hospital. That choice is strictly the decision of each physician. (Fargis Decl. ¶ 6).

4. The original three year Columbia Retro Plan ("Retro Plan") was administered and insured by NCRIC. (Exhibit 4 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

5. The Retro Plan provided a 19% discount to physicians on their malpractice premiums. (Exhibit 4 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

6. In exchange for the premium amount credited, Columbia agreed to pay the amount of credit should losses under the program reach a certain level. (Fargis Decl. ¶ 7).

7. A retrospective rating plan, such as the Retro Plan, requires a "reconciliation" that looks back over each year to compare the premium to the claims to determine: (1) if additional premium is due to the insurance company, should losses under the plan exceed the premium by a predetermined calculation; or (2) if a return of premium is due the hospital, should losses have been favorable based on a predetermined calculation. (Fargis Decl. ¶ 8).

8. The Retro Plan is driven by two key financial factors: (1) the premiums paid by the physicians; and (2) the claimed losses incurred by the physicians. (Fargis Decl. ¶ 13).

9. The reconciliation includes a "reserve" amount for claims that represent a potential liability and the associated expenses of handling the claim, such as attorneys' fees and costs. (Fargis Decl. ¶ 10).

10. NCRIC and Columbia agreed not to begin making actual payments to one another until all claims for a certain year reached final resolution, i.e., until all of the pending claims were closed. (Fargis Decl. ¶ 10).

11. The decision to defer making payments until the claims for each year were closed was made largely because of the recognition that reserve amounts could change, which would cause fluctuations in the reconciliation with payments possibly being made simultaneously between both parties at the time of a reconciliation. (Fargis Decl. ¶ 10).

12. Every three months a reconciliation is made for each year in the Retro Plan to determine the amount of Additional Premium owed to NCRIC or Return Premium due to Columbia. This is called the Retro Premium. (Exhibit 4 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

13. Those calculations are, in part, based on open claims, and are correct to the best of NCRIC's knowledge. If an error is discovered during a subsequent calculation, that error would be corrected. (Fargis Decl. ¶ 20).

14. To the extent an error is uncovered during a quarterly reconciliation of the Retro Plan, such an error would not impact Columbia because NCRIC and Columbia agreed not to pay any Additional Premium or Return Premium until the claims were closed. (Fargis Decl. ¶ 21).

15. To determine if the appropriate premium amounts were collected to pay losses under the Retro Plan, the Retro Premium (as calculated based on a preset formula and more further described in the Fargis Declaration) is then compared to the Deposit Premium. If the Retro Premium is less than the Deposit Premium, the premium is due to Columbia. If the Retro Premium is more than the Deposit Premium, Columbia owes NCRIC the additional premium to pay against the losses. (Fargis Decl. ¶ 17).

16. A "floor" and a "ceiling" are set to financially protect both Columbia and NCRIC from large swings in risk. To illustrate, if total losses were exorbitant (130% of total), then this would cap Columbia's risk. If losses were extremely favorable (60% of total), then NCRIC is protected. (Fargis Decl. ¶ 17(c)).

17. In December 1995, at the end of the second year of the Retro Plan, the reconciliation revealed that Columbia was due to be paid some Return Premium for year 1 of the program. (Fargis Decl. ¶ 9).

18. In late 1995, Columbia requested the Retro Plan be amended to increase the physicians' premium discount to 30%. (Exhibit 5 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

19. NCRIC and Columbia negotiated the accompanying changes to the Deposit Premium, from 81% to 62 %, to accommodate the increased discount. (Exhibit 5 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

20. The parties amended the Retro Plan with the revised discount and Deposit Premium in effect from January 1, 1996 forward. (Exhibit 6 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

21. The parties also agreed to renew the Retro Plan effective September 1, 1996. (Fargis Deposition dated July 31, 2001, attached as Exhibit 45 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment ("Fargis II") at 450).

22. In November 1996, NCRIC representatives met twice with Columbia's Finance Committee to present and explain the first Reconciliation under the Retro Plan and proposed new revisions to the discount and premium calculations. (Exhibit 7 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment); (Fargis Deposition dated July 30, 2001,

attached as Exhibit 44 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment ("Fargis I") at 210-17).

23. During these meetings, the NCRIC representatives explained that a Return Premium of approximately $159,000 was due to Columbia for the first year (1993-94), but Additional Premiums of approximately $417,000 were due to NCRIC for the next two years (1994-95 and 1995-96). (Exhibit 7 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

24. Because the claims from these periods were still pending, these prior years were not yet "closed-out" and these calculations were subject to change with each subsequent reconciliation. (Fargis I Dep. at 211-12).

25. NCRIC and the Finance Committee recognized that if payments were exchanged at the time of each reconciliation as described in the Retro Plan, then checks would be exchanged back and forth between Columbia and NCRIC as the numbers changed up to the time that the year "closed-out." (Fargis I Dep. at 211-12).

26. The parties agreed to avoid such interim payments and instead only exchange money when a year was "closed-out" under the plan. Therefore, neither NCRIC nor Columbia made any payments under the Retro Plan as a result of the fall 1996 Reconciliation Calculation. (Exhibit 7 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment); (Fargis I Dep. at 214-15).

27. In 1997, the hospital faced a crisis when its Board of Directors "imploded" in the midst of a conflict of interest and financial kickback scandal and the hospital was put into receivership. (Ben Ezra Deposition, attached as Exhibit 42 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment, at 34-36).

28. Columbia was also fighting a lawsuit by one of its largest creditors, The Bank of Tokyo-Mitsubishi, regarding Columbia's line of credit. (Ben Ezra Dep. at 38-39).

29. In early 1998, Columbia filed for reorganization under Chapter 11 of the United States Bankruptcy Code, in large part to stem seizure of assets by the Bank of Tokyo. (Ben Ezra Dep. at 39).

30. Media coverage throughout 1998 and 1999 recounted the history of Columbia's financial difficulties throughout the decade, as the hospital dealt with increased pressures from the rise of managed care and competition from suburban hospitals, which resulted in decreased revenues at Columbia. (Exhibit 11 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment); (Beaulieu Deposition, attached as Exhibit 41 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment, at 78-80); (Gasser Deposition, attached as Exhibit 48 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment at 66-68).

31. Columbia emerged from bankruptcy in 1999, but continued to have financial difficulties. (Ben Ezra Dep. at 75-77).

32. As a result of Columbia's cost-saving measures, doctors at Columbia were faced with shortages of supplies and inadequate staffing. (Asterbadi Deposition, attached as Exhibit 40 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment, at 133-35); (Gasser Dep. at 120-21, 140); (Ben Ezra Dep. at 176-77); (Exhibit 12 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

33. Columbia's admissions also continued to be lower than projected in 1999. (Exhibit 21 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

34. In 1997, Columbia and NCRIC began negotiations regarding the possible renewal of the Retro Plan. These negotiations were challenging because of Columbia's financial difficulties. (Fargis I Dep. at 348).

35. Because of Columbia's impending bankruptcy, NCRIC requested, and Columbia provided, financial security of $1 million to cover part of Columbia's then-current liability under the Retro Plan. (Exhibit 8 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment); (Exhibit 9 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment); (Beaulieu Dep. at 45-47).

36. Following approval by the D.C. Insurance Commission, NCRIC treated these installments as payments on premium and credited Columbia with $1 million in paid premium on all future Retro Plan calculations. (Exhibits 33 & 37 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment); (Fargis I Dep. at 278).

37. The 1996 changes also were reflected in the Addendum signed in January 1998 to the Retro Plan which extended the Retro Plan to September 1, 1998. (Exhibit 10 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

38. The Modifications to the Retro Plan applied the new discount for claims in 1996, 1997 and 1998, and made appropriate mathematical changes to the Deposit Premium and the Development Factor for those periods. (Exhibit 10 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

39. During 1998, while Columbia was in bankruptcy, Columbia's administration sought proposals from various insurance brokers regarding possible alternatives to a renewal of the Retro Plan. (Exhibit 13 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

40. After reviewing the proposals, the Columbia Board of Directors approved the choice of an insurance plan supplied by the Medical Inter-Insurance Exchange ("MIIX") in August 1998 and presented this program to the medical staff. (Exhibit 13 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

41. Similar to presentations made to Columbia personnel by MIIX, NCRIC made a series of presentations to the Medical Staff at Columbia and the Board of Directors in late September and early October 1998 regarding the continuation of the Retro Plan. (Beaulieu Dep. at 94-95).

42. At these meetings, NCRIC explained the history of the Retro Plan and its operation and compared the various costs and benefits between the MIIX proposal and a renewal of the Retro Plan. (Exhibit 14 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

43. The Columbia Board of Directors subsequently withdrew its endorsement of the MIIX proposal, in part, because many physicians at the hospital contacted the Board and stated that they wanted the hospital to renew a plan with NCRIC. (Exhibit 17 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment); (Beaulieu Dep. at 19-20).

44. Most doctors cited long-standing relationships with NCRIC and a hesitancy to switch to a new carrier. (Beaulieu Dep. at 34-35).

45. Columbia and NCRIC signed an amendment in December 1998 which renewed the Retro Plan until September 1, 1999. (Exhibit 20 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

46. In August 1998, NCRIC performed a reconciliation calculation that included the calculation of Return Premium due to Columbia after the closure of all the claims from the first year of the program (1993-94). Because this year was now "closed out," NCRIC paid Columbia a Return Premium of $172,815 for 1993-94. (Exhibit 18 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

47. In October 1998, Columbia asked NCRIC to provide a proposal for a separate insurance policy which would cover doctors working in the ambulatory clinic at Columbia (the "Clinic") who were then covered under Columbia's Self Insured Trust. (Exhibit 16 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

48. Following negotiations, NCRIC issued the "Medical Entity Policy" effective December 1, 1998 to December 1, 1999. (Exhibit 19 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

49. This policy was a standard group insurance policy which covered the physicians practicing medicine at Columbia's Clinic for professional liability in return for the payment of a set premium each year. (Exhibit 19 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

50. In the fall of 1999, NCRIC and Columbia renewed both the Retro Plan and the Medical Entity Policy until September 1, 2000 and December 1, 2000, respectively. (Exhibit 23 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment); (Sohm Deposition, attached as Exhibit 52 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment, at 123).

51. During the spring of 2000, Columbia requested NCRIC propose a transitional plan to replace the Retro Plan with a new program which did not require a retroactively calculated

16d-001177

premium. (Exhibit 24 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

52. NCRIC proposed a method of "closing out" the Retro Plan and converting the program to a guaranteed cost contract which would discontinue the retroactive calculations from previous years of the Retro Plan. (Exhibit 24 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

53. The parties negotiated the one-time cost that Columbia would have to pay to accomplish such a close out throughout the spring and summer of 2000. (Exhibit 24 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

54. In July 2000, Columbia rejected NCRIC's condition of a close out payment of $750,000. (Exhibit 25 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

55. Because negotiations appeared at an impasse, NCRIC informed Columbia that the Retro Plan would expire on its contractual end date of September 1, 2000. (Exhibit 32 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

56. Although both parties continued to negotiate a possible renewal of the Retro Plan in good faith, these discussions also failed to resolve the disagreements between the parties. (Exhibit 29 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

57. As obligated under the Retro Plan, NCRIC performed a yearly reconciliation and sent the calculation with a request for payment of the Additional Premium due from Columbia on September 1, 2000. (Exhibit 33 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

58. Since September 1, 2000, NCRIC has continued to provide Columbia with the quarterly and yearly calculation statements required by the Retro Plan, including a yearly reconciliation statement and request for Additional Premium due for the 2000-2001 year. (Exhibit 37 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

59. During the first half of 2000, NCRIC became aware that Columbia's Self Insurance Trust Fund, which was responsible for paying Columbia's share of claims, was severely underfunded and could not support Columbia's financial obligations for these claims. (Wilson Deposition dated July 16, 2001, attached as Exhibit 53 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment ("Wilson II") at 305); (Fargis Deposition dated January, 10, 2002, attached as Exhibit 46 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment ("Fargis III") at 551, 830).

60. As a result, on June 30, 2000, NCRIC notified Columbia that it would exercise its right to cancel the Medical Entity Policy effective August 15, 2000. (Exhibit 26 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

61. Columbia appealed the cancellation of the Policy to the D.C. Commissioner of Insurance (Exhibit 27 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

62. The D.C. Commissioner of Insurance determined that NCRIC legally canceled the policy due to the increased risk to NCRIC caused by Columbia's depleted Self Insurance Trust Fund, but extended the date of cancellation to September 15, 2000. (Exhibit 35 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

63. Due to the underwriting and financial risks associated with Columbia's depleted Self Insurance Trust Fund, and to avoid double coverage, on October 1, 2000, NCRIC issued an endorsement to the individual insurance policies of all doctors practicing at the Clinic. (Exhibit 34 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

64. The endorsement excluded from coverage any activities in the Clinic after November 15, 2000. (Exhibit 34 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

65. Columbia again appealed to the D.C. Insurance Commission for reconsideration of its decision upholding the cancellation of the Medical Entity Policy and challenging the validity of the individual exclusionary endorsements issued. (Exhibit 36 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

66. The D.C. Insurance Commission ruled that NCRIC provided a proper and valid cancellation of the policy and was within its regulatory authority to issue the exclusionary endorsement. (Exhibit 36 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

67. Columbia has not paid NCRIC any Additional Premium charged by NCRIC under the terms of the Retro Plan since September 1, 2000. (Rifka Deposition dated January, 21, 2002, attached as Exhibit 51 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment ("Rifka II") at 255).

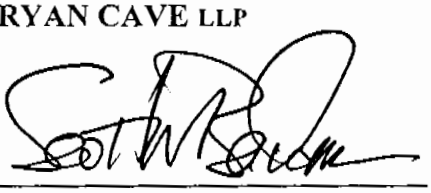
68. Based on the most recent calculation, Columbia owes NCRIC approximately $2.1 million, after applying the $1 million premium payment made by Columbia to secure continuation of the program in 1998. (Exhibit 37 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment).

16d-001180

69. Since the expiration of the Retro Plan, Columbia has provided its physicians with an insurance plan from another company which provides lower premiums for each doctor than the Retro Plan. (Exhibit 31); (Fargis Decl. ¶ 19); (Rifka Deposition dated June 21, 2001, attached as Exhibit 50 to NCRIC's Memorandum of Law in Support of NCRIC's Motion for Summary Judgment ("Rifka I") at 161).

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: February 7, 2002.

16d-001181

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Motions Deadline -- February 7, 2002
Defendant.	

ORDER GRANTING NCRIC'S MOTION FOR SUMMARY JUDGMENT

Pending before the Court is the motion of Plaintiff NCRIC, Inc. ("NCRIC") for summary judgment in the above-captioned case.

After consideration of the motion, memorandum in support, defendant's opposition, and the reply, NCRIC's motion is hereby **GRANTED** and Columbia's counterclaims are dismissed. NCRIC is also entitled to judgment with respect to liability on its contract claim.

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Dated: _____ __, 2002.

Copies to:

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960

Roy I. Nicdermayer, Esq.
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Joseph Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20006

Counsel for Defendant Columbia Hospital for Women Medical Center

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Summary Judgment along with the Memorandum in Support, Statement of Material Facts Not in Dispute, and Exhibits was served this 7 day of February 2002, via first class mail, postage prepaid, to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

16d-001184

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 -- Judge Blackburn-Rigsby Next Event: Dispositive Motions Filed, February 7, 2002

DEFENDANT'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., respectfully submits this Statement of Material Facts Not in Dispute pursuant to Superior Court Civil Rule of Procedure 12-I(k).

Parties

1. Columbia is a non-profit hospital specializing in care for women.

2. NCRIC provides malpractice liability insurance to physicians in, among other jurisdictions, the District of Columbia.

Retro Plan

3. On or about October 23, 1993, Columbia and NCRIC entered into the Retrospective Rating Plan Agreement ("Retro Plan" or "Plan") (Exhibit 1 hereto). *See* Reply of Plaintiff to Amended Counterclaims 1 and 2 of Defendant ("Amended Reply") ¶ 4.

4. The Plan was drafted by representatives of NCRIC, *see* Amended Reply ¶ 4, including David Little and/or David Bickerstaff, *see* Answers of Plaintiff to Interrogatories of Defendant ("Interrogatory Response No.") (Exhibit 22 hereto), Response No. 16.

5. The Plan was to be effective for three years, from September 1, 1993 to September 1, 1996. *See* Retro Plan, Exh. A at 1, ¶ 1.

6. The parties agreed to two, related amendments of the Plan in January 1996. *See* Letter from Susan M. Hansen to Stephen Fargis, dated January 17, 1996 ("Hansen Letter") (amending Attending Faculty discount) (Exhibit 2 hereto); Amended Reply ¶ 16; Retrospective Rating Plan Amendment A ("Amendment A") (amending Deposit Premium due to amendment in discount) (Exhibit 3 hereto); *see* Amended Reply ¶ 17; Letter from Stephen S. Fargis to Susan M. Hansen dated January 22, 1996 ("1/22/96 Fargis Letter") (attaching copy of Amendment A signed by Mr. Fargis) (Exhibit 16 hereto). Amendment A was drafted by Mr. Fargis. *See* Amended Reply ¶ 17.

7. The Plan initially expired on September 1, 1996. *See* Transcript of Stephen S. Fargis Deposition ("Fargis Dep.") (Exhibit 24 hereto), at 321-22, 343, 349. Soon thereafter, on November 7, November 20, and December 18, 1996, NCRIC representatives Steve Fargis and William Burgess met with Columbia's Board of Directors, and the Finance Committee of the Board. *Id.* at 309-27. Based on NCRIC's representations at that meeting about the cost of the Plan, Columbia agreed to renew the Plan, effective January 1, 1997, for one year. The parties engaged in extensive negotiations concerning new terms for the Plan, but did not agree on the terms of the amendment. *See id.* at 397-407, 423-25.

8. NCRIC admits that the Retro Plan subsequently was renewed by three separate addenda. First, on or about January 26, 1998, representatives of NCRIC and Columbia signed an addendum with an effective date of September 1, 1996. *See* Addendum to Retrospective Rating Plan ("Addendum") (Exhibit 4 hereto); Amended Reply ¶ 22. Second, on or about December 3, 1998, representatives of NCRIC and Columbia signed an addendum with an effective date of

16d-001186

September 1, 1998. *See* Addendum B to Retrospective Rating Plan ("Addendum B") (Exhibit 5 hereto). Third, on or about August 23, 1999, representatives of NCRIC and Columbia signed an addendum with an effective date of September 1, 1999. *See* Addendum B-1999 to Retrospective Rating Plan ("Addendum B-1999") (Exhibit 6 hereto); Amended Reply ¶ 25. NCRIC drafted each of these amendments. *See* Amended Reply ¶¶ 16, 22, 25.

9. On June 28, 2000, NCRIC informed Columbia that the Retro Plan was "terminated" effective September 1, 2000. NCRIC's notice of "termination" failed to provide Columbia with "(90) days' written notice prior to the end of any Experience Period," as required by the Plan. *See* Retro Plan at 4, ¶ 15. Yet, even if the Plan was discontinued, it "remain[s] in full force and effect until . . . [all] Experience Period[s] . . . are finally closed." *Id.* ¶ 12.

Attending Faculty Discount

10. Columbia and NCRIC entered into the Plan in order to share the risk of sponsoring a discount on NCRIC medical malpractice liability insurance for a group of physicians practicing at Columbia, known as "Attending Faculty." Under the Plan, each Attending Faculty member was to receive a Retrospective Rating Plan Endorsement from NCRIC, which entitled the holder to a substantial discount off the premium for $500,000 of malpractice coverage by NCRIC. *See* Retro Plan at 2, ¶ 2 & Exh. A at 2, ¶ 2.

11. When the parties entered into the Retro Plan, the premium discount ("Attending Faculty discount") was 19% off the cost of $500,000 in malpractice coverage. *See* Retro Plan Exh. A at 1, ¶ 2 ("premium charged to and paid by Plan Participants for coverage limits of $500,000 . . . shall be discounted by 19% of the otherwise applicable premium for such coverage"). The discount to physicians remained at that level through December 31, 1995.

12. The Attending Faculty discount increased to 33% effective September 1, 1995. *See* Addendum at 3, ¶ 2 ("premium charged to and paid by Plan Participants . . . shall be discounted by 33% of the otherwise applicable premium for such coverage").

13. This increase in the Attending Faculty discount was not retroactive. *See id.* (Attending Faculty discount changed to 67% only "for the last three periods [of the Retro Plan] ending 1996, 1997 and 1998 respectively"); *accord* Addendum B at 4, ¶ 2 ("premium charged to and paid by Plan Participants for coverage limits of $500,000 . . . shall be discounted by 19% of the otherwise applicable premium for such coverage in the first two years of the Plan and 33% of the otherwise applicable premium for such coverage in the remaining two years of the Plan"). That is, the discount did not cause NCRIC to refund premium to Attending Faculty.

14. Nor did the increase in the Attending Faculty discount, to 33%, actually occur on September 1, 1995. In fact, the discount changed on January 1, 1996. *See* Hansen Letter (increasing discount effective January 1, 1996). As such, a higher discount – 38%, *see* Amendment A at 1 – was used temporarily, to give effect to the 33% discount over the course of the September 1, 1995 to September 1, 1996 year. Using a 38% discount for three quarters after employing a 19% discount for one quarter resulted in a 33% discount for the year [*i.e.*, (¼ * 19%) + (¾ * 38%) = approximately 33%)].

Operation of Retro Formula

15. The Plan was originally comprised of three one-year periods, called Experience Periods. *See* Retro Plan, Exh. A at 2. The first Experience Period ran from September 1, 1993 to September 1, 1994; the second Experience Period ran from September 1, 1994 to September 1, 1995; the third Experience Period ran from September 1, 1995 to September 1, 1996. *See id.*

16. Subsequent amendments, NCRIC admits, added the fourth and fifth Experience Periods, from September 1, 1996 to September 1, 1998; *see* Addendum at 4, ¶ 5; the sixth Experience Period, from on September 1, 1998 to September 1, 1999, *see* Addendum B at 5, ¶ 5; and the seventh Experience Period from September 1, 1999 to September 1, 2000, *see* Addendum B-1999 at 1, ¶ 5. No additional Experience Periods have been added since then.

17. The Retro Plan calls for NCRIC to perform retrospective calculations, or Reconciliations, each year, starting with September 1, 1996. *See* Addendum B at 5 (schedule listing "First Reconciliation Date" for each corresponding Experience Period); Addendum B-1999 at 1 (same); *see also* Retro Plan, Exh. A at 3 (same); Addendum at 4 (same).

18. Individual Experience Periods are reconciled separately to determine whether, for that such Period, Columbia owes NCRIC money or vice versa. Then, the amount for each Experience Period is added up to obtain a cumulative total. *See* Addendum B at 5, ¶ 4; *see also* Retro Plan, Exh. A ¶ 4; Addendum at 4, ¶ 4.

19. Typically, after each Reconciliation, NCRIC provides Columbia with a spreadsheet listing all the individual Experience Periods, with a cumulative total at the right side. *See, e.g.*, Fargis Dep., at 653 & Exh. 67 ("Columbia Hospital for Women Retro-Program Years Sept 01, 1993 – August 31, 2000" (9/1/00)) ("September 1, 2000 Reconciliation") (Exhibit 10 hereto). NCRIC is required to provide this spreadsheet, or similar notice, within 60 days of the end of each Experience Period – after which time Columbia has 30 days to pay any premium due. *See* Addendum B ¶ 5; *see also* Retro Plan, ¶ 5 & Exh. A ¶ 5; Addendum ¶ 5. Further, Reconciliations are performed anew, *every year* for every Experience Period. This repeated recalculation continues to occur until all claims for each Period are closed. *See* Addendum B ¶ 5; *see also* Retro Plan, ¶ 5 & Exh. A ¶ 5; Addendum ¶ 5.

Terms of the Plan

20. **Subject Premium** is "the total of the undiscounted premiums that would be charged to physician[s] for coverage limits of $500,000 each claim . . . if the physician[s] were not Plan Participants." Addendum B ¶ 7, at 8; *see also* Addendum ¶ 7, at 6.

21. All premiums under the Retro Plan are calculated by applying multipliers to the Subject Premium. As such, it is an extremely important number to be able to evaluate. However, the process by which NCRIC calculates the Subject Premium is opaque, since the Plan only provides a range, not an exact formula. *See* Addendum B ¶ 7, at 8 (explaining that the Subject Premium "shall not exceed 85%, nor be less than 70% of the undiscounted premium charged for coverage limits of $1 million); Addendum ¶ 7, at 6 (same). Further, the Plan puts the actual determination of the amount of Subject Premium in the hands of NCRIC's consulting actuary. *See* Retro Plan, Exh. A ¶ 7, at 4 (Subject Premium is "determined by NCRIC's consulting actuary"). Columbia has not, to date, received from NCRIC the data necessary to perform a full audit the Subject Premium number. (Yet, even without performing even a detailed audit, Columbia has identified several errors in NCRIC's past Subject Premium calculations. *See* Fargis Dep., at 676-78.) Accordingly, Columbia assumes for the purposes of its motion, but does not concede, that NCRIC's Subject Premium numbers are correct.

22. The **Reconciliation Date** is September 1 of each year. NCRIC must complete its Reconciliation and notify Columbia of the details concerning the amount it owes, in writing, "[w]ithin (60) days" of each Reconciliation Date. *See* Addendum B ¶ 5; Retro Plan ¶ 5 & Exh. A ¶ 5; Addendum ¶ 5. Columbia could not have been expected to make the complicated calculations (*see infra* ¶ 31) necessary to determine what was owed at each Reconciliation, particularly since it did not have access to much of the information necessary to make the

calculations (*e.g.*, information about Loss Reserves (*see infra* ¶ 40)). As such, NCRIC's notice is no mere formality. Indeed, the language of the Plan makes notice a condition precedent to Columbia's being liable for any amount due under the Plan. *See* Addendum B ¶ 5 ("Any amounts due either to or from [Columbia] shall be due and payable within thirty (30) days" after Columbia receives notice from NCRIC); *accord* Retro Plan ¶ 5 & Exh. A ¶ 5; Addendum ¶ 5;

23. In the original Plan, the first Reconciliation of each Experience Period was *two* years after the Period ended. Since the Plan was (allegedly) amended effective September 1, 1996, Experience Periods are now reconciled for the first time just *one* year after they end. *Compare* Retro Plan, Exh. A ¶ 5 (schedule listing "First Reconciliation Date" for each Experience Period) *with* Addendum B ¶ 5 (same charts, with different dates).

24. **Deposit Premium** is "the Subject Premium multiplied sixty-seven (67%)." Addendum B ¶ 7, at 6; Addendum ¶ 7, at 5. The current Deposit Premium was first documented in the Addendum, which was signed in January 1998 and retroactive to September 1, 1996, *see id.* at 1 – yet, the actual *effective* date for the current Deposit Premium is September 1, *1995*. As set forth in the Addendum, *see id.* ¶ 7, at 5, the 67% Deposit Premium was to be effective for the "three-year term of the Plan" – that is, for the most recent three Experience Periods only. This restriction was consistent with the explicit limitation on an earlier, temporary amendment to the Deposit Premium (*see infra*, ¶ 27), which "[did] not adjust the Agreement prior to [its effective] date" (January 1, 1996). Further, the restriction on the new Deposit Premium precisely matched the restriction on the Deposit Premium's mirror term (*see infra*, ¶¶ 26-28), Attending Faculty discount. *See* Addendum at 3, ¶ 2 (stating that the new Attending Faculty discount applies only to the last three periods of the Plan, "ending 1996, 1997 and 1998"). In short, the Addendum

16d-001191

modified the Deposit Premium so that – as NCRIC concedes (*see infra* ¶¶ 26, 29) – the 67% number *does not* apply to the 1993-94 and 1994-95 Experience Periods, in any Reconciliation.

25. Originally, the Plan defined Deposit Premium as "the Subject Premium multiplied by *eighty-one percent (81%)*," Retro Plan, Exh. A ¶ 7, at 3 (emphasis added). By making Deposit Premium (1) the inverse of the Attending Faculty discount (which is the Subject Premium less a 19% discount, *see supra*, ¶ 26) and (2) a set-off against the Retrospective Premium (which is the actual cost of providing the insurance, *see infra* ¶ 26), the Plan carefully defined the role of Deposit Premium: it is the total amount on "deposit" with NCRIC as a result of the Attending Faculty premium payments for $500,000 each in medical malpractice coverage. In short, Deposit Premium is a credit to Columbia for the Attending Faculty's premium.

26. In order to retain its function as the Attending Faculty's "deposit," the Deposit Premium multiplier must remain the *inverse* of the Attending Faculty discount. If the Attending Faculty discount changes, the Deposit Premium must change. In fact, throughout the life of the Plan, the terms have moved together: originally, they were 81% and 19%; then, briefly, they were 62% and 38%; finally, they are 67% and 33%. (This connection is well-known to NCRIC, and particularly, Steve Fargis. *See* 1/22/96 Fargis Letter, at 1 (informing Columbia of the need to change the Deposit Premium to reflect the recent change in the Attending Faculty discount).)

27. Similarly, when the 67% Deposit Premium was amended effective September 1, 1995, the change occurred in exactly the same way as the change to the 33% Attending Faculty discount occurred (*see supra*, ¶ 14). First, the Deposit Premium actually changed on January 1, 1996, *see* Amendment A at 1, not on September 1, 1995. Second, a temporary Deposit Premium multiplier – here, 62% – was used to give effect to the new 67% Deposit Premium multiplier over the course of the full 1995-96 year. Third, the result was, effectively, a change on

16d-001192

September 1, 1995 – because nine months of a 62% Deposit Premium, after three months of an 81% Deposit Premium, is the same as a 67% discount of over 12 months [*i.e.*, (¼ * 81%) + (¾ * 62%) = approximately 67%)]. In sum, the change in the Deposit Premium to 62% occurred, on its face, simply to effectuate the new 67% Deposit Premium part-way through a Plan year.

28. Although the Plan does not make the connection between Deposit Premium and Attending Faculty discount explicit, the logic of the Plan makes the connection implicit. Indeed, NCRIC concedes that the connection exists by employing, in current Reconciliations, the 81% Deposit Premium for the Experience Periods where the Attending Faculty discount was 19%. *See* September 1, 2000 Reconciliation (1994-95 column). Indeed, NCRIC admits that 81% is the correct multiplier to apply for those years. *See, e.g.,* Responses to Defendant's Requests for Admissions ("RFA Response No."), Responses No. 24-27 (Exhibit 21 hereto). As such, there is no doubt: the new Deposit Premium applies *only* to the last five Experience Periods.

29. In addition, there is no doubt that Deposit Premium factor stated in the Plan is 67%, not 62%. NCRIC's 30(b)(6) designee, Stephen Fargis, has repeatedly affirmed this. *See, e.g.,* Fargis Dep. at 452, 747, 748-49, 757-58 & Exh. 78 (Letter from Stephen S. Fargis to Anne D. Gaffey, dated March 29, 2000) (Exhibit 19 hereto) ("the current contract reflects a deposit premium of 67%"). Since NCRIC drafted of the language changing the Deposit Premium – not once but *twice* – and also reviewed it, it *knew* that the Plan said 67%, not 62% from the outset.

30. Finally, the Plan's language places no limitations on the applicability of the Deposit Premium to any particular Experience Period. Yet, the term's role as the inverse of the Attending Faculty discount reflects the parties' intent to limit its applicability, as set forth above.

31. **Retrospective Premium** ("**Retro Premium**") represents, for each Experience Period, the total cost of providing $500,000 in malpractice insurance coverage to all the

Attending Faculty. As such, the Retro Premium is subtracted from the Deposit Premium to determine how much is owed (and by whom) for each year. *See* Addendum B at 5, ¶ 6 ("The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the [Retro Premium] from the applicable Deposit Premium for the subject Experience Period(s)."); *see also* Addendum at 4 ¶ 6 (same); Retro Plan, Exh. A ¶ 6 (same). Each year, the Retro Premium for each Experience Period is recalculated, *see* Addendum B at 5, ¶ 5; *see also* Addendum at 4 ¶ 5 (same); Retro Plan, Exh. A ¶ 5, as of each Reconciliation Date, by applying the **Retrospective Rating Premium Formula** ("**Retro Formula**"): "Retrospective Premium (Subject to established Minimum and Maximum Premium) = {[[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor} + Basic Premium."

32. **Minimum Premium** is the minimum Retro Premium for a Experience Period, currently, "sixty percent (60%) of the Subject Premium." Addendum B ¶ 7. The language of the Plan places no limitations whatsoever on the application of the Minimum Premium to any particular Experience Period(s). *See* Fargis Dep. 454-55 (admitting that there is no basis in the definition of Minimum Premium for concluding that it was changed along with, or necessarily changes in concert with the Deposit Premium and/or Attending Faculty discount). Unlike with the Deposit Premium, there is no logical basis for imposing any implicit limitations on the application of the Minimum Premium to certain Experience Periods.

33. **Maximum Premium** is the maximum Retro Premium for a particular Experience Period, currently "one hundred and thirty-three percent (133%) of the Subject Premium." *See* Fargis Dep., at 453. As with the similar Minimum Premium, the Plan's definition does not limit the applicability of the Maximum Premium to any particular Experience Period(s).

34. In the original Plan, the Minimum Premium was 75% of the Subject Premium. See Retro Plan, Exh. A ¶ 7, at 4. The Minimum Premium was first changed in January 1998, effective September 1, 1996. *See* Addendum ¶ 7, at 6. (In the original Plan, the Maximum Premium was 115% of the Subject Premium; it changed to 133% effective September 1, 1996.)

35. An obvious typographical error in the first amended definition of Minimum Premium was corrected by the second amendment. (A similar error in the amended definition of Maximum Premium was similarly repaired.) *Compare* Addendum ¶ 7, at 6 (first amendment) ("Minimum Premium shall be equal to seventy-five percent (60%) of the Subject Premium") *with* Addendum B ¶ 7, at 7 (second amendment) ("Minimum Premium shall be equal to sixty percent (60%) of the Subject Premium"); *accord* Fargis Dep., at 152-53. NCRIC caught its prior error, and corrected it, while reviewing the first amendment and drafting the second. *See id.*

36. **Additional Premium** is indicated by a positive balance (*i.e.*, in NCRIC's favor), either for an individual Experience Period or cumulative for the entire Plan, in a Reconciliation spreadsheet. *See, e.g.*, September 1, 2000 Reconciliation (indicating cumulative Additional Premium of $1,286,525, and Additional Premium of $491,225 for 1995-96 Experience Period). Additional Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is *greater* than the Deposit Premium. *See* Addendum B at 5, ¶¶ 5, 6.

37. **Return Premium** is indicated by a negative balance (*i.e.*, in Columbia's favor), either for an individual Experience Period or cumulative for the entire Plan, in a Reconciliation spreadsheet. *See, e.g.*, September 1, 1998 Reconciliation (indicating cumulative Return Premium of $669,403, and Return Premium of $177,806 for the 1994-95 Experience Period). Return Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is *less* than the Deposit Premium. *See* Addendum B at 5, ¶¶ 5, 6.

38. **Experience Period**: each year of the Plan is a separate Experience Period.

39. For each Experience Period, the total Retro Premium and Deposit Premium are both recalculated, *every* year, until all claims for that year are closed.

40. **Loss Reserves** are "allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid." Addendum B ¶ 7, at 7; *accord* Addendum ¶ 7, at 6; Retro Plan, Exh. A ¶ 7, at 4. The reserves (which become **Paid Losses** if paid) fall into two categories, indemnity payments for medical malpractice claims against the Attending Faculty and expanses for defending those claims. In its Reconciliation spreadsheets, NCRIC lists Indemnity Reserves and Expense Reserves ("ALAE Reserves") separately. The two categories are tallied to obtain the total Loss Reserves.

41. **Development Factors** are "the factors by which Loss Reserves are multiplied for purposes" of calculating the Retro Premium. Addendum B ¶ 6. The Development Factors are a schedule of multipliers that increase as Experience Periods progress, and as a claim matures, to "develop" of NCRIC's Loss Reserves as its level of certainty about the accuracy of the Loss Reserves increases. Because of the Development Factors, Columbia was responsible (under the Plan as originally drafted) only for developed losses, not for all of NCRIC's Loss Reserves. The effect of Development Factors is that, even in the (unlikely) event that the total Loss Reserves for a particular Experience Period remain exactly the same over the course of several Reconciliations, the "developed" losses captured by the Plan will steadily increase.

42. Over time, the Plan has been amended to change the value of – but *not* the procedure for applying – the Development Factors. Originally, the Development Factors were:

Year 1 Reconciliation	-	88.5%
Year 2 Reconciliation	-	87.5%
Year 3 Reconciliation	-	90.5%
Year 4 Reconciliation	-	96.0%

16d-001196

Year 5 Reconciliation	-	100.0%
All Subsequent Reconciliations	-	100.0%

Retro Plan, Exh. A ¶ 7, at 3.

43. Effective September 1, 1996, the Development Factors were lowered:

Year 1 Reconciliation	-	55.0%
Year 2 Reconciliation	-	65.0%
Year 3 Reconciliation	-	80.0%
Year 4 Reconciliation	-	105.0%
Year 5 Reconciliation	-	105.0%
All Subsequent Reconciliations	-	100.0%

Addendum, Exh. ¶ 7, at 5. This change in the *amounts* did not effect any substantive change in the *manner* in which the Development Factors were applied. *See* Fargis Dep., at 703-05.

44. In 1999, the parties added interim Development Factors:

Months	Factor
12	0.55 (unchanged)
15	0.58
18	0.60
21	0.63
24	0.65 (unchanged)
27	0.69
30	0.73
33	0.76
36	0.81 (unchanged)
39	0.86
42	0.93
45	0.99
48+	1.05 (unchanged)

Addendum B-1999, at 2. These interim Development Factors were solely for informational purposes, to be used in NCRIC's quarterly updates. *See* Fargis Dep., at 524. (In 1998, NCRIC start producing quarterly reports on a regular basis, as required by the Plan. The interim factors were merely an informational tool, use to smooth out the quarterly reconciliation updates.) Introduction of the interim factors was not intended to change, and did not in fact change, the manner in which the Development Factors were applied. *See id.* at 694-98, 702-03.

16d-001197

45. Exhibit E to the Retro Plan is explicitly an "Example of Operation of the Plan." *See* Retro Plan, Exh. E (header). It also is expressly incorporated into the Plan to be used "for clarification" of concepts like Development Factors. *See id.* at 4, ¶ 13.

46. By showing several cumulative Reconciliations, Exhibit E helps explain how they work over time. In particular, Exhibit E indicates that Development Factors are to be applied the relevant number of months *after* the end of an Experience Period, not that number of months *before* the end of an Experience Period. For example, on Exhibit E, the *first* Development Factor – the "Year 1 Reconciliation," or 88.5% Development Factor (*see* Retro Plan, Exh. A ¶ 7, at 3) – is *always* applied to an Experience Period the first time it is reconciled. To apply the current Development Factors in this way, the 12-month Factor (55%), not the 24-month Factor (65%), would be applied to an Experience Period the first time it is reconciled. Indeed, NCRIC admits that the 55% Factor was meant to replace the 88.5% Factor. *See* Fargis Dep., at 706-07.

47. Of course, Exhibit E, being older, is in a different format, and differs substantively from the NCRIC spreadsheets in some respects. (*I.e.*, Exhibit E, which is part of the original Plan, was drafted to include Experience Periods two years after they were complete, like the original Plan. Moreover, Exhibit E is, as an example, based on a 1/1 Reconciliation Date rather than a 9/1 Reconciliation Date. Further, its format is something different than the NCRIC spreadsheets, in that the years move in the opposite direction.) Nonetheless, Exhibit E provides clear guidance that Development Factors are to be applied the relevant number of months *after* the end of an Experience Period, not that number of months *before* the end of a Period.

48. NCRIC did not comport with Exhibit E in performing any of its recent Reconciliations. *See* Fargis Dep., at 716-18.

49. There is no dispute that the Development Factors apply to all Experience Periods.

NCRIC's Reconciliations

50. In performing Reconciliations, NCRIC uses a Deposit Premium multiplier of 62% for Experience Periods from 1995-96 to the present.. *See* RFAs Response Nos. 22 & 23.

51. NCRIC does not use 67% as the Deposit Premium multiplier for *any* Experience Period, for any Reconciliation.

52. NCRIC applies the 60% Minimum Premium multiplier only for Experience Periods beginning after September 1, 1995. *See* RFAs Response Nos. 87, 91, 95, 99 (referring to September 1, 2000 Reconciliation); *see also* September 1, 2000 Reconciliation ("Min. Factor" row at bottom of spreadsheet, four columns on right). For the first two Experience Periods (one of which it treats as closed) NCRIC uses the old 75% Minimum Premium multiplier. *See* RFAs Response No. 83, 105 (referring to September 1, 2000 Reconciliation); *see also* September 1, 2000 Reconciliation ("Min. Factor" row, column on far left).

53. NCRIC did not use the 60% Minimum Premium factor to calculate the $172,815 in Return Premium that it sent to Columbia on November 30, 1998. Rather, it used a 75% factor.

54. NCRIC applies each Development Factor the relevant number of months after an Experience Period *begins*, not the relevant number of months after an Experience Period *ends*. *See e.g.*, September 1, 2000 Reconciliation (applying 65%, the 24-month factor, to the Experience Period *beginning* 24 months before the Reconciliation Date, on September 1, 1998, and *ending* 12 months before the Reconciliation Date, on September 1, 1999; applying 80%, the 36-month factor, to the Experience Period *beginning* 36 months before the Reconciliation Date, on September 1, 1997, and *ending* 24 months before the Reconciliation Date, on September 1, 1998; applying 105%, the 48-month-plus factor, to the Experience Period *beginning* 48 months before the Reconciliation Date, on September 1, 1996, and *ending* 36 months before the

Reconciliation Date, on September 1, 1997); *see also* September 1, 1998 Reconciliation (same pattern); September 1, 1999 Reconciliation (same pattern).

September 1, 2001 Reconciliation

55. NCRIC did not provide Columbia with the September 1, 2001 Reconciliation. *See* Declaration of Joseph K. Leahy In Support of Defendant's Motion for Summary Judgment ("Leahy Decl.") (Exhibit 20 hereto) ¶ 2.

56. A spreadsheet that NCRIC sent to Columbia on September 5, 2001, which purported to be the September 1, 2001 Reconciliation of the Plan, was not, in fact, the September 1, 2001 Reconciliation. According to NCRIC (through its Rule 30(b)(6) representative Steve Fargis), the September 5 spreadsheet may have contained "certain assumptions to try to reach settlement," and therefore, it could not be counted on to reflect a proper Reconciliation. *See* Fargis Dep., at 655. Indeed, if the spreadsheet were the Reconciliation, it would have included a "letter requesting payment of an amount, " *id.* at 655-56 – which it did not, *see* Leahy Decl. ¶ 3.

57. Columbia never received from NCRIC any other spreadsheet purporting to be a September 1, 2001 Reconciliation spreadsheet, with or without a letter requesting a payment of an amount. Further, despite attempts to obtain the September 1, 2001 Reconciliation from NCRIC since the issue recently came to light, Columbia has not been able to obtain a September 1, 2001 Reconciliation. *See* Leahy Decl. ¶ 2-3. Accordingly, Columbia cannot determine the amount of Additional Premium, if any, that was due as of September 1, 2001.

Oral Agreement Chronology

58. NCRIC representatives, including Steve Fargis and Bill Burgess, presented NCRIC's Reconciliation of the first Experience Period of the Retro Plan at meetings with Columbia's Board of Directors and Finance Committee on or about November 20, 1996. *See*

Fargis Dep., at 309 & Exh. 18, at 3 (spreadsheet entitled "Columbia Hospital for Women Retrospective Rating Program – Years 1993-1996") (Exhibit 15 hereto). At the meetings, NCRIC explained that it currently owed Columbia approximately $159,000 in Return Premium for the first Experience Period. *Id.* at 210-14; *see also* Affidavit of Dr. Safa Rifka In Support of Defendant's Motion for Summary Judgment ("Rifka Aff.") (Exh. 17 hereto) ¶ 3.

59. In an effort to avoid paying the Return Premium that it owed to Columbia, NCRIC proposed the following modification of the Plan: neither party would pay Additional Premium or Return Premium for any Experience Period (regardless of whether, for that Experience Period, the Reconciliation indicated that Additional or Return Premium was due) until *all* claims for that Experience Period were closed. *See* Fargis Dep., at 210-15, 220-21; Interrogatory Response No. 5; Rifka Aff. ¶ 4.

60. Further, NCRIC's representatives, including Mr. Fargis, proposed that once all claims for an Experience Period were closed (*i.e.*, once the Experience Period was "closed"), the Additional Premium or Return Premium for that Experience Period – and only that Period – would be paid. *See* Fargis Dep., at 318-21; Interrogatory Response No. 5; Rifka Aff. ¶¶ 4-5.

61. Importantly, as part of this proposal, NCRIC's representatives, including Mr. Fargis, indicated to Columbia that the parties' oral agreement would continue to operate until all Experience Periods were closed, regardless of whether the Plan remained in effect. At no point did any NCRIC representative suggest that, under any circumstances, the parties might exchange money for a year of the Plan before all claims for that year closed. *See* Rifka Aff. ¶ 5-6.

62. Columbia accepted NCRIC's proposed oral modification of the Retro Plan ("the parties' oral agreement to pay premium only for closed Experience Periods" or "the parties' oral agreement"). *See* Interrogatory Response No. 5 (admitting that "plaintiff and defendant agreed

to this procedure" where "[a]mounts owed to plaintiff, or amounts owed to defendant . . . were not paid by one party to the other, but were 'rolled forward' until the close of [an Experience Period]"; "[p]laintiff and defendant agreed . . . [that] payments . . . would be paid once [an Experience Period] was closed"); *see also* Rifka Aff. ¶ 5; Fargis Dep., at 320-21, 720-21.

63. In consideration for the benefit it received under the parties' oral agreement, each party gave up the right to demand payment of Additional Premium or Return Premium for any Experience Period until that Period was closed. In particular, Columbia did not demand, and NCRIC did not pay, the Return Premium that NCRIC otherwise would have owed under the Plan, effective September 1, 1996. *See* Fargis Dep, at 318, 321; Rifka Aff., 5.

64. In the Fall of 1997, NCRIC provided Columbia with a Reconciliation effective September 1, 1997. That Reconciliation indicated that approximately $1.77 million in cumulative Additional Premium. *See* Fargis Dep., at 490-91 & Exh. 46 (spreadsheet entitled "Columbia Hospital for Women Retro-Program . . . as of September 1, 1997") (Exhibit 7 hereto)

65. None of the Plan's Experience Periods were closed at this time. *Id.* Exh. 46 (showing Loss Reserves for outstanding claims for each Experience Period being reconciled). Accordingly, due to the parties' oral agreement to pay premium only for closed years, Columbia did not owe NCRIC any Additional Premium at this time. *See* Fargis Dep., at 420.

66. Regardless, NCRIC demanded that, as a condition for adding an additional (1998-99) Experience Period to the Plan, Columbia must pay $1 million as "financial security" for "future liabilit[ies]" under the Plan. *See id.* at 582. This security would remain on deposit with NCRIC, even if Columbia was owed Return Premium by NCRIC under the parties' oral agreement. *See id.* at 375-76. NCRIC also repeatedly characterized the payment as a deposit in its dealings with Columbia. *See, e.g., id.* at 604, 629-31, 634, 638-39, 762.

67. Columbia paid the $1 million in installments of $250,000 each, between January and March 1998. As NCRIC admits, the $1 million deposit constituted a one-time exception to the parties' oral agreement. *See* Amended Reply ¶ 21.

68. Subsequently, the parties amended the Plan to reflect that Columbia would, henceforth, provide for its contingent liabilities under the Plan by providing security to NCRIC. See Addendum, at 1 (modifying paragraph 8 of Retro Plan to state that Columbia "has made, and will continue to make financial security to NCRIC . . . for the contingent liabilities"); *id.* (modifying paragraph 10 of Retro Plan to state that, annually Columbia "will provide NCRIC with financial security"). To date, NCRIC has not demanded additional financial security.

69. NCRIC presented Columbia with the September 1, 1998 Reconciliation on or about October 23, 1998. *See* Fargis Dep., at 624-25 & Exh. 65 (spreadsheet entitled "Columbia Hospital for Women Retro-Program . . . as of August 31, 1998" (October 23, 1998)).

70. In light of Columbia's $1 million payment, the September 1, 1998 Reconciliation showed a balance of $670,000 in cumulative Return Premium. Due to the parties' oral agreement, NCRIC did not pay this amount to Columbia. Indeed, NCRIC continued to hold Columbia's $1 million on deposit instead of paying Return Premium. *See id.* at 638, 651-52.

71. However, the 1993-94 Experience Period had recently closed. Further, NCRIC's Reconciliation showed a balance $172,815 in Return Premium due for this Experience Period. Under the parties' oral agreement, this meant NCRIC owed Columbia money. *See id.* at 652.

72. Sure enough, on about November 30, 1998, NCRIC paid Columbia $172,815 in Return Premium for the 1993-94 Experience Period. *See* Fargis Dep., at 217, 650-51 & Exh. 70 (Letter from Jeffrey Marsh to Gerald Beaulieu, dated November 30, 1998 (attaching check for $172, 815)) (Exhibit 18 hereto).

73. NCRIC presented Columbia with the September 1, 1999 Reconciliation on or about October 11, 1999. *See* Fargis Dep., at 646-48 & Exh. 66 (spreadsheet entitled "Columbia Hospital for Women Retro-Program Years 9/1/1993 – 8/31/1999" (October 11, 1999)). This Reconciliation indicated an amount of $903,814 in Additional Premium due from Columbia ($1,903,814 less Columbia's $1 million deposit), albeit including all of the years (the latest of which was not permitted to be reconciled at that time).

74. However, no additional Experience Periods had closed since the 1993-94 period. Accordingly, pursuant to the terms of the parties' oral agreement, NCRIC did not demand any money from Columbia at this time

75. NCRIC presented Columbia with the September 1, 2000 Reconciliation on or about September 1, 2000. *See* Fargis Dep., at 653-55 & Exh. 67 (September 1, 2000 Reconciliation). This Reconciliation indicated a cumulative amount of $1,286,525.00 in Additional Premium due. *See* September 1, 2000 Reconciliation.

76. As of the September 1, 2000 Experience Period, one additional Experience Period – 1994-95 – was deemed closed by NCRIC. *See* September 1, 2000 Reconciliation (indicating a negative balance $177, 806, and no Loss Reserves (*i.e.*, no open claims) for the 1994-95 Experience Period). As NCRIC admits, this Experience Period showed a balance of Return Premium due in the amount of $177,806. NCRIC did not pay this amount to Columbia. *See* Fargis Dep., at 729-30.

77. Since there were no closed Experience Periods for which Additional Premium was due, Columbia owed NCRIC no money under the parties' oral agreement. Rather, NCRIC owed Columbia Return Premium, because the second (1994-95) Experience Period had recently closed, and Return Premium was due for that Period.

16d-001204

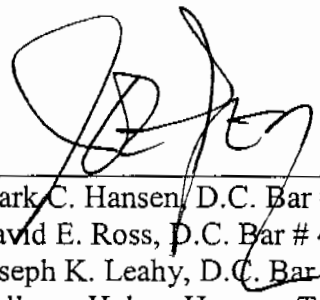
78. On October 1, 2000, NCRIC presented Columbia with a bill for $1,285,525.00.

79. Subsequent to the October 1, 2000 bill, NCRIC has provided Columbia with several quarterly reconciliation updates. The most recent update, dated January 8, 2002, is the quarterly update effective November 30, 2001. This update indicates that the current amount of cumulative Additional Premium due is $2,144,978. *See* Columbia Hospital for Women Retro-Program Years: Sept 30, 1993 – Sept 30, 2000") (Nov. 30, 2001) (Exhibit 23 hereto). However, there is no way to tell from this spreadsheet what the amount due was, as of September 1, 2001. Since that time, the Loss Reserves could have increased; NCRIC undoubtedly has incurred more Paid Losses, if just for ALAE Expenses – and the Development Factors have changed due to the passage of time. Columbia therefore cannot discern what it owes from this spreadsheet.

80. Columbia does not, however, owe any more money under the parties oral agreement. As the most recent spreadsheet shows, no additional Experience Periods have closed since the September 1, 2000 Reconciliation. *See id.*

DATED: February 7, 2002

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

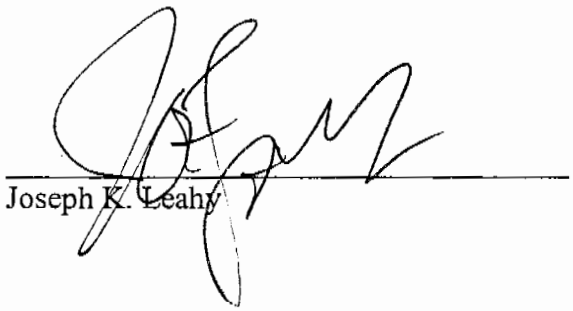
16d-001206

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 8th day of February, 2002, a copy of Defendant's Statements of Material Facts Not In Dispute was served upon the following by first class United States mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on the 11th day of February, 2001, a courtesy copy of all of the aforementioned papers will be served upon the Chambers for Judge Anna Blackburn-Rigsby by hand delivery.



Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Oppositions to Dispositive Motions Filed, February 4, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

FILED
FEB 11 5 56 PM '02
ADMINISTRATIVE DIVISION

PRAECIPE

Defendant Columbia Hospital for Women Medical Center, Inc. hereby submits errata pages 6-9 and 14 of its Statement of Material Facts Not In Dispute, which may be inserted in place the corresponding pages in the original.

DATED: February 11, 2002

Respectfully submitted,

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 11th day of February, 2002, a copy of Defendant's Praecipe was served upon the following by first class United States mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on the the same date, a courtesy copy of the aforementioned Praecipe was served upon the Chambers for Judge Anna Blackburne-Rigsby by hand delivery.

Joseph K. Leahy

Terms of the Plan

20. **Subject Premium** is "the total of the undiscounted premiums that would be charged to physician[s] for coverage limits of $500,000 each claim . . . if the physician[s] were not Plan Participants." Addendum B ¶ 7, at 8; *see also* Addendum ¶ 7, at 6.

21. All premiums under the Retro Plan are calculated by applying multipliers to the Subject Premium. As such, it is an extremely important number to be able to evaluate. However, the process by which NCRIC calculates the Subject Premium is opaque, since the Plan only provides a range, not an exact formula. *See* Addendum B ¶ 7, at 8 (explaining that the Subject Premium "shall not exceed 85%, nor be less than 70% of the undiscounted premium charged for coverage limits of $1 million); Addendum ¶ 7, at 6 (same). Further, the Plan puts the actual determination of the amount of Subject Premium in the hands of NCRIC's consulting actuary. *See* Retro Plan, Exh. A ¶ 7, at 4 (Subject Premium is "determined by NCRIC's consulting actuary"). Columbia has not, to date, received from NCRIC the data necessary to perform a full audit the Subject Premium number. (Further, with without performing even a detailed audit, Columbia has identified several errors in NCRIC's past Subject Premium calculations. *See* Fargis Dep., at 676-78.) Accordingly, Columbia assumes for the purposes of its motion, but does not concede, that NCRIC's Subject Premium numbers are correct.

22. The **Reconciliation Date** is September 1 of each year. NCRIC must complete its Reconciliation and notify Columbia of the details concerning the amount it owes, in writing, "[w]ithin (60) days" of each Reconciliation Date. *See* Addendum B ¶ 5; Retro Plan ¶ 5 & Exh. A ¶ 5; Addendum ¶ 5. Columbia could not be expected to make the complicated calculations (*see infra* ¶ 31) necessary to determine what it owes or is owed at each Reconciliation, particularly since it did not have access to much of the information necessary to make the calculations (*e.g.*,

information about Loss Reserves (*see infra* ¶ 40)). As such, NCRIC's notice is far more than a mere formality. Indeed, the language of the Plan makes NCRIC's notice a condition precedent to Columbia to become liable for any amount due under the Plan. *See* Addendum B ¶ 5 ("Any amounts due either to or from [Columbia] shall be due and payable within thirty (30) days" after Columbia receives notice from NCRIC); *accord* Retro Plan ¶ 5 & Exh. A ¶ 5; Addendum ¶ 5;

23. In the original Plan, the first Reconciliation of each Experience Period was *two* years after the Period ended. Since the Plan was (allegedly) amended effective September 1, 1996, Experience Periods are now reconciled for the first time just *one* year after they end. *Compare* Retro Plan, Exh. A ¶ 5 (schedule listing "First Reconciliation Date" for each Experience Period) *with* Addendum B ¶ 5 (same charts, with different dates).

24. **Deposit Premium** is "the Subject Premium multiplied sixty-seven (67%)." Addendum B ¶ 7, at 6; Addendum ¶ 7, at 5. The current Deposit Premium was first documented in the Addendum, which was signed in January 1998 and retroactive to September 1, 1996, *see id.* at 1 – yet, the actual *effective* date for the current Deposit Premium is September 1, *1995*. As set forth in the Addendum, *see id.* ¶ 7, at 5, the 67% Deposit Premium was to be effective for the "three-year term of the Plan" – that is, for the most recent three Experience Periods only. This restriction was consistent with the explicit limitation on an earlier, temporary amendment to the Deposit Premium (*see infra*, ¶ 27), which "[did] not adjust the Agreement prior to [its effective] date" (January 1, 1996). Further, the restriction on the new Deposit Premium precisely matched the restriction on the Deposit Premium's mirror term (*see infra*, ¶¶ 26-28), Attending Faculty discount. *See* Addendum at 3, ¶ 2 (stating that the new Attending Faculty discount applies only to the last three periods of the Plan, "ending 1996, 1997 and 1998"). In short, on its face, the 1996/1998 amendment to the Deposit Premium was to be limited consistent with its immediate

predecessor and its mirror. In short, as NCRIC concedes (*see infra* ¶¶ 26, 29), the new Deposit Premium *does not* apply to the 1993-94 and 1994-95 Experience Periods, in any Reconciliation.

25. Originally, the Plan defined Deposit Premium as "the Subject Premium multiplied by *eighty-one percent (81%)*," Retro Plan, Exh. A ¶ 7, at 3 (emphasis added). By making the Deposit Premium (1) the inverse of the Attending Faculty discount (the Subject Premium received by NCRIC from Attending Faculty, less a 19% discount, *see supra*, ¶ 26) and (2) a set-off against the Retrospective Premium (the actual cost of providing the insurance, *see infra* ¶ 26), the Plan defined its role in the Plan: it is the total amount on "deposit" with NCRIC, as a result of the Attending Faculty's premium payments towards $500,000 each in medical malpractice liability coverage. In short, it is a credit to Columbia for the Attending Faculty's premium.

26. In order to retain its function as the Attending Faculty's "deposit," the Deposit Premium multiplier must remain the *inverse* of the Attending Faculty discount. If the Attending Faculty discount changes, the Deposit Premium must change. In fact, throughout the life of the Plan, the terms have moved together: originally, they were 81% and 19%; then, briefly, they were 62% and 38%; finally, they are 67% and 33%. (This connection is well-known to NCRIC, and particularly, Steve Fargis. *See* 1/22/96 Fargis Letter, at 1 (informing Columbia of the need to change the Deposit Premium to reflect the recent change in the Attending Faculty discount).)

27. Similarly, when the 67% Deposit Premium was amended effective September 1, 1995, the change just as it did with the 33% Attending Faculty discount (*see supra*, ¶ 14). First, the Deposit Premium actually changed on January 1, 1996, *see* Amendment A at 1, not on September 1, 1995. Second, a temporary Deposit Premium multiplier – here, 62% –was used to give effect to the new 67% Deposit Premium multiplier over the course of the full 1995-96 year. Third, the result was, effectively, a change on September 1, 1995, because nine months of a 62%

Deposit Premium, after three months of an 81% Deposit Premium, achieves a 67% discount of over 12 months [*i.e.*, (¼ * 81%) + (¾ * 62%) = approximately 67%)]. In sum, the change in the Deposit Premium to 62% occurred, on its face, simply to effectuate the new 67% Deposit Premium part-way through a Plan year.

28. While the Plan does not make this explicit, its logic is undeniable. Further, NCRIC, at a minimum, concedes the connection between the Attending Faculty discount and the Deposit Premium by continuing to employ, in current Reconciliations, the 81% Deposit Premium for the Experience Periods where the Attending Faculty discount was 19%. Indeed, NCRIC admits that 81% is the correct multiplier to apply for those years. *See, e.g.*, Responses to Defendant's Requests for Admissions ("RFA Response No."), Responses No. 24-27 (Exhibit 21 hereto). As such, there is no doubt: the new Deposit Premium applies *only* to the last five Experience Periods.

29. In addition, there is no doubt that Deposit Premium factor stated in the Plan is 67%, not 62%. NCRIC's voice, Stephen Fargis, has repeatedly affirmed this. *See, e.g.*, Fargis Dep. at 452, 747, 748-49, 757-58 & Exh. 78 (Letter from Stephen S. Fargis to Anne D. Gaffey, dated March 29, 2000) (Exhibit 19 hereto) ("the current contract reflects a deposit premium of 67%"). Since NCRIC drafted of the language changing the Deposit Premium – not once but *twice* – and also reviewed it, it *knew* that the Plan said 67%, not 62% from the outset.

30. Finally, the Plan's plain language places no limitations on the applicability of the Deposit Premium to any particular Experience Period. Yet, the term's role as the inverse of the Attending Faculty discount reflects the parties' intent to limit its applicability, as set forth above.

31. **Retrospective Premium** ("**Retro Premium**") represents, for each Experience Period, the total cost of providing $500,000 in malpractice insurance coverage to all the

45. Exhibit E to the Retro Plan is explicitly an "Example of Operation of the Plan." *See* Retro Plan, Exh. E (header). It also is expressly incorporated into the Plan to be used "for clarification" of concepts like Development Factors. *See id.* at 4, ¶ 13.

46. By showing several cumulative Reconciliations, Exhibit E helps explain how they work over time. In particular, Exhibit E indicates that Development Factors are to be applied the relevant number of months *after* the end of an Experience Period, not that number of months *before* the end of an Experience Period. For example, on Exhibit E, the *first* Development Factor – the "Year 1 Reconciliation," or 88.5% Development Factor (*see* Retro Plan, Exh. A ¶ 7, at 3) – is *always* applied to an Experience Period the first time it is reconciled. To apply the current Development Factors in this way, the 12-month Factor (55%), not the 24-month Factor (65%), would be applied to an Experience Period the first time it is reconciled. Indeed, NCRIC admits that the 55% Factor was meant to replace the 88.5% Factor. *See* Fargis Dep., at 706-07.

47. Of course, Exhibit E, being older, in a different format, and differs substantively from the NCRIC spreadsheets in some respects. (*I.e.*, Exhibit E, which is part of the original Plan, was drafted to include Experience Periods two years after they were complete, like the original Plan. Moreover, Exhibit E is, as an example, based on a 1/1 Reconciliation Date rather than a 9/1 Reconciliation Date. Further, its format is something different than the NCRIC spreadsheets, in that the years move in the opposite direction.) Nonetheless, Exhibit E provides clear guidance that Development Factors are to be applied the relevant number of months *after* the end of an Experience Period, not that number of months *before* the end of a Period.

48. NCRIC did not comport with Exhibit E in performing any of its recent Reconciliations. *See* Fargis Dep., at 716-18; see also id. 7

49. There is no dispute that the Development Factors apply to all Experience Periods.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Oppositions to Dispositive Motions Filed, February 28, 2002
	)	
Defendant/Counter-Plaintiff.	)	

RECEIVED
Civil Clerk's Office
FEB 12 2002
Superior Court of the
District of Columbia

PRAECIPE

Defendant Columbia Hospital for Women Medical Center, Inc. hereby withdraws Exhibit 20 to Defendant's Statements of Material Facts Not In Dispute (Declaration of Joseph K. Leahy in Support of Defendant's Motion for Summary Judgment, dated February 7, 2002), and submits the attached errata copy of the same exhibit (Declaration of Joseph K. Leahy in Support of Defendant's Motion for Summary Judgment, dated February 11, 2002).

DATED: February 11, 2002

Respectfully submitted,

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburn-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Oppositions to Dispositive Motions Filed, February 28, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DECLARATION OF JOSEPH K. LEAHY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

JOSEPH K. LEAHY, an attorney admitted to practice before this Court, affirms the following under penalty of perjury:

1. I am an associate with the firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., which is counsel for Defendant in the above-captioned case. I submit this declaration in support of Defendant's Motion for Summary Judgment.

September 1, 2001 Reconciliation

2. In January, at the deposition of Stephen Fargis, I learned that NCRIC, Inc. had not provided Columbia Hospital for Women Medical Center ("Columbia") with a September 1, 2001 Reconciliation of the Retrospective Rating Plan Agreement ("Retro Plan"). Mr. Fargis testified that a September 5, 2001 spreadsheet it had provided to Columbia was, in all likelihood, not the Reconciliation.

3. I followed up with Columbia after that, in an attempt to locate the Reconciliation. The client was unable to locate any Reconciliation it received during the relevant time, except

the September 5, 2001 document, which Mr. Fargis testified probably was not the Reconciliation.

4. In addition, I repeatedly contacted opposing counsel to determine whether we had received the Reconciliation, but to no avail. For example, I called counsel on January 31, 2002, and sent at least one follow-up email during this week, in an attempt to find out the status of the Reconciliation. I never heard back from opposing counsel about the matter, even though I had asked counsel to get back to me on an expedited basis – even if the answer was that the spreadsheet did not exist or had been produced. Due to my inability to obtain the Reconciliation from opposing counsel, I must assume that it does not exist.

Reconciliation Spreadsheets

5. In addition, attached as exhibits to Defendant's Motion for Summary are several spreadsheets that were created by my office, on behalf of Defendant, for the purpose of this motion. To the best of my knowledge, these spreadsheets are exactly what they purport to be: reproductions of NCRIC's Reconciliations, but with one or more multipliers changed.

6. I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, DC
February 11, 2002

Joseph K. Leahy

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 12th day of February, 2002, a copy of Defendant's Praecipe was served upon the following by facsimile and first class United States mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on the same date, a courtesy copy of the aforementioned Praecipe was served upon the Chambers for Judge Anna Blackburne-Rigsby by hand delivery.

Joseph K. Leahy/sls
Joseph K. Leahy

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC., Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar #8 Judge Blackburne-Rigsby Next Event: Opposition to Summary Judgment Motions -- February 28, 2002

PLAINTIFF NCRIC'S SUPPLEMENTAL RULE 26(B)(4) STATEMENT AS OPPONENT OF A CLAIM

Pursuant to District of Columbia Superior Court Rule 26(b)(4) plaintiff NCRIC, Inc. ("NCRIC"), hereby supplements its prior statement filed August 9, 2001 regarding the following expert witnesses NCRIC expects to call at trial:

1. **Mary Woodford**
   PricewaterhouseCoopers LLP
   1900 K Street, NW Suite 900
   Washington DC 20006

As stated in NCRIC's prior Rule 26(b)(4) statement, Ms. Woodford will testify with regard to analysis and rebuttal of the calculation of damages presented by defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") through defendant's designated damages witness, Peter Ben Ezra. On January 23, 2001, NCRIC received the damages calculations report by Mr. Ben Ezra, and NCRIC deposed Mr. Ben Ezra regarding his damages calculations on January 24, 2001. Mr. Ben Ezra's opinion relates to Columbia's claim

for lost income as a result of alleged conduct by NCRIC as detailed in Columbia's Amended Counterclaim.

Upon review of the materials submitted by Columbia's expert, Ms. Woodford will testify regarding the reasonableness of Mr. Ben Ezra's damages calculations. Specifically, Ms. Woodford will testify that Mr. Ben Ezra's calculations have not been made to a reasonable degree of economic certainty due to his lack of independent inquiry and lack of reasonable and supportable bases for the assumptions underlying his conclusions. Ms. Woodford will testify that due to the significant defects in Mr. Ben Ezra's conclusions, Columbia's damages calculations are baseless and speculative.

Ms. Woodford will base her testimony on a review of the documents Columbia designated and produced as the data relied upon by Mr. Ben Ezra in his calculations and preparation of his report. Ms. Woodford will also analyze available documents produced by Columbia regarding Columbia's historical operating and financial statistics and relevant market data.

Ms. Woodford is a Director with PricewaterhouseCoopers LLP, and has a Masters in Business Administration, as indicated on her curriculum vitae submitted with NCRIC's 26(b)(4) Statement filed August 9, 2001. Ms. Woodford has extensive professional training, knowledge and experience in the fields of accounting and financial analysis, and specific expertise in calculation of economic damages. Ms. Woodford has been qualified to testify as an expert on economic damages in other courts.

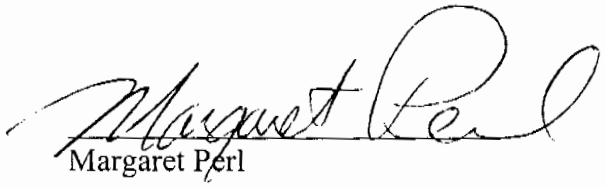
NCRIC respectfully reserves the right to supplement this disclosure should a more detailed review of Mr. Ben Ezra's report reveal that additional testimony is required. Finally, the other disclosures contained in NCRIC's initial Rule 26(b)(4) report remain valid.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Supplemental Rule 26(b)(4) Statement as Opponent of Claim was served this 14th day of February 2002, via first class mail, postage prepaid, to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women



Margaret Perl

16d-001221

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Oppositions to Dispositive Motions Filed, February 28, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

PRAECIPE

Defendant Columbia Hospital for Women Medical Center, Inc. hereby submits errata pages 6-9 and 14 to its Statement of Material Facts Not In Dispute. The attached errata pages, which are marked with an "-e" after each page number for identification, replace pages 6–E to 9-E and 14-E, which were attached to a Praecipe filed on February 11, 2001. Due to an oversight, the pages attached to the earlier Praecipe were not in fact the errata pages; rather, they were exact copies of the original pages 6-9 and 14 (except for the "-E" after each page number).

DATED: February 21, 2002

Respectfully submitted,

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

ADMINISTRATIVE DIVISION
FEB 21 4 53 PM '02
RECEIVED

calculations (*e.g.*, information about Loss Reserves (*see infra* ¶ 40)). As such, NCRIC's notice is no mere formality. Indeed, the language of the Plan makes notice a condition precedent to Columbia's being liable for any amount due under the Plan. *See* Addendum B ¶ 5 ("Any amounts due either to or from [Columbia] shall be due and payable within thirty (30) days" after Columbia receives notice from NCRIC); *accord* Retro Plan ¶ 5 & Exh. A ¶ 5; Addendum ¶ 5;

23. In the original Plan, the first Reconciliation of each Experience Period was *two* years after the Period ended. Since the Plan was (allegedly) amended effective September 1, 1996, Experience Periods are now reconciled for the first time just *one* year after they end. *Compare* Retro Plan, Exh. A ¶ 5 (schedule listing "First Reconciliation Date" for each Experience Period) *with* Addendum B ¶ 5 (same charts, with different dates).

24. **Deposit Premium** is "the Subject Premium multiplied sixty-seven (67%)." Addendum B ¶ 7, at 6; Addendum ¶ 7, at 5. The current Deposit Premium was first documented in the Addendum, which was signed in January 1998 and retroactive to September 1, 1996, *see id.* at 1 – yet, the actual *effective* date for the current Deposit Premium is September 1, *1995*. As set forth in the Addendum, *see id.* ¶ 7, at 5, the 67% Deposit Premium was to be effective for the "three-year term of the Plan" – that is, for the most recent three Experience Periods only. This restriction was consistent with the explicit limitation on an earlier, temporary amendment to the Deposit Premium (*see infra*, ¶ 27), which "[did] not adjust the Agreement prior to [its effective] date" (January 1, 1996). Further, the restriction on the new Deposit Premium precisely matched the restriction on the Deposit Premium's mirror term (*see infra*, ¶¶ 26-28), Attending Faculty discount. *See* Addendum at 3, ¶ 2 (stating that the new Attending Faculty discount applies only to the last three periods of the Plan, "ending 1996, 1997 and 1998"). In short, the Addendum

16d-001223

modified the Deposit Premium so that – as NCRIC concedes (*see infra* ¶¶ 26, 29) – the 67% number *does not* apply to the 1993-94 and 1994-95 Experience Periods, in any Reconciliation.

25. Originally, the Plan defined Deposit Premium as "the Subject Premium multiplied by *eighty-one percent (81%)*," Retro Plan, Exh. A ¶ 7, at 3 (emphasis added). By making Deposit Premium (1) the inverse of the Attending Faculty discount (which is the Subject Premium less a 19% discount, *see supra*, ¶ 26) and (2) a set-off against the Retrospective Premium (which is the actual cost of providing the insurance, *see infra* ¶ 26), the Plan carefully defined the role of Deposit Premium: it is the total amount on "deposit" with NCRIC as a result of the Attending Faculty premium payments for $500,000 each in medical malpractice coverage. In short, Deposit Premium is a credit to Columbia for the Attending Faculty's premium.

26. In order to retain its function as the Attending Faculty's "deposit," the Deposit Premium multiplier must remain the *inverse* of the Attending Faculty discount. If the Attending Faculty discount changes, the Deposit Premium must change. In fact, throughout the life of the Plan, the terms have moved together: originally, they were 81% and 19%; then, briefly, they were 62% and 38%; finally, they are 67% and 33%. (This connection is well-known to NCRIC, and particularly, Steve Fargis. *See* 1/22/96 Fargis Letter, at 1 (informing Columbia of the need to change the Deposit Premium to reflect the recent change in the Attending Faculty discount).)

27. Similarly, when the 67% Deposit Premium was amended effective September 1, 1995, the change occurred in exactly the same way as the change to the 33% Attending Faculty discount occurred (*see supra*, ¶ 14). First, the Deposit Premium actually changed on January 1, 1996, *see* Amendment A at 1, not on September 1, 1995. Second, a temporary Deposit Premium multiplier – here, 62% – was used to give effect to the new 67% Deposit Premium multiplier over the course of the full 1995-96 year. Third, the result was, effectively, a change on

September 1, 1995 – because nine months of a 62% Deposit Premium, after three months of an 81% Deposit Premium, is the same as a 67% discount of over 12 months [*i.e.*, (¼ * 81%) + (¾ * 62%) = approximately 67%)]. In sum, the change in the Deposit Premium to 62% occurred, on its face, simply to effectuate the new 67% Deposit Premium part-way through a Plan year.

28. Although the Plan does not make the connection between Deposit Premium and Attending Faculty discount explicit, the logic of the Plan makes the connection implicit. Indeed, NCRIC concedes that the connection exists by employing, in current Reconciliations, the 81% Deposit Premium for the Experience Periods where the Attending Faculty discount was 19%. *See* September 1, 2000 Reconciliation (1994-95 column). Indeed, NCRIC admits that 81% is the correct multiplier to apply for those years. *See, e.g.,* Responses to Defendant's Requests for Admissions ("RFA Response No."), Responses No. 24-27 (Exhibit 21 hereto). As such, there is no doubt: the new Deposit Premium applies *only* to the last five Experience Periods.

29. In addition, there is no doubt that Deposit Premium factor stated in the Plan is 67%, not 62%. NCRIC's 30(b)(6) designee, Stephen Fargis, has repeatedly affirmed this. *See, e.g.,* Fargis Dep. at 452, 747, 748-49, 757-58 & Exh. 78 (Letter from Stephen S. Fargis to Anne D. Gaffey, dated March 29, 2000) (Exhibit 19 hereto) ("the current contract reflects a deposit premium of 67%"). Since NCRIC drafted of the language changing the Deposit Premium – not once but *twice* – and also reviewed it, it *knew* that the Plan said 67%, not 62% from the outset.

30. Finally, the Plan's language places no limitations on the applicability of the Deposit Premium to any particular Experience Period. Yet, the term's role as the inverse of the Attending Faculty discount reflects the parties' intent to limit its applicability, as set forth above.

31. **Retrospective Premium** ("**Retro Premium**") represents, for each Experience Period, the total cost of providing $500,000 in malpractice insurance coverage to all the

45. Exhibit E to the Retro Plan is explicitly an "Example of Operation of the Plan." *See* Retro Plan, Exh. E (header). It also is expressly incorporated into the Plan to be used "for clarification" of concepts like Development Factors. *See id.* at 4, ¶ 13.

46. By showing several cumulative Reconciliations, Exhibit E helps explain how they work over time. In particular, Exhibit E indicates that Development Factors are to be applied the relevant number of months *after* the end of an Experience Period, not that number of months *before* the end of an Experience Period. For example, on Exhibit E, the *first* Development Factor – the "Year 1 Reconciliation," or 88.5% Development Factor (*see* Retro Plan, Exh. A ¶ 7, at 3) – is *always* applied to an Experience Period the first time it is reconciled. To apply the current Development Factors in this way, the 12-month Factor (55%), not the 24-month Factor (65%), would be applied to an Experience Period the first time it is reconciled. Indeed, NCRIC admits that the 55% Factor was meant to replace the 88.5% Factor. *See* Fargis Dep., at 706-07.

47. Of course, Exhibit E, being older, is in a different format, and differs substantively from the NCRIC spreadsheets in some respects. (*I.e.*, Exhibit E, which is part of the original Plan, was drafted to include Experience Periods two years after they were complete, like the original Plan. Moreover, Exhibit E is, as an example, based on a 1/1 Reconciliation Date rather than a 9/1 Reconciliation Date. Further, its format is something different than the NCRIC spreadsheets, in that the years move in the opposite direction.) Nonetheless, Exhibit E provides clear guidance that Development Factors are to be applied the relevant number of months *after* the end of an Experience Period, not that number of months *before* the end of a Period.

48. NCRIC did not comport with Exhibit E in performing any of its recent Reconciliations. *See* Fargis Dep., at 716-18.

49. There is no dispute that the Development Factors apply to all Experience Periods.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 21st day of February, 2002, a copy of Defendant's Praecipe was served upon the following by first class United States mail (a copy of the attached pages were served on the same by electronic mail the previous evening):

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on the this 21th day of February, 2002, a courtesy copy of the Praecipe was served upon the Chambers for Judge Anna Blackburne-Rigsby by hand delivery.

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
FEB 26 4 24 PM '02
ADMINISTRATIVE
DIVISION

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 – Judge Blackburne-Rigsby Next Event: Oppositions to dispositive motions filed, February 28, 2002

PRAECIPE

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by its counsel, hereby states, in accordance with Superior Court Rule 16(b), that counsel for Plaintiff NCRIC, Inc. ("NCRIC"), has consented to extend the following deadlines in the current scheduling order, for the mutual benefit of the parties:

Deadline In Current Scheduling Order	Order Date	New Date
Oppositions to dispositive motions filed:	2/28/02	3/4/02
Replies to oppositions to dispositive motions filed:	3/18/02	3/25/02

The parties also hereby agree that the aforementioned deadlines, as stated in the current scheduling order, have not previously been modified. Accordingly, the parties' modification of these deadlines by stipulation pursuant to Superior Court Rule 16(b) is valid.

DATED: February 26, 2002

Respectfully submitted,

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-001229

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 26th day of February 2002, a copy of the attached Praecipe was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

In addition, on the same date, a courtesy copy of the aforementioned Praecipe was served on the chambers of Judge Blackburne-Rigsby by hand delivery.

Joseph K. Leahy

16d-001230

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Oppositions to Dispositive Motions Filed, March 4, 2002
	)	
Defendant/Counter-Plaintiff.	)	

CONSENT MOTION TO CLARIFY THAT MEDIATION HAS BEEN POSTPONED

Defendant Columbia Hospital for Women Medical Center, Inc. hereby moves this court to clarify that the scheduling order dated December 20, 2001 (attached), which postponed the due date for Confidential Settlement Statements to May 19, 2002, also postponed the date for ADR to a date *after* May 19, 2002. Plaintiff NCRIC, Inc. has consented to the filing of this motion and will attend the mediation on whatever date the Court so directs (as will Columbia).

In support of this motion, Columbia states that it requests the foregoing clarification so that the Multi-Door Mediation Division may postpone their ADR session, which was previously scheduled for February 28, 2002, at 11:00 a.m. A proposed clarifying order is attached.

DATED: February 27, 2002

Respectfully submitted,

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for: *DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.*

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Amend Scheduling Order is hereby GRANTED, and the current scheduling order shall be amended as follows:

Deadline	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/13/01	1/17/02
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/13/01	1/17/02
Expert depositions completed:	12/20/01	1/17/02
All discovery closes:	12/20/01	1/24/02
Dispositive motions filed:	1/3/02	1/31/02
Oppositions to dispositive motions filed:	1/31/02	2/28/02
Replies to oppositions to dispositive motions filed:	2/18/02	3/18/02
Dispositive motions decided:	4/11/02	5/9/02
Confidential Settlement Statement due:	4/22/02	5/19/02
ADR:	T.B.D.[1]	T.B.D.
Pretrial:	T.B.D.	T.B.D.
ADR:	T.B.D.	T.B.D.
Pretrial:	T.B.D.	T.B.D.

[1] To be determined by the Assignment Office.

SO ORDERED.

Judge Linda K. Davis

SIGNED IN CHAMBERS
Copies mailed from chambers
on 12-21-01.

Dated: 12/20, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, M.D. 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

16d-001233

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

Pursuant to the scheduling order dated December 20, 2001, which postponed the due date for the parties' Confidential Settlement Statements to May 19, 2002, the ADR session in the above-captioned matter, which was previously scheduled for February 28, 2002, at 11:00 a.m., is POSTPONED until a to-be-determined date sufficiently *after* May 19, 2002.

SO ORDERED.

Judge Anna Blackburne-Rigsby

Dated: February __, 2002.

Copies to:

Joseph K. Leahy, Esq
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
(fax) (202) 326-7999

Attorneys for:

DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(202) 508-6000
(fax) (202) 508-6200

Attorneys for:

PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Oppositions to Dispositive
MEDICAL CENTER, INC.,	)	Motions Filed, March 4, 2002
	)	
Defendant/Counter-Plaintiff.	)	

RULE 12-I(A) CERTIFICATE

I, Joseph K. Leahy, hereby certify that I contacted counsel for Plaintiff NCRIC, Inc. by telephone and electronic mail on February 27, 2002, and he consented to this motion.

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 27th day of February, 2002, a copy of Defendant's Motion to Clarify was served upon the following by facsimile and by first class United States mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on the same date, a courtesy copy of the motion was served upon the Chambers for Judge Anna Blackburne-Rigsby by facsimile and by hand delivery.

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC ,
Plaintiff/Counter-Defendant,
v
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC ,
Defendant/Counter-Plaintiff

Civil Action No 00-0007308
Calendar 8 -- Judge Blackburne-Rigsby

ORDER

Pursuant to the scheduling order dated December 20, 2001, which postponed the due date for the parties' Confidential Settlement Statements to May 19, 2002, the ADR session in the above-captioned matter, which was previously scheduled for February 28, 2002, at 11:00 a.m., is POSTPONED until a to-be-determined date sufficiently *after* May 19, 2002

SO ORDERED

A. Blackburne-Rigsby

Judge Anna Blackburne-Rigsby

Dated February 28, 2002

DOCKETED MAR 05 2002

MAILED MAR 05 2002

16d-001238

RECEIVED
Civil Clerk's Office
MAR 0 4 2002
Superior Court of the
District of Columbia

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	
Plaintiff/Counter-Defendant,	
v.	Civil Action No. 00-0007308
	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Oppositions to Dispositive Motions, March 4, 2002
Defendant/Counter-Plaintiff.	

DEFENDANT'S MOTION TO EXTEND TIME FOR FILING SUMMARY JUDGMENT PAPERS

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") hereby moves for the entry of the attached proposed Order, and as grounds for such Order states:

1. The parties' oppositions to cross-motions for summary judgment are currently due on March 4, 2002, having previously been extended by two business days by a consent Praecipe.

2. The attached motion would extend by an additional three business days the time for filing both parties' cross-papers in opposition to summary judgment. It also would extend by three days the deadline for each party's reply, so that Plaintiff NCRIC, Inc, is not prejudiced.

3. The summary judgment motions currently before the court concern the "Retrospective Rating Plan Agreement," an extremely complex insurance-related contract, and the parties' resulting eight-year relationship. Columbia believes that the extension requested herein would materially aid the Court by permitting a more careful and comprehensive analysis of Agreement and the relevant factual issues raised in this matter, by allowing Columbia to prepare a more careful and considered response to the arguments raised by NCRIC.

4. Columbia urges that the requested extension is reasonable and fair in light of the fact that Columbia is responding to a 47-page summary judgment brief, which addresses thirteen claims, whereas its own summary judgment brief was only 18 pages long.

5. NCRIC takes no position with respect to the motion.

6. Columbia submits that the foregoing constitutes good cause for modifying the current scheduling order in effect.

WHEREFORE, Columbia asks the Court to grant Defendant's Motion to Extend Time for Filing Summary Judgment Papers and enter the proposed Order.

DATED: March 4, 2002

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-001240

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the Defendant's Motion to Extend Time for Filing Summary Judgment Papers is hereby GRANTED, and

FURTHER, the time for each party to file and serve its opposition to the opposing party's motion for summary judgment is hereby extended up through and including March 7, 2002; and

FURTHER, the time for each party to file and serve its reply to the opposing party's summary judgment opposition is hereby extended up through and including March 28, 2002.

SO ORDERED.

_____
Judge Anna Blackburne-Rigsby

Dated: _____, 2002.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

16d-001242

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Oppositions to Dispositive Motions, March 4, 2002
	)	
Defendant/Counter-Plaintiff.	)	

CERTIFICATE

I, Joseph K. Leahy, hereby certify that I emailed counsel for NCRIC, Inc. and sought consent to this motion on March 3, 2002, and called to confirm on March 4, 2002, but was unable to obtain such consent. I was told, however, that NCRIC takes no position with respect to the motion.

Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

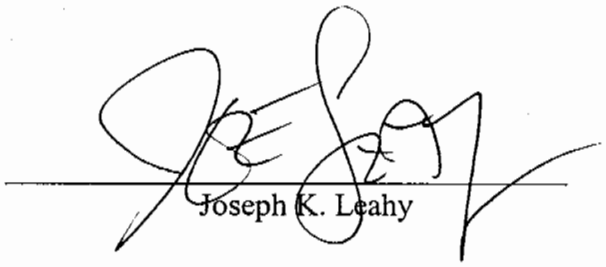
Attorney for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 4th day of March 2002, a copy of the Columbia's Motion to Extend Time for Filing Summary Judgment Papers; Certification; and proposed Order were served upon the following by regular mail:

Rodney F. Page, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

In addition, on the same date, a courtesy copy of the aforementioned papers were served on the Chambers of Judge Anna Blackburne-Rigsby by facsimile and by hand delivery.



Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Mediation - TBA
	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the Defendant's Motion to Extend Time for Filing Summary Judgment Papers is hereby GRANTED, and

FURTHER, the time for each party to file and serve its opposition to the opposing party's motion for summary judgment is hereby extended up through and including March 7, 2002; and

FURTHER, the time for each party to file and serve its reply to the opposing party's summary judgment opposition is hereby extended up through and including March 28, 2002.

SO ORDERED.

A. Blackburne-Rigsby
Judge Anna Blackburne-Rigsby

Dated: Mar. 4, 2002.

16d-001245

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

ADMINISTRATIVE DIVISION
MAR 7 11 51 PM '02

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Oppositions to Dispositive Motions, filed March 7, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NCRIC'S MOTION FOR SUMMARY JUDGMENT

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., hereby states as follows in opposition to the Motion for Summary Judgment filed by Defendant NCRIC, Inc. ("NCRIC").

Preliminary Statement

Seven years after entering into the Retrospective Rating Plan Agreement ("Retro Plan" or "Plan") with Columbia in 1993, and just three years after extracting $1 million from it with threats and tricks, NCRIC now claims that Columbia owes $2.4 million more. Actually, quite the opposite is true. In fact, as Columbia explained it its motion for summary judgment, NCRIC owes Columbia several hundred thousand dollars, yet NCRIC refuses to pay, and therefore its contract claim should granted, not dismissed (Point I, *infra*). Further, due to the structure of the Plan, and due to NCRIC's superior knowledge and skill with regard to the Plan, the parties' working relationship has developed into a confidential relationship, which NCRIC breached (Point II, *infra*). With respect to the rest of the claims, the assertions in NCRIC's motion for summary judgment cannot be reconciled with the record in this case. NCRIC ignores relevant

evidence, mischaracterizes other evidence, and denies Columbia the reasonable inferences to which it is entitled. In fact, every claim by Columbia – breach of duty of good faith (Point III, *infra*), intentional and negligent misrepresentation (Point IV, *infra*), tortious interference (Point V, *infra*), defamation and injurious falsehood (Point VI, *infra*), and conversion (Point VII *infra*) – is supported by enough evidence to not only create a triable issue of material fact, but to support a jury verdict in its favor. Moreover, Columbia's damages expert properly calculated its damages, and his report properly left causation to the jury (Point VIII, *infra*). Finally, NCRIC's contract claim must be rejected for the same reasons that Columbia's contract claim must be granted (Point IX, *infra*).

Factual Background

Attending Faculty

The Attending Faculty are a small sub-set of Columbia's medical staff who have admitted patients to Columbia for years. *See* SMF2 ¶ 193. The program provides a support network for physicians who refer most of their patients to Columbia. *See id.* ¶ 194. The Attending Faculty are therefore a self-selecting group: they intend to bring the bulk of their practice to the hospital, now and into the future. *See id.* Indeed, Attending Faculty with established practices tend to remain at Columbia continue their normal practice patterns until they retire, at age 65 or later. *See id.* ¶¶ 196-97. Accordingly, prior to October 2000, there had never been a mass departure of Attending Faculty. *See id.* ¶ 196.

Attending Faculty provide the bulk of Columbia's patient admissions, which in turn, provide most of its revenue. *See id.* ¶ 198.

16d-001248

Retro Plan and Reconciliations

The Retro Plan, as initially drafted, provided Attending Faculty with a 19 percent discount off of the premium for $500,000 in medical malpractice coverage, which approximated a 15 percent discount off the premium $1 million in coverage that most Attending Faculty held. *See id.* ¶ 5. In December 1995, NCRIC increased the Attending Faculty discount to 30% off of the premium for $1 million in malpractice coverage, which is approximately 33% off of the premium for $500,000 of coverage, retroactive to September 1, 1995. *See id.* 18, 20-21.

Under the Plan, a Reconciliation was to be performed each year, on September 1, to determine how much premium was owed to NCRIC or Columbia. *See id.* ¶ 12. However, the parties' orally agreed in November 1996 that payment for any Plan year ("Experience Period") will occur only once, after that year is "closed." *See id.* ¶ 11.

The Plan expired in September 1996, but the parties renewed it, effective January 1, 1997. *See id.* ¶ 21. The parties never agreed to the terms of the new Plan, so they renewed it on the same terms as the prior Plan. *See id.* ¶ 34. In January 1998, the parties renewed the Plan effective September 1, 1996. *See id.* ¶ 21. The new Plan contained many changes that the parties had previously negotiated but never implemented. *See id.* ¶ 45.

Fraud and/or Errors

In Fall 1996, NCRIC proposed, when it owed premium to Columbia, that the parties not exchange premium under the Plan. *See id.* ¶ 11. Columbia agreed, expecting it would avoid owing money in Fall 1997. Also in Fall 1996, NCRIC urged Columbia to renew the Plan, based on its calculations, which showed that the Plan was an economical program for Columbia. *See id.* ¶¶ 23, 104, 109-110. In reliance on that date, Columbia agreed to extend the Plan; however, as it turned out, NCRIC had grossly undercalculated the amount Columbia owed. *See id.* ¶ 104.

16d-001249

There is no dispute about the meaning of NCRIC's reconciliation spreadsheets: the parties agree on the meaning of every column and row. *See id.* ¶¶ 97-103. Yet, NCRIC regularly used the wrong values on the spreadsheet for terms defined in the Plan, or simply made mathematical "errors." *See id.* ¶ 13. For example, as NCRIC admits, it made a gross error in October 1997, which denied Columbia a $500,000 credit. *See id.* ¶¶ 14, 128-133. NCRIC also made other errors on that date. *See id.* ¶¶ 118-23, 124-27. In addition, NCRIC repeatedly used multipliers despite knowing that the multipliers stated in the Plan were different. *See id.* ¶ 91-96.

Financial Crisis and $1 Million Payment

Columbia provides high-quality medical care to women and newborns, as it has for over 130 years. However, Columbia is not a sophisticated financial entity. *See id.* ¶ 71.

Columbia hit on hard times in the early 1990s. It lost millions of dollars. *See id.* ¶ 115. Between late 1996 and early 1998, several important changes occurred: the old Board resigned and placed the hospital in receivership; a new Board including the medical staff was contacted; three CEOs departed in quick succession. Finally, Columbia became embroiled in a legal battle with its main creditor, over a crucial letter of credit. *See id.* ¶ 116, 117.

At the height of Columbia's financial distress, in October 1997, NCRIC provided Columbia with a Reconciliation and demanded $1.77 million that it claimed it was owed. *See id.* ¶¶ 35, 115. In fact, the bill was grossly overstated. *See id.* Nor was the amount due, in light of the parties' oral agreement – as NCRIC admits. As such, NCRIC stated that payment was a condition for the Retro Plan being renewed. That would have left the Attending Faculty without an insurance program, and possibly cause revenues to fall, which Columbia could not afford. Lacking insurance alternatives on short notice, it had no option but to pay. *See id.* ¶ 35. Columbia could not afford to pay the whole sum but agreed to pay $1 million in four

installments. *See id.* ¶ 35. In early 1998, after making two payments, Columbia plunged into bankruptcy. *See id.* ¶ 34.

Even after bankruptcy, NCRIC held onto the $1 million. It described it as a deposit to Columbia, and even promised interest – but never delivered. *See id.* ¶ 36.

Fiduciary Relationship

NCRIC drafted the Retro Plan and took on the responsibility of administering it and bookkeeping for it. *See id.* ¶ 1, 4. In early 1998, Columbia's management had no experience with retrospective rating plans, and no in-house counsel. *See id.* ¶¶ 72-74. While they made reasonable efforts to become familiar with the Plan, they did not understand it. *See id.* ¶ 76.

From early 1998 through early 2000, Columbia and NCRIC generally met quarterly to discuss the Retro Plan. *See id.* ¶ 77. At these meetings, NCRIC provided Columbia with a basic summary of the current status of the Plan, and briefly reviewed the calculations. *See id.* ¶ 77, 83. Columbia had no opportunity to audit the calculations, *see id.* ¶ 78, particularly since NCRIC's spreadsheets did not contain any underlying data (*e.g.*, individual loss reserves). *See id.* ¶ 86.

As a result of having drafted the Retro Plan and having wide knowledge and experience about insurance matters, NCRIC stood in a position of superior knowledge and skill relative to Columbia with regard to operation of the Plan. *See id.* ¶ 80. Further, NCRIC's personnel stood in a position of superior knowledge and skill relative to Columbia's personnel with regard to operation of the Plan. *See id.* ¶ 82. Columbia's personnel asked questions in an attempt to understand the Plan, and expressed that they did not understand it. *See id.* ¶ 85. They also made reasonable attempts to obtain underlying data that did not appear on the NCRIC spreadsheets, but NCRIC refused to provide it on the grounds it was client confidential and/or proprietary actuarial information. *See id.* ¶ 87.

16d-001251

Due to the structure of the Plan, where NCRIC was bookkeeper and kept much of the underlying data confidential, Columbia's personnel had no other option but to trust NCRIC to perform Reconciliation calculations correctly on Columbia's behalf. *See id.* ¶ 88. NCRIC personnel understood and encouraged this trust. *See id.* Indeed, Columbia's personnel viewed the Retro Plan as a joint undertaking, rather than a normal, arms-length contractual relationship. *See id.* ¶ 89, 90. NCRIC understood and accepted this trust. *See id.* ¶ 91.

False Statements

Summer/Fall 1998 Statements

In August 1998, Columbia determined that, due to its financial situation (it was in bankruptcy), it could not afford to continue the Retro Plan. *See id.* ¶ 134. Shortly thereafter, Columbia worked out a deal with Medical Inter-Insurance Exchange ("MIIX"), a highly-rated national insurance company, to provide a discounted insurance program for the Attending Faculty. *See id.* ¶ 135. MIIX guaranteed low premiums to the Attending Faculty, without any potential financial obligation by Columbia. *See id.* ¶¶ 40, 137-39.

Upon hearing about Columbia's new insurance program, NCRIC called a secret meeting of the Attending Faculty where it urged the physicians to leave Columbia if the Plan was not renewed. *See id.* ¶¶ 41, 42, 144-49. NCRIC made false, disparaging statements and employed scare tactics at the meetings, in an effort to induce the doctors to leave. *See id.* ¶¶ 42, 151-152.

NCRIC also contacted Columbia and informed it that it would continue to provide the Attending Faculty with insurance, at Columbia or elsewhere. *See id.* ¶ 141. NCRIC also made preparations to induce the doctors to leave Columbia. *See id.* ¶¶ 143-144. Many Attending Faculty contacted Columbia and demanded that the Retro Plan be renewed. The physicians were

16d-001252

loyal to Columbia, but were cowed by NCRIC. *See id.* ¶¶ 44, 153-154. Columbia had no choice but to comply. *See id.* ¶¶ 43, 155.

In early March 2000, Columbia informed NCRIC that it had discovered that NCRIC was applying several terms improperly. *See id.* ¶¶ 240-241. Columbia subsequently demanded its $1 million back, but did not get it. *See id.* ¶ 242. NCRIC continued to apply the terms as it had.

In late June 2000, Columbia's Board decided, after negotiating with NCRIC to close out the Retro Plan, that could not afford NCRIC's proposal. The Board decided to continue negotiations with NCRIC, *see id.* ¶ 54, but NCRIC decided to "terminate" the Plan. *See id.* ¶ 55.

Retaliation

The Columbia Physicians Group ("CPG") are employed part-time by Columbia with its Ambulatory Care Clinic ("Clinic") for low-income persons. *See id.* ¶ 176. From 1998-2000, the Clinic was covered by a NCRIC group insurance policy ("Entity Policy").

In retaliation for Columbia's failure to agree to the buy-out proposal, two days after NCRIC purported to terminate the Plan, without *any* forewarning, it cancelled the Entity Policy. *See id.* ¶ 55. This caused an uproar at the Clinic, and several doctors who worked there quit immediately. *See id.* ¶¶ 171-183. Yet, some physicians continued to practice at the Clinic under their own, 24-hour individual medical malpractice insurance policies. *See id.* ¶¶ 184-185.

NCRIC, however, informed physicians they were not covered, *see id.* ¶ 184, and then took the unprecedented step of issuing an endorsement excluding them from coverage in the Clinic under their own policies, *see id.* ¶¶ 186-189. The rationales it offered for this endorsement, or for canceling the Entity Policy, did not stand up to scrutiny. *See id.* ¶¶ 59-62, 186-192. The D.C. Insurance Commissioner later ruled that NCRIC's termination was

16d-001253

procedurally valid – but would not rule on Columbia's substantive retaliation claim, since it does not do fact-finding.

Summer/Fall 2000 Statements

In Summer/Fall 2000, NCRIC insiders among the Attending Faculty began circulating rumors that Columbia would close and that its Clinic was uninsured. *See id.* ¶¶ 170-172. Among these doctors was NCRIC's Chairman of the Board, Dr. Leonard Glassman, who made a number of false statements about the hospital in early Fall 2000. *See id.* ¶¶ 161-167. Members of NCRIC's Policyholder Services Department also spread this rumor. *See id.* ¶¶ 173-175.

Immediately following these statements, on the expiration date of the final Experience Period of the Retro Plan, nearly thirty Attending Faculty moved their practices to other hospitals, mostly Sibley Memorial Hospital ("Sibley") or George Washington University Medical Center "GW"). *See id.* ¶¶217-118. The rumors of Columbia's impending closure was a substantial factor in these physicians' decision to leave. *See id.* ¶ 219. Many of the Attending Faculty had been practicing at Columbia for 10 years, or even 20. *See id.* ¶¶ 225-230. The departure of these physicians caused admissions and revenues to drop dramatically. *See id.* ¶¶ 220, 225, 236.

Bad Faith Negotiations

In prior years, when the Retro Plan was renewed after its expiration (as it often was), *see id.* ¶ 206, NCRIC would wait to bill its insureds while the parties negotiated. *See id.* ¶ 206. In 2000, however, NCRIC billed Attending Faculty in for their full premium amounts, which was a shock to the doctors. Further, NCRIC surreptitiously contacted the Attending Faculty to urge them to move to other hospitals. *See id.* ¶ 209. It also began to plan its lawsuit against Columbia – all the while the negotiations to continue the deal were in progress. *See id.* ¶ 210.

16d-001254

Negotiations continued until late August, when Columbia believed a deal was finalized; at the last minute, NCRIC vetoed the deal and the parties parted ways. *See id.* ¶ 213. Due to its belief that the parties were negotiating in good faith, Columbia did not even develop other alternative insurance program proposals until it was too late, August 2000. *See id.* ¶ 215. With the rumors circulating that the hospital would close, some physicians made other plans. *See id.*

Damages

An accounting professor with vast experience applied a generally accepted "lost cash flow" model to calculated Columbia's damages from the departure of the Attending Faculty. However, Columbia also suffered damages, including the lost opportunity to hold a gala fundraiser, *see id.* ¶¶ 230-232, and to obtain a low-interest loan from the Department of Housing and Urban Development ("HUD"), *see id.* ¶¶ 232-236, to which a lay witness could testify.

Argument

Standard of Review

A party moving for summary judgment "bears the burden of clearly demonstrating the absence of a material factual dispute and entitlement to judgment as a matter of law." *Sherman v. District of Columbia*, 653 A.2d 866, 869 (D.C. 1995) (internal quotation marks omitted). In response, the nonmoving party need only show "that sufficient evidence supporting the claimed factual dispute . . . require[s] a jury . . . to resolve the parties' differing versions of the truth at trial." *Hill v. White*, 589 A.2d 918, 921 (D.C. 1991). Moreover, "if the moving party does not meet its initial burden, summary judgment must be denied even where the [non-moving party] comes forth with nothing." *Sherman*, 653 A.2d at 869.

Summary judgment is proper only where "the record shows there is no genuine issue of material fact . . . and that the movant is entitled to judgment as a matter of law." *Big Builders,*

16d-001255

Inc. v. Israel, 709 A.2d 74, 76 (D.C. 1998) (internal quotation marks omitted). "Any doubt as to the existence of such issues must be resolved in favor of the non-moving party." *McBride v. Pizza Hut, Inc.*, 658 A.2d 205, 207 (D.C. 1995). In deciding the motion, the court must draw "all reasonable inferences in the light most favorable to the nonmoving party" and deny summary judgment unless the moving party can show that no reasonable juror could find for the non-moving party. *See Galloway v. Safeway Stores, Inc.*, 632 A.2d 736, 738 (D.C. 1993).

I. NCRIC Is Not Entitled to Judgment as a Matter of Law on Columbia's Contract Claim (Count One)

A. NCRIC Breached the Retro Plan By Failing To Pay Columbia Return Premium Effective September 2000

Neither party disputes that the parties entered into the Retro Plan effective in 1993, and further, that the Plan as initially drafted was a valid contract. For a discussion of the terms of the plan, S*ee* Columbia SJ Mem. at 2; SMF ¶¶ 1-3. Further, as NCRIC readily admits, the parties orally amended the Plan so that no money would be exchanged for any Experience Period until all malpractice claims for that Period were "closed" under the Plan. *See* NCRIC Mem. at 5-6, 8, 29, 37. Since the only Experience Period for which all claims are presently closed are 1993-94 and 1994-95 – Periods for which NCRIC owes Columbia Return Premium – NCRIC owes Columbia Return Premium under the Plan as amended. *See* Columbia SJ Mem. at 8-11.

Application of the correct terms of the Plan[1] indicates that the amount of Return Premium due is about $765,000. *See id.* at 11-12; *see also id.* 13-15 (NCRIC applies the wrong Deposit Premium and Minimum Premium). NCRIC's failure to notify Columbia of this amount as of the September 1, 2000 Reconciliation, and failure to pay Columbia this amount within 30 days of

[1] NCRIC's improper application of Development Factors does not affect the amount Columbia owes under the oral agreement, because it does not owe NCRIC for any loss reserves under that agreement.

that Reconciliation, were breaches of the Retro Plan, as amended by the parties' oral agreement. *See id.* at 11-12.[2]

Even absent the oral agreement, NCRIC would owe Columbia Return Premium under the Retro Plan, because NCRIC failed to provide Columbia with a September 1, 2001 Reconciliation. By failing to perform the 2001 Reconciliation on time, NCRIC breached the Plan and missed an opportunity to bill Columbia through September 1, 2001. *See id.* at 12-13. As a result, the September 1, 2000 Reconciliation continues to govern the parties payment obligations. Under correct terms of the Plan as drafted as of the September 1, 2000 Reconciliation, NCRIC would owe Columbia approximately $560,000, absent the oral agreement. *See id.* at 17.

B. NCRIC Breached the Retro Plan By Performing Reconciliations Improperly

1. NCRIC Admits It Performed Reconciliations Inaccurately

Under the Plan, NCRIC is required to perform all bookkeeping, *see* SMF2 ¶ 4, to perform Reconciliations of the Plan pursuant to a particular formula, *see id.*; SMF ¶ 31; *see also* Columbia SJ Mem. at 4-8 (setting forth exact terms of the Retro Formula), and to provide all these calculations to Columbia, *see id.* ¶ 12. Yet, NCRIC readily admits that it repeatedly performed Reconciliations inaccurately.[3] *See id.* ¶¶ 13-14; *see, e.g., id.* ¶ 123 (miscalculations

---

[2] Because the 1993-94 Experience Period was closed as of the September 1, 1998 Reconciliation, NCRIC has owed Columbia the money for that period – $414,754 (*i.e.*, the $587,569 it is owed less the $172,815 it was paid at the time) – since December 1998. *See* SMF ¶ 157.

[3] NCIRC argues, based on the declaration of Stephen S. Fargis, that it "has demonstrated that each reconciliation was properly calculated." NCRIC Mem. at 27 (citing Fargis Decl. ¶¶ 20-21). Mr. Fargis's declaration, in which he explains how reconciliations were performed, and asserts without any reference to the terms of the Plan that such reconciliations were performed in compliance with the Plan; and in which he makes the generalized assertion that any errors that occurred were later corrected, *see* Fargis Decl. ¶¶ 15, 20-21, is irrelevant to the question of contract interpretation before the Court. There is no *factual* dispute between the parties regarding what calculations Mr. Fargis made under the Retro Plan, or what his spreadsheets mean. The only issue with respect to the contract claim (except with respect to Subject Premium, for which Columbia has not been able to audit his underlying calculations, *see infra*, n.__) is whether Mr. Fargis's calculations conform to the Retro Plan. That is a pure question of law.

resulting in NCRIC crediting Columbia with $500,000 less Deposit Premium than required by the Plan). Since the whole point of Reconciliations was to inform Columbia of the amount it owed or was owed under the Plan, *see id.* ¶ 12, NCRIC's miscalculations were material breaches of the Plan. Further, due to the error of magnitude in NCRIC's miscalculations, they were anything but minor. As such, NCRIC's argument that Columbia is nitpicking, NCRIC Mem. at 29, is an opposite.

2. Columbia Has Evidence of Breaches and Damages

NCRIC repeatedly claims there is no "evidence" to prove it made miscalculations in the Reconciliations it performed under the Retro Plan. NCRIC Mem. at 27-28. Besides overlooking NCRIC's own admissions of error, *see supra*, pp. __, this argument ignores Columbia's theory on this claim that NCRIC's misapplication of the Retro Plan is a matter of contract interpretation. Questions of contract interpretation are questions of law for the court. *Byrd v. Allstate Ins. Co.*, 622 A.2d 691, 693-94 (D.C. 1993). The only *factual* evidence necessary to prove that NCRIC made miscalculations in the Retro Plan are NCRIC's Reconciliation spreadsheets. And there is simply no dispute about the meaning of these spreadsheets, because the parties agree what term of the Plan corresponds to each entry on the spreadsheets, *see* SMF2 ¶ 97.

Nor did Columbia fail to prove damages for this contract claim, as NCRIC claims. *See* NCRIC Mem. at 29.[4] Rather, Columbia was damaged by the $1 million that it deposited with NCRIC in installments between January 1998 and March 1998. *See* SMF2 ¶ 29. Had NCRIC performed the 1997 Reconciliation correctly, the spreadsheet would have shown that (absent the oral agreement) Columbia was owed Return Premium – or, at most, that Columbia owed

[4] Even if Columbia failed to prove damages (it did not), it would be entitled to nominal damages. *See, e.g., Patel v. Howard Univ.*, 896 F. Supp. 199 (D.D.C. 1995).

approximately $1.2 million, not $1.8 million, in Additional Premium. *See* SMF2 ¶¶ 118-123.[5] As such, a reasonable juror could infer that Columbia, which agreed to pay $1.0 million when asked for $1.8 million, would have paid a much lower amount as a condition for renewing the Plan – if anything. *See id.* ¶¶ 132-133. Further, the $1 million payment was a contributing cause to Columbia's bankruptcy – which occurred in the middle of Columbia's four installment payments – and the resulting legal fees. *See id.* ¶ 29.[6]

II. Material Issues of Fact Exist as to the Breach of Fiduciary Duty Claim (Count Three)

A. The Evidence Is Sufficient To Establish a Fiduciary Relationship, Due to NCRIC's Superior Knowledge and Skill and Columbia's Repose of Trust

Columbia's breach of fiduciary duty claim requires that it prove the existence of a fiduciary duty and a breach thereof. *See Shapiro, Lifschitz & Schram, P.C. v. R.E. Hazard, Jr. Ltd.*, 24 F. Supp. 2d 66, 75 (D.D.C. 1998).

The evidence shows that NCRIC owed Columbia a fiduciary duty. This duty arose from the structure of the Retro Plan, which placed NCRIC in a position of superior knowledge and required that Columbia trust NCRIC's calculations. Specifically, NCRIC was to perform all bookkeeping, including all Reconciliation calculations, for both parties, *see* SMF2 ¶¶ 4, 89; and Columbia was not given access to information necessary to audit NCRIC's calculations (*e.g.*, undiscounted insurance premiums of individual Attending Faculty members and rate-factor multipliers used to calculate the Subject Premium, *see id.* ¶¶ 87-88, 95, and indemnity and

---

[5] As explained in detail in SMF2, NCRIC improperly miscalculated the September 1, 1997 Reconciliation by $1.8 million by adding an additional Experience Period to it, *id.* ¶¶ 124-127; or alternatively, it miscalculated the Reconciliation by about $500,000, by using the wrong Deposit Premium Factor and the wrong Maximum Premium, *id.* ¶¶ 118-123, 128-133. Each error increased the amount shown as Return Premium owed by Columbia.

[6] The testimony of various Columbia Board members does not, as NCRIC urges, contradict Columbia's claim that NCRIC was a contributing cause of the bankruptcy. These witnesses testified that Columbia's battle with the Bank of Tokyo caused the bankruptcy filing – not that it was the *sole* cause. That the bankruptcy had another cause does not preclude Columbia from holding NCRIC liable for the share of the damages that it caused.

expense reserves for individual malpractice claims that comprise the Loss Reserves, *see id.* ¶¶ 86, 87).

The fiduciary duty also arose out of the facts of the parties' relationship, apart from the Plan. NCRIC's Reconciliation calculations involved application of the Retro Formula – an extremely complicated formula developed by NCRIC and its actuaries. *See id.* ¶ 6. As such, from the very outset, NCRIC held a position of superior knowledge and skill regarding operation of the Plan. *See id.* ¶¶ 80, 82. Moreover, the parties relationship was not, from the start, entirely commercial: Columbia is not a typical market competitor, but rather, a non-financially sophisticated non-profit, community-benefit institution, focused on the well-being of mothers and newborns. *See id.* ¶¶ 70-71. As a result, its management and Board reasonably expected that they could look to NCRIC, a cooperative owned by doctors (including many who practiced at Columbia), which had a long-standing relationship with the hospital, for support during its difficult times. *See id.* ¶¶ 86-88.

Moreover, even if the Plan itself had not rendered the parties' relationship fiduciary in nature, the evolution of their relationship into a "joint undertaking" gave rise to such a duty. By late 1997, the differential between the parties' knowledge and understanding of the Plan increased, due to sea changes at Columbia including: the resignation of its entire Board of Directors, *see id.* ¶ 34; the departure of several CEO's in quick succession, *see id.*; the crisis with the Bank of Tokyo, *see id.* ¶ 115; and bankruptcy, *see id.* ¶ 34. *See id.* ¶¶ 27, 31, 34. As such, having essentially no prior knowledge or understanding of the Retro Plan, *see id.* ¶¶ 72, 74, 76, and being consumed by other crises, it was reasonable for Columbia's new management to have placed their trust in NCRIC to administer the Plan on Columbia's behalf – regardless of whether such trust and reliance was reasonable at the outset of the Plan. *See Humana Health Plan, Inc. v.*

Heritage Indiana Med. Group, P.C., No. 99:C 6276, 2001 WL 8878, at *2-*3 (N.D. Ill. Jan. 3, 2001) ("a contractual relationship may evolve into a fiduciary relationship").

Finally, the parties' fiduciary relationship was reinforced during the reconciliation process. At the quarterly meetings with NCRIC personnel, Columbia representatives sought to inform themselves about the operation of the Plan, by asking how the various terms were reflected on the spreadsheets; by asking NCRIC to run through the Retro Formula calculations; and by checking NCRIC's math to the extent they could. *See* SMF2 ¶¶ 83-88. However, Columbia's personnel were unable to audit NCRIC's numbers because, *inter alia*, the spreadsheets do not show all of the multipliers used in the Retro Formula, and Columbia had access to none of the underlying data (*e.g.*, individual premiums or loss reserves). *See id.* ¶¶ 86-88. Columbia's personnel frequently expressed frustration with their inability to know all the calculations or see all the data. In response, NCRIC's representatives repeatedly stated that the calculations were accurate, that they corrected any errors they found, and that they were watching out for Columbia's interests when performing the Reconciliations. *See id.* ¶¶ 88-91. Finally, Columbia's personnel repeatedly expressed that they trusted NCRIC to perform the Reconciliations, and generally operate the Retro Plan, on Columbia's behalf, and NCRIC's personnel repeatedly reassured them that this trust was warranted. *See id.* ¶¶ 88-91. This trusting relationship continued from late Fall 1997 through at least Spring 2000. *See id.*

Due to the structure of the Retro Plan, NCRIC's inherent position of superior knowledge and skill, and NCRIC's claim that Columbia should trust its performance, a fiduciary relationship arose. *See, e.g., Cafritz v. Corporation Audit Co.*, 60 F. Supp. 627, 631 (D.D.C. 1945) (holding that an accountant owed its client a fiduciary duty), *aff'd in part, rev'd in part on other grounds*, 156 F.2d 839, 81 U.S. App. D.C. 196 (D.C. Cir. 1946); *see Church of*

Scientology, Int'l v. Eli Lilly & Co., 848 F. Supp. 1018, 1028 (D.D.C. 1994) (fiduciary relationship exists when "the parties, through the past history of the relationship and their conduct, had extended the relationship beyond the limits of the contractual obligations").

B. NCRIC's Assertion That No Fiduciary Duty Arose Ignores the Fact-Intensive Nature of Fiduciary Relationship *and* the Facts in the Record

In its brief, NCRIC glosses over the inherently "fact-intensive" nature of fiduciary relationships. *Firestone v. Firestone*, 76 F.3d 1205, 1211, 316 U.S. App. D.C. 152, 158 (D.C. Cir. 1996). In fact, whether a fiduciary relationship exists is a "searching inquiry" that considers "the nature of the relationship, the promises made, the type of services or advice given and the legitimate expectations of the parties." *Id.* (quoting *Church of Scientology*, 848 F. Supp. at 1028) (internal quotation marks omitted). This inquiry is best performed by a jury. As a result, where there are facts on both sides of the issue, "it may not be appropriate to resolve this issue on a motion for summary judgment." *Firestone*, 76 F.3d at 1211, 316 U.S. App. D.C. at 158. Here, though NCRIC ignores it, the record is replete with evidence that supports the parties' fiduciary relationship.[7]

1. The Parties' Relationship Was Not Arms-Length

NCRIC also argues that no fiduciary duty arises because the duties alleged are merely contractual and "negotiated at arms length." In fact, there is no competent evidence in the record that the parties negotiated at arms-length, because no witness in this case was involved in the

[7] NCRIC attempts to argue that Columbia's allegations "fail as a matter of law" to give rise to a fiduciary duty. NCRIC Mem. at 31 (citing Counterclaims ¶ 119). But this Court has already rejected that argument. *See* Order at 3-4. As Columbia previously argued, the Retro Plan gave rise to a fiduciary relationship because confidence was "'reposed [by Columbia] and the resulting superiority and influence [of NCRIC].'" Columbia's Supplemental Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Dismiss Counterclaims at 5 (quoting *Cafritz*, 60 F. Supp. at 631, and citing *Church of Scientology*, 848 F. Supp. at 1028). Judge Davis's holding that Columbia's allegations were sufficient to allege a fiduciary duty must be respected as the law of the case. *See, e.g., Ehrenhaft*, 483 A.2d at 1196-97 (applying law of case to summary judgment motion after issue was determined in motion to dismiss). Since Columbia has adduced sufficient evidence to prove the facts it pleaded, a holding that Columbia failed to make out a claim for fiduciary duty on those facts would violate the law of the case.

16d-001262

initial negotiations of the Plan.[8] Further, the structure of the Plan itself was critical to the development, as a factual matter, of the parties' fiduciary relationship. It is well-accepted that such a duty may arise out a contract. *See GLM Corp. v. Klein*, 665 F. Supp. 283, 286 (S.D.N.Y. 1987) ("If a contract establishes a relationship of trust and confidence between the parties . . . , then a fiduciary duty arises from the contract which is independent of the contractual obligation."); *see also Lavin v. Kaufman, Greenhut, Lebowitz & Forman*, 640 N.Y.S.2d 57, 58 (App. Div. 1996); *Mandelblatt v. Devon Stores, Inc.*, 521 N.Y.S.2d 672, 676 (App. Div. 1987).

Contrary to NCRIC's assertion, Columbia supports its allegations of trust in NCRIC with credible testimony by real people, not "legal conclusions." From late 1997 onward, Columbia *did* trust NCRIC to perform Reconciliations properly and for Columbia's benefit. *See* SMF2 ¶ 88 (citing Declarations of Ann Gaffey, Gerry Beaulieu, et al.; Wilson Decl. ¶¶ 3-4). Hence, regardless of what the parties' relationship was in 1993 (and there is no evidence either way), Columbia turned to NCRIC to operate the Plan on its behalf, and Columbia placed its trust in NCRIC's superior knowledge and skill, at least by late 1997. *See supra*, p. ____;[9] *see, e.g.*, *Humana Health Plan,* 2001 WL 8878, at *2-*3 ("a contractual relationship may evolve into a fiduciary relationship . . . when one party reposes trust and confidence in another who thereby gains a resulting influence and superiority over the first") (internal quotation marks omitted).

2. The Quarterly Meetings Were Seminars, Not Audits

[8] Indeed, NCRIC (which has refused to designate any former employees) designated no Rule 30(b)(6) witnesses for questions pertaining to events that occurred before late 1995; Columbia was able to designate a few former employees, but none who participated in the initial negotiations was available.

[9] NCRIC's claim that "[a]ll obligations between the parties were contained wholly within" the Retro Plan Deposition of Safa Rifka, M.D., Jr. at 6-7 (Jan. 18, 2002) ("Rifka Dep. II") finds absolutely no support in the record. NCRIC cites a statement by Dr. Rifka (who never even read the Plan) from a personal deposition, expressing his understanding that the parties' relationship was contractual. *See* NCRIC Mem. (citing Rifka Dep.). Dr. Rifka never said that the relationship was "wholly" contractual, however. Nor did he even suggest that the parties' relationship was not fiduciary in nature. In fact, Dr. Rifka understands that Columbia placed its trust in NCRIC. *See* Rifka Decl. ¶ 5.

Moreover, the Retro Plan provision calling for quarterly reconciliations "for purposes of cross reference and confirmation," *see* SMF2 ¶ 77, does not, as NCRIC seems to suggest, preclude Columbia from proving that a fiduciary relationship existed. *See* NCRIC Mem. at 32. Whether a fiduciary duty exists is a "fact-intensive question," *Firestone*, 76 F.3d at 1211, 316 U.S. App. D.C. at 158. As such, that Columbia had the opportunity to meet with NCRIC about the Reconciliations is no basis for concluding that, as a matter of law, no fiduciary relationship existed between the parties.

In fact, contrary to NCRIC's assertion, the meetings provided Columbia no opportunity whatsoever to "verify and confirm NCRIC's information independently." NCRIC Mem. at 32. Due to the parties' trusting relationship and NCRIC's superior knowledge about the Plan, both parties treated the meetings as information sessions for NCRIC to impart to Columbia basic details about Reconciliations and a rudimentary explanation of the Plan's operation. *See* SMF2 ¶¶ 83-84. These meetings were not the place for Columbia to grill NCRIC about every term or to have independent accountants audit the spreadsheet. *See id.* ¶¶ 86-87. Moreover, NCRIC never provided Columbia with any individual loss reserve calculations, actuarial verifications of the total of the reserves, lists of individual insurance premiums, or multipliers used to calculate Subject Premium. *See id.* ¶ 85. Indeed, when Columbia requested such information, NCRIC demurred, saying that its loss reserves were confidential doctor information and that its methodology for calculating Subject Premium was proprietary. *See id.* ¶ 87.

3. The Parties' Bargaining Positions Were Not Equal

NCRIC's argument that the parties stood in equal bargaining position ignores contrary evidence in the record. As the evidence foregoing shows, Columbia's management and Board,

16d-001264

particularly from late 1997 onward, while the hospital was suffering financial difficulties, placed their trust in NCRIC to administer the Retro Plan on Columbia's behalf.

NCRIC offers no basis for its assertion that Columbia was a sophisticated financial entity, and the evidence allows an inference to the contrary: after October 1997, Columbia had a new CEO with no prior experience with the Retro Plan; it had no in-house counsel; its Risk Manager had no legal or financial training, and little experience with insurance issues; and it was experiencing a financial crisis.[10] *See id.* 72-74, 115-17

NCRIC's suggestion that Columbia was sophisticated simply because it "initiated" the December 1995 "negotiations" to increase the discount also demands an inference against Columbia. Even so, Columbia's bargaining position drastically declined by late 1997 and early 1998, after it faced turmoil on the Board, receivership, resignation of the Board, several successive CEOs, and bankruptcy. *See id.* ¶ 34.

Nor does the existence of other malpractice alternatives for Columbia indicate that it held an equal bargaining position with NCRIC. To the contrary, the result of each of Columbia's forays into finding a new malpractice insurance program underlines Columbia's difficult position: In 1998, when Columbia looked for more cost-effective malpractice insurance programs, NCRIC's scare tactics with the Attending Faculty forced Columbia to reject the MIIX program that was objectively a better deal for the hospital. *See id.* ¶¶ 148-155. Further, in 1999, due to Attending Faculty reluctance, the attempt to look for a new insurer went nowhere. *See id.* ¶ 156. Finally, in 2000, when Columbia finally had no money to continue the Plan, NCRIC

[10] Even prior to 1997, Columbia had displayed less sophistication than NCRIC. Columbia's CEO, Susan Hansen, wrote NCRIC to ask about the "30% discount" – which was how NCRIC explained the new, 33% discount (*i.e.*, 30% off the total $1 million premium that physicians paid equaled 33% off the $500,000 in premium) to persons not well-versed with the Plan's intricacies. *See* SMF2 ¶ 18. By contrast, in his response, NCRIC's Vice President displayed his sophistication: he explained that an array of multipliers in the Plan would likely change as a result of the new 33% discount. (The parties later agreed that most of these changes would not occur. *See id.* ¶ 22.)

16d-001265

flexed its muscles by "terminating" the Plan, retaliating against Columbia, and inducing the physicians to walk. *See id.* ¶ 209. If Columbia had any negotiating position, the Retro Plan would have been renewed at more favorable terms, and a third of its physicians would not be practicing elsewhere today.

In sum, NCRIC offers no basis for concluding that it did not have superior knowledge and skill, or that Columbia did not trust and rely upon it with NCRIC's knowledge. Therefore, particularly in light of the fact-intensive nature of this inquiry, summary judgment must be denied. *See Church of Scientology*, 848 F. Supp. at 1028.

III. Material Issues of Fact Exist As to the Breach of Implied Duty of Good Faith and Fair Dealing Claim (Count Two)

Under District of Columbia law, a party to a contract breaches its implied duty of good faith and fair dealing by, *inter alia*, "evading the spirit of the contract" or "willfully rendering imperfect performance." *Steel v. Isikoff*, 130 F. Supp. 2d 23, 32 (D.D.C. 2000) (internal quotation marks omitted). NCRIC's willful misconduct in 1998 and 2000, *see, e.g.*, *supra*, pp. ___, clearly constitutes a breach of that duty. NCRIC breached that duty in several ways.

A. NCRIC Evaded the Spirit of the Contract Because Its Ultimatum Denied Columbia the Benefit of the Oral Agreement

In October 1997, in the midst of a financial crisis for Columbia, NCRIC demanded that Columbia pay $1.7 million in cumulative Additional Premium. Otherwise NCRIC would not renew the Plan. *See* SMF2 ¶ 35. Not able to locate another insurance program for its Attending Faculty on such short notice, Columbia had no choice but to agree to pay what it could: $1.0 million. *See id.*

There is evidence that NCRIC's demand was made in bad faith: (1) the demand effectively thwarted the benefit of Columbia's bargain, from the oral agreement with NCRIC just

16d-001266

the year before, that Columbia would not pay money in 1997, *see id.* ¶ 11; (2) NCRIC did not even mention the oral agreement to Columbia's new acting CEO (who did not know about the agreement), *see id.* ¶ 35; (3) and the Reconciliation included the 1995-96 Experience Period, even though at the time the existing contract showed that Experience Periods were to be reconciled two years after they were completed, *see id.* ¶ 17; SMF2 ¶¶ 124-127; (4) without including this Experience Period (for which the Loss Reserves were high), the plan would have shown a cumulative Return Premium due (*i.e.*, a balance in Columbia's favor), *see id.* ¶ 127. A reasonable juror could infer that NCRIC took advantage of Columbia and denied it the benefit of its bargain by willfully manipulating the September 1, 1997 Reconciliation and Columbia's new acting CEO.

Further, NCRIC's $1 million "exception" to the oral agreement in 1997 stands in stark contrast to its strict compliance in the years of the Plan where it owed money: in 1996, NCRIC owed $159,000, but did not pay, due to the oral agreement; in 1998, rather than paying cumulative Return Premium of $670,000, it paid merely $172,000 – due to the oral agreement. *See id.* ¶¶ 26, 126, 157. By extracting the $1 million when Columbia was in a bad financial position, a reasonable juror could conclude, NCRIC purposely attempted to "evad[e] the spirit" of the parties' agreement not to exchange money and deny Columbia the benefit of its bargain.

NCRIC's argument that Columbia's $1 million payment was "negotiated," even if true, does not absolve its bad-faith conduct. Moreover, the evidence shows that, having no other alternative insurance program, Columbia had *no choice* but to make the payment. SMF2 ¶ 35.

In addition, NCRIC is wrong to argue that its assent to somewhat more favorable terms, in the Addendum signed in January 1998, indicates that it had not acted in bad faith by demanding the $1 million in October 1997. NCRIC cannot retroactively excuse its bad faith

16d-001267

through generosity. Moreover, NCRIC did not follow through on these accommodations – which, in itself, is evidence of bad faith. For example, although the Addendum lowered the Minimum Premium, to allow Columbia to retroactively recoup Return Premium from the 1993-94 and 1994-95 Experience Periods (when NCRIC had reaped a huge windfall due to excellent claims history) NCRIC never followed through on the accommodation. Instead, it refused to apply the Minimum Premium as written in the Retro Plan, to Columbia's detriment. *See* Columbia's SJ Mem. at 13-14.

Nor did the parties' oral agreement "accommodat[e] Columbia." In fact, NCRIC used the oral agreement to escape paying money under the Plan when it was convenient (1996, 1998), *see id.* ¶ 11, and demanded money as an "exception" to the oral agreement at the height of Columbia's fiscal woes (1997), *see id.* ¶ 35. Columbia managed to avoid paying money it owed in only one of the six years of the oral agreement (1999). *See id.* ¶ 157. After that (2000, 2001), NCRIC decided not to "renew" the Plan – and demanded payment in full, in an apparent attempt unilaterally to terminate the oral agreement.

B. NCRIC Willfully Rendered Imperfect Performance by Performing Reconciliations Inaccurately

In early 2000, Columbia asked its insurance broker to review the Retro Plan. *See* SMF2 ¶ 94. As a result, Columbia learned that NCRIC had been applying the wrong Deposit Premium – 62% instead of 67% – and notified NCRIC. *See id.* Despite being notified of this error, Mr. Fargis, who *drafted* the amendment containing the 67% figure (and the prior amendment, which also contained that amount), and who had reviewed the language before it was signed, claimed to be "puzzled" as to how it got there – and insisted that such a "direct reading" of the contract did not reflect Columbia's intent. *See id.* Subsequently, NCRIC refused to use the Deposit Premium

stated in the Plan in performing any reconciliations. *See e.g.*, SMF2 ¶ 243. This is "willfully rendering imperfect performance."

NCRIC also failed to provide the Attending Faculty with the discount that the parties negotiated. Apparently, NCRIC gave the doctors a *larger* discount, and secretly passed the cost along to Columbia by reducing the Deposit Premium accordingly. *See id.* ¶¶ 86, 96. The contract says 33%, and NCRIC knew it – but it has been providing 37%, without informing Columbia. *See id.* Columbia SJ Mem. at 4.

In sum, Columbia marshaled substantial evidence to show that NCRIC's conduct was far worse than "heavy-handed." A reasonable juror could conclude that NCRIC acted in bad faith.

IV. Material Issues of Fact Exist as to the Intentional/Constructive and Negligent Misrepresentation Claims (Counts Seven and Eight)

A. Columbia Established All of the Essential Elements of Fraud

The essential elements of fraud are: (1) a false representation; (2) concerning a material fact; (3) made with knowledge of its falsity; (4) with the intent to deceive; (5) upon which reliance is placed. *See Goldsmith v. Tapper*, 748 A.2d 416, 419 (D.C. 2000).

1. NCRIC Made Material, False Representations to Columbia in the Reconciliations

NCRIC's agents falsely represented to Columbia, after the performance of *each* Reconciliation, that an amount of Additional or Return Premium for each closed Experience Periods, plus a cumulative amount of Additional or Return Premium, was due. *See* SMF2 ¶ 126.

NCRIC's false representations were material because they resulted in Columbia paying significantly more money to NCRIC (the $1 million deposit) or receiving no Return Premium when it was due (for example in 1998 and in 1999). *See* Defendant's Mem. at 12.[11] If not for

[11] Further, even when no money was due between the parties, the amount NCRIC reported to Columbia significantly impacted Columbia's understanding of whether the Plan was economically viable, and its decisions whether to

NCRIC's false representations, Columbia would have paid the correct amount of Additional Premium and/or would have demanded the correct amount of Return Premium. *See id.* ¶ 241.

NCRIC's claim that its Reconciliation calculations were always correct, *see* NCRIC Mem. at 27, 36, misstates the factual record. Not even Mr. Fargis, who performed the Reconciliations for NCRIC, *see* SMF2 ¶ 81, makes such a claim. To the contrary, Mr. Fargis admits that he performed inaccurate Reconciliation calculations, including a major "error" in the September 1, 1997 Reconciliation. *See id.* ¶¶ 123, 129-132 (admitting to a misapplication of the Deposit Premium for that calculation, which denied Columbia credit of $532,000); *see also*

Further, in addition to the errors to which Mr. Fargis admits, he repeatedly failed to produce Reconciliations that complied with the terms of the Retro Plan, despite contrary representations to Columbia. *See, e.g., id.* ¶¶ 118-127.[12] For the same reasons that Columbia prevails on its claim that NCRIC breached the contract by wrongly calculating the Additional Premium due, *see supra*, pp.__; *infra*, pp. __, Columbia also must prevail on its claim that NCRIC misrepresented to Columbia the amount of Additional and/or Return Premium that was due.

2. There Is Clear and Convincing Evidence That NCRIC Made the Representations with Knowledge That They Were False

The evidence shows that NCRIC (1) drafted an the Addendum to the Plan establishing the 67% Deposit Premium factor, yet (2) repeatedly used the 62% factor after the amendment.

---

renew the Plan or look for alternatives. In particular, in 1996, Columbia decided to renew the Plan based on NCRIC's misrepresentation that it owed far *less* than called for by the Plan. *See* SMF2 ¶¶ 14, 111.

[12] For example, NCRIC improperly used 62% for the Deposit Premium factor, *see* Columbia SJ Mem. at 14-15; *see* SMF ¶¶ 24-30 – without Columbia knowing, because the multiplier does not appear on its spreadsheets, *see* SMF2 ¶ 95. This reduced Columbia's credit towards the Retro Premium. Because the correct multiplier was 67%, *see* Columbia SJ Mem. at 14-15, each Reconciliation falsely underrepresented the amount of Columbia's credit.

16d-001270

Further, it performed the 1996 and 1997 Reconciliations inaccurately, first causing Columbia to renew the Plan, then causing Columbia to pay $1 million that was not due. This is clear and convincing evidence of fraud.

NCRIC argues, incorrectly, that Columbia failed to establish its knowledge of falsity by "clear and convincing evidence." This standard is not onerous[13]: it simply requires Columbia to "produce in the mind of the trier of fact a firm belief . . . as to the [fraud]." *District of Columbia v. Hudson*, 404 A.2d 175, 179 n.7 (D.C. 1979) (en banc) (internal quotation marks omitted). With regard to fraudulent intent, the standard requires a showing that the false statements were "not equally consistent with either honesty or deceit." *Bennett v. Kiggins*, 377 A.2d 57, 59 (D.C. 1977). No direct evidence of deceit is necessary, however: "Generally, the fact of misrepresentation coupled with proof that the practitioner knew of the falsity warrants the inference that there was fraudulent intent." *Lipman v. Lehman,* Civ. A. No. 95-0774, 1996 WL 420869, at *8 (D.D.C. July 19, 1996), *aff'd*, 174 F.3d 1363 (Fed. Cir. 1999).

Further, with regard to the "errors" to which Mr. Fargis admits, Columbia met the clear and convincing evidence standard because the fact of the inaccurate calculation on the spreadsheet is "coupled" with evidence that Mr. Fargis simply entered the numbers into the computer. While Mr. Fargis claims that the errors were typographical, his credibility is a question for the jury.

The same is true with inaccurate calculations that Mr. Fargis admits he made knowingly, such as the use of the 62% Deposit Premium factor. His assertion that he "has no idea" why the Plan says 67% does not negate Columbia's inference that, as the drafter, he knew what the Plan said and simply misrepresented to Columbia that his calculations complied with the Plan.

[13] The standard has been described as "somewhere between a preponderance of evidence and evidence probative beyond a reasonable doubt." *In re J.M.C.*, 741 A.2d 418, 423 (D.C. 1999) (internal quotation marks omitted).

16d-001271

NCRIC cannot simply "dispose of this fact-intensive count by arguing that [Columbia] has failed to adduce 'clear and convincing evidence'. . . . A jury, drawing all reasonable inferences in favor of [Columbia], could find on the basis of those facts that [Columbia] proved fraudulent misrepresentation by clear and convincing evidence." *Cassidy & Pinkard, Inc. v. Jemal*, 899 F. Supp. 5, 8-9 (D.D.C. 1995).

NCRIC is similarly misguided to argue that it could not act with the necessary intent for fraud, as a matter of law, because reconciliations were mere "estimates." *See* NCRIC Mem. at 35, 37. According to NCRIC, interim reconciliations were always estimates, and annual Reconciliations became estimates when the parties agreed not to exchange money except for closed Experience Periods. *See id.* Under the Retro Plan, however, reconciliations, annual and interim, were not "estimates" of future amounts. Instead, they were *actual* calculations of the *current* status of the Plan at the *present* time. Indeed, many of the terms of the Plan – Paid Losses, Subject Premium, Minimum Premium, Maximum Premium and Deposit Premium, to name just a few – involved no estimate or future prediction whatsoever. These terms reflected actual, current amounts already paid or received by NCRIC. Any miscalculation of these terms – or the multipliers used to interpret these terms, which were written in black and white in the Plan itself – was not a "mis-estimate."

Indeed, the only part of the Plan that arguably could be considered an "estimate" was the Loss Reserves – but neither the Plan nor NCRIC's claims department treats loss reserves as estimates. Reserves are current amounts, actually set aside to pay the indemnity or expenses for a claim. *See* Gaffey Decl. ¶ 9. This is reflected in the Plan, which does not speak of estimates, but current indemnity reserves (not estimated future indemnity payments) and current ALAE

16d-001272

reserves (not estimated future expense payments) – which are multiplied by the *current*ly applicable Development Factors.

Further, whether the parties planned to exchange money as a result of a reconciliation is irrelevant. Under the Plan as drafted, interim reconciliations were to be performed by the same method as annual Reconciliations, *see* SMF2 ¶ 12, and the parties never agreed that NCRIC could perform any reconciliations less rigorously than called for under the Plan, *see id.* ¶ 12 **[?]**. Nor is there that there parties ever agreed that annual Reconciliations would be performed differently under the oral agreement than under the Plan as drafted.[14][8] Certainly, NCRIC never informed Columbia that, nor did Columbia's personnel understand that, the Reconciliations were anything other than actual calculations of the current status of the Plan. *See id.* ¶ 84.[15] To the contrary, NCRIC always represented to Columbia that it followed the Plan to the letter. *See id.*

Finally, as NCRIC admits, even "estimates" may be relied upon if the estimator knows about such reliance. Here, NCRIC did know that Columbia relied upon it. *See infra*, p. __.[16]

2. NCRIC Intended for Columbia To Rely, and It Did Reasonably Rely, on NCRIC's False Representations, to Its Detriment

NCRIC intended that Columbia rely upon its false representations, as it demanded money or did not pay money based upon its calculations. *See* SMF ¶¶ 71, 76; *see also* SMF2 ¶ 157. At least once, NCRIC also encouraged Columbia to renew the Retro Plan based upon its representations. *See id.* ¶¶ 14, 23. Moreover, due to NCRIC's position as bookkeeper for the

---

[14] Indeed, NCRIC admits that the quarterly reconciliations are important for Columbia to be able to assess how Loss Reserves are developing over the course of the year, so that it is not surprised at the amount of premium that is owed at year-end. *See id.* ¶ 107. Accordingly, NCRIC had reasont o believe that Columbia relied on interim reconciliations when planning its budget for year-end Reconciliations.

[15] NCRIC also argues that Columbia's constructive fraud claim fails for lack of a fiduciary relationship. As Columbia has shown, the parties' relationship was fiduciary in nature at least after Fall 1997. *See supra*, pp. __.

[16] Additionally, even if Reconciliations were "estimates" of future premium due, for at least some errors, NCRIC knew that its "estimates" would *never* accurately reflect the true terms of the Plan (*e.g.*, applying 62% instead of 67% would never yield the correct "estimated future" Deposit Premium factor).

reserves (not estimated future expense payments) – which are multiplied by the *currently* applicable Development Factors.

Further, whether the parties planned to exchange money as a result of a reconciliation is irrelevant. Under the Plan as drafted, interim reconciliations were to be performed by the same method as annual Reconciliations, *see* SMF2 ¶ 12, and the parties never agreed that NCRIC could perform any reconciliations less rigorously than called for under the Plan, *see id.* ¶ 12. Nor is there that there parties ever agreed that annual Reconciliations would be performed differently under the oral agreement than under the Plan as drafted.[14][8] Certainly, NCRIC never informed Columbia that, nor did Columbia's personnel understand that, the Reconciliations were anything other than actual calculations of the current status of the Plan. *See id.* ¶ 84.[15] To the contrary, NCRIC always represented to Columbia that it followed the Plan to the letter. *See id.*

Finally, as NCRIC admits, even "estimates" may be relied upon if the estimator knows about such reliance. Here, NCRIC did know that Columbia relied upon it. *See infra*, p. __.[16]

2. NCRIC Intended for Columbia To Rely, and It Did Reasonably Rely, on NCRIC's False Representations, to Its Detriment

NCRIC intended that Columbia rely upon its false representations, as it demanded money or did not pay money based upon its calculations. *See* SMF ¶¶ 71, 76; *see also* SMF2 ¶ 157. At least once, NCRIC also encouraged Columbia to renew the Retro Plan based upon its representations. *See id.* ¶¶ 14, 23. Moreover, due to NCRIC's position as bookkeeper for the

---

[14] Indeed, NCRIC admits that the quarterly reconciliations are important for Columbia to be able to assess how Loss Reserves are developing over the course of the year, so that it is not surprised at the amount of premium that is owed at year-end. *See id.* ¶ 107. Accordingly, NCRIC had reasont o believe that Columbia relied on interim reconciliations when planning its budget for year-end Reconciliations.

[15] NCRIC also argues that Columbia's constructive fraud claim fails for lack of a fiduciary relationship. As Columbia has shown, the parties' relationship was fiduciary in nature at least after Fall 1997. *See supra*, pp. __.

[16] Additionally, even if Reconciliations were "estimates" of future premium due, for at least some errors, NCRIC knew that its "estimates" would *never* accurately reflect the true terms of the Plan (*e.g.*, applying 62% instead of 67% would never yield the correct "estimated future" Deposit Premium factor).

Plan, Columbia's reliance on these false Reconciliations by paying or collecting the wrong amounts, was reasonable and known to NCRIC. *See* SMF ¶ 19 (payment was due within 60 days of reconciliation). Finally, Columbia was directly and proximately damaged by the false representations by overpaying or undercollecting premium. *See id.* ¶¶ 71, 76.[17] This was sufficient to prove fraud by clear and compelling evidence.

B. NCRIC's Arguments for Summary Judgment Misstate the Facts

At a minimum, this evidence shows that NCRIC's misrepresentations were negligent. Such negligence will give rise to a claim for misrepresentation. *See Hall v. Ford Enters., Ltd.*, 445 A.2d 610, 612 (D.C. 1982) (elements of negligent misrepresentation are a material, false statement that was relied upon to the plaintiff's detriment, and negligence).

Here, NCRIC had the Retro Formula available to it, it created the Reconciliation spreadsheets on spreadsheet software (which performs all the calculations automatically), and it had 60 days to perform and review the calculations for correctness, *see* SMF ¶ 19 – yet it made "errors," consistently in its own favor, that cost Columbia hundreds of thousands of dollars, *see* SMF2 ¶¶ 128-132. NCRIC's failure to check its work or inability to use the spreadsheet software correctly thus gives rise to a claim for negligent misrepresentation if not misrepresentation itself.

NCRIC claims, however, without citation, that it performed Reconciliations with "due care" as a matter of law.[18] Yet NCRIC also admits that it made numerous large errors in its Reconciliations. *See id.* ¶¶ 108, 123. In light of NCRIC's knowledge and skill about the Retro

---

[17] Further, in 1996, Columbia renewed the Plan based on NCRIC's false September 1, 1996 Reconciliation, thereby incurring additional obligations for Additional Premium. *See* SMF2 ¶¶ 111-112.

[18] Even the self-serving testimony that NCRIC cites does not support its claim that calculations were performed with "due care." NCRIC Mem. at 39. At best, this testimony indicates that the calculations were "correct to the best of NCRIC's knowledge." Fargis Decl. ¶ 20; Burgess Decl. ¶ 15. That is not the same as performing calculations with due care: good faith is a subjective standard, which one calls an objective one. Moreover, there is no evidence that

Plan, its past experience performing Reconciliations, its use of a spreadsheet to perform the calculations and the 60-day window it is allowed to prepare its calculations, a reasonable jury easily could conclude that NCRIC's failure to perform the calculations correctly was negligent.

V. Material Issues of Fact Exist as to Columbia's Defamation and Injurious Falsehood Claims (Counts Nine and Ten)

A. Columbia Satisfied Each Element of Defamation and Injurious Falsehood

The elements of defamation are: (1) a false, defamatory statement that the defendant made concerning the claimant; (2) publication without privilege to a third party; (3) publication resulting from defendant's negligence; and (4) damages resulting from publication. *See Crowley v. North Am. Telecomms. Ass'n*, 691 A.2d 1169, 1173 n.2 (D.C. 1997); *Prins v. International Tel. and Tel. Corp.*, 757 F. Supp. 87, 90 (D.D.C. 1991). The elements of injurious falsehood (or "trade libel"[19]) are the same, except that the false statement must disparage the claimant's property, goods or services. *See Golden Palace, Inc. v. National Broad. Co.*, 386 F. Supp. 107, 109 (D.D.C. 1974). Columbia has shown that NCRIC made defamatory and disparaging statements in Summer/Fall 2000, and disparaging statements in Fall 1998.

1. NCRIC Published False, Defamatory and/or Disparaging Statements in Summer/Fall 2000 That Concerned and Damaged Columbia

Dr. Leonard Glassman, Chairman of NCRIC's Board of Directors, published disparaging statements concerning Columbia to a wide variety of people:

- On September 1, 2000, Dr. Glassman announced in Columbia's cafeteria that (1) the Entity Policy covering CPG physicians and the Clinic had expired; (2) CPG physicians with NCRIC individual medical malpractice insurance policies were not covered under those policies when practicing at the Clinic; (3) Columbia's self-insurance trust fund was insufficiently funded to insure the Clinic; and (4) Columbia was planning to cease

errors were corrected "immediately," as NCRIC says; some errors continued from year to year. *See* SMF2 ¶ 108.

[19] *See also Procter & Gamble Co. v. Quality King Distribs., Inc.*, 974 F. Supp. 190, 197 (E.D.N.Y. 1997) (trade libel involves disparagement of a goods or services); *ArtMetal-USA, Inc. v. United States*, 753 F.2d 1151, 1156, 244 U.S. App. D.C. 1, 6 (D.C. Cir. 1985) ("injurious falsehood" and "trade libel" are same tort).

operations. *See* SMF2 ¶¶ 161-162. Many physicians overheard Dr. Glassman make these statements. Not surprisingly, rumors to these effects circulated throughout the hospital. *See id.* 162.

- Also in about September 2000, staff members in Columbia's Radiology Department, where Dr. Glassman worked, repeatedly overheard him telling patients to pick up their films and bring them to his office in the suburbs because Columbia was planning to close, and telling physicians employed by the Hospital to start looking for jobs elsewhere for the same reason. *See id.* ¶ 163. Dr. Glassman made these statements with his door open, so other radiology patients in the office also could hear these statements. *See id.* 164.

- At around the same time, Dr. Glassman told another physician, Dr. Gideon Kioko, to move his group to Sibley, because (he urged) Columbia was about to close. Other physicians who were eating in the cafeteria at the time heard these remarks. *See id.* ¶ 165.

- Later, Dr. Glassman told a physician in the hallway at Columbia that, because the hospital was closing, another physician, Dr. Evelyn Karson, was leaving. *See id.* ¶ 166.[20]

The foregoing statements by Dr. Glassman were false because (1) the Entity Policy was in effect through September 15, 2000; (2) the endorsement excluding CPG physicians from coverage under their individual NCRIC malpractice policies while practicing at the Clinic was issued on October 1, 2000 and did not go into effect until November 15, 2000; (3) Columbia had committed to fund its self-insurance trust on an as-needed basis to pay all claims against the Clinic and CPG physicians; and (4) Columbia's management had no plans to cease operations. *See id.* ¶ 167.

Further, these statements were defamatory because they called into question the hospital's insurability and future viability. *See, e.g., John Langenbacher Co., Inc. v. Tolksdorf*, 199 A.D.2d 64, 64-65 (2d Dep't 1993) (statement that company would suffer "financial problems . . . and would be unable to fulfill its commitments" was slanderous).[21] Additionally, the

[20] NCRIC's Policyholder Services Department (including, *e.g.*, Vice President David Osborn and Eric Hempleman), and Dr. Morton Roberts, a NCRIC "insider" who Columbia considered to be speaking on behalf of NCRIC published similar statements in September and July 2000, respectively. *See id.* ¶¶ 169-73.

[21] The statements that Columbia was going to close and that the self-insurance trust fund could not cover malpractice claims against the Clinic, were slander *per se*, and therefore, no proof of damages is necessary. *See*

statements were injurious falsehoods because they disparaged the quality of the insurance program, first through the Entity Policy and then through the self-insurance trust, that Columbia provided to physicians working in the Clinic.[22]

Finally, Columbia was damaged in several ways by NCRIC's statements. First, several CPG physicians quit working in the Clinic due to insurance concerns, leaving it uncovered and causing an uproar among Attending Faculty. *See* SMF2 ¶¶ 142, 148, 217, 228, 236. Moreover, based in large part on their understanding that Columbia was closing it doors, about twenty-seven long-time Attending Faculty members moved their practices to other hospitals. *See id.* ¶ 217. In addition, due to the rumors about its pending closure, Columbia was forced to cancel a major fundraiser, *see id.* ¶ 231, and due to the departure of its physicians, it became ineligible for a loan that would have substantially reduced its interest rate, *see id.* ¶¶ 237-238.

2. NCRIC Published False, Disparaging Statements in Fall 1998 That Concerned and Damaged Columbia

NCRIC Vice President Stephen Fargis and CEO R. Ray Pate published the following statements about Columbia:

- In September and October 1998, at meetings NCRIC called with the Attending Faculty, Mr. Fargis and Mr. Pate said that: (1) MIIX would not remain in the District of Columbia insurance market; (2) MIIX would not stand by its guarantee not to raise premiums for two years; (3) MIIX was an unreliable insurance company; (4) MIIX planned to raise premiums once it cornered the District of Columbia medical malpractice market; (5) the MIIX proposal was the result of cronyism which would benefit members of the Columbia Board of Directors rather than the Attending Faculty; (6) Columbia had lied to the Attending Faculty by stating that it could not afford to continue the Plan; and (7) lawyers with whom

---

Intercity Maint. Co. v. Local 254, Service Employees Intern. Union, AFL-CIO, 241 F.3d 82, 90 n.7 (statements are defamatory "per se," if they "impute insolvency, financial embarrassment, unworthiness of credit, or failure in business to a plaintiff"; "[u]nder the common law rule damages are presumed . . . if the defamatory statement is "libelous per se").

[22] As a NCRIC Board member and long-time Attending Faculty member, *see* SMF2 ¶ 160, Dr. Glassman had access to both NCRIC's and Columbia's management, and a reasonable juror could conclude that he acted negligently by making such profoundly negative statements in public, before confirming their veracity.

16d-001278

NCRIC contracted to defend physicians against medical malpractice claims would not work with MIIX. *See id.* ¶ 149.

These statements were all false, *see id.* ¶¶ 151-152, and NCRIC does not argue otherwise. The statements disparaged the quality of the insurance program that Columbia provided to physicians working in the Clinic.

Columbia suffered damage as a result of these statements because several prominent Attending Faculty members (whose practice groups admitted nearly one third of the hospital's total patients) demanded that Columbia proceed with the MIIX program instead of renewing the Retro Plan. *See id.* ¶ 153. Some of these physicians even threatened to leave the hospital, despite their loyalty to it, as a result of the panic caused by NCRIC. *See id.* ¶ 154. As a result, Columbia had no choice but to continue the Retro Plan – which meant that it would potentially be obliged to pay Additional Premium (unlike with the MIIX program). *See id.* ¶¶ 155, 136.

B. NCRIC Demands Inferences That Properly Belong to Columbia

NCRIC argues that both the injurious falsehood claim and the defamation claim fail, with respect to statements made in Summer/Fall 2000, because (1) the statements were not made by a specific NCRIC representative; (2) the statements were true; and (3) there is no "clear and convincing evidence" that NCRIC made the statements with "actual malice."[23] NCRIC Memorandum of Law in Support of the Motion For Summary Judgment at 12-14, 16-20 ("NCRIC Mem."). NCRIC argues further that the injurious falsehood claim fails with respect to

[23] NCRIC's argument that its Summer/Fall 2000 statements were "opinions . . . not capable of bearing a defamatory meaning," NCRIC Mem. at 13, 18 n.10, fails because Judge Davis already rejected it, *see* Order at 8 (May 11, 2000) (holding that the statements in question were "capable of bearing a defamatory meaning"). Judge Davis's decision is the "law of the case," and must not be disturbed. *See Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1197 (D.C. 1984) ("Law of the case" doctrine bars trial court from reconsidering questions of law already submitted to and adjudicated by another court of coordinate jurisdiction); *see also id.* at 1196-98 (law of the case doctrine prevented issue decided on motion to dismiss from being relitigated on summary judgment). Judge Davis's decision was correct. *See* Supplemental Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Dismiss Counterclaims ("Columbia Opp.") at 20-22 (explaining that NCRIC's September 2000 statements are actionable because they imply provably false facts or rely upon stated facts that are provably false).

statements made in Fall 1998 because those statements "do not even concern Columbia." NCRIC Mem. at 12-13, 15-16.[24] All four arguments improperly require that favorable inferences be drawn in NCRIC's favor.

1. Whether Dr. Glassman Spoke on NCRIC's Behalf Is a Jury Question

NCRIC asks the Court to infer that Dr. Glassman did not speak on NCRIC's behalf, but rather, "in his capacity as a Columbia physician." NCRIC Mem. at 14 n.6. This inference in NCRIC's favor must be rejected. A reasonable juror could conclude that Dr. Glassman – NCRIC's Chairman of the Board, who often purported to speak on the company's behalf, and who was understood to be speaking on NCRIC's behalf, *see* SMF2 ¶ 160 – had authority to do so.[25] *See, e.g., Columbia Hosp. for Women Found., Inc. v. Bank of Tokyo-Mitsubishi, Ltd.*, 15 F. Supp. 2d 1, 8 (D.D.C. 1997) (chairman of board had apparent authority to act on behalf of corporation); *see, also American Express Co. v. Lopez*, 340 N.Y.S.2d 82, 83 (N.Y. Civ. Ct. 1973) (same); *see also Federal Deposit Ins. Corp. v. Texas Bank of Garland*, 783 S.W.2d 604, 607 (Tex. App. 1989) (chairman had apparent authority *per se*).[26] At a minimum, whether a statement by a *NCRIC* Board member to *NCRIC* insureds about *NCRIC* insurance coverage was made with (at least) apparent authority is a jury question. *See Sigal Constr. Corp. v. Stanbury*, 586 A.2d 1204, 1219 (D.C. 1991) ("[c]ritical to apparent authority, therefore, is the third-party's perception of the agent's authority"; "issue of apparent authority presents a question of fact"); *see*

---

[24] Nowhere does NCRIC argue that its Fall 1998 statements were true.

[25] NCRIC is simply wrong to claim that no specific person heard Dr. Glassman make defamatory statements. His statements were overheard, first-hand, by Dr. Nabil Asterbadi, Dr. Jerome O'Connell, other unnamed physicians, members of the Radiology Department staff, and radiology patients. *See* SMF2 ¶¶ 160-167. Columbia is not required to identify every person who heard the statements in order to prove publication to a group.

[26] "Apparent authority arises when a principal places an agent in a position which causes a third person to reasonably believe the principal had consented to the exercise of authority the agent purports to hold." *Feltman v. Sarbov,* 366 A.2d 137, 139 (D.C.1976) (internal quotation marks omitted). Here, listeners at Columbia understood that, as Chairman of the Board, Dr. Glassman knew NCRIC's position about Columbia's financial health and was authorized to disseminate it. SMF2 ¶ 160.

16d-001280

also American Soc'y of Mech. Eng'r v. Hydro Level Corp., 456 U.S. 556, 566 (1982) ("if an agent is guilty of defamation, the principal is liable so long as the agent was apparently authorized to make the defamatory statement"); *Restatement (Second) of Agency* § 247 (1957); *see, e.g., Michaelson v. Exxon Research & Eng'g Co.*, 629 F. Supp. 418, 422 (W.D. Pa. 1986) (principal is liable for defamation based on theory of apparent authority).

Further, NCRIC is not absolved from liability, as it argues, if Dr. Glassman did not *initiate* the rumor that Columbia was planning to close. *See* NCRIC Mem. at 14 n.6. Even those who merely repeat slanderous statements are liable for defamation. *See Restatement (Second) Torts* § 581A, cmt. e. (1957); *see, e.g., Smith v. Vencare, Inc.*, 519 S.E.2d 735, 742 ("talebearers are as bad as talemakers") (Ga. App. 1999). Plus, Columbia alleges more than just a generalized "rumor mill": unlike the cases NCRIC cites, the evidence here shows that *specific* people actually made *specific* defamatory statements. *Compare Burns v. City of Minneapolis, Minnesota*, No. 00-577 ADM/AJB, 2001 WL 1589619, at *3-*4 (D. Minn. Dec 11, 2001) (dismissing "'vague allegations" of "rumors . . . circulated around town'" and other "such chatter," when no specific statements by specific people were alleged); *Szot v. Allstate Ins. Co.*, 161 F. Supp. 2d 596, 608 (D. Md. 2001) (dismissing defamation claim based on "rumor mill" where there was no evidence that defendant made the statements in question); *Ives v. Guilford Mills, Inc.*, 3 F. Supp. 2d 191, 199 (N.D.N.Y. 1998) (dismissing defamation claim due to lack of specifics, and because "plaintiff ha[d] no specific statements in mind") (internal quotation marks omitted).[27]

[27] Further, since there is no evidence that anyone made the statements before Dr. Glassman did (except Dr. Roberts, a NCRIC insider), a reasonable jury could conclude that NCRIC *started* the rumor that Columbia was closing.

16d-001281

2. NCRIC's Summer and Fall Statements Were False, or Arguably False

Nor did Columbia admit the truth of NCRIC's statements. To the contrary, it is undisputed that two statements were false *when they were made*. First, NCRIC admits that it terminated the Entity Policy (it did not "expire") effective September 15, 2000, *see* NCRIC Statement ¶ 62; SMF2 ¶ 55, so Dr. Glassman's statement that it had expired was false when he made it two weeks earlier.[28] Second, NCRIC admits that the CPG physicians were covered under their individual insurance policies until the endorsements (issued on October 1, 2000) went into effect on November 15, 2000, *see* NCRIC Statement ¶¶ 63-64; SMF2 ¶¶ 63, 184-188, so Dr. Glassman's statement that these physicians were not covered was false on September 1.

Moreover, a jury could reasonably conclude that the self-insurance trust was "sufficiently funded" to insure the CPG, thereby rendering false Dr. Glassman's statement to the contrary. Although Columbia could not, due to its difficult financial situation, fund the trust to the actuarially recommended level, the fund never failed to cover claims against physicians in the Clinic. *See id.* ¶ 63. Rather, Columbia committed to pay, and did pay, any claims out of its operating expenses, by placing sufficient funds in the trust to cover any shortfall. *See id.* ¶ 59. As a result, the trust was *always* funded *precisely* to the level necessary to pay claims. Thus, a reasonable jury could conclude that NCRIC's statement was, in light of its audience (physicians, not actuaries) false.

3. The Statements Regarding MIIX Insurance Concerned Columbia's Insurance Program for Attending Faculty

NCRIC's false statements concerning MIIX insurance did not, as NCRIC contends, concern "an unrelated third party." NCRIC Mem. at 15. The statements concerned MIIX malpractice insurance, which Columbia had arranged to provide at a group discount to the

[28] As such, the Policy never *expired* – it was *terminated* by NCRIC before the expiration date.

16d-001282

Attending Faculty. By disparaging the brand of insurance that Columbia had proposed to provide in its insurance program with the Attending Faculty, NCRIC disparaged a service provided by Columbia.[29] A reasonable juror could conclude that NCRIC's statements about MIIX insurance were either explicitly "of and concerning" Columbia's insurance program, or were "reasonably capable of sustaining an [implicit] defamatory meaning" that tarnished the program,[30] *see Saenz v. Playboy Enters., Inc.*, 841 F.2d 1309, 1316 (7th Cir. 1988) (implicit defamatory statement must be "of and concerning" plaintiff). Further, NCRIC's statement that the MIIX program was the result of cronyism was "of and concerning" the process Columbia used to develop its insurance program. As such, a reasonable juror could conclude that the statement disparaged a Columbia service provided to the Attending Faculty. *See id.* ¶¶ 149-152.

Further, because NCRIC's statements concerning Columbia's insurance program were false, any privilege that otherwise might have protected NCRIC as a competitor was inapplicable. *See Restatement (Second) of Torts* § 649, cmt. c. (conditional privilege shields a competitor only if comparison does not contain false assertions of specific fact about its products or services).

C. The Actual Malice Standard Does Not Apply

1. NCRIC's Statements Were Commercial Speech, and Therefore, Not Entitled to the Protections of the "Actual Malice" Standard

It is uncontested that both NCRIC's 1998 statements regarding the MIIX-Columbia insurance program, and its and 2000 statements regarding Columbia's viability as a hospital,

---

[29] This is analogous to, for example, falsely disparaging the brand of radiology equipment at Columbia. Disparaging the quality of the hospital's equipment, also disparages the hospital's services.

[30] *Coles v. Washington Free Weekly, Inc.*, 881 F. Supp. 26, 33 (D.D.C. 1995), *aff'd*, 88 F.3d 1278 (D.C. Cir. 1996). As such, *Coles*, which concluded that defendant's statement "[did] not necessarily imply" any defamatory meaning about plaintiff, is distinguishable. *Id.*

were made for the purpose of keeping the Attending Faculty as premium-paying NCRIC insureds. Hence, they were "commercial speech." *See Procter & Gamble Co. v. Amway Corp.*, 242 F.3d 539, 549 (5th Cir.) (commercial speech includes statements "related solely to the economic interests of the speaker and its audience" and speech for the purpose of proposing a commercial transaction) (internal quotation marks omitted), *cert. denied*, 122 S. Ct. 329 (2001); *see, e.g., id.* at 566 (disparagement constituted commercial speech); *World Wrestling Fed'n Entm't, Inc. v. Bozell*, 142 F. Supp. 2d 514, 523-26 (S.D.N.Y. 2001) (same). Commercial speech warrants less First Amendment protection than normal speech (and false commercial speech warrants none), *see Procter & Gamble*, 242 F.3d at 546 n.12, so commercial speech is not entitled to the "actual malice" burden of proof, *see id.* at 556-57; *U.S. Healthcare, Inc. v. Blue Cross of Greater Philadelphia*, 898 F.2d 914, 937 (3d Cir. 1990).

2. Columbia Is Not Any Sort of Public Figure

a. Despite Its Excellent and Far-Reaching Reputation, Columbia Is Not Sufficiently Famous To Be a General Public Figure

Moreover, Columbia is not, as NCRIC asserts, a "general purpose public figure"[31] – a public figure for "all purposes," due to its "'persuasive power and influence'" or "'general fame or notoriety in the community, and pervasive involvement in the affairs of society,'" *Waldbaum*, 627 F.2d at 1292 (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 352 (1974)). General purpose public figures are "rare." *Tavoulareas v. Piro*, 817 F.2d 762, 772, 260 U.S. App. D.C. 39, 49 (D.C. Cir. 1987) (en banc). To qualify, one must be "so famous that they can 'transfer

[31] By using "public figure" rather than "general-purpose" or "pervasive" public figure, NCRIC fails to distinguish that concept adequately from the term "limited-purpose" or "vortex" public figure. A limited-purpose public figure is, for the purpose of the "particular public controvers[y]" at hand, a "public figure." *Sculimbrene v. Reno*, 158 F. Supp. 2d 8, 21 (D.D.C. 2001) (quoting *Waldbaum v. Fairchild Publ'ns, Inc.*, 627 F.2d 1287, 1291, 201 U.S. App. D.C. 301, 305 (D.C. Cir. 1980)). For the same reason, NCRIC misreads *Lakeshore Community Hosp., Inc. v. Perry*, 538 N.W.2d 24 (Mich. Ct. App. 1995), as a general-purpose public figure case. *See id.* at 28 (holding that hospital was a "public figure for purposes of this case").

their recognition and influence from one field to another.'" *Id.* (quoting *Waldbaum*, at 627 F.2d at 1294 n.15). As such, even one who is "highly prominent" in particular circles is not a general public figure if its "celebrity in society at large does not approach that of a well-known athlete or entertainer." *Id.* "[F]ew persons attain the level of notoriety to be public figures in all contexts," *id.* – and Columbia is not one of them.

NCRIC argues that Columbia is a general purpose public figure based solely on the reach of its reputation. NCRIC Mem. at 18-20. This argument fails to consider the limited breadth of Columbia's reputation: Columbia is a boutique hospital, not a major corporation. *See* SMF2 ¶¶ 70-71. *See, e.g., Q-Tone Broadcasting Co. v. MusicRadio of Maryland, Inc.*, C.A. No. 93C-09-021, 1995 Del. Super. LEXIS 598, *15 (Del. Super. Ct. Dec. 22, 1995) (to be a public figure, corporation's "general fame and notoriety must be established in the community as a whole and not simply within selected subsections.").[32] While Columbia enjoys an excellent reputation nationally for obstetrics and gynecology; and is highly regarded nationally (or even internationally) for its sub-specialty care, like infertility and high-risk neonatology, *see id.* ¶ 70, it is not "famous" to the average person, like General Motors or General Electric. As such, its widespread reputation in its specialty field does not render it a pubic figure. *See Computer Aid, Inc. v. Hewlett-Packard Co.*, 56 F. Supp. 2d 526, 536 (E.D. Pa. 1999) (Hewlett-Packard is not a general public figure). In short, Columbia's reputation is wide in scope, but narrow in breadth:

[32] *Blue Ridge Bank v. Veribanc, Inc.*, 866 F.2d 681, 687 (4th Cir. 1989) (despite "occup[ying] a position of . . . considerable influence" in the community, corporation did not "enjoy[] either the widespread power or pervasive influence necessary to affect the resolution of public issues in a manner which elevates it to a general purpose public figure") (internal quotation marks omitted); *National Life Ins. Co. v. Phillips Publishing Inc.*, 793 F. Supp. 634, 635 (D. Md. 1992) (insurance company, its "fame and pervasive influence" being "confined . . . to the borders of the [state] on a variety of issues and to the borders of insurance related issues on a national level" had not "risked the spotlight of public comment on all aspects of its corporate life").

there is no evidence that nationally (or even locally) people who have never come into contact with Columbia in their daily lives have ever heard of it.

Nor do the cases that NCRIC cites support its argument. Both *Martin Marietta Corp. v. Evening Star Newspaper Co.*, 417 F. Supp. 947 (D.D.C. 1976) and *Lakeshore Community Hosp., Inc. v. Perry*, 538 N.W.2d 24 (Mich. Ct. App. 1995) are *limited* purpose public figure cases. Columbia is not a limited purpose pubic figure. *See infra*, pp. ___. Further, *Martin Marietta*, where plaintiff was a national aerospace conglomerate, 417 F. Supp. at 95, is easily distinguished from the case of a small, specialty hospital.[33]

b. Columbia Is Not a Limited Public Figure Because There Was No Public Controversy

Columbia also is not a "limited-purpose public figure" here, despite its excellent and far-reaching reputation in specialty care.[34] As NCRIC admits, *see* NCRIC Mem. at 19 n.11, before a defamation plaintiff can be a limited public figure, there must be a "public controversy." *Joseph v. Xerox Corp.*, 594 F. Supp. 330, 333 (D.D.C. 1984). To qualify, the "controversy must be public both in the sense that 'persons actually were discussing' it, and that 'persons beyond the immediate participants in the dispute [are likely] to feel the impact of its resolution.'" *Tavourealas*, 817 F.2d at 775, 260 U.S. App. D.C. at 42 (quoting *Waldbaum*, 627 F.2d at 1297). NCRIC has the burden to show that such a controversy exists, *see Carr v. Forbes, Inc.*, 259 F.3d 273, 279 (4th Cir. 2001), and it has not done so.

In Fall 1998, the "controversy" over who would provide malpractice insurance for the Attending Faculty, NCRIC or MIIX, absolutely was not *public*. There is no evidence that people

[33] If, however, *Lakeshore Community Hospital* is read to deem a local hospital a general-purpose public figure, that holding is unpersuasive and should be rejected. Such a holding would conflict with the widespread acceptance among courts that "general-purpose public figure" status is reserved for only the very, very famous.

16d-001286

other than the immediate participants (*i.e.*, the physicians, and employees of Columbia and NCRIC), were discussing the issue or likely to feel its impact. Nor was there any press coverage of this issue. The "issue" had no more significance to ordinary District residents (including Columbia patients, who undoubtedly have no idea who insures their physicians), than any other normal business transaction.

Even if NCRIC *created* a public controversy in the Summer/Fall 2000 by inducing physicians to leave the hospital en masse (resulting in an article in the Washington Post, *see* SMF2 ¶ 227), by then NCRIC had already made the defamatory statements at issue. Moreover, even then, the "public controversy" (if any) was whether a historic non-profit hospital would close its doors; as before, the parties' private controversy, whether NCRIC would continue to provide Columbia's physicians with malpractice insurance,[35] remained of no interest whatsoever to ordinary individuals. No average citizen would have been affected by the issues raised in the parties' private controversy. NCRIC cannot obtain the protection of the First Amendment privilege by wrongfully creating a public controversy out of a private transaction. *See Hutchinson v. Proxmire*, 443 U.S. 111, 135 (1979) ("Clearly, those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure").

Three other factors also counsel against deeming this a public controversy. *First*, NCRIC is a non-media defendant. Even if such defendants are entitled to the same constitutional

---

[34] *Accord Nanavati v. Burdette Tomlin Mem. Hosp.*, 645 F. Supp. 1217, 1226 n.15 (D.N.J. 1986) (commenting favorably on lower court holding that hospital was not a limited-purpose public figure), *aff'd*, 857 F.2d 96 (3d Cir. 1988).

[35] NCRIC is wrong to characterize the parties' private controversy as "whether Columbia physicians were covered by malpractice insurance." NCRIC Mem. at 19 n.11. There was no controversy about that until NCRIC canceled the Entity Policy, refused to renew the Retro Plan and spread rumors that Columbia's self-insurance trust was unfunded. Moreover, even if this was a controversy, it was not a *public* controversy, because there is no evidence that ordinary folks were "actually . . . discussing" it. *Tavourealas*, 817 F.2d at 775, 260 U.S. App. D.C. at 42. At most, it was a matter of "general interest," which does not meet the public controversy requirement. *Joseph*, 594 F. Supp. at 333.

16d-001287

protection as media defendants,[36] the fact that the entire controversy between NCRIC and Columbia escaped media attention prior to the physicians' departure suggests that the controversy was not public. *Second*, NCRIC's defamatory statements were not typical high-value speech that is at the core of the First Amendment, such as petitioning activity. Rather, the statements were private comments that became public through the "rumor mill." That NCRIC never attempted to "go public" with the controversy in the first place weighs against deeming that controversy "public" now. *Third*, regardless of its fame, Columbia's financial situation made it difficult to tell its side of the story – it had no money for media consultants, public relations teams, or television advertisements. Since Columbia did not "ha[ve] access to channels of effective communication[]," it was not a public figure. *National Life Ins. Co. v. Phillips Publishing, Inc.*, 793 F. Supp. 627, 635 (D. Md. 1992).

The cases that NCRIC cites also are easily distinguished. *Martin Marietta* involved a newspaper article about a major corporation dealing with an issue "of legitimate public concern, *per se*": possible violations of federal law by plaintiff. 417 F. Supp at 956. *Phillips Publishing Co.*, involved a newspaper article about "the financial health of the insurance industry" – a topic that both parties "agreed" was a "public controversy." 793 F. Supp. at 634. Finally, *Lakeshore Community Hospital* involved a public battle over a hospital merger, and a defamation claim "premised in large part on defendant's [public] statements . . . statements threatening to file a lawsuit . . . solicitation of proxies" and a "letter to the editor" – core First Amendment speech. 538 N.W.2d at 27-28.

---

[36] *But see, e.g., Beattie v. Fleet Nat'l Bank,* 746 A.2d 717, 723 n.2 (R.I. 2000) (holding that they are not).

16d-001288

3. There Is Evidence That NCRIC Acted with Actual Malice

Even if the "actual malice" standard did apply, there is direct evidence that NCRIC "knew the statement[s were] false [when made] or acted in reckless disregard of [their] truth," *Robertson v. McCloskey*, 666 F. Supp. 241, 248 (D.D.C. 1987). NCRIC knew, when its representatives stated that its Entity Policy had expired on September 1, 2000, that the statement was false – because *it* had already *extended* the policy through September 15, 2000. *See* SMF2 ¶ 167. NCRIC knew, when its representatives stated that individual NCRIC insurance policies did not cover physicians working in the clinic, that the statement was false – because *it* had previously *admitted* that the physicians were covered at the outset of the Policy. *See* SMF2 ¶ 190.

Further, there is sufficient evidence in the record – "evidence of negligence, motive and intent" – from which a reasonable juror could infer knowledge of falsity, *see Bose Corp. v. Consumers Union*, 692 F.2d 189, 196 (1st Cir. 1982), *aff'd*, 466 U.S. 485 (1984). Foremost, NCRIC's retaliatory and heavy-handed conduct, *see supra*, pp. __, and misrepresentations, *see infra*, pp. __, supports an inference of knowledge, *see Mark v. Shoen*, 48 F.3d 412, 419 (9th Cir. 1995) (ill will is circumstantial evidence of actual malice). Moreover, in each case, NCRIC had a strong economic incentive to distort the truth: keeping its insureds. These factors, in addition to NCRIC's failure to investigate the truth of its statements, would support an actual malice finding. *See Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 665 (1989); *see, e.g., Arroyo v. Rosen*, 648 A.2d 1074, 1080 (Md. App. 1994).

Plus, NCRIC's "failure to investigate" certain claims, coupled with its "high degree of awareness of . . . probable falsity," also satisfies the actual malice requirement. *See Gertz*, 418 U.S. at 332 (internal quotation marks omitted). For example, NCRIC's statement in 2000 that

Columbia was planning to close its doors was reckless, because NCRIC knew Columbia was continuing to negotiate the Retro Plan in good faith and because there is no evidence that NCRIC made any effort to confirm with Columbia or check with regulators (to whom Columbia would have to announce its closure 90 days in advance, *see* D.C. Mun. Regs. tit. 22, § 4113.6 (2002)). Similarly, NCRIC obtained MIIX's rate filing prior to making the 1998 statements concerning the Columbia insurance program, *see* SMF2 ¶ 147, and therefore, NCRIC can be assumed to have known that MIIX was a highly rated (rather than "unreliable") insurance company.

VI. Material Issues of Fact Exist as to Columbia's Tortious Interference Claims (Counts Four and Five)

The elements of tortious interference with business relations and prospective business relations are: (1) a valid business relationship or expectancy; (2) knowledge of the relationship or expectancy by defendant; (3) defendant's intentional interference, inducing termination of the relationship or denial of the expectancy; and (4) resulting damages. *See Bennett Enters., Inc. v. Domino's Pizza, Inc.*, 45 F.3d 493, 499, 310 U.S. App. D.C. 192, 198 (D.C. Cir. 1995); *see generally, Alfred A. Altimont, Inc. v. Chatelain, Samperton & Nolan*, 374 A.2d 284 (D.C. 1977).[37] Columbia offered more than enough evidence to reach a jury on each of these elements, and therefore, summary judgment should be denied.

A. Columbia Had a Reasonable Business Relationship with the Attending Faculty, and Its Expectation of Patient Referrals Was Not Speculative

Up through September 2000, Columbia had long-standing business relationships with approximately 60 physicians, the Attending Faculty, who referred most (if not all) of their

[37] The claims for interference with business relations and interference with prospective business advantage are two different theories of recovery for the same tort: the former claim relates to interference with existing business relations while the latter claim relates to interference with reasonable expectancies of future business. *See* Defendant's Opp. at 10-11 (explaining two theories); Order at 3-4 (July 3, 2001) (upholding two theories).

16d-001290

patients to Columbia. *See* SMF2 ¶ 194. Columbia reasonably expected that Attending Faculty would continue to refer the bulk of their patients to it for the foreseeable future. *See id.* ¶ 200.[38]

Contrary to NCRIC's claim, Columbia's expectancy of prospective patient referrals was not "speculative." Columbia's claim is founded on the hospital's expectation that current Attending Faculty would have continued to refer patients to the hospital until they retired. This expectation was reasonable because, *inter alia*: Attending Faculty tend to remain at Columbia until retirement age or longer, *see* SMF2 ¶¶ 197 & 200; typically, established Attending Faculty do not tend to change their admitting patterns (*i.e.*, the percentage of their patients they referred to Columbia), *see id.* ¶ 196; historically, the number of births at Columbia has remained stable over time, *see id.* ¶ 228; and the number of Attending Faculty historically has remained the same, because attrition occurs gradually and at the same pace as new Attending Faculty arrive through informal recruiting processes, *see id.*¶ 199. Columbia has not, as far back as memory stretches, seen an en masse departure of physicians as occurred Summer/Fall 2000, when about a third of its patient-referring Attending Faculty walked out the door, along with the patients they referred, in just two months. SMF2 ¶ 196. Columbia had every reason to believe that would never occur. *See* SMF2 ¶¶ 196-197.

The cases NCRIC cites are not to the contrary. None of these cases involved an expectation of future business relations anywhere near as certain as Columbia's expectation, where physicians (1) *already* referred the bulk of their patients to Columbia, *see id.* ¶¶ 194, 198, 200; (2) were loyal to the hospital and only considered leaving due to economic pressures, *see id.*

[38] There can be no doubt that NCRIC knew about Columbia's business relationship with the Attending Faculty, and its expectation of current and future patient referrals. *See* SMF2 ¶ 201.

16d-001291

¶ 154; and who, as a group, historically tended to stay at Columbia, and continue their existing practice patterns, until they retired, *see id.* ¶ 196.

For example, in *Sheppard v. Dickestein, Shapiro Morin & Oshinsky*, 59 F. Supp. 2d 27, 28 (D.D.C. 1999), plaintiff sued a third party for tortiously interfering with his at-will employment. The court dismissed plaintiff's claim for interference with his prospective employment because plaintiff (who had worked for his employer for four years) "offered no evidence of a *future* business relationship" with his employer. *Id.* at 34 (emphasis added). In stark contrast to *Sheppard*, Columbia offered sufficient evidence that it reasonably expected the Attending Faculty who left – some who had practiced at Columbia for 20 years – to remain at Columbia and continue their normal admission practices until they retired. *See* SMF ¶¶ 154, 196. Further, in *Citylink Group, Ltd. v. Hyatt Corp.*, 729 N.E.2d 869, 877 (Ill. App. 2000), the court concluded (as one alternative ground for its holding) that plaintiff failed to identify a specific party with which it contemplated future business relations. Columbia, in contrast, identified nearly 30 *specific* physicians with whom it expected to have business relations.[39]

B. NCRIC Intentionally and Wrongfully Interfered with Columbia's Business Relationship with the Attending Faculty and Its Expectancy of Patient Referrals

NCRIC interfered with Columbia's business relationship with the Attending Faculty and expectancy of patient referrals by: (1) intentionally, recklessly and negligently making false and unsupported statements about Columbia's insurance program with MIIX (a malpractice insurer)

[39] *CACI Int'l, Inc. v. Pentagen Techs. Int'l, Ltd.*, No. 94-2058, 1995 WL 679952, at *5 (4th Cir. Nov, 16, 1995) arose in a different context. In *CACI Int'l*, the appellate court upheld, as "not clearly erroneous," the lower court's *finding* at a bench trial that there was "insufficient evidence of actual damage"; the issue was not whether the damages were too speculative to reach a jury. Yet, *CACI Int'l* also is distinguishable: plaintiff failed to prove damages for its interference claim because its claim rested on its unconvincing proof that it would perform *additional* services in the future for a third party. Here, Columbia seeks no damages for *additional* services that the Attending Faculty *might* have performed; it only claims damages for the services the physicians *actually had* performed in 1999-2000.

16d-001292

in Fall 1998, *see* SMF2 ¶ 41; (2) propagating false and/or unsupported rumors about Columbia's viability in the Summer/Fall 2000, which spread panic among the Attending Faculty, *see id.* ¶¶ 221-228; (3) maliciously and without warning canceling the Entity Policy that insured the Clinic and the physicians who worked there, *see id.* ¶ 55; (4) engaging in bad-faith negotiations to renew the Retro Plan, thereby denying Columbia the ability to provide an alternative insurance program for Attending Faculty in a timely manner, *see id.* ¶ 215; and (5) urging the Attending Faculty to move their practices to Sibley and GW, *see id.* ¶¶ 142-143, 204, 212. As such, NCRIC's arguments that (1) its actions did not cause the departure of the Attending Faculty and (2) its conduct was not sufficiently wrongful to be actionable, lack merit.

1. NCRIC Ignores Testimony Regarding Why the Physicians Left and the Inferences Arising from the Timing of Their Departure

Contrary to NCRIC's claim that no evidence connects the movement of Attending Faculty to its defamatory statements, *see* NCRIC Mem. at 21-22, *every single* group of physicians who left Columbia in Summer/Fall 2000 informed a Columbia Board member that they were leaving due to the baseless rumor, spread by NCRIC's own Dr. Glassman, that Columbia was planning to close its doors. *See* SMF2 ¶ 219 (citing Asterbadi Dep. at 160-61).[40] Moreover, even absent the physicians' admissions, the timing of their departure from Columbia – immediately after NCRIC's campaign of disinformation and retaliation, and the Retro Plan's September 1, 2000 renewal date – is sufficient to allow a reasonable juror to infer that the physicians left due to NCRIC's misconduct. *Lyon v. Campbell*, 707 A.2d 850, 863 (Md. App.

[40] NCRIC cites statements by several Columbia Board members that they do not know why the physicians left Columbia. *See* NCRIC Mem. at 22 (citing depositions of Dr. Asterbadi, Dr. Rifka, et al.). This testimony simply shows that Columbia's Board members could not know for *certain* why the physicians left. Moreover, these Board Members understand, based on the physicians' statements and the timing of their departure, that the physicians left due to NCRIC's misconduct. *See, e.g.*, SMF2 ¶ 219 (citing Asterbadi Dep. at 217).

16d-001293

1998) ("[c]ircumstantial evidence that supports a rational inference" is sufficient to prove causation) (internal quotation marks omitted).

NCRIC also is wrong to claim that there is no evidence that the Attending Faculty left at its urging, or that they left simply because it did "not . . . renew" the Retro Plan. NCRIC Mem. at 22. NCRIC admits that it developed insurance programs with other hospitals, *see* SMF2 ¶ 141, informed the Attending Faculty about the programs, *see id.* ¶¶ 143-146 (citing Fargis Dep.), urged them to join the programs, and facilitated their admission, *see id.* ¶¶ 143-146, 204, 212 – at precisely the time that the Retro Plan "ended." Then, like clockwork, several large groups of physicians abruptly moved to Sibley and GW. *See* SMF2 ¶¶ 217, 200, 223-226. This sequence gives rise to a reasonable inference that (1) NCRIC urged the physicians to move to other hospitals, and (2) they did move, for reasons related to the Retro Plan. SMF2 ¶¶ 211-212. Some physicians even admitted that their departure was related to the Plan ending. *See id.* ¶ 221.

2. Whether NCRIC's Malicious, Retaliatory Conduct Was Sufficiently "Egregious" or "Wrongful" Is, At a Minimum, a Jury Question

NCRIC's contention that Columbia "cannot prove" it acted wrongfully is unfounded. Since Dr. Glassman's statements (and the other NCRIC statements to the same effect, *see* SMF2 ¶¶ 168-175) were all defamatory, *see supra*, pp. ____, they are, NCRIC admits, *see* NCRIC Mem. at 22, sufficiently wrongful to give rise to liability for tortious interference. *See Sheppard*, 59 F. Supp. at 34 ("the requisite intent [for tortious interference] is met if behavior involves egregious conduct, such as libel, slander, physical coercion, and fraud").

Further, NCRIC did far more than just "urge" the Attending Faculty to move to Sibley and GW: it engaged in "scare tactics" and other misconduct to induce the physicians to leave

16d-001294

Columbia.[41] *See* SMF2 ¶¶ 42, 44, 148. In addition to its defamatory statements, *see supra*, pp. __, and its misrepresentations, *see infra*, pp. __, NCRIC:

- "terminated" the Retro Plan at the end of June, rather than continuing to negotiate, a close-out proposal, simply because Columbia could not afford the prior proposal, *see* SMF2 ¶¶ 54-55;
- cancelled the Entity Policy *just two days later*, without *any* prior warning and without offering *any* justification, in apparent retaliation for Columbia's failure to accept the close-out proposal, *see id.* ¶ 55;
- billed the Attending Faculty weeks early, in early July 2000, for their full premium amounts, despite purporting to negotiate with Columbia to extend the Retro Plan, *see id.* ¶ 207;
- secretly contacted the Attending Faculty in July and August 2000, to play on the fears about other insurance companies it had instilled in 1998, *see id.* ¶¶ 208-209;
- performed an interim reconciliation of the Retro Plan in July, which reflected an amount due that it *knew* did not reflect the terms listed in the Plan, *see id.* ¶ 243;
- in September, sent out an unprecedented exclusion, denying physicians practicing at the Clinic coverage under their own malpractice insurance policies, *see id.* ¶ 186; and
- offered the physicians murky, ominous reasons for the exclusion than the reason it offers now. *Compare id.* ¶¶ 1, 189 ("changes are occurring at Columbia" and the Clinic "is no longer a prudent underwriting risk") with ¶ 190 (purpose was to eliminate double coverage because physicians had group coverage, as well). By engaging in such tactics, NCRIC crossed the line from simple advocacy to unfair pressure. *Id.* ¶ 3.

Finally, Columbia is not, as NCRIC claims, attempting to hold it liable solely for its "decision to let the Retro Plan end." NCRIC Mem. at 24. NCRIC did not simply walk away from the Plan. Instead, knowing that the Attending Faculty were reluctant to leave Columbia, NCRIC caused a panic by canceling the Clinic's insurance, spreading rumors that the hospital was planning to close its doors, and urging physicians to look elsewhere before GW and Sibley

[41] Once again, NCRIC attempts to re-litigate issues already decided in this case. In moving to dismiss, NCRIC argued that Columbia's allegations were not, even if proved, sufficiently "egregious" to prove tortious interference. *See* NCRIC Motion at 7. In response, Columbia argued that NCRIC acted egregiously by making false statements in September 1998 and September 2000; by canceling the Entity policy in retaliation against Columbia for terminating the Plan; by excluding Clinic physicians from coverage under their own individual insurance policies; by performing Reconciliations falsely; and by bringing a lawsuit against Columbia, knowing it was destitute and owed nothing. Judge Davis agreed with Columbia that the foregoing allegations constituted "egregious" behavior. *See* Order at 3, 4. Since Columbia has produced evidence to support each of these allegations, Judge Davis's decision that this conduct satisfied the requisite intent for tortious interference governs as Law of the Case. *See*

16d-001295

became overcrowded. *See id.* ¶¶ 60, 149, 161-162, 209, 211. This conduct crossed the line from advancing NCRIC's own interests to wrongful interference – or, at a minimum, a reasonable juror could so conclude.[42]

C. Columbia Suffered Damage As a Proximate Result of the Attending Faculty's Departure

In September through November of 2000, as a direct result of NCRIC's wrongful conduct, between 20 and 30 Attending Faculty members moved (the bulk of) their practices to Sibley and/or GW. *See* SMF2 ¶ 217. As a result, Columbia suffered heavy damages: it lost patient referrals, costing it millions of dollars in revenue each year for the foreseeable future, *see id.* ¶¶ 198-200, 220, 236; further, it was denied a loan, due to its abrupt decline in revenue, that would have substantially reduced the cost of its debt service, *see id.* ¶¶ 235-237; and it was forced to cancel a gala fundraiser that would have generated over a million dollars in donations, *see id.* ¶¶ 230-231.

NCRIC asserts, incorrectly, that Columbia's interference claims encompass "any physician" who left the hospital from "September 2000 through September 2001 – irrespective of the physician's motivation," NCRIC Mem. at 21. In fact, Columbia's tortious interference claims are carefully tailored to include *only* physicians who moved their practices to Sibley or GW during September through November 2000, *see* SMF2 ¶¶ 217, 226, immediately following NCRIC's campaign of malicious, retaliatory and defamatory conduct in July through September 2000, *see id.* ¶¶ 142-149, 208-209 – including its "termination" of the Retro Plan. The Retro Plan did not terminate, and still governs the parties. *See* SMF1 ¶ 9. Many of the physicians who left were members of large practice groups that moved immediately following the termination of

---

supra, p. __.

[42] NCRIC's conduct is particularly reprehensible in light of the fiduciary duty it owed Columbia. *See infra*, pp. __.

16d-001296

the Retro Plan. *See id.* ¶¶ 221-226. These groups began planning to move to Sibley and GW in about July and August 2000, after they were secretly urged to do so by NCRIC, *see id.* ¶¶ 41, 143, 209, 211-212. Several of the physician groups announced their departure on or about September 1, 2000, *see id.* ¶¶ 217, 222-223, 226; and all of these groups left in mid-September through November 2000, *see id.* This abrupt departure corresponds with the steep drop in newborn deliveries that Columbia suffered in October and November 2000. *See* id. ¶¶ 220, 236 (41% decrease in births between September and November). Further, these physicians have not returned to Columbia: the hospital's admissions have remained at that level – about 40% below the average level of the previous five years. *See id.* ¶ 228. Finally, Columbia's damages expert excluded from consideration any physician who left the hospital for reasons other than NCRIC's inducement. *See* Ben Ezra Decl. ¶ 16.

VII. Material Issues of Fact Exist as to the Conversion Claim (Count Eleven)

A. Columbia's Makes Out Each Element of Conversion

Conversion is the unlawful exercise of ownership, dominion, or control over the personal property of another in denial or repudiation of that person's rights thereto. *O'Callaghan v. District of Columbia*, 741 F. Supp. 273, 279-80 (D.D.C.1990). Since the parties agreed in 1998 to treat the money as a deposit, *see* SMF2 ¶¶ 14, 36, 157; and since Columbia demanded in vain that its $1 million deposit be returned once it was realized that NCRIC was performing Reconciliations inaccurately, *see id.* ¶¶ 159, 242; and since Columbia was damaged by the loss of interest on that deposit, *see id.* ¶ 36, Columbia has satisfied all of the elements of its conversion claim. *See O'Callaghan,* 741 F.Supp. at 279-80.[43]

[43] Moreover, since the money was obtained by fraud, based on NCRIC's overcalculation of the amount of cumulative Additional Premium due for the September 1, 1997 Reconciliation, and its knowledge that the terms it used in the were not in the plan it drafted. *See* SMF2 ¶¶ 118-133. NCRIC is incorrect to argue that its possession was lawful in the first place. As such, regardless of whether the $1 million was an agreed-upon deposit, NCRIC's

NCRIC argues, incorrectly, that Columbia's conversion count is properly a claim for money owed under the Retro Plan. This is the essentially the same factual argument that the money was not a deposit, and fails for the same reason: Columbia has adduced sufficient evidence to show that it was a deposit, not a lawful payment. *See* SMF2 ¶¶ 14, 36, 101,157. Indeed, NCRIC treated the money as deposit throughout. *See id.* ¶ 101 ("Columbia Deposit – $1 million" listed on each Reconciliation spreadsheet).[44]

Despite its representations to Columbia that the $1 million was a deposit, NCRIC now claims that it was "premium applied against the total amount due under the Retro Plan."[45] NCRIC Mem. at 40. Yet NCRIC concedes that the parties agreed not to exchange premium under the Retro Plan for any Experience Periods until it was closed. *See* NCRIC Mem. at 5-6, 8, 29, 37. Since no Experience Periods were closed as of the September 1, 1997 Reconciliation, *no premium was due* at the time Columbia paid the $1 million. *See* SMF2 ¶ 127.

Because Columbia's payment was a deposit, not a payment of premium, *Lawson v. Commonwealth Land Title Ins. Co.*, 518 A.2d 174 (Md. Ct. Spec. App. 1986), is distinguishable. In *Lawson*, plaintiff owed defendant money and overpaid him – so, when defendant cashed the check and took some of the money for himself, plaintiff's funds were no longer identifiable. *Id.* at 177. Therefore, plaintiff's lawsuit was a claim for money owed, not a claim for conversion.

---

possession of it is unlawful. *See, e.g., FDIC v. Smith*, 144 F. Supp. 2d 507, 517 (money obtained by fraudulent means is unlawful possession sufficient to support claim for conversion).

[44] Even if NCRIC did not keep the $1 million deposit segregated from its own funds, this does not undermine Columbia's claim. Indeed, NCRIC's failure to keep the $1 million segregated after agreeing that it was a deposit was itself a conversion.

[45] NCRIC told Columbia that the $1 million was to be used for future premium. *See* SMF2 ¶¶ 36, 157. NCRIC told its auditors and the D.C. Insurance Commissioner a different story, however: that Columbia owed the $1 million as premium. *See id.* ¶ 36. Columbia understood that NCRIC informed the Commissioner that the deposit would be used as future premium. *See id.* NCRIC also informed Columbia that it would earn interest on the deposit. Yet, although Columbia continually asked NCRIC to credit it for the interest, NCRIC never did. *See id.* ¶¶ 101, 157-158, 242.

16d-001298

By contrast, here Columbia *did not* owe NCRIC money, and *did not* allow NCRIC to cash the check and take some of the money for itself; rather, NCRIC was to keep the funds as a deposit.

VIII. Columbia's Damages Are Sufficiently Certain to Create an Issue of Fact for the Jury

A. Columbia's Lost Revenue Damage Calculations Are Reasonably Certain

To calculate Columbia's lost revenue damages, its expert, Peter Ben Ezra – who teaches business school courses in management accounting – performed a "lost cash flow" analysis. *See* Ben Ezra Dep. at 5-6, 231. For this analysis, Mr. Ben Ezra obtained a breakdown of Columbia's actual revenue from patient referrals, sorted by physician. He then compared the revenue streams attributable to the physicians who left the hospital for the year before October 1, 2000 and the year after October 1, 2000, and compared the two numbers. *See id.* at 5. Then, Mr. Ben Ezra used a textbook "lost cash flow" model to calculate the lost cash flows over time until an estimated year when each physician would have retired, had they stayed at Columbia. *See id.* at 231-32. This is a well-accepted means of calculating lost cash flow. *See id.*;[46] Report of Peter Ben Ezra, Expert Witness (1/22/02) (attached to NCRIC Mem. as Exh. 39). This is sufficient to reach a jury. *See Garcia v. Llerena*, 599 A.2d 1138, 1143 n.9 (D.C. 1991) (lost profits damages "must be based upon evidence which leads to a reasoned conclusion") (internal quotation marks omitted); *see, e.g., Tuf Racing Products, Inc. v. American Suzuki Motor Corp.*, 223 F.3d 585, 591 (7th Cir. 2000) (Posner, J.) (upholding admission of testimony of expert accountant who, based on "financial information furnished by [plaintiff] and assumptions given him by counsel, . . . calculated the discounted present value of the lost future earnings").

B. NCRIC Fundamentally Misunderstands the Expert's Analysis, and Ignores That His Assumptions Are Based on Evidence in the Record

[46] It is undisputed that Mr. Ben Ezra properly performed his calculations based on what he understands to be accurate data, *see id.* at 230-34 both summarized his conclusions, and showed his calculations, in an extremely detailed report.

16d-001299

Unable to attack his methodology, NCRIC and its "expert," Mary Woodford,[47] attack Mr. Ben Ezra[48] and his assumptions. But none of these criticisms have any merit.

1. The Damages Expert Is Not A Causation Expert, Nor Need He Be

Foremost, NCRIC urges that Mr. Ben Ezra's calculations all are "speculative" because he "assumed" causation. In fact, Mr. Ben Ezra simply leaves proof of causation to Columbia to establish with lay testimony. Once Columbia shows that NCRIC's wrongful conduct caused the NCRIC Group of Doctors to leave or cut back on patients they referred to Columbia (and it has, *see supra*, pp. __), Mr. Ben Ezra's report will allow the jury to calculate the resulting damages. Since causation is irrelevant to Mr. Ben Ezra's report, NCRIC's criticisms of it fail.

NCRIC offers no basis in law for suggesting that proof of causation by lay testimony and proof of damages by expert testimony is not appropriate in this case. Nor can it. Expert testimony is generally not required if the issue of causation can be "resolved wholly within the realm of ordinary human knowledge and experience," or if "the proof is so obvious as to lie within the ken of the average lay juror." *Lasley v. Georgetown Univ.*, 688 A.2d 1381, 1385 (D.C. 1997). Further, it is well-accepted that lay witness testimony can lay a foundation for the expert's report. *See Diversey Corp. v. Chem-Source Corp.*, 965 P.2d 332, 340 (N.M. Ct. App.)

---

[47] Despite working at a Big 5 accounting firm, Ms. Woodford apparently has no accounting background. Woodford Decl. Exh 1.

[48] Mr. Ben Ezra is, as NCRIC claims, "not the typical disinterested witness": he is a volunteer officer of Columbia's Board of Directors, *see* Ben Ezra Decl. ¶ 9. Yet it does not follow that he "cannot be considered objective." Mr. Ben Ezra has strived, successfully, to limit his role as an expert by eliminating essentially every element of subjective judgment, to render his calculations unimpeachable. Mr. Ben Ezra declined to enter into more subjective areas of judgment, such as estimating good-faith losses. Further, Mr. Ben Ezra has been sure that his lost cash flow analysis – which, as NCRIC admits, is "little more than adding up the numbers" – has been more conservative, more cautious, and more objective than any disinterested witness would need to be. Every time that he had an opportunity to exercise his judgment between two different numbers, Mr. Ben Ezra choose the value that benefited NCRIC, not Columbia. *See id.* ¶¶ 10-12, 23, 28 (listing each such decision). As such, any motion to strike on the grounds of lack of objectivity must fail. *Compare Conde v. Velsicol Chem. Corp.*, 804 F. Supp. 972, 984-86 (S.D. Ohio 1992) (allowing testimony of expert damages witness who used objective methodology, despite that he was plaintiff), *aff'd*, 24 F.3d 809 (6th Cir. 1998).

16d-001300

(rejecting argument that expert's testimony was "based on an assumption, not evidence, that [defendant] caused [plaintiff's] losses," because "it is permissible for non-experts in cases like the instant one to lay the foundation for an expert's testimony") *cert. dismissed*, 9 P.3d 69 (N.M. 1998). For the claims at issue here, tortious interference and defamation (among others), causation is not outside the "ken" of the average juror: that physicians left the hospital shortly after rumors that the hospital was closing. *See* SMF2 ¶¶ 217-228. *Compare, e.g.*, *Diversity*, 965 P.2d at 340-41 (holding that lay witness could properly lay a foundation for damage expert's report in tortious interference case where defendant spread malicious rumors that plaintiff "was going . . . out of business"). Here, the brief time between Dr. Glassman false statements of and the departure of Columbia's Attending Faculty, could lead a reasonable juror to infer that the events were causally related.

Further, NCRIC's so-called expert, Ms. Woodford, offers no learned basis for her opinion that, due to its lack an analysis of causation, Mr. Ben Ezra's method is speculative. (Indeed, Ms. Woodford speculates herself: she posits that Mr. Ben Ezra failed to consider that there are other possibilities for why the physicians departed Columbia, *see* Woodford Decl. ¶¶ 8-10.) Ms. Woodford also offers no basis for urging that Mr. Ben Ezra should have made an independent inquiry into causation. *See id.* ¶¶ 9, 20-21. In fact, because Mr. Ben Ezra will offer no opinion regarding causation to the jury, there is no need for an independent inquiry.

While expert testimony is not necessary to prove causation since the reasons that the Attending Faculty left Columbia are fully within the ken of ordinary people and lay witnesses, Mr. Ben Ezra did undertake some independent inquiry to satisfy himself that the physicians he used in his report left due to NCRIC. Specifically, he (1) asked physicians at the hospital to

confirm that his list of physicians left because of NCRIC, *see* Ben Ezra Dep. at 106-08; (2) knew, based on his personal knowledge, that several large groups of physicians left right abruptly after the Retro Plan was not renewed, *see id.* at 125-26; and (3) determined that the list of physicians he received excluded certain physicians who left during 2001 for other reasons, *see id.* at 107.

Moreover, by attacking Mr. Ben Ezra's overall figure – $21.5 million – NCRIC ignores the menu of other options offered by his report. For example, the report lists the total amount of lost cash flow, per doctor, for each physician. *See* Report at 6 (list of physicians with total lost cash flow for each). *See* Ben Ezra Decl. ¶¶ 18-19. Thus, by using Mr. Ben Ezra's detailed calculations, a jury can calculate the lost cash flows attributable to NCRIC for *each individual physician* that it concludes NCRIC induced to leave; if it determines that only certain physicians were induced to leave by NCRIC's wrongful conduct, it can eliminate the others from the calculations.

2. The Evidence Supports the Use of 65 As a Retirement Age

NCRIC's purported expert, Ms. Woodford, attacks Mr. Ben Ezra for using age 65 as the end of each physician's period of lost cash flows. Woodford Decl. ¶¶ 17-19. Yet, there is evidence that Attending Faculty with established practices at Columbia have, historically, remained at Columbia, and continued their normal patient practice patterns, until they are 65 or older. *See* SMF2 ¶¶ 196-197.[49] Because of this Columbia-specific evidence regarding historic physician practices, there is no need for "work life studies," *see* Woodford Decl. ¶¶ 18-19.[50]

---

[49] Additionally, this court can take judicial notice of the retirement age for Social Security, and conclude that assuming that age for retirement is reasonable per se.

[50] Even if Department of Labor work life tables are admissible, as Ms. Woodford urges, they are not required – particularly where there is other evidence of retirement age. *See, e.g., Brom v. Bozell, Jacobs, Kenyon & Eckhardt, Inc.*, 867 F.Supp. 686, 691 (N.D. Ill. 1994) (defendant's use of work life table was a matter for the jury).

3. Mr. Ben Ezra's Other Assumptions Are Supported By Evidence

Ms. Woodford's other criticisms of Mr. Ben Ezra's assumptions also fail. First, she is wrong to eschew his use of 30 percent as Columbia's marginal cost, *see* Woodford Decl. ¶ 23-24. As Mr. Ben Ezra makes clear, thirty percent is a conservative estimate; hospitals have high fixed costs and low marginal costs. *See* Ben Ezra Decl. ¶ 26; *compare Coventry Health Care of Kansas, Inc. v. Via Christi Health System, Inc.*, 176 F. Supp. 2d 1207, 1224 (D. Kan. 2001) (judge finding that "[g]enerally, 70% of a hospital's costs are viewed as fixed costs"). Further, Mr. Ben Ezra based his marginal cost figure a real-life example from his textbook, and marginal cost does tend to not vary by more than a few percentage points within any given industry. *See* Ben Ezra Decl. ¶ 29. In addition, Mr. Ben Ezra was unable to review Columbia's cost accounting data because, due to its lack of financial sophistication, it does not have any. *See id.* ¶ 31. Nor was he required to engage in the onerous task of performing a cost analysis of the hospital simply to perform his report.[51]

4. The Data Shows That The Physicians Left Columbia, Or Substantially Reduced Their Practices

NCRIC and its purported expert also are wrong to suggest that Mr. Ben Ezra simply relied on Columbia's representation that physicians left Columbia. *See* Woodford Decl. ¶¶ 7, 11. In fact, he performed an independent analysis based on the revenue data he received from Columbia. *See* Ben Ezra Dep. at 16. If the data suggested that the physician did not leave Columbia or cut down on referring patients – *i.e.*, if the cash flows generated by the physician

[51] Finally, Mr. Ben Ezra was not required to audit the reams of financial data he used to produce his report. Rather, he was entitled to rely on the hospital's financial records, which kept in the regular course of its business, under general ledger control. This is a standard practice in estimating cash flows. Ben Ezra Dep. at 209. Neither NCRIC nor Ms. Woodford offer a legal or learned basis for concluding otherwise. *Compare International Adhesive Coating Co., Inc. v. Bolton Emerson Intern., Inc.*, 851 F.2d 540, 545 (1st Cir. 1988) (accountant testifying as expert witness was not obligated, as a condition of admissibility of his opinion, to present invoices, statements, documents, breakdown or supporting data to support the areas of damages that he testified about). Nor do they offer any factual basis for suggesting that Columbia's data is faulty.

stayed the same (or even increased) before and after October 1, 2000 – then Mr. Ben Ezra did not perform an analysis for that physician. *See id.*; Ben Ezra Decl. ¶ 16.

Ms. Woodford also is wrong to suggest that, by taking physicians who increased their admissions out of his model, Mr. Ben Ezra excised some mitigating cash flow streams in his analysis. *See* Woodford Decl. ¶ 11. In fact, these damages are not "mitigating." The hospital already had *excess* capacity, and the physicians who increased their referrals already practiced at Columbia. *See* Ben Ezra Decl. ¶ 16. Thus these physicians could have increased their patient regardless of whether the other physicians left.

Also contrary to Ms. Woodford's assertion, Woodford Decl. ¶¶ 12-14, Mr. Ben Ezra did check to determine whether either of the years used in his analysis were extraordinary. They were not.[52] *See* Ben Ezra Decl. ¶¶ 32-33 . Further, Mr. Ben Ezra relied on the best available data he had available in performing his report. *See id.* ¶ 31. And, since he was already familiar with Columbia's financial statements, there was no need for him to re-review them. *See id.* ¶ 32.

5. The Opinion of NCRIC's "Expert" Is Not Proper Expert Testimony, Should Be Ignored, and Is Subject to a Motion to Strike

Ms. Woodford's declaration is not "expert" testimony. None of her analysis requires any expertise beyond the ken of an average juror. Indeed, much of it is simply relays basic factual information about the supposed failings of Mr. Ben Ezra's report.

Further, Ms. Woodford frequently engages in blatant speculation, none of which requires any expertise. *See* Woodford Decl. ¶ 10. ("I understand most if not all of the departed doctors joined [other hospitals]. It is possible that either hospital may have been competing for CHW

[52] Contrary to Ms. Woodford's unsupported assertions, *see* Woodford Decl. ¶ 15-16, Mr. Ben Ezra knew exactly what the data he was using meant, both from his association with Columbia and standard accounting terminology. It is of no moment that he could not name, for example, every single type of adjustment that comprised the category "Total Adjustments," when he knew well the function and meaning of that category. *See* Ben Ezra Decl. ¶ 35.

doctors. . . . Doctors may have been concerned about the long-term viability of CHW."); *id.* ¶ 20 ("doctors may leave CHW in the future for a reason other than one related to NCRIC. . . . either Sibley or GW hospital may recruit doctors. Patients may demand to have their birth at Sibley. Doctors may be interested in the brand new medical office being built at GW."), *see id.* ¶ 9 (urging that, due to his association with the hospital, Mr. Ben Ezra "could have asked any of all doctors why they left" not without any basis for stating that doctors who left the hospital would explain why to someone associated with the hospital). Since Mr. Ben Ezra is not a causation witness, most of Ms. Woodford's speculative statements are entirely irrelevant to his report. As such, Ms. Woodford's report would be of little benefit to the jury. *See Scott v. Sears, Roebuck & Co.*, 789 F.2d 1052, 1055 (4th Cir. 1986) (expert testimony is inadmissible "as to a matter which obviously is within the common knowledge of jurors because such testimony, almost by definition, can be of no assistance"); *accord Zimmer v. Miller Trucking Co.*, 743 F.2d 601, 604 (8th Cir. 1984).

C. Columbia's Proof of Lost Fundraising Activities and Lost Financing Opportunities Is Reasonably Certain

Finally, there is sufficient evidence of damages, even absent Mr. Ben Ezra's lost cash flow analysis, to allow Columbia to proceed on all of its claims. There was simply no need for an expert to establish the facts to support two additional categories of damages.[53]

[53] Columbia listed four categories of damages in its Rule 26(b)(4) report which Mr. Ben Ezra did not analyze. For two of these categories, lost financing opportunities and lost fundraising opportunities, there is sufficient lay witness testimony in the record to establish that Columbia's damages are reasonable. *See* SMF2 ¶¶ 229-239 (citing Wilson Dep. at 260-65; Deposition of Safa Rifka, M.D., Jr. at 77-81 (June 21, 2001) ("Rifka Dep. I"). Further, there is no support for NCRIC's assertion that, by listing them as expected subjects of expert witness testimony, Columbia "recognized" that these damage categories were "beyond the testimony of lay witnesses." NCRIC Mem. at 43 n.22. NCRIC cites no legal authority to suggest that submission of an expert report on damages forecloses lay witnesses testimony on the subject. Expert testimony is not required simply because it may be of assistance. *See Jones v. Fleetwood Motor Homes*, 127 F. Supp. 2d 958, 964 (N.D. Ill. 2000) (while it might be of assistance, expert testimony was not required.)

For example, Columbia it lost the opportunity to hold a gala fundraiser, budgeted to garner over $1.5 million in contributions, due to NCRIC's defamation and tortious interference. This gala, scheduled for May 2001 was canceled abruptly in Summer/Fall 2000 by Columbia's volunteer fundraising board, because the pervasive rumors that the hospital was going to close made it essentially impossible to raise contributions. *See* SMF2 ¶ 231.

In addition, Columbia became ineligible for a $35 million, low-interest HUD loan, which it was reasonably assured of obtaining in light of HUD's support for its candidacy. However, after the Attending Faculty left in Summer/Fall 2000, Columbia's volume and revenues dropped sharply. As a result, HUD advised Columbia that it no longer qualified for the loan. *See id.* ¶ 237. Denial of this loan meant losing the opportunity to reduce the hospital's cost of capital 10.5% to 4.5% per month. *See id.* ¶¶ 235-238.

IX. Summary Judgment on NCRIC's Contract Claim Is Appropriate – *Against* NCRIC

NCRIC's contract claim fails to take into account the oral agreement that it admits governs the parties. Further, NCRIC applies several multipliers improperly when it performs Reconciliations. *See* Columbia SJ Mem. at 9-10 (oral agreement), 12-13 (failure to produce 2001 Reconciliation), 13-16 (improper application of multipliers). Accordingly, NCRIC owes

16d-001306

Columbia money under the Retro Plan, not vice-versa. As such, Columbia did not breach the Retro Plan, and summary judgment for NCRIC on liability is improper.[54]

It is undisputed that the Retro Plan is unambiguous, and that this Court may interpret it as a matter of law. Accordingly, this Court may review the Retro Plan, determine what the proper terms are, and enter judgment as a matter of law on the contract claim. As explained above, whether the Plan is interpreted with or without the oral agreement, NCRIC owes Columbia substantial Return Premium. *See supra*, pp. ____. Summary judgment *against* NCRIC on its contract claim, and for Columbia on its contract claim, is therefore appropriate.

---

[54] In addition, even if NCRIC had correctly interpreted the Retro Plan, summary judgment for NCRIC would be inappropriate at this time. While Columbia sought documents regarding the calculation of the Subject Premium, many months ago, NCRIC has failed to provide Columbia with these documents to date. Both of these values are necessary for NCRIC to calculate the Subject Premium for each Experience Period; without these figures, there is no way for Columbia to know whether NCRIC's Subject Premium numbers are accurate. And, since Subject Premium is the number from which all other premium amounts are derived, Columbia's inability to audit NCRIC's Subject Premium means that it cannot properly audit whether it owes Additional or Return Premium. In light of NCRIC's failure to produce its Subject Premium calculations and the underlying data necessary to check them – data that NCRIC must have in its possession to calculate the Subject Premium – this Court should not grant summary judgment for NCRIC. The parties are still engaged in negotiations concerning whether NCRIC will produce this data, and Columbia has not moved to compel to date in hopes that NCRIC will produce the requested data. However, if NCRIC fails to produce the information sufficiently in advance of trial, Columbia will request permission to move to compel and/or will make a motion *in limine* to exclude all evidence of Subject Premium.

16d-001307

Conclusion

WHEREFORE, for the foregoing reasons, NCRIC's Motion for Summary Judgment should be denied in its entirety.

DATED: March 7, 2002

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-001308

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Oppositions to Dispositive Motions, filed, March 7, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

WHEREFORE, upon consideration of the points and authorities submitted by the parties, and oral argument presented thereby, Plaintiff's Motion for Summary Judgment is hereby DENIED in its entirety.

SO ORDERED.

_____
Judge Anna Blackburne-Rigsby

Dated: _____, 2002.

Copies to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

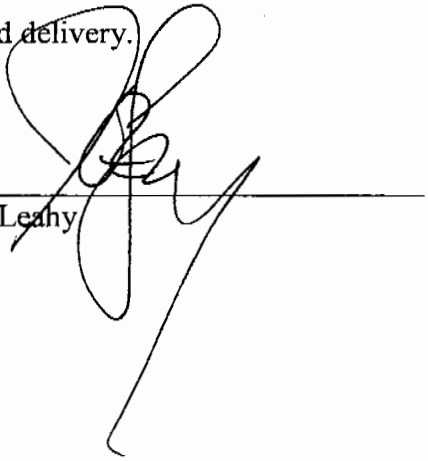
Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 7th day of March, 2002, a copy of Defendant's Memorandum of Points and Authorities In Opposition to NCRIC's Motion for Summary Judgment was served upon the following by first class United States mail:

Rodney F. Page, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that a courtesy copy of all of the aforementioned papers will be served upon the Chambers for Judge Anna Blackburne-Rigsby by hand delivery.



Joseph K. Leahy

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Reply Brief in Support of Summary Judgment Motions -- March 28, 2002
Defendant.	

NCRIC'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

BRYAN CAVE LLP
Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for NCRIC, Inc.

Dated: March 28, 2002

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. COLUMBIA'S FINANCIAL CONDITION HAS BEEN POOR FOR YEARS 3

III. THE ALLEGED 2000 STATEMENTS CANNOT SUPPORT A DEFAMATION OR INJURIOUS FALSEHOOD CLAIM 4

A. There is no Evidence That Some of the Statements Were Even Published 4

B. Columbia Admits the Truth, or Substantial Truth, of Certain Statements 8

IV. THE FALL 1998 STATEMENTS DID NOT DISPARAGE COLUMBIA 9

V. BECAUSE COLUMBIA IS EITHER A GENERAL OR LIMITED PURPOSE FIGURE, IT MUST PROVE THAT NCRIC MADE THE ALLEGED STATEMENTS WITH ACTUAL MALICE BY CLEAR AND CONVINCING EVIDENCE 11

A. Even if NCRIC's Statements are Characterized as Commercial Speech, Columbia Must Still Prove Actual Malice 13

B. There is No Evidence of Actual Malice 15

VI. COLUMBIA'S CLAIMS FOR TORTIOUS INTERFERENCE FAIL AS A MATTER OF LAW 16

A. Any Alleged Conduct was Simply not Tortious 16

B. NCRIC did not Tortiously Cause any Columbia Physician to Leave 19

VII. NCRIC DID NOT BREACH THE RETRO PLAN OR THE IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING 21

A. Columbia owes NCRIC Payment for Additional Premium 21

B. Columbia has no Credible Evidence that NCRIC Improperly Calculated Retro Plan Amounts 22

16d-001313

Page

C. NCRIC Did Not Act in Bad Faith or Breach a Duty of Fair Dealing Under the Retro Plan 24

VIII. COLUMBIA HAS NOT PROVEN A FIDUCIARY RELATIONSHIP BETWEEN THE PARTIES 26

A. NCRIC did not Have a Fiduciary Obligation to Columbia Under The Retro Plan 27

B. No Fiduciary Relationship "Evolved" During the Implementation of the Retro Plan 28

IX. COLUMBIA'S FRAUDULENT OR CONSTRUCTIVE OR NEGLIGENT MISREPRESENTATION CLAIMS FAIL AS A MATTER OF LAW 33

X. COLUMBIA'S CONVERSION CLAIM FAILS BECAUSE ALL PAYMENTS WERE CREDITED TOWARD PREMIUM ACTUALLY OWED 34

XI. ALL OF COLUMBIA'S CLAIMS FAIL AS A MATTER OF LAW AS ITS DAMAGES ARE SPECULATIVE 36

A. A "Sham Affidavit" Cannot Preclude the Entry of Summary Judgment 36

B. Columbia Cannot Prove any Damages Proximately Caused by NCRIC's Alleged Breach 40

C. Summary Judgment is Proper Where Damages are Speculative 43

XII. CONCLUSION 44

16d-001314

TABLE OF AUTHORITIES

CASES **PAGE(S)**

Alaska Travel Specialists, Inc. v. First National Bank of Anchorage,
919 P.2d 759 (Alaska 1996) 43-44

Albert v. Loksen,
239 F.3d 256 (2d Cir. 2001) 7

Alexis v. District of Columbia,
77 F. Supp. 2d 35 (D.D.C. 1999) 10

Allstate Insurance Co. v. LaPore,
762 F. Supp. 268 (N.D. Cal. 1991) 6

American Continental Insurance Co. v. Pooya,
666 A.2d 1193 (D.C. 1995) 6

Art Metal-U.S.A., Inc. v. United States,
244 U.S. App. D.C. 1, 753 F.2d 1151 (D.C. Cir. 1985) 10

Barber v. Daly,
586 N.Y.S.2d 398 (App. Div. 1992) 7

Bennett v. Kiggins,
377 A.2d 57 (D.C. 1977) 33

Braden v. News World Communications, Inc.,
No. CA-10689'89, 1991 WL 161497 (D.C. Super. Ct. Mar. 1, 1991) 15

Braden v. News World Communications, Inc.,
No. CA-10689'89, 1993 WL 625508 (D.C. Super. Ct. Sept. 3, 1993) 15

Burleson v. Burleson,
277 A.2d 647 (D.C. 1971) 20

Cafritz v. Corporation Audit Co.,
60 F. Supp. 627 (D.D.C. 1945) 29

Camfield Tires, Inc. v. Michelin Tire Corp.,
719 F.2d 1361 (8th Cir. 1983) 37

Church of Scientology International v. Eli Lilly & Co.,
848 F. Supp. 1018 (D.D.C. 1994) 27

16d-001315

Curaflex Health Services, Inc. v. Bruini,
877 F. Supp. 30 (D.D.C. 1995) 35

Davis v. Boyle Brothers,
73 A.2d 517 (D.C. 1950) 27

Donohoe v. Watt,
546 F. Supp. 753 (D.D.C. 1982), aff'd, 230 U.S. App. D.C. 70, 713 F.2d 864 (D.C. Cir. 1983) 17

GLM Corp. v. Klein,
665 F. Supp. 283 (S.D.N.Y. 1987) 27, 29

Genetic System Corp. v. Abbott Laboratories,
691 F. Supp. 407 (D.D.C. 1988) 17, 18

Goldsmith v. Tapper,
748 A.2d 416 (D.C. 2000) 33

Howard University v. Best,
484 A.2d 958 (D.C. 1984) 5

Humana Health Plan, Inc. v. Heritage Indiana Medical Group, PC,
No. 99 C 6276, 2001 WL 8878 (N.D. Ill. Jan. 3, 2001) 29-30, 32

Lakeshore Community Hospital, Inc. v. Perry,
538 N.W.2d 24 (Mich. Ct. App. 1995) 13

Lavin v. Kaufman, Greenhut, Lebowitz & Forman,
640 N.Y.S.2d 57 (App. Div. 1996) 29

Linkins v. Protestant Episcopal Cathedral Foundation of the District of Columbia,
87 U.S. App. D.C. 351, 187 F.2d 357 (D.C. Cir. 1950) 14

Mandelblatt v. Devon Stores, Inc.,
521 N.Y.S.2d 672 (App. Div. 1987) 29

Martin Marietta Corp. v. Evening Star Newspaper Co.,
417 F. Supp. 947 (D.D.C. 1976) 12

Martin v. Merrell Dow Pharmaceuticals, Inc.,
851 F.2d 703 (3d Cir. 1988) 36

McGlinchy v. Shell Chemical Co.,
845 F.2d 802 (9th Cir. 1988) 43

Nader v. de Toledano,
408 A.2d 31 (D.C. 1979) 15

National Life Insurance Co. v. Phillips Publishing, Inc.,
793 F. Supp. 627 (D. Md. 1992) 12, 13, 14, 15

O'Donnell v. Associated General Contractors of America, Inc.,
645 A.2d 1084 (D.C. 1994) 19

P.P.P. Products, Inc. v. W & L, Inc.,
418 A.2d 151 (D.C. 1980) 27

Patel v. Howard University,
896 F. Supp. 199 (D.D.C. 1995) 42

Pearce v. E.F. Hutton Group, Inc.,
664 F. Supp. 1490 (D.D.C. 1987) 8, 9

Petersen v. Dacy,
550 N.W.2d 91 (S.D. 1996) 6

Phillips v. Washington Magazine, Inc.,
472 A.2d 98 (Md. 1984) 15

Pinkney v District of Columbia,
439 F. Supp. 519 (D.D.C. 1977) 5

Pyramid Securities Ltd. v. IB Resolution, Inc.,
288 U.S. App. D.C. 157, 924 F.2d 1114 (D.C. Cir. 1991) 36, 37

Q-Tone Broadcasting Co. v. MusicRadio of Maryland, Inc.,
No. Civ. A. 93C-09-021-WTQ, 1995 WL 875438
(Del. Super. Ct. Dec. 22, 19951) 13, 15

Richardson v. District of Columbia,
522 A.2d 1295 (D.C. 1987) 19-20

Ridgewells Caterer, Inc. v. Nelson,
688 F. Supp. 760 (D.D.C. 1988) 5

Rizzuto v. Nexxus Products Co.,
641 F. Supp. 473 (S.D.N.Y.), aff'd, 810 F.2d 1161 (2d Cir. 1986) 10

16d-001317

Shapiro, Lifschitz & Schram, P.C. v. Hazard,
24 F. Supp. 2d 66 (D.D.C. 1998) 29

Solow v. Liebman,
692 N.Y.S.2d 693 (App. Div. 1999) 43

Steele v. Isikoff,
130 F. Supp. 2d 23 (D.D.C. 2000) 27, 30

U.S. Healthcare, Inc. v. Blue Cross of Greater Philadelphia.,
898 F.2d 914 (3d Cir. 1990) 14, 15

Waldbaum v. Fairchild Publications, Inc.,
201 U.S. App. D.C. 301, 627 F.2d 1287 (D.C. Cir. 1980) 11, 12

Washington v. Government of District of Columbia,
152 A.2d 191 (D.C. 1959) 27

Weinberg v. Whatcom County,
241 F.3d 746 (9th Cir. 2001) 43

MISCELLANEOUS

D.C. Super. Ct. R. Civ. P. 56(e) 7

D.C. Super. Ct. R. Civ. P. 56(g) 37

Restatement (Second) of Torts § 649 & cmt. B 11

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Reply Brief in Support of Summary Judgment Motions – March 28, 2002
Defendant.	

PLAINTIFF NCRIC'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Pursuant to District of Columbia Superior Court Rules of Civil Procedure 12-I(e) and 56, as well as this Court's Order of March 4, 2002, plaintiff NCRIC, Inc. ("NCRIC") submits this Reply Brief in Support of its Motion for Summary Judgment filed against defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") in the above captioned case.

I. INTRODUCTION

In an effort to stave off dismissal of legally deficient and factually unsupported claims, Columbia's submits an opposition to NCRIC's summary judgment motion filled with inadmissible hearsay, declarations contradicting sworn deposition testimony, inaccurate legal arguments, and factual assertions without proper foundation. In so doing, Columbia attempts to use the sheer volume and bulk of its papers to play fast and loose with the facts and applicable law. Columbia apparently hopes this Court will not undertake a comprehensive and complete review of the facts and law. NCRIC invites this Court to do so.

In addition to failing to prove any credible improper motive for NCRIC's actions, Columbia's lengthy missive is devoid of any careful analysis of the required legal elements of its claims. Columbia paints with a broad brush in an effort to convince this Court that its counterclaims survive scrutiny. Columbia lacks evidence from any physician that he or she chose to leave Columbia because of NCRIC. Columbia also lacks (or has claimed privilege to protect disclosure of) admissible evidence to establish any of its damage claims.

When it suits Columbia, the hospital describes itself an entity lacking in sophistication and/or business records. See, e.g., Columbia Opp.[1] at 56 ("Mr. Ben Ezra was unable to review Columbia's cost accounting data because, due to its lack of financial sophistication, it does not have any."). Nevertheless, in an effort to invent damages, Columbia proudly brandishes, and relies entirely, upon charts created by its counsel solely for this litigation. See Exs. 11-14 to Columbia Memo; Ex. 32 to Columbia Opp. While Columbia's Chairman of the Board previously refused to sign his report calculating damages because he could not authenticate the figures (see Ben Ezra Dep. at 46-47, attached as Ex. AA), he now submits a sworn declaration under penalty of perjury attesting to his $21 million number. See Ex. 3 to Columbia Opp. Such "evidence" of damages is wholly speculative and unreliable.

Noticeably absent from Columbia's papers is any response to the fundamental issue described by NCRIC in its motion for summary judgment: as a professional liability insurance company, NCRIC has no stake, financial or otherwise, in where a physician practices medicine

[1] The prior briefings and exhibits filed by the parties will be referenced herein as follows: NCRIC's Memorandum in Support of its Motion for Summary Judgment filed February 7, 2002 ("NCRIC Memo), Columbia's Memorandum in Support of its Motion for Summary Judgment filed February 7, 2002 ("Columbia Memo"), NCRIC's Opposition to Columbia's Motion filed February 28, 2001 ("NCRIC Opp."), Columbia's Opposition to NCRIC's Motion filed March 7, 2002 ("Columbia Opp.").

16d-001320

and admits patients. See Fargis Decl. ¶ 6, attached as Ex. 2 to NCRIC's Memo. Even if the Retrospective Rating Plan ("Retro Plan") at Columbia had ended in a previous year, physicians would not have been left without coverage – only the discount to be paid by the hospital would have changed. Columbia's groundless accusations of bad faith and tortious conduct are merely an attempt to shield Columbia from liability for its refusal to pay premiums in breach of the Retro Plan.

II. COLUMBIA'S FINANCIAL CONDITION HAS BEEN POOR FOR YEARS

Columbia admits, as it must, that the financial picture at the hospital has been bleak and deteriorating for many years. Columbia's Chairman of the Board (and its sole designated expert witness), Peter Ben Ezra, testified that from at least 1990 to the present, Columbia has lost money each and every year. See Ben Ezra Dep. at 62, 75. When asked to describe Columbia's financial performance over the past decade, Mr. Ben Ezra testified that Columbia is "in trouble." See id. at 75-76. He stated that Columbia's liquidity was "poor." See id. at 77. Columbia went through bankruptcy in the late 1990's and, even today, is not in a good position to survive. See id. at 38-39, 79. According to Mr. Ben Ezra, Columbia's auditors will not give the hospital a clean opinion because the accountants have a concern (shared by Mr. Ben Ezra) whether Columbia can continue to exist as a going concern. See id. at 80. Columbia's Chairman further testified that the hospital has been able to stay in operation for the past six years mostly through the sale of its assets. See id. at 80. Mr. Ben Ezra even admitted that OB/GYN services – Columbia's specialty – are a loss leader for hospitals in the District of Columbia and that there are an overabundance of hospital beds in D.C. See id. at 56, 74-75, 78.

It is in this desperate financial environment that Columbia seeks to hold NCRIC responsible for seemingly all of its troubles.

16d-001321

III. THE ALLEGED 2000 STATEMENTS CANNOT SUPPORT A DEFAMATION OR INJURIOUS FALSEHOOD CLAIM

Columbia attempts to distract the Court from the key issues regarding its defamation and injurious falsehood claims by citing to evidence in the record that is wholly irrelevant to the issues, entirely speculative, or so riddled with hearsay that it cannot be considered for purposes of summary judgment. Stripped of these diversions, Columbia is faced with the following facts that cannot be disputed: (1) certain alleged statements were never published; (2) some statements were true; (3) there is no evidence that NCRIC made any of the alleged statements, let alone with actual malice; and (4) there is no evidence that any of the alleged statements harmed Columbia.[2] For these reasons, Columbia's defamation and injurious falsehood claims fail as a matter of law.

A. There is no Evidence That Some of the Statements Were Even Published

Columbia pins its injurious falsehood and defamation claims arising from the statements allegedly made in 2000 almost entirely by a single Columbia physician, Dr. Leonard Glassman ("Dr. Glassman"), who allegedly uttered the statements – not at a NCRIC meeting, not on NCRIC's premises, not in conjunction with any NCRIC presentation – but in Columbia's cafeteria and Columbia's Radiology Department.[3] Specifically, Columbia claims that Dr. Glassman stated that:

---

[2] Columbia has failed to set forth any evidence demonstrating that it suffered harm based on the alleged defamatory and disparaging statements. The absence of harm resulting from Columbia's defamation, injurious falsehood and tortious interference claims are addressed together at pp. 36-40 below.

[3] Columbia argues that whether Dr. Glassman spoke in his capacity as a NCRIC or Columbia representative is a disputed issue of material fact which cannot be resolved on summary judgment. As discussed below, this issue is not material because, regardless of the capacity in which Dr. Glassman allegedly spoke, the statements are, as a matter of law, neither defamatory nor disparaging. In addition, Columbia is entitled to only reasonable inferences as the non-moving party, and based on the manner and location of where Dr. Glassman allegedly uttered the statements, the sole inference is that he was speaking in his capacity as a Columbia physician. See NCRIC Memo at 14 n.6.

> (1) the Entity Policy had expired; (2) Columbia physicians were not covered for work in the clinic; (3) Columbia's self-insurance trust was insufficiently funded; and (4) Columbia was going to cease operations.

See Countercl. ¶ 89; Columbia Opp. at 29-30. Columbia still fails to identify a single individual who heard any of the first three alleged statements. See NCRIC Memo at 13-14. Therefore, to the extent Columbia's defamation and injurious falsehood claims rely on those statements, they must be dismissed. Both defamation and injurious falsehood require publication, and simply stated, conclusory allegations that the statements were published to various unnamed individuals is insufficient to defeat summary judgment.[4] See Howard Univ. v. Best, 484 A.2d 958 (D.C. 1984) (summary judgment proper where evidence failed to identify anyone who received or circulated the report containing the allegedly defamatory statements); Ridgewells Caterer, Inc. v. Nelson, 688 F. Supp. 760, 763 (D.D.C. 1988) (complaint dismissed for failing to identify to whom the statements were communicated); Pinkney v District of Columbia, 439 F. Supp. 519 (D.D.C. 1977) (publication requires statement to third person).

Columbia does, however, attempt to resurrect its defamation and injurious falsehood claims to the extent they rely on Dr. Glassman's alleged statement that Columbia was going to close. For the first time, Columbia puts forth the declarations of various (previously unnamed and undisclosed to NCRIC) Columbia physicians who allegedly "overheard" Dr. Glassman say that Columbia was about to close. Columbia has submitted the declarations of Dr. Jerome O'Connell, Ms. Renee Perkins and Ms. Elizabeth Jackson (Exs. 5, 7, and 8 to Columbia Opp.), none of whom were previously identified in Columbia's discovery responses as having

[4] Columbia consistently attempts to distract the Court from the key issues in this case. Its brief cites to its Statement of Material Facts, which, in turn, cites to various deposition excerpts – which either do not support the proposition set forth or are replete with speculation and hearsay – which, as discussed below, does not create a material issue of disputed fact.

16d-001323

knowledge of the matters alleged in the Complaint, or identified in Columbia's Initial List of Fact Witnesses for Trial. See Ex. BB (Columbia's interrogatory responses) & Ex. CC (Columbia's witness list) attached. Accordingly, those declarations should be disregarded in their entirety. The Court's consideration of these statements would prejudice NCRIC because it did not have the opportunity to depose, or otherwise seek discoverable information of the only individuals Columbia now claims to have heard the allegedly defamatory and/or disparaging statements.

Even if the Court chooses to consider the declarations, they do not save Columbia's claims. Both Ms. Perkins and Ms. Jackson are careful to state that they simply "overheard" Dr. Glassman talking to or about unnamed individuals. See Exs. 5, 8 to Columbia Opp. The fact that these individuals happened to hear Dr. Glassman make the alleged statements while he was engaged in private conversations does not translate into a defamation claim.[5] See American Continental Ins. Co. v. Pooya, 666 A.2d 1193 (D.C. 1995); see, e.g., Petersen v. Dacy, 550 N.W.2d 91, 94 (S.D. 1996) ("remarks allegedly . . . overheard by various customers at the store" insufficient to support defamation claim); Allstate Ins. Co. v. LaPore, 762 F. Supp. 268, 271 (N.D. Cal. 1991) (Because defamation "requires proof that the defendant intended to publish the defamatory statement . . .[t]he very nature of defamation precludes the conclusion that it can occur 'accidentally'").

Furthermore, Dr. O'Connell's sworn statement, that he overheard Dr. Glassman allegedly tell a Dr. Gideon Kioko (another previously unnamed Columbia witness) that Columbia was going to close, does not save this claim from dismissal. See Ex. 7 to Columbia Opp. Despite producing volumes of additional information in opposition to NCRIC's Motion for Summary

[5] To the extent Columbia asserts that the statements were published to those individuals to which Dr. Glassman was allegedly speaking, Columbia's claims still fail because, as discussed above, the failure to identify those individuals is fatal to its claims. See p. 5 above.

16d-001324

Judgment, Columbia does not produce any sworn statement from Dr. Kioko himself. It is well-established that only admissible evidence is allowed in support or opposition to summary judgment. See Super. Ct. R. Civ. P. 56(e) (requiring parties to set forth such facts as would be admissible in evidence). Dr. O'Connell's affidavit is nothing more than rank hearsay which cannot be considered at summary judgment. See Albert v. Loksen, 239 F.3d 256, 266-67 (2d Cir. 2001) (granting summary judgment on defamation claim where only evidence that statements were made were hearsay); Barber v. Daly, 586 N.Y.S.2d 398, 400 (App. Div. 1992) (plaintiff's "assertion that [two other individuals] 'personally told' him of slanderous statements made by defendant is mere hearsay and insufficient to raise a triable issue of fact").

Finally, Columbia makes a passing reference in its opposition to various individuals "affiliated" with NCRIC (Mr. Osborn, Mr. Hempelman and Dr. Roberts) who Columbia alleges also defamed and/or disparaged Columbia. See Columbia Opp. at 30 n.20. However, the deposition testimony Columbia cites in support of its position does not even address each statement alleged to have been made. See id; Statement of Material Facts submitted with Columbia's opposition ("Columbia Opp. SMF") ¶¶ 169-173. As with the alleged statements by Dr. Glassman, Columbia does not specifically identify who made the alleged statements. Again, the only evidence that any statements were even made is inadmissible hearsay which cannot be considered at summary judgment. See, e.g., Gasser Dep. at 94, attached as Ex. 48 to NCRIC Memo (stating that Drs. Johnson and Koch told him that it was their understanding that they were not covered for care in the ambulatory clinic). In fact, Columbia's assertion that "a representative of NCRIC's Policyholder Services Department (*e.g.*, Mr. Osborn or Mr. Hempelman) informed . . . Dr. Heather Johnson, [among other things that] Columbia's self insurance trust fund was insufficiently funded" is simply wrong. See Columbia's SMF ¶ 173. Mr.

Hempelman was clear in his testimony that he was not aware of any person from NCRIC making any of the alleged statements to Dr. Johnson or anyone. See Hempelman Dep. at 129-30, 135, 139-40, attached as Ex. DD. Indeed, Mr. Gasser himself testified that neither Dr. Johnson, nor anyone else, stated that NCRIC told them Columbia's self insurance trust fund was underfunded. See Gasser Dep. at 111-12 ("I didn't mean to imply that NCRIC had said that. I had not heard that NCRIC had said that.").

B. Columbia Admits the Truth, or Substantial Truth, of Certain Statements

Even if Columbia can overcome the hurdle of publication, its claims still fail because the alleged 2000 statements were true. Columbia flat out admits that the self-insurance trust was insufficiently funded, and, therefore, that statement cannot give rise to a claim of defamation or injurious falsehood. See Columbia Opp. at 35 ("Columbia could not . . . fund the trust to the actuarially recommended level"); NCRIC Memo at 17. Columbia's newly revised assertion that it had committed to pay claims out of its operating expenses does not alter the truth of the alleged statement at the time it was made.

Additionally, the Court must reject Columbia's argument that any statement made by Dr. Glassman on September 1, 2000 that the Entity Policy had expired and that the Columbia physicians were not covered for care in the clinic was false because those events did not take place for a few weeks after the statements were allegedly made. "[W]ith regard to establishing falsity, slight inaccuracies in an allegedly defamatory statement must be tolerated." Pearce v. E.F. Hutton Group, Inc., 664 F. Supp. 1490, 1511 (D.D.C. 1987). "The key is that the 'gist' or 'sting' of the statement cannot be justified." Id. (citation omitted). Columbia's entire argument that both of these statements are defamatory hinges on nothing more than a minor timing difference. As a matter of law, any statements regarding the expiration of the Entity Policy and coverage in the

clinic were "substantially true" (particularly given that Columbia cannot even identify a single individual who even heard the statements).[6] As the D.C. District Court noted, "summary judgment 'is often granted to defendants on the issue of substantial truth.'" Id. (citation omitted). Because these alleged statements were substantially true, summary judgment in favor of NCRIC is proper.

IV. THE FALL 1998 STATEMENTS DID NOT DISPARAGE COLUMBIA

Columbia next argues that the following statements, allegedly made in the fall of 1998, somehow disparaged Columbia despite the fact that they simply did not "concern" Columbia:

> (1) that MIIX would not remain in the District of Columbia insurance market; (2) that MIIX would not stand by its guarantee not to raise premiums for two years; (3) that MIIX was an unreliable insurance company; (4) that MIIX planned to raise premiums once it cornered the District of Columbia MMLI market; (5) that the MIIX proposal was cronyism which would benefit members of [Columbia Board as opposed to] Attending Faculty; (6) that [Columbia] had lied to the Attending Faculty by stating that it could not afford to continue the Plan; and (7) that the lawyers with whom NCRIC contracted to defend physicians against medical malpractice claims would not work with MIIX.

See Countercl. ¶ 69. In an attempt to avoid the obvious, Columbia argues that these alleged statements, which strictly concerned MIIX (another professional medical liability insurance company), disparaged Columbia because,"[b]y disparaging the brand of insurance that Columbia has proposed to provide in its insurance program with the Attending Faculty, NCRIC disparaged a service provided by Columbia." See Columbia Opp. at 36. Columbia leaps too far, and cites no case which has stretched the tort beyond its logical boundaries as Columbia would have this Court do.

---

[6] Columbia also asserts that the statement that the Entity Policy "expired" was false because it was actually "terminated." Again, the alleged statement is not actionable because it was substantially true.

Indeed, Columbia's argument, taken to its logical extreme, would support a finding that every entity could maintain a defamation claim by its mere association, however tenuous, with another entity which is allegedly defamed or disparaged. See Columbia Opp. at 36 n.29 (providing example that "disparaging the brand of radiology equipment at Columbia" would disparage Columbia). Columbia would have this Court hold that the hospital could maintain a defamation action based on a statement, for example, that "Breyer's ice cream is not natural" simply because Columbia served that brand of ice cream in its cafeteria. Columbia's argument that the statements regarding MIIX disparaged Columbia is nothing more than an effort to obscure the obvious: the alleged statements do not concern NCRIC and Columbia has no injurious falsehood claim. See NCRIC Memo at 15-16.[7]

Even if the alleged 1998 statements can somehow be considered to "concern" Columbia, they are still not actionable because they are opinions. Injurious falsehood requires publication of a false statement, and opinions are not actionable because their truth or falsity cannot be determined. See Art Metal-U.S.A., Inc. v. United States, 244 U.S. App. D.C. 1, 5 n.6, 753 F.2d 1151, 1155 n.6 (D.C. Cir. 1985) (injurious falsehood requires publication of a false statement); Rizzuto v. Nexxus Prods. Co., 641 F. Supp. 473, 481 (S.D.N.Y.) (holding that statements of opinion were not actionable in injurious falsehood case), aff'd, 810 F.2d 1161 (2d Cir. 1986). Given that NCRIC's statements were made in an attempt to convey the benefits of

[7] The only statements which could conceivably "concern" Columbia are the alleged statements to physicians that (1) the MIIX proposal was "cronyism" which would benefit members of Columbia's Board; and (2) that Columbia lied about its ability to afford to continue the Plan. See Countercl. ¶ 69(5)-(6). As discussed in NCRIC's prior brief, the minimal evidence concerning these statements could only support a finding that, even if spoken, the statements were directed at Dr. Asterbadi and Dr. Rifka in their individual capacities. See NCRIC Memo at 16. Rifka Dep. II at 149-54, attached as Ex. 51 to NCRIC Memo; Asterbadi Dep. at 55, 61, 92-93, attached as Ex. 40 to NCRIC Memo. "Defamation is personal . . . [and] [a]llegations of defamation by an organization or group and its members are not interchangeable." Alexis v. District of Columbia, 77 F. Supp. 2d 35, 40 (D.D.C. 1999). The same is true for injurious falsehood. Columbia does not does not argue otherwise; and accordingly, there can be no disparagement or defamation based on these alleged statements which were not even directed at Columbia.

16d-001328

NCRIC over MIIX, the only reasonable inference is that the alleged statements were strictly NCRIC's opinions which cannot, as a matter of law, support a basis for an injurious falsehood claim.[8]

Finally, the alleged 1998 statements are not actionable because they are privileged communications. In its opposition, Columbia does not dispute that disparagement is permitted on the "basis of mere business competition." See Restatement (Second) of Torts § 649 & cmt. B; NCRIC Memo at 15-16 n.9. Columbia argues, however, that the competitors' privilege is not applicable because the alleged statements were false. See Columbia Opp. at 36. Columbia does not explain which statements were false or how any of the statements can be considered false. Indeed, as discussed above, the alleged statements cannot be false because they constitute opinions. See, e.g., Countercl. ¶ 69 ("MIIX was an unreliable insurance company"). Columbia's claim for injurious falsehood must be dismissed.

V. BECAUSE COLUMBIA IS EITHER A GENERAL OR LIMITED PURPOSE FIGURE, IT MUST PROVE THAT NCRIC MADE THE ALLEGED STATEMENTS WITH ACTUAL MALICE BY CLEAR AND CONVINCING EVIDENCE

Casting aside the testimony of its own witnesses indicating the notoriety Columbia enjoys, Columbia attempts to escape classification as a general public figure because it is not "very, very famous." See Columbia Opp. at 39 n.33. However, as Columbia acknowledges, a corporation is considered a public figure if its notoriety is established within the "community"– the area where the alleged defamation took place. See Waldbaum v. Fairchild Publ'ns, Inc., 201 U.S. App. D.C. 301, 309 n.22, 627 F.2d 1287, 1295 n.22 (D.C. Cir. 1980). Columbia's

[8] Columbia contends that this Court is barred from holding that NCRIC's statements were protected by the "law of the case" doctrine. See Columbia Opp. at 32 n.23. However, as argued below, the law of the case doctrine does not preclude consideration of an issue on summary judgment simply because such an argument was raised at the motion to dismiss stage. See footnote 20 below.

16d-001329

involvement in the community within which it operates and within which the alleged statements occurred is pervasive. As Columbia concedes, it is an "historic non-profit hospital" and leader in obstetrics, gynecology and various sub-specialties. See Columbia Opp. at 38, 40 n.35; Columbia Opp. SMF ¶ 70. Columbia is wrong that it must be "'famous' to the average person, like General Motors . . . ." See Columbia Opp. at 38. "[N]ationwide fame is not required." Waldbaum, 201 U.S. App. D.C. at 309 n.22, 627 F.2d at 1296 n.22; see also Martin Marietta Corp. v. Evening Star Newspaper Co., 417 F. Supp. 947 (D.D.C. 1976) (publicly held corporation characterized as public figure even though the corporation may not be "household word" like General Motors).

Alternatively, Columbia has failed to establish that even if it is not a general public figure, it certainly has assumed the role of a limited public figure. See NCRIC Memo at 19 n.11. Columbia correctly acknowledges that in order to qualify as a limited public figure, there must be a public controversy where persons beyond the immediate participants are impacted. See Columbia Opp. at 39. Columbia's own allegations demonstrate the requisite impact. Indeed, Columbia claims that the alleged statements harmed the Columbia physicians and patients who would have otherwise received care at Columbia. It is disingenuous for Columbia to argue that only the participants in the negotiations would have been impacted when, at the same time, it claims far reaching consequences of NCRIC allegedly defamatory statements. See National Life Insurance Co. v. Phillips Publishing, Inc., 793 F. Supp. 627, 637 (D. Md. 1992) (rejecting efforts of plaintiff to redefine controversy as a strictly private dispute).

Columbia criticizes NCRIC for characterizing the public controversy as whether Columbia physicians were covered by malpractice insurance, and instead, offers that the public controversy was whether a "historic non-profit hospital would close its doors." See Columbia Opp. at 40 n.35. In either event, the result is the same. Columbia cannot credibly argue that the

possible closing of its doors would not have interested or affected individuals within the community. To the contrary, the closing of one of the self-proclaimed leading womens' hospital would certainly be an issue that ordinary people in the community would discuss. Indeed, Columbia's financial well-being has been the subject of multiple newspaper articles in the general media. See, e.g., Ex. 11 to NCRIC Memo. The case of Lakeshore Community Hosp., Inc. v. Perry, 538 N.W.2d 24 (Mich. Ct. App. 1995) (which Columbia summarily dismisses) is factually indistinguishable. There, the Court held that a hospital is "public figure" where it "assumed the role of being a prominent and critical component of the health care delivery system in the community." Id. at 28. The same result applies here.

A. Even if NCRIC's Statements are Characterized as Commercial Speech, Columbia Must Still Prove Actual Malice

Columbia maintains that whether it is classified as a general or limited figure is irrelevant because the alleged statements constitute "commercial speech," and therefore, it need not prove that NCRIC acted with actual malice. See Columbia Opp. at 36-37. Even if Columbia is able to conveniently lump all 11 alleged statements together and classify them as commercial speech, the actual malice standard still applies and, giving Columbia the benefit of all reasonable inferences as is required when deciding a summary judgment motion, there is still no evidence that NCRIC acted with that requisite degree of fault.

While neither the Supreme Court or the D.C. Court of Appeals has addressed whether the actual malice standard applies to commercial speech, other courts have held that a finding of commercial speech does not negate plaintiff's requirement to prove actual malice. Indeed, Columbia's selective citing of both National Life, 793 F. Supp. at 645-48 and Q-Tone Broadcasting Co. v. MusicRadio of Maryland, Inc., No. Civ. A. 93C-09-021-WTQ, 1995 WL

875438 (Del. Super. Ct. Dec. 22, 1995), obscures the fact that both courts rejected the argument that actual malice need not be proven when the alleged statements constitute commercial speech.

The reasoning of the Maryland court in National Life should be adopted here. See Linkins v. Protestant Episcopal Cathedral Found. of the District of Columbia, 87 U.S. App. D.C. 351, 354, 187 F.2d 357, 360 (D.C. Cir. 1950) ("the common law of Maryland, is the fundamental part of the law in this jurisdiction to which we look in the absence of statutory enactment") (footnote omitted). Like Columbia, the plaintiff in National Life simplistically argued that "because commercial statements receive less First Amendment protection, a defendant's conduct and statements are automatically judged against a negligence standard, and not the traditional malice standard, that is applied when plaintiff is a public figure." 793 F. Supp. at 645. The court disagreed, recognizing that the Supreme Court has articulated two distinct lines of cases addressing First Amendment jurisprudence: one strain involves defamation law and the other involves government regulation of commercial speech. Courts generally do not mix issues of a defamation action involving a public figure with issues of whether a particular expression was properly characterized as commercial speech. National Life, 793 F. Supp. at 645-46 ("In using the mere identification of commercial speech as the analytical tool, Plaintiff operates with a meat clever instead of a scalpel, and would amputate much of the core of protected speech from the body of the First Amendment; and all of this would be done in the name of protecting its own good name and reputation.").[9] Accordingly, Columbia must still prove actual malice, by clear and convincing clarity, regardless of whether the alleged statements constitute commercial speech.

[9] Columbia cites to the case of U.S. Healthcare, Inc. v. Blue Cross of Greater Philadelphia, 898 F.2d 914, 932-39 (3d Cir. 1990) for the proposition that actual malice need not be proved if commercial speech is involved. Apart from the obvious difficulty in reconciling that Court's determination that insurance giants, Blue Cross/Blue Shield and U.S. Healthcare were *private* figures (which even Columbia must admit does not comport with its own analysis of the law), that decision has also been criticized for its apparent ruling that the malice standard did not apply

B. There is No Evidence of Actual Malice

Columbia argues that "direct" evidence that NCRIC knew the alleged statements were false or acted in disregard for their truth exists, yet does not point to any of this "direct" evidence. Rather, Columbia argues that this Court should find that NCRIC knew the statements were false simply because Columbia says so. This does not satisfy Columbia's heavy burden to defeat dismissal of this claim. Proof of defamation and falsity alone affords an insufficient basis for recovery. Nader v. de Toledano, 408 A.2d 31, 40 (D.C. 1979); see Phillips v. Washington Magazine, Inc., 472 A.2d 98 (Md. 1984) (plaintiff in a defamation case must do more than allege mere bald assertions of actual malice). As discussed previously, the evidence overwhelming supports a finding that a majority of the alleged statements were true, or simply opinions whose truth or falsity cannot be determined. See pp. 8-11 above.

Indeed, even if any of the alleged statements can somehow be considered false, Columbia has not pointed to any evidence that would demonstrate, with convincing clarity, that NCRIC was aware of a "high probability" of the falsity of the alleged statements. See Braden v. News World Comm., Inc., No. CA-10689'89, 1991 WL 161497, at *13 (D.C. Super. Ct. Mar. 1, 1991) (citations omitted). "[T]he pertinent inquiry is not how others perceived defendants' conduct; rather, it is how defendants perceived their own acts." Braden v. News World Comm., Inc., No. CA-10689'89, 1993 WL 625508, at *10 (D.C. Super. Ct. Sept. 3, 1993). In fact, Columbia's own examples[10] demonstrate precisely why it cannot meet its burden. Columbia

---

because the communication was commercial speech. The U.S Healthcare opinion "seems to . . . be an unhelpful and confusing mixture of defamation law and commercial speech." Q-Tone, 1995 WL 875438, at *10; accord National Life, 793 F. Supp. at 647 (recognizing that applying the Central Hudson commercial speech test to defamation cases "underscores an inherent difficulty when these two lines of analysis are conflated").

[10] Columbia does not address each of the statements, explaining how NCRIC acted with actual malice in making them. Rather, Columbia selects various examples and, based on this, summarily concludes that there is "direct

asserts that NCRIC acted with actual malice when it allegedly said that MIIX was "unreliable," because NCRIC knew of MIIX's A.M. Best rating at the time it made the statement. See Columbia Opp. at 43. Apart from the obvious fact that this alleged statement is nothing more than an opinion, MIIX's rating is entirely irrelevant because there is no allegation, and no basis to infer, that NCRIC misstated MIIX's rating. In addition, Columbia's allegation that NCRIC acted with actual malice because it knew, when its representatives stated that NCRIC policies did not cover work in the clinic, that the statement was false because it had previously admitted that the physicians were covered at the outset. Id. at 42. Again, Columbia asks this Court to infer actual malice, presumably based on the fact that exclusions became effective a few weeks after the alleged statement was made. Proving actual malice requires more, and Columbia has failed to meet this burden.

VI. COLUMBIA'S CLAIMS FOR TORTIOUS INTERFERENCE FAIL AS A MATTER OF LAW

A. Any Alleged Conduct was Simply Not Tortious

Faced with the prospect of having its tortious interference claims dismissed, Columbia seeks to expand the scope of the allegations in its counterclaim, now asserting that not only did the alleged defamatory statements interfere with Columbia's business expectations, but now, a whole host of other conduct. See Columbia Opp. at 45-46. In effect, Columbia now argues that the manner in which NCRIC terminated the Retro Plan and the Entity Policy constitutes tortious interference. Columbia's argument must be rejected as simply an attempt to translate its ordinary breach of contract claim into a tortious interference claim. All of the

---

evidence" that NCRIC knew the statements were false or somehow acted in reckless disregard for their truth. Columbia is mistaken. Columbia, not NCRIC, has the burden of proving that each statement it bases its defamation and disparagement claim on was made with actual malice. Columbia's citation to a few examples does not satisfy its burden. As such, the claim must be dismissed.

conduct complained of either arises under, or is directly related to, Columbia's allegations for breach of contract. See, e.g., Columbia Opp. at 48 n.41 (asserting tortious interference claim based on termination of the Plan and performing interim reconciliation wrong). It is well-established that one cannot tortiously interfere with its own contract. See Donohoe v. Watt, 546 F. Supp. 753, 757 (D.D.C. 1982) (a "defendant's conduct under his own contract with the plaintiff may or may not rise to the level of a breach of that contract, but it cannot support an action for interference with it"), aff'd, 230 U.S. App. D.C. 70, 713 F.2d 864 (D.C. Cir. 1983).

Even if such allegations could give rise to a separate tortious interference claim, the conduct complained of, as a matter of law, does not rise to the level of "egregious" behavior contemplated under the law.[11] See Genetic Sys. Corp. v. Abbott Labs., 691 F. Supp. 407, 423 (D.D.C. 1988). Columbia, in effect, argues that the following alleged conduct could somehow be considered "egregious:" (1) a decision to stop negotiating; (2) canceling an insurance policy (which was within its legal rights to do) without advance notice or purported justification; (3) billing physicians early; (4) informing the Attending Faculty of the benefits of NCRIC; (5) performing an interim reconciliation improperly; and (6) sending an exclusion for coverage in the clinic (which, again, was within its legal rights to do). See Columbia Ex. 72. Not surprisingly, Columbia cites to not a single case holding that the conduct complained of, or any similar conduct, has been held to constitute the requisite degree of fault for a tortious interference claim. See Columbia Opp. at 48. The conduct alleged falls far short of what is required under the law.

---

[11] Columbia contends that this Court is barred from holding that the alleged actions do not rise to the level of "egregious" conduct by the "law of the case" doctrine. See Columbia Opp. at 48 n.41. However, as argued below, the law of the case doctrine does not preclude consideration of an issue on summary judgment simply because such an argument was raised at the motion to dismiss stage. See footnote 20 below.

16d-001335

See Genetic Sys., 691 F. Supp. at 423 (egregious conduct includes "libel, slander, physical coercion, fraud, misrepresentation, or disparagement").

Finally, Columbia claims that NCRIC tortiously interfered with Columbia's business relations and prospective business advantage because it "urged" Columbia physicians to leave Columbia. In sole reliance on the deposition testimony of NCRIC's Mr. Fargis, Columbia claims that "NCRIC compiled a list of its insured among the Attending Faculty . . . with the intent to induce the insureds to leave Columbia if the Retro Plan was not continued," see Columbia Opp. SMF ¶ 142, and "contacted its insureds to . . . urge them to participate in the discount programs." Id. ¶ 143. Contrary to Columbia's representation, Mr. Fargis did not testify to this effect and no evidence otherwise supports Columbia's assertion. See Fargis Dep. III at 591, attached as Ex. 16 to Columbia Opp. (the list was to determine whether premium would be lost if a physician went to a different program). Mr. Fargis testified that he did not specifically recall any communications initiated by NCRIC to Columbia physicians for the purpose of urging Columbia physicians to leave. See id. Rather, the evidence, at most, supports a finding that certain physicians may have left Columbia because of any number of factors related to Columbia's well publicized financial problems. Any damages Columbia may have suffered because these physicians left was not due to any tortious conduct by NCRIC. Indeed, in a letter from a Dr. Cooper to Columbia's then CEO, Mr. Wilson, it is clear that other hospitals had courted physicians to join them for years. See Ex. 76 to Columbia Opp. (7/12/00 letter from Dr. Cooper to Mr. Wilson). Columbia cannot attach blame to NCRIC for any alleged consequences of discontinuing the Retro Plan when the parties were not obligated to renew the plan. See pp. 24-25 below.

B. NCRIC did not Tortiously Cause any Columbia Physician to Leave

Even if NCRIC's conduct could be considered to rise to the level of egregious behavior contemplated under the law, Columbia's tortious interference claims still fail. Nowhere in the abundance of "evidence" Columbia has now placed before the Court is there any document or testimony even suggesting any physicians left Columbia *because* of the alleged defamatory or disparaging statements, or any other alleged conduct by NCRIC. Again, Columbia's request that this Court deny summary judgment based on pure speculation and conclusory allegations must be rejected.

Contrary to Columbia's assertion that NCRIC ignores testimony regarding why physicians left, that testimony does not link any tortious conduct by NCRIC to the departure of any Columbia physician. In fact, the only deposition testimony Columbia cites is that of Dr. Asterbadi who testified that various physicians told him they left because they felt that Columbia was going to close. See Asterbadi Dep. at 160-61, attached as Ex. 12 to Columbia Opp. It is only then that Dr. Asterbadi speculates that their departure was based on "rumors" allegedly started by NCRIC. Stripped of the first layer of hearsay and the second layer of speculation, Columbia is left with no evidence admissible at summary judgment demonstrating that there was any connection between the alleged actions of NCRIC and the departure of physicians from Columbia. See O'Donnell v. Associated Gen. Contractors of Am., Inc., 645 A.2d 1084, 1089 (D.C. 1994) (explaining hearsay cannot be relied upon by one opposing summary judgment); Richardson v. District of Columbia, 522 A.2d 1295, 1298 (D.C. 1987) ("[t]he Eng affidavit is not

16d-001337

based on personal knowledge but on what appellants' counsel allegedly told the affiant. On its face it is patent hearsay and, as such, would not be admissible in evidence"); see p. 7 above.[12]

Columbia also asks this Court to consider a list purportedly prepared by Drs. Asterbadi and Rifka[13] of those physicians that they believed left based on "NCRIC's misconduct related to the termination of the Retro Plan and the Entity Policy, and the rumors NCRIC spread about Columbia closing and not providing insurance for the Clinic." See Rifka Decl. ¶ 13, attached as Ex. 9 to Columbia Opp.; Ex. 84 to Columbia Opp. Columbia does not produce any evidence from any one of the physicians on the list that they left Columbia *because* of any actions, including the alleged defamatory statements, by NCRIC. Once again, Columbia's own self-severing declaration that the doctors listed left because of NCRIC is pure speculation and conjecture. In fact, the only document from physicians who allegedly left because of NCRIC's conduct is a letter to all employees of Columbia from the Columbia Physicians Group – not NCRIC. See Ex. 78 to Columbia Opp. The letter says nothing apart from the fact that the doctors are leaving Columbia and is no more probative of the NCRIC's alleged involvement regarding that departure than any other evidence Columbia has put forth.[14]

---

[12] Similarly, Columbia's submission of a letter from Dr. Asterbadi to Dr. Roberts discussing alleged rumors regarding the closure of Columbia consists of multiple layers of hearsay. See Ex. 77 to Columbia Opp. "A factual dispute is not created by filing in the record a document consisting of inadmissible hearsay statements." Burleson v. Burleson, 277 A.2d 647, 649 (D.C. 1971). The letter should be disregarded in its entirety.

[13] See p. 38 below (discussing Columbia's prior testimony that list was not prepared by Columbia, but by counsel for Columbia).

[14] Indeed, all reasonable inferences (and Columbia's own witness) indicate that any Columbia doctors that may have stopped working in the Clinic did so simply because they were no longer going to be covered by NCRIC for care provided there – a statement which, as discussed above, was indisputably true. See Ex. 70 to Columbia Opp. ("My malpractice carrier, NCRIC, will no longer cover my work through the clinic as of 11/15/00 . . . I understand that the hospital will cover the other [Columbia] physicians . . . [but] I do not want to take a chance on being covered through the hospital and there being insufficient funds to cover a specific year."); Ex. 65 to Columbia Opp. (citing the lack of insurance coverage as reason for leaving Columbia).

16d-001338

VII. NCRIC DID NOT BREACH THE RETRO PLAN OR THE IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

In its opposition to NCRIC's motion for summary judgment on Counts One and Two of its Counterclaim, Columbia substantially repeats its arguments from its own motion for partial summary judgment. As stated in NCRIC's opposition to that motion, Columbia cannot obtain summary judgment on its contract claim. Moreover, Columbia has no credible evidence that any alleged ultimatums and/or improper calculations forced Columbia to continue with the Retro Plan or that NCRIC otherwise acted in bad faith throughout the term of the Retro Plan in breach of the implied duty of good faith and fair dealing.

A. Columbia owes NCRIC Payment for Additional Premium

In its opposition, Columbia once again argues that NCRIC breached the Retro Plan agreement because proper calculations under the Retro Plan mandate that NCRIC owes Columbia Return Premium for 1993-1995, and that Columbia does not owe NCRIC any Additional Premium at this time. See Columbia Opp. at 10. Columbia's argument rests upon its flawed interpretation of the parties' oral agreement in the fall of 1997 to delay payment of premium until a year was "closed-out." See id. As presented in NCRIC's opposition, the only reasonable inference from the evidence proves that the parties agreed in 1997 to delay payment of premium until a year was closed *or until the Retro Plan ended*. See NCRIC Opp. at 7-9; Fargis Dep. III at 611-12, attached as Ex. A to NCRIC Opp. Columbia has no credible evidence to dispute this interpretation of the scope of the parties' agreement. See NCRIC Opp. at 7-9. Therefore, payment for the net premium under the Retro Plan was due in September 2000 when the Retro Plan expired upon Columbia's choice not to renew.

16d-001339

Columbia also repeats its argument that it does not owe payment of Additional Premium at this time because NCRIC "failed to provide Columbia with a September 1, 2001 Reconciliation." See Columbia Opp. at 11. NCRIC has presented evidence that a reconciliation calculation and notice of amount due was sent to Columbia both in September 2001 and January 2002. See NCRIC Opp. at 10-11. Columbia's only "evidence" that such notice was not sent in 2001 is an inadmissible declaration from Columbia's counsel that he had not seen any such document produced in discovery. See NCRIC Opp. at 11.[15] Moreover, as noted in NCRIC's opposition, the hospital's notice argument is specious. Columbia's legal obligation to pay Additional Premium was triggered upon the September 1, 2000 reconciliation and demand for payment at the end of the Retro Plan, which Columbia admits it received and never paid. See NCRIC Opp. at 10; Columbia Opp. SMF ¶¶ 75,78; Rifka Dep. II at 255. Thus, any allegedly improper notice in 2001 does not excuse Columbia's breach of contract in 2000. Columbia simply has not paid the Additional Premium it owes NCRIC.

B. Columbia has no Credible Evidence that NCRIC Improperly Calculated Retro Plan Amounts

NCRIC has presented testimony from individuals knowledgeable about Retro Plan calculations explaining that NCRIC's calculations under the Retro Plan used the mathematically proper figures based on the agreement of the parties. See NCRIC Opp. at 14-19. Columbia attempts to create disputed issues of material fact to avoid summary judgment by asserting that certain factors were never applied properly in the calculations. Columbia's only evidence of such "miscalculations" is inconclusive testimony by lay witnesses that they thought the numbers did not

[15] NCRIC has previously objected to the use of a testimonial declaration from Columbia's counsel and documentary evidence created by Columbia's counsel for the purposes of summary judgment. See NCRIC Opp. at 5 n.2, 14. Such evidence would not be admissible at trial cannot form the basis of a disputed fact for summary judgment. See p. 7 above. Thus, these exhibits should be disregarded by the Court.

16d-001340

"look right" and spreadsheets re-calculating the Retro Premium created by *Columbia's counsel* which reflect *counsel's* interpretation of the Retro Plan. See NCRIC Opp. at 14; Declaration of Joseph K. Leahy, attached as Ex. 6 to Columbia Opp.; Exs. 11-14 to Columbia Memo and Ex. 32 to Columbia Opp. (documents created by Columbia's counsel for purposes of summary judgment).[16] Columbia has no lay or expert testimony regarding the parties intent for application of these factors and, in fact, Columbia withdrew its witnesses who were designated to testify on these subjects. Columbia is left with nothing but raw, unsupported speculation. Such conjecture is not sufficient to insulate Columbia from a motion for summary judgment on Columbia's breach of contract, bad faith, and fiduciary duty claims.

The lack of credible evidence proving exactly what calculations were allegedly improper is highlighted by Columbia's vague accusations that NCRIC reconciliations presented to Columbia sometimes overstated the amount Columbia owed under the plan, yet sometimes understated the amount of premium due from Columbia. See, e.g., Columbia Opp. SMF ¶¶ 8, 11. Columbia attempts to compensate for the lack of factual support for its claims by contending that the proper calculation under the Retro Plan is a "pure question of law" which can be determined by reading the Retro Plan alone. See Columbia Opp. at 11 n.3, 12. Thus, Columbia alleges, without any expert or lay testimony regarding how insurance premiums are calculated, that NCRIC's Retro Plan calculations were each incorrect in some way. However, as illustrated in NCRIC's opposition, the Retro Plan does not unambiguously explain the application of each mathematical factor within a reconciliation. See NCRIC Opp. at 14-19. In support of its

[16] The fact that Mr. Fargis testified that certain numbers on a particular calculation sheet did not appear correct, without the ability to recalculate the numbers on the spot, does not equal evidence that NCRIC admits that it consistently miscalculated items under the Retro Plan. See Columbia Opp. at 11-12. Indeed, Mr. Fargis also testified that any errors in calculations were corrected in subsequent quarterly calculations, which were cumulative. See Fargis Decl. ¶¶ 20-21, attached as Ex. 2 to NCRIC Memo.

calculations, NCRIC has provided evidence which explains both the parties' intent, and the mathematical logic, for the application of certain factors. See id. Columbia has not, and indeed cannot, dispute this evidence.

C. NCRIC Did Not Act in Bad Faith or Breach a Duty Of Fair Dealing Under The Retro Plan

Columbia's opposition offers two theories to support its allegation that NCRIC breached the implied duty of good faith and fair dealing during the operation of the Retro Plan. However, in both cases, Columbia fails to provide sufficient evidence of the required intent for bad faith or willful imperfect performance to survive summary judgment.

Columbia first argues that NCRIC manipulated Columbia in 1997 during negotiations for renewal of the Retro Plan by offering the hospital's new, and allegedly inexperienced, CEO an "ultimatum." See Columbia Opp. at 20-21. The evidence demonstrates that as a part of the renewal negotiations, NCRIC presented Columbia with a reconciliation calculating Additional Premium of over $1 million due to NCRIC should the Retro Plan end. See NCRIC Memo at 7, 30. As a condition of renewal, and in response to Columbia's financial difficulties and impending bankruptcy, NCRIC and Columbia *negotiated* a partial payment towards that Additional Premium owed of $1 million. See id. at 30. There is simply no evidence of bad faith. The terms of a discretionary renewal were simply modified. The parties then negotiated the final amount and terms of the payment. See Ex. 8-9 to NCRIC Memo. Columbia's argument is contradicted by its own CEO, who during his deposition, admitted there was no obligation for NCRIC or Columbia to renew the Retro Plan in Fall 1997. See Wilson Dep. I at

16d-001342

199, attached as Ex. EE. Columbia could have refused these terms of renewal and discontinued its Retro Plan with NCRIC.[17] Columbia chose not to do so.

As illustrated above, Columbia has no credible evidence that the reconciliation presented by NCRIC in 1997 was incorrect. Columbia was always free to have outside legal counsel or its own insurance consultants review the reconciliation and renewal proposal, as indeed it did at other times. See pp. 28-30 below. That Columbia did not do so is not evidence of bad faith by NCRIC. Nor did NCRIC's alleged failure to educate Columbia's CEO regarding the terms of the oral agreement constitute bad faith. As discussed above, the oral agreement provided for payment upon the conclusion of the Retro Plan – the situation the parties were facing in 1997 without a renewal agreement signed. NCRIC was following the terms of the oral agreement.

Columbia also argues that NCRIC's alleged miscalculations under the Retro Plan prove NCRIC "willfully rendered imperfect performance," thereby breaching the implied duty of good faith and fair dealing. See Columbia Opp. at 22-23. However, as stated above and in NCRIC's opposition, Columbia has not presented any credible evidence of *willful* misconduct by NCRIC. Columbia argues in its opposition that Mr. Fargis' use of 62% in the calculations instead of the 67% figure listed in some of the parties agreements is conclusive proof of willful misconduct and bad faith. See Columbia Opp. at 22. Yet, NCRIC has presented evidence that 62% is the mathematically correct factor and that it is mathematically impossible to achieve the parties' agreed-to discount rate while using 67% for this factor. See NCRIC Opp. at 16-17; Ex. 54 to Columbia Opp. (reflecting Columbia's acceptance of this explanation for use of 62%

[17] If the Retro Plan had not been renewed in 1997 no doctor or hospital would have lost insurance coverage. All that would have changed were future discounts on premiums paid. See p. 3 above. Columbia was fully within its rights to not renew the plan and then search for another discount program if it chose, while explaining to its loyal doctors that some transition time would be needed. See Ben Ezra Dep. at 175 (doctors were supportive of Columbia). NCRIC did not have the power to "force" Columbia to renew the Retro Plan.

16d-001343

factor). Additionally, documents contemporaneous to the parties' negotiation of the changed discount reflect a 62% number for the Deposit Premium. See Exs. 5-6 to NCRIC Memo; Exs. 26-27 to Columbia Opp.

Columbia has no credible evidence to dispute NCRIC's contention that the 62% number was proper and any reference to 67% in some documents must have been an inadvertent typographical mistake. Even if NCRIC's figure is ultimately determined to be factually incorrect, it does not rise to the level of willful misconduct which could prevent the entry of summary judgment in NCRIC's favor. As Mr. Fargis testified, it is not bad faith if NCRIC applied the factor it believed was the negotiated, mathematically correct factor in the reconciliations presented to Columbia for review. Columbia has no credible evidence to prove any nefarious explanation for the discrepancy.

The only reasonable inference drawn from the evidence is that NCRIC made good faith efforts to implement the contractual terms of the parties.[18] NCRIC extended discounts to faculty while renewal negotiations continued in many years, and revised terms in Columbia's favor, such as increasing the discount and decreasing the Minimum Premium *prospectively*.[19] Columbia cannot prove the "willful" level of intent required to support its claim under Count 2.

VIII. COLUMBIA HAS NOT PROVEN A FIDUCIARY RELATIONSHIP BETWEEN THE PARTIES

Despite Columbia's protestations of ignorance and naiveté, there is no basis for Columbia's breach of fiduciary duty claim because there was no fiduciary relationship between

[18] Columbia's witnesses concede that NCRIC's actions did not interfere with Columbia's performance under the contract. See NCRIC Memo at 31.

[19] Columbia has no evidence that the decreased Minimum Premium was intended by the parties to apply retroactively as opposed to all the other changes in 1996-1997 which applied proposepctively. See NCRIC Opp. at 14-16.

16d-001344

Columbia and NCRIC as a matter of law. Columbia cannot refute the fact that the Retro Plan was a contract between two business entities to provide a commercial service. The Retro Plan does not contain any contractual language naming NCRIC as a fiduciary to Columbia, nor do any other circumstances give rise to a fiduciary relationship. Columbia's only remedy for alleged wrongdoing is a breach of contract claim.[20]

A. NCRIC did not Have a Fiduciary Obligation to Columbia Under the Retro Plan

The undisputed facts in this case do not meet the legal standard for a fiduciary duty. The general rule is that arms-length negotiated contracts between two sophisticated business parties do not create a fiduciary relationship between the parties. See Steele v. Isikoff, 130 F. Supp. 2d 23, 36 (D.D.C. 2000); Church of Scientology Int'l v. Eli Lilly & Co., 848 F. Supp. 1018, 1028 (D.D.C. 1994). Columbia does not dispute that there is no language in the Retro Plan which names NCRIC as the fiduciary of Columbia, acting on its behalf or creates "a relationship of trust and confidence between the parties." See Columbia Opp. at 17 (quoting GLM Corp. v. Klein, 665 F. Supp. 283, 286 (S.D.N.Y. 1987)).

---

[20] Columbia assertion that the Court is precluded from even considering this question under the "law of the case" doctrine is misleading and simply wrong on the law. See Columbia Opp. at 16 n. 7. Columbia maintains that Judge Davis' order partially granting NCRIC's Motion to Dismiss decided, *as a binding matter of law*, that NCRIC had a fiduciary duty to Columbia. See id. However, the law of the case doctrine only precludes consideration of a legal issue when the "same question of law" has been ruled upon in a "final" ruling during a prior proceeding in the case. See P.P.P. Prods., Inc. v. W & L, Inc., 418 A.2d 151, 152 (D.C. 1980). D.C. law does not apply law of the case preclusion automatically to an issue raised in a motion for summary judgment simply because the issue was considered at the motion to dismiss stage. See Washington v. Government of District of Columbia, 152 A.2d 191 (D.C. 1959) (holding denial of motion to dismiss was not sufficiently "final" to apply law of the case preclusion to summary judgment motion); Davis v. Boyle Bros., 73 A.2d 517 (D.C. 1950) (same). As this Court is aware, a Rule 12(b)(6) motion to dismiss for failure to state a claim is judged by a different legal standard than a Rule 56 motion for summary judgment. In fact, Judge Davis' order simply held that Columbia brought a claim which, depending on the facts, *could* state a claim for breach of fiduciary duty. See Order dated July 3, 2001 at 2. The court did not hold that as a matter of law, there was a fiduciary duty between Columbia and NCRIC. See id. Therefore, the decision to deny NCRIC's motion to dismiss Columbia's fiduciary duty claim does not preclude this Court from concluding now – on the basis of undisputed facts gathered in discovery – that Columbia has not proven a fiduciary relationship at summary judgment. The law of the case doctrine is inapplicable. Columbia's breach of fiduciary duty claim fails as a matter of law.

Nor is there any evidence that the parties were in an unequal bargaining position at the time they created the Retro Plan in 1993, which would make the transaction anything but arms-length. Columbia argues in its opposition that there is no evidence regarding the bargaining position of the parties at the time of the negotiations and, therefore, NCRIC has not shown that the parties were equals. See Columbia Opp. at 17-18. Yet, documents recently produced by Columbia provide evidence that Columbia negotiated the terms of the Retro Plan deal and had the benefit of outside legal review of the agreement before signing in 1993. See Ex. FF attached.

Indeed, *Columbia* bears the burden of proving that the parties were *unequal* during the negotiations, as it is Columbia's claim for breach of fiduciary duty. Columbia admits that it has no such evidence which counters the evidence showing its active negotiation and consultation with outside legal advice at the time the Retro Plan was signed. Therefore, Columbia's argument that a fiduciary duty between the parties was created based upon the negotiation of the Retro Plan must fail.

B. No Fiduciary Relationship "Evolved" During the Implementation of the Retro Plan

Columbia tries to evade the lack of fiduciary language in the contract, and the absence of any evidence of unequal bargaining during the negotiation of the Retro Plan by asserting that a fiduciary duty *developed* during the years when the Retro Plan was in effect. See Columbia Opp. at 14-15. Yet, Columbia has cited no case that supports the concept of a "joint undertaking" between contractual parties which gives rise to a fiduciary duty under D.C. law. See id. The cases cited by Columbia in support of its position that a fiduciary duty can develop during a contractual relationship are clearly distinguishable from the facts here. Columbia's cases involved either (1) individuals entering into personal services contracts which traditionally create a

16d-001346

fiduciary relationship, or (2) employees acting on behalf of their employer. See Shapiro, Lifschitz & Schram, P.C. v. Hazard, 24 F. Supp. 2d 66 (D.D.C. 1998) (attorney/client relationship); Cafritz v. Corporation Audit Co., 60 F. Supp. 627 (D.D.C. 1945) (client/ accountant/auditor relationship); Lavin v. Kaufman, Greenhut, Lebowitz & Forman, 640 N.Y.S.2d 57 (App. Div. 1996) (applying New York fiduciary duty law to the client/accountant relationship); GLM Corp.v. Klein, 665 F. Supp. 283 (S.D.N.Y. 1987) (applying New York fiduciary duty law to corporation/employee relationship); Mandelblatt v. Devon Stores, Inc., 521 N.Y.S.2d 672 (App. Div. 1987) (same). The logic of these cases simply does not apply to the negotiated arms-length commercial contract between the business parties here.

Indeed, Columbia's reliance on Humana Health Plan, Inc. v. Heritage Indiana Medical Group, PC, No. 99 C 6276, 2001 WL 8878 (N.D. Ill. Jan. 3, 2001) actually supports a finding that NCRIC never "evolved" into a fiduciary for Columbia. See Columbia Opp. at 14-15; Humana Health Plan, No. 99 C 6276, 2001 WL 8878 (N.D. Ill. Jan. 3, 2001). There, the court explained that "'[n]ormal trust between friends or businesses, plus a slightly dominant business position, do not operate to turn a formal, contractual relationship into a confidential or fiduciary relationship.'" Id. at *3 (citation omitted). In fact, the court held there was *no* fiduciary relationship between the contractual parties in that case regarding allegations of miscalculations and improper bookkeeping similar to Columbia's:

> Heritage's allegation that Humana's ability to exercise discretion with respect to the Funds and its IBNR estimated setoffs created a relationship of trust, confidence and dependence, similar to that of a fiduciary duty is simply not sufficient to establish that a fiduciary relationship existed . . . . Heritage's claims regarding Humana's discretion to contribute fewer dollars to the Funds based on "medical necessity" and *Humana's practice of charging balance estimates for claims to be paid later and its failure to credit the Funds with the interest* are not sufficient.

Id. (emphasis added). Likewise, under D.C. law a contractual relationship is insufficient to establish a fiduciary duty. See Steele, 130 F. Supp. 2d at 36.

Even if a fiduciary duty could evolve between two contractual parties, Columbia has not presented credible evidence that it has occurred in this case. First, there is evidence that Columbia periodically consulted with outside legal counsel and consultants regarding the Retro Plan and its various amendments and renewals. For example, Columbia's Finance Committee Meeting Minutes for November 20, 1996 state:

> After discussion with the Committee, the *Consultants* recommended that we continue with our current plan to become effective January 1, 1997 with a three year cumulative reconciliation. The Committee requested that NCRIC present the new proposal to our *insurance consultant and legal counsel* for review and comment prior to the December 18 meeting.

See Ex. 30 to Columbia Opp. (emphasis added); see also Ex. 44 to Columbia Opp. (referring to negotiations between Columbia in-house counsel and NCRIC). Columbia was fully within its rights to consult with such legal counsel at all times during the Retro Plan. To the extent Columbia chose to act without consulting legal counsel and consultants at certain times, that is a business decision by Columbia which does not impose a fiduciary duty on NCRIC.

Next, the fact that NCRIC was an "expert" in Retro Plans and kept the books for the premium billing under the Retro Plan does not translate into a finding that NCRIC was acting on behalf of Columbia as a fiduciary. In most commercial settings, businesses hire other businesses to perform services in which they lack expertise – or else they would perform those functions themselves. If Company A signs a contract with Company B to design and build a complicated machine for the business, the fact that Company A does not have the expertise to design and build the machine themselves does not impose any fiduciary duty on Company B. If

16d-001348

Company A is unhappy with the product and discovers that Company B has made mistakes in the design and building, then Company A has a proper cause of action for breach of contract – nothing more. Columbia's argument that NCRIC had a fiduciary duty to Columbia because it was an expert in the Retro Plan insurance business and Columbia did not have the knowledge or expertise to perform the Retro Plan calculations themselves logically extends to the imposition of a fiduciary duty on Company B and all other commercial parties which contract for services with other businesses. Such a result is obviously not supported by the law.

Columbia's opposition attempts to paint a picture of Columbia as a small health care provider naïve to the world of business which can be taken advantage of by savvy companies who wish to do business with Columbia. Common sense devalues this argument. Columbia is a medical facility which has been in business for over 180 years. The hospital boasts about its state of the art facilities and its modernization efforts. It is disingenuous for Columbia to now argue that the hospital is an unsophisticated business party and not a "typical market competitor." See Columbia Opp. at 14. The hospital must deal on a daily basis with numerous commercial contracts for everything from cafeteria catering to medical supplies. Columbia is a sophisticated company who is capable of arms-length negotiated commercial contracts.[21]

Columbia has not refuted evidence showing many negotiated changes to the Retro Plan were instigated by Columbia, and that the parties extensively negotiated over the terms of each renewal of the Retro Plan. See NCRIC Memo at 33. Columbia has not refuted the evidence

[21] Columbia's opposition also includes numerous declarations from former CEOs and Risk Managers professing their inexperience and ignorance regarding malpractice insurance premium calculations, and stating that they trusted NCRIC's numbers to be correct. See Exs. 2, 4, 9, 11 to Columbia Opp. Inexperience of subsequent management does not impose a fiduciary duty which did not exist in the Retro Plan. It is Columbia's responsibility to find people who are experienced enough to handle the positions they are assigned. Moreover, there is evidence that Columbia on occasion hired outside legal counsel and "insurance consultants" to supplement the knowledge of

showing that it used the services of outside legal counsel and insurance consultants when reviewing the Retro Plan and its renewals. See pp. 28, 30 above. Finally, Columbia has no credible evidence that NCRIC "forced" Columbia to renew the Retro Plan at any time. Like any commercial contractor, NCRIC competes for business with other malpractice insurance providers. NCRIC did not breach any legal duty to Columbia by attempting to illustrate the business reasons why the Retro Plan should be continued instead of Columbia switching their contract to a competitor.[22] NCRIC was in a position of a commercial contractor, not a fiduciary which owed extra-contractual duties and obligations to act for the benefit of Columbia.

To the extent Columbia has any viable cause of action against NCRIC for alleged miscalculations under the Retro Plan it is under a breach of contract theory. See Humana Health Plan, 2001 WL 8878, at *3 ("Humana either complied with the provisions of the contract between the two parties or it did not, and Heritage's remedy if it did not is its breach of contract action."). There is no evidence of a fiduciary obligation accepted by NCRIC and Columbia's breach of fiduciary duty claim fails as a matter of law.

---

its own staff. Columbia cannot escape its contractual agreements and claim the benefit of a fiduciary relationship by simply hiring inexperienced management officials.

[22] Columbia argues that NCRIC's "scare tactics" with the Attending Faculty forced Columbia to reject other insurance contracts (such as MIIX) which it believed were "a better deal for the hospital" and effectively precluded Columbia from seeking insurance elsewhere. See Columbia Opp. at 19. Even assuming that Columbia can prove that NCRIC talked with its physicians and encouraged them to lobby for the Retro Plan's renewal, this does not overwhelm Columbia's power and negotiating position. If a soft drink vendor tried to convince doctors that they should fight against a plan to not renew their contract with the cafeteria in favor of a new contract with its main rival, this is nothing more than marketing and competition between contractors competing for Columbia's business. Columbia still has the final say and NCRIC did not "force" them to renew the Retro Plan instead of other offers.

16d-001350

IX. COLUMBIA'S FRAUDULENT OR CONSTRUCTIVE OR NEGLIGENT MISREPRESENTATION CLAIMS FAIL AS A MATTER OF LAW

Columbia's claims for fraudulent and/or negligent misrepresentation depend upon the same allegations of miscalculations of Retro Plan premiums by NCRIC discussed above. See Columbia Opp. at 23-29. Once again, Columbia has not provided any credible proof that NCRIC's reconciliations under the Retro Plan were false. See NCRIC Memo at 34-36; pp. 21-24 above. Falsity of the statement is a necessary element for both of Columbia's misrepresentation claims. See Goldsmith v. Tapper, 748 A.2d 416, 419 (D.C. 2000) (listing elements of fraud). As discussed above, NCRIC's evidence shows that the reconciliations were proper and any errors were corrected in subsequent cumulative calculations. See pp. 21-24 above. Because Columbia's evidence of miscalculations by NCRIC consists of nothing more than interpretation of the Retro Plan and calculations by Columbia's counsel, it has not met its burden to prove falsity of the reconciliations by clear and convincing evidence.[23]

Additionally, Columbia has not presented evidence that NCRIC did not use due care, and was therefore negligent in its calculations. See Columbia Opp. at 28-29. Aside from Columbia's counsel's assertions regarding the "proper" calculations of the plan, Columbia offers no testimony regarding the standard of care for NCRIC in performing complicated Retro Plan calculations. It is Columbia's burden to prove that NCRIC did not use due care – not simply that a few mistakes were made throughout the years of the Retro Plan. Moreover, Columbia has not

[23] Although Columbia acknowledges that each element of fraud must be proved by "clear and convincing evidence" – a heavier burden than the basic civil standard of "preponderance of the evidence" – it argues that such a standard is "not onerous." See Columbia Opp. at 25. However, Columbia's speculative evidence regarding calculations under the Retro Plan is far from satisfactory under this heightened standard. See Bennett v. Kiggins, 377 A.2d 57, 60 (D.C. 1977).

proven detrimental reliance on any of the Retro Plan calculations. Conclusory assertions that Columbia was "forced" to renew the Retro Plan to its detriment and that it would have paid some unspecified amount less than $1 million in 1997 does not amount to sufficient proof. Columbia cannot quantify its detrimental reliance because it is purely speculative and based upon Columbia's counsel's notions of proper insurance calculations. These allegations do not state a claim for negligent misrepresentation.

X. COLUMBIA'S CONVERSION CLAIM FAILS BECAUSE ALL PAYMENTS WERE CREDITED TOWARD PREMIUM ACTUALLY OWED

Columbia attempts to salvage its claim for conversion by alleging that material facts are disputed regarding whether the $1 million Columbia paid to NCRIC in 1997-1998 was a "deposit." See Columbia Opp. at 50-51. Columbia now contends that its conversion action is proper because "the parties agreed in 1998 to treat the money as a deposit" and Columbia repeatedly "demanded in vain that its $1 million deposit be returned." Id. at 50. However, Columbia has no credible evidence to counter the contemporaneous documentary evidence demonstrating that the $1 million was an agreed partial payment on premium owed by Columbia. Any claim Columbia has for money owed under the Retro Plan is the subject of its breach of contract claim and does not support a separate claim for conversion.

Columbia submits declarations of witnesses in support of its claim that the parties agreed that the $1 million payment was a deposit for which NCRIC would pay Columbia interest. See Columbia Opp. at 50; Columbia Opp. SMF ¶¶ 36, 157. Even if simple characterization of the payment as a "deposit" was sufficient to establish a conversion claim, after-the-fact, self-serving testimony cannot contradict the contemporaneous documentary evidence which shows the parties agreed to treat the money as payment on premium owed and did not agree to any payment of

interest. Both the December 1997 and January 1998 letters which set forth the terms for the $1 million payment refer to the money as "payment on the current liability incurred upon Columbia" and "billed premium."[24] See Exs. 9-10 to NCRIC's Mem; Ex. GG attached. Neither of these documents, nor the Promissory Note, contain any agreed terms providing interest to Columbia. See id. Both the D.C. Insurance Commission and NCRIC's auditors report in 1998 approved the treatment of the payment as $1 million as premium. See Exs. 36-37 to Columbia Opp. Columbia's testimonial evidence simply reflects its current litigation position that no payments were due under the Retro Plan in 1997 and that Columbia is entitled to lost interest. Such declarations are not credible evidence to refute the contemporaneous documents which prove the terms of the parties agreement.[25]

Columbia has no evidence that it is entitled to interest on the $1 million dollar payment. Therefore, Columbia is simply left with a claim for overpayment of premium under the Retro Plan. As discussed in NCRIC's prior submission, under D.C. law "[a] cause of action for conversion . . . may not be maintained to enforce a mere obligation to pay money." Curaflex Health Servs., Inc. v. Bruini, 877 F. Supp. 30, 32 (D.D.C. 1995); see also NCRIC Memo at 39-40. Count 11 fails as a matter of law.

---

[24] Columbia places great emphasis on the fact that some of the NCRIC reconciliation spreadsheets used the phrase "Columbia Deposit" on the line item subtracting the $1 million from premium owed by Columbia. See Columbia Opp. at 51. However, some reconciliation spreadsheets refer to this line as "Columbia Payment." See Ex. 33 to NCRIC Memo. Columbia cannot impose a legally binding term on the parties' agreement which is not reflected in the documents from 1997 and 1998 based simply upon what shorthand phrase NCRIC used in some of its calculations.

[25] Columbia's Opposition assertion that Columbia repeatedly "demanded" the return of its "deposit" contradicts prior testimony by its witnesses in this case. This Court should disregard the affidavit by Larry Wilson submitted with Columbia's Opposition as his statements in the affidavit are inconsistent with prior deposition testimony. Compare Wilson Decl. ¶ 2, attached as Ex. 11 to Columbia Opp. ("I told them that Columbia wanted its deposit back several times while I was CEO. . . .") with Wilson Dep. I at 127 (testifying that no demand was made for NCRIC to pay the money back, but only a request to credit the money forward). Columbia cannot defeat summary judgment by using such affidavits to create disputed facts. See p. 37 below.

16d-001353

XI. ALL OF COLUMBIA'S CLAIMS FAIL AS A MATTER OF LAW AS ITS DAMAGES ARE SPECULATIVE

Throughout discovery, Columbia alternatively claimed that factual information concerning its damages was subject to protection from disclosure by the attorney work product doctrine (see, e.g., Wilson Dep. II at 218-19, attached as Ex. HH) or would be detailed by their designated expert witnesses (see Columbia's Rule 26(b)(4) statement, attached as Ex. II). Because Columbia refused to substantively put forward the facts supporting its damage claims on the advice of counsel, NCRIC was forced to file a Motion to Compel.[26] Near the close of discovery, Columbia withdrew two of its designated experts and only put forward one witness to testify as to damages – Peter Ben Ezra, who happens to be Columbia's Chairman of the Board.

A. A "Sham Affidavit" Cannot Preclude the Entry of Summary Judgment

Recognizing that Mr. Ben Ezra's deposition testimony illustrated the speculative nature of Columbia's damage calculations, See NCRIC Memo at 41-44, Columbia has now provided this Court with a supplemental declaration of Mr. Ben Ezra in an effort to prevent judgment as a matter of law. As explained below, that declaration should be stricken or otherwise disregarded by this Court as it amounts to no more than a "sham affidavit," put forward in an effort to create a genuine issue where none exists.

"Courts have long held that a party may not create a material issue of fact simply by contradicting its prior sworn testimony." Pyramid Secs. Ltd. v. IB Resolution, Inc., 288 U.S. App. D.C. 157, 166, 924 F.2d 1114, 1123 (D.C. Cir. 1991). "[T]he objectives of summary judgment would be seriously impaired if the district court were not free to disregard [the later testimony.]" Martin v. Merrell Dow Pharm., Inc., 851 F.2d 703, 706 (3d Cir. 1988). While it is

[26] NCRIC's Motion to Compel this discoverable, factual information remains pending with this Court.

16d-001354

not the function of this Court to weigh evidence or to make credibility determinations while deciding a summary judgment motion, the rejection of statements that are implausible and contrary to other statements made by the same person is not "a credibility determination but rather [the] recognition of a sham issue." Camfield Tires, Inc. v. Michelin Tire Corp., 719 F.2d 1361, 1365 (8th Cir. 1983). cf. D.C. Super. Ct. R. Civ. P. 56(g). "The upshot is that the prior sworn statement will receive controlling weight unless the shifting party can offer persuasive reasons for believing the supposed correction." Pyramid Secs. Ltd., 288 U.S. App. D.C. at 166, 924 F.2d at 1123. Columbia does not even attempt to put forward any such reasons here.

NCRIC demonstrated that as a matter of law Mr. Ben Ezra's single damage calculation should be disregarded as unsupported, rank speculation because: (a) he simply accepted as true the representation of Columbia's counsel with respect to the doctors who allegedly left Columbia (see Ben Ezra Dep. at 140); (b) he did no analysis or investigation why doctors left Columbia (see Ben Ezra Dep. at 140); (c) he did no analysis or research to determine causation (see Ben Ezra Dep. at 133); (d) he presumed that each doctor would work until he or she turned age 65 without reviewing any studies or analysis concerning the retirement age of physicians (see Ben Ezra Dep. at 154-55); and (e) he assumed a 20 year damage projection without offering any facts as to why he selected that time period (see Ben Ezra Dep. at 151-153).

Recognizing the weaknesses exposed by NCRIC's moving papers, Columbia has attempted to bolster Mr. Ben Ezra by contradicting his sworn deposition testimony.[27] See Ben Ezra Decl., attached as Ex. 3 to Columbia Opp. With a revised declaration, Columbia attempts to

[27] In his declaration, Mr. Ben Ezra bravely states he volunteers his services at Columbia because of his personal commitment to community service and that he received no monetary compensation for his time. See Ben Ezra Decl. ¶ 9. During his deposition, however, Mr. Ben Ezra stated that he would send a bill for his services and that he "expect[ed] to be compensated" for his work. See Ben Ezra Dep. at 85-86. Mr. Ben Ezra also testified that he previously received $25,000 or $26,000 for work done for Columbia. See Ben Ezra Dep. at 32.

16d-001355

address the deficiencies in Mr. Ben Ezra's deposition testimony. For example, in his deposition, Mr. Ben Ezra conceded he simply received a list of doctors from counsel for Columbia and accepted counsel's representation concerning who was on the list, see Ben Ezra Dep. at 95-96,[28] and that he did not participate in creating the list of physicians. See id. Understanding such speculation is a ground for striking the report, in a supplemental declaration, Mr. Ben Ezra now opines he "first obtained a list of physicians from Columbia" as well as other documents supporting that list from Columbia – not counsel. See Ben Ezra Decl. ¶¶ 4, 5, 14. Contrary to his deposition testimony, Mr. Ben Ezra now states he relied on his personal knowledge concerning what the list represented. See id. ¶ 14.

While Columbia concedes Mr. Ben Ezra knows absolutely nothing about causation, the hospital attempts to bolster Mr. Ben Ezra unsupported assertions concerning physician retirement age, marginal costs, and hospital historical data. With respect to the retirement age for D.C. physicians, during his deposition, Mr. Ben Ezra testified as follows[29]:

> Q: Have you done any studies or analysis with respect to what the average retirement date of a physician in the District of Columbia is?
> A: No, I have not.
> Q: Do you know what that number would be?
> A: No, I do not.
> Q: Sixty-five is your presumption?
> A: That is a presumption, yes.

---

[28] Q: Do you know where this list came from? How were these doctors selected? Let's try it that way. [objection noted as to form] A: I was furnished that by counsel to Columbia. Q: Do you have any idea how this group was picked? A: No. Q: You accepted the representation on its face? A: Yes. See Ben Ezra Dep. at 95-96.

[29] At one point, Mr. Ben Ezra stated under oath that counsel for Columbia told him when a certain physician would retire. Mr. Ben Ezra testified: "A: ... It's been represented to me that [a Columbia physician] will retire on 11/1/[20]01. Q: Who represented that to you? A: My counsel, counsel for the hospital." See Ben Ezra Dep. at 195-96. This answer rasies other questions concerning Mr. Ben Ezra's testimony which will be addressed, if necessary, in a motion to strike. At a minimum, it shows Mr. Ben Ezra's lack of objectivity and hypothetical nature of his conclusions.

16d-001356

See Ben Ezra Dep. at 154. In his declaration, Mr. Ben Ezra now attempts to improperly bolster his presumption based on alleged "observation and experience at Columbia." See Ben Ezra Decl. ¶ 23. Such guesswork, changing over time, must not be permitted to go forward to a jury.

Columbia's next effort to bolster Mr. Ben Ezra's testimony on marginal costs is even more egregious. Columbia routinely refers to the "textbook" model used by Mr. Ben Ezra. See Columbia Opp. at 52, 56. The marginal cost figure relied upon by Mr. Ben Ezra is taken from a workbook-type problem in a textbook:

> Q: And you circled a provision in that page?
> A: Right. The sentence says, and its Problem No. 2-32, "Hospital costs and pricing," and its begin, "St. Vincent Hospital" -- it's on page 70 of the textbook. It says, "St. Vincent Hospital has overall variable costs of 30 percent of total revenue and fixed costs of $42 million per year."
> Q: Do you know what St. Vincent Hospital in the textbook is referring to?
> A: No, I do not.
> Q: Do you know if this textbook is referring to a real St. Vincent Hospital somewhere in America?
> A: No, I do not, but I believe there are some St. Vincent Hospitals somewhere in America.
> ...
> Q: You didn't know what St. Vincent Hospital they are referring to and if this 30 percent referenced in the problem is true or not?
> A: No. What's true is in the problem it says variable costs are 30 percent.
> Q: And you don't know where the authors got that from?
> A: No. I have used other textbooks, and I would say I've seen similar problems, and they may be even on the CPA exam, similar problems.

See Ben Ezra Dep. at 181-82. In other words, Mr. Ben Ezra simply lifted the 30% marginal cost number from a hypothetical workbook problem in a book – without knowing anything regarding how the figure was selected – and asks this Court to rely upon it as an important component for Columbia's damages. In his declaration, Mr. Ben Ezra now claims the textbook "in his experience, uses reasonable, representative, real-life examples" (see Ben Ezra Decl. ¶ 29), but apparently, he still does not know where the 30% figure comes from. It should be disregarded.

16d-001357

Moreover, Mr. Ben Ezra admits, as he must, that he only used one year of unaudited, historical data in his calculations. See Ben Ezra Dep. at 161; Ben Ezra Decl. ¶ 30. He only used that single year worth of data "due to the limitations in the data available at Columbia" and due "to [Columbia's] lack of a cost accounting system." See Ben Ezra Decl. ¶¶ 30-31. In his deposition, Mr. Ben Ezra reviewed data for other years, but did not use it. He testified:

> Q: You did this analysis, I think, for -- how many years did you do this analysis for?
> A: The analysis is based on the difference between two years. I did look at the prior year data that was furnished to me. I elected not to use it. I was not comfortable in using that data.
> Q: Why?
> A: I don't think it was complete.
> Q: And how did you know it wasn't complete?
> A: It didn't look right.
> Q: I'm sorry, I don't mean, again, to argue with you but what does, "It didn't look right," mean?
> A: The number of records and the totals I couldn't rely on. I mean, I'm not going to use data in my analysis that I don't feel is correct.

See Ben Ezra Dep. at 161. Columbia sole damage witness, its Chairman of the Board, selected among the data, choosing one year and disregarding others without sufficient explanation or analysis. As noted above, Columbia cannot on the one hand decry the fact that it lacks complete and accurate data, yet at the same time have its Chairman of the Board testify under oath that Columbia is entitled to $21.5 million in damages because he picked one year of data that he determined was correct. The law does not support such a chance result.

B. Columbia Cannot Prove any Damages Proximately Caused by NCRIC's Alleged Breach

Columbia's witnesses, including Mr. Ben Ezra, testified that a dispute with one of the hospital's largest creditors created the need for Chapter 11 reorganization. See NCRIC Memo at 29 (referencing deposition testimony of various Columbia witnesses); Ben Ezra Dep. at

16d-001358

38-39. Columbia's opposition now presents new declarations that contradict this former deposition testimony and state that Columbia never considered bankruptcy before the $1 million negotiated payment with NCRIC and NCRIC's request of such payment as a condition of renewal in 1997 "was a contributing cause to Columbia's bankruptcy." See Columbia Opp. at 13; Asterbadi Decl. ¶ 9, attached as Ex. 1 to Columbia Opp. Thus, Columbia argues that NCRIC is liable for "the share of the damages that it caused." See Columbia Opp. at 13 n.6.

This effort to revise history must fail. Columbia has presented no evidence of causation on this point except for the self-serving declarations filed with its opposition that attempt to contradict past deposition testimony. NCRIC has presented undisputed evidence illustrating Columbia's financial difficulties in 1997 and 1998 caused by sources wholly unrelated to NCRIC's administration of the Retro Plan. See NCRIC Memo at 6-7; Exs. 11, 21 to NCRIC Memo. Even assuming Columbia could prove NCRIC's actions were a partial cause of the bankruptcy, Columbia has no evidence calculating an apportionment of bankruptcy damages. Without any evidence to support its allegations, Columbia's claim for bankruptcy damages must fail on summary judgment.

In addition, Columbia's opposition asserts that its damages for breach of contract include the $1 million paid to NCRIC towards the Additional Premium due in 1997. See Columbia Opp. at 12-13. First, this claim fails because it relies upon speculative allegations regarding NCRIC miscalculations. Columbia has little credible evidence to support its assertion that the calculation presented to Columbia in 1997 overstated the amount of premium due. See p. 25 above. Moreover, Columbia has no reliable evidence to support its claim that if the number presented to Columbia was lower it would have negotiated a lower payment in 1997 than $1 million. See Columbia Opp. at 12-13. Conclusory statements by Columbia witnesses that if

NCRIC had asked for less than $1.7 million they would have paid less than $1 million is not reliable proof. See Asterbadi Decl., attached as Ex. 1 to Columbia Opp. There is not even an assertion in Columbia's argument, much less evidence to support, any quantifiable measure damages under this theory. How much less would Columbia have paid? Columbia cannot say. Therefore, these damages are wholly speculative and without support and cannot survive summary judgment.[30]

Next, as Columbia has little evidence from sources outside of Columbia's counsel regarding the "proper" calculations under the Retro Plan, it cannot prove any amount of damages for breach of contract. Columbia cannot claim that NCRIC's calculations of amount due under the plan at this time has caused any damages because Columbia has not made any payment to NCRIC for premium owed since the $1 million payment in 1997-98. Moreover, Columbia has nothing more than a conclusory allegation to support its claim that it has suffered damages because NCRIC allegedly owes Columbia money under the Retro Plan. Columbia has presented no reliable evidence showing premium not properly paid to Columbia.

Similarly, Columbia has offered no credible evidence of damages concerning defamation, injurious falsehood, or breach of fiduciary duty. Columbia now claims that lay testimony can establish damages. See Columbia Opp. at 53. While lay testimony certainly can establish certain types of damages, Columbia has no evidence to support its claims.

---

[30] Columbia argues that it would at least be entitled to nominal damages for NCRIC's alleged miscalculations in breach of contract. See Columbia Opp. at 12 n.4. Under D.C. law, nominal damages for breach of contract are equal to one dollar. See Patel v. Howard Univ., 896 F. Supp. 199, 205 (D.D.C. 1995). Moreover, as damages are an element of breach of contract, Columbia must still prove some harm in order to succeed on its claim. See pp. 43-44 below.

16d-001360

C. Summary Judgment is Proper Where Damages are Speculative

As damages are an essential element of any tort claim, courts routinely dismiss claims when the proponent fails to offer credible evidence concerning damages. For example, in Weinberg v. Whatcom County, 241 F.3d 746 (9th Cir. 2001), the court affirmed summary judgment where a party had failed to offer sufficient proof of damages, which the court characterized as an essential element of the party's claims. "'Where discovery has been completed, summary judgment is appropriate when a party challenged by motion fails to offer evidence supporting an element of a claim on which that party bears the burden of proof at trial.'" Weinberg, 241 F.3d at 751 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986)). "Because [the plaintiff] failed to offer competent evidence of damages, dismissal on summary judgment was appropriate with respect to all claims for which [the plaintiff] bore the burden of establishing the amount of actual harm he suffered as a result of the County's actions. We have observed that plaintiffs '"must provide evidence such that the jury is not left to speculation or guesswork in determining the amount of damages to award."'" Id. (quoting McGlinchy v. Shell Chem. Co., 845 F.2d 802, 808 (9th Cir. 1988)) (quoting Dolphin Tours, Inc. v. Pacifico Creative Serv. Inc., 773 F.2d 1506, 1509 (9th Cir. 1985)). Thus, "[s]ummary judgment is appropriate where appellants have no expert witnesses or designated documents providing competent evidence from which a jury could fairly estimate damages." McGlinchy, 845 F.2d at 808 (citing Rickards v. Canine Eye Registration Found., Inc., 704 F.2d 1449, 1452 (9th Cir.1983)). See also Solow v. Liebman, 692 N.Y.S.2d 693 (App. Div. 1999) (affirming summary judgment where expert affidavit was based on conclusory allegations without any independent factual basis); Alaska Travel Specialists, Inc. v. First Nat'l Bank of Anchorage, 919 P.2d 759

(Alaska 1996) (affirming summary judgment dismissal when party's lost profits damages were speculative).

Such is the case here with Columbia and Mr. Ben Ezra. What the hospital has put forward is nothing but unsupported speculation and conjecture created by its counsel and Chairman of the Board in an effort to prevent dismissal of deficient claims on which Columbia has no competent evidence of damages.

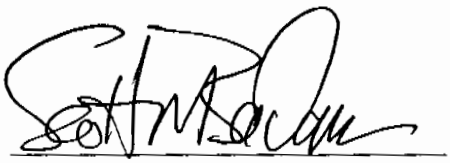
Furthermore, in its brief, Columbia has now again reversed course and intends to rely on lay testimony and newly created documents – produced for the first time during briefing summary judgment – in an effort to prove damages it could not during discovery. See Columbia Opp. at 53-54; Exs. 6, 25, 32, 71, 73, 84 to Columbia Opp. As other courts have rejected claims as a matter of law based on unsupported damage calculations, so should this Court should reject Columbia's untimely and speculative calculations.

XII. CONCLUSION

Columbia continues its litigation strategy of making legal arguments lacking support and stretching the facts in an effort to salvage dubious claims. Columbia has attempted to overwhelm this Court with sheer bulk, lacking substance. Those efforts must fail. A comprehensive review of the facts and applicable law mandates dismissal of Columbia's counterclaims as a matter of law.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for NCRIC, Inc.

Dated: March 28, 2002.

16d-001363

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Brief with the attached Exhibits was served this 18 day of March 2002, via first class mail, postage prepaid, to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

16d-001364

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Reply to Summary Judgment Motions -- March 28, 2002**
Defendant.	

PLAINTIFF NCRIC'S OPPOSITION TO DEFENDANT COLUMBIA'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Plaintiff NCRIC, Inc. ("NCRIC"), submits this opposition to Defendant Columbia Hospital for Women Medical Center, Inc.'s ("Columbia") Statement of Material Facts Not in Dispute submitted in support of Columbia's Motion for Summary Judgment. NCRIC filed a Statement of Material Facts in support of its Motion for Summary Judgment ("NCRIC Facts" & "NCRIC Memo"), and incorporated by reference that statement as a refutation of Columbia's similar statement in NCRIC's opposition dated February 28, 2002 ("NCRIC Opp."). This statement further refutes Columbia's statement by specific reference to each numbered paragraph within Columbia's statement.

1. Not disputed.

2. Not disputed.

3. The effective date of the Retro Plan speaks for itself. See NCRIC Facts ¶¶ 1, 4.

4. The Retro Plan was negotiated between the parties. See NCRIC Facts ¶¶ 1, 4.

5. The original term of the Retro Plan was three years. See NCRIC Facts ¶ 4.

6. The Retro Plan was amended and extended. See NCRIC Facts ¶¶ 18-21.

7. The parties renewed the Retro Plan retroactively to September 1, 1996. After a full exchange of information regarding the then-current status of the Retro Plan and the possible amendment of terms prospectively, the parties agreed to renew the Retro Plan. See NCRIC Facts ¶¶ 21-26.

8. The parties also agreed to amend certain terms of the Retro Plan prospectively from January 1, 1996 forward to correspond to an increased physicians' discount of 30%. See NCRIC Facts ¶¶ 18-21, 37-38, 45, 50.

9. On or about June 28, 2000, NCRIC informed Columbia that, in response to the desire of Columbia's Board to terminate the Retro Plan agreement, the Plan would end as of its expiration date of September 1, 2000. See NCRIC Facts ¶ 54-55. The remainder of paragraph 9 contains impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

10. The terms of the Retro Plan speak for themselves. See NCRIC Facts ¶¶ 1-6.

11. The terms of the Retro Plan speak for themselves. See NCRIC Facts ¶ 5.

12. The terms of the Retro Plan speak for themselves. See NCRIC Facts ¶ 18.

13. The terms of the Retro Plan speak for themselves. See NCRIC Facts ¶ 20. The last sentence of Columbia's proposed fact 13 is not supported in the record.

14. The increased discount of 30% and corresponding changes to other factors in the Retro Plan to accommodate the revised discount took effect prospectively from January 1, 1996. See NCRIC Facts ¶ 20.

15. To the extent terms are defined in the Retro Plan, it is a document which speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan).

16. See NCRIC Facts ¶¶ 18-21, 37-38, 45, 50. To the extent terms are defined in the Amendments and Addenda to the Retro Plan, these documents speak for themselves. See Exs. 5, 10, 20, 23 to NCRIC Memo (Amendments and Addenda to the Retro Plan).

17. See NCRIC Facts ¶¶ 7, 12. To the extent terms are defined in the Retro Plan, this document speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan).

18. See NCRIC Facts ¶¶ 12. To the extent terms are defined in the Retro Plan, this document speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan).

19. NCRIC provided Columbia all quarterly and annual reconciliation calculations required by the Retro Plan. See NCRIC Facts ¶¶ 7, 12, 22, 46, 57, 58. To the extent terms and notice provisions are defined in the Retro Plan, it is a document which speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan).

20. See NCRIC Facts ¶ 8, 15. To the extent terms are defined in the Retro Plan, this document speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan).

21. See NCRIC Facts ¶ 15. Aside from the first statement that "[a]ll premiums under the Retro Plan are calculated by applying multipliers to the Subject Premium," the remainder of paragraph 21 constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and

should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

22. To the extent terms are defined in the Retro Plan, this document speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan). The remainder of paragraph 22, starting with the phrase "Columbia could not be expected to make the complicated calculations...," constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

23. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan); Exs. 5, 10, 20, 23 to NCRIC Memo (Amendments and Addenda to the Retro Plan).

24. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan); Exs. 5, 10, 20, 23 (Amendments and Addenda to the Retro Plan). Any revision to the Deposit Premium was effective prospectively from January 1, 1996 according to agreement by the parties to change that factor to 62%. See NCRIC Facts ¶ 20; Ex. 5 to NCRIC Memo. The remainder of paragraph 24, starting with the phrase "This restriction was consistent with the explicit limitation...," constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

25. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan). Mr. Fargis testified as to how the Deposit Premium is related to the discount. See Fargis Dep. III at 758-59; Ex. 19 to Columbia Memo.

26. The entirety of paragraph 26 is improper conjecture by Columbia's counsel without cites to the record and does not require a response. Moreover, Mr. Fargis testified as to how the Deposit Premium is related to the discount. See Fargis Dep. III at 758-59; Ex. 19 to Columbia Memo.

27. The entirety of paragraph 27 is improper conjecture by Columbia's counsel without cites to the record and does not require a response.

28. The entirety of paragraph 28 constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

29. The entirety of paragraph 29 constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

30. The entirety of paragraph 30 constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

31. See NCRIC Facts ¶¶ 12, 15. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan).

32. See NCRIC Facts ¶ 16. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan); Exs. 5, 10, 20, 23 to NCRIC Memo (Amendments and Addenda to the Retro Plan). The negotiated changes to various factors in the Retro Plan as a result of the increased discount agreed to by the parties in 1995 applied prospectively from January 1, 1996. See NCRIC Facts ¶¶ 18-20; Ex. 5 to NCRIC Memo. The remainder of paragraph 32, beginning with the phrase "The language of the Plan places no limitations," constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

33. See NCRIC Facts ¶ 16. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan); Exs. 5, 10, 20, 23 to NCRIC Memo (Amendments and Addenda to the Retro Plan). The negotiated changes to various factors in the Retro Plan as a result of the increased discount agreed to by the parties in 1995 applied prospectively from January 1, 1996. See NCRIC Facts ¶¶ 18-20; Ex. 5 to NCRIC Memo. The second sentence of paragraph 33, beginning with the phrase "[a]s with the similar Minimum Premium," constitutes an impermissible legal argument and conclusion interpreting the Retro Plan which is inappropriate in a statement of material facts, does not require a response, and should be disregarded in its

entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

34. See NCRIC Facts ¶ 37-38. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan); Exs. 5, 10, 20, 23 to NCRIC Memo (Amendments and Addenda to the Retro Plan). The negotiated changes to various factors in the Retro Plan as a result of the increased discount agreed to by the parties in 1995 applied prospectively from January 1, 1996. See NCRIC Facts ¶¶ 18-20; Ex. 5 to NCRIC Memo.

35. The first two sentences of paragraph 35 are improper conclusions of Columbia's counsel without cites to the record which do not require a response. See NCRIC Facts ¶ 37-38. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are a documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan); Exs. 5, 10, 20, 23 to NCRIC Memo (Amendments and Addenda to the Retro Plan).

36. See NCRIC Facts ¶ 15. To the extent terms are defined in the Retro Plan this is a document which speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan).

37. See NCRIC Facts ¶ 15. To the extent terms are defined in the Retro Plan this is a document which speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan).

38. See NCRIC Facts ¶¶ 12, 15. To the extent terms are defined in the Retro Plan this is a document which speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan).

39. The entirety of paragraph 39 is an improper conclusion of counsel for Columbia without cites to the record which does not require a response.

40. See NCRIC Facts ¶¶ 9,13. To the extent terms are defined in the Retro Plan this is a document which speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan).

41. See NCRIC Facts ¶ 15. To the extent terms are defined in the Retro Plan this is a document which speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan). The remainder of paragraph 41, starting with the phrase "[b]ecause of the Development Factors...," constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

42. To the extent terms are defined in the Retro Plan this is a document which speaks for itself. See Ex. 4 to NCRIC Memo (Retro Plan).

43. See NCRIC Facts ¶¶ 19-20, 37-38. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan); Exs. 5, 10, 20, 23 to NCRIC Memo (Amendments and Addenda to the Retro Plan).

44. See NCRIC Facts ¶ 50. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan); Exs. 5, 10, 20, 23 to NCRIC Memo (Amendments and Addenda to the Retro Plan).

45. Exhibit E to the Retro Plan is labeled as an example of Retro Plan operation. See Ex. 4 to NCRIC Memo (Retro Plan). Paragraph 13 of the Retro Plan states that Exhibit E is "not to vary, alter or amend the terms hereof or of the Plan." See id.

46. The entirety of paragraph 46 constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts,

do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

47. The entirety of paragraph 47 constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

48. The entirety of paragraph 48 constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

49. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan); Exs. 5, 10, 20, 23 to NCRIC Memo (Amendments and Addenda to the Retro Plan). This is an unsupported conclusion put forward by counsel for Columbia.

50. NCRIC applied the Deposit Premium factor as agreed by the parties in 1996 to mathematically correspond with the increased discount. See NCRIC Facts ¶¶ 19-20; Ex. 5 to NCRIC Memo.

51. The entirety of paragraph 51 is an unsupported conclusion put forward by counsel for Columbia without cites to the record which does not require a response.

52. NCRIC applied the Minimum Premium factor prospectively from January 1, 1996, as agreed by the parties in 1996. See NCRIC Facts ¶¶ 19-20; Ex. 5 to NCRIC Memo.

53. NCRIC applied the Minimum Premium factor prospectively from January 1, 1996, as agreed by the parties in 1996. See NCRIC Facts ¶¶ 19-20; Ex. 5 to NCRIC Memo.

54. NCRIC applied the Development Factors as mathematically required by the Retro Plan. See Ex. 4 to NCRIC Memo (Retro Plan); Exs. 5, 10, 20, 23 to NCRIC Memo (Amendments and Addenda to the Retro Plan); Fargis Dep. III at 697-700; 715-20.

55. NCRIC provided two different September 1, 2001 reconciliations to Columbia on or about September 1, 2001 with letters demanding payment of Additional Premium due. See NCRIC Facts ¶ 57-58; Fargis Dep. III at 655-57. Counsel for Columbia improperly asserts himself as a witness in this case. See e.g. United States v. Morris, 714 F.2d 669, 671 (7th Cir. 1983) ("[t]hat counsel should avoid appearing both as advocate and witness except under special circumstances is beyond question"); United States v. Birdman, 602 F.2d 547, 551 (3rd Cir. 1979) (court condemns practice of serving as both lawyer and witness); Lau Ah Yew v. Dulles, 257 F.2d 744, 746 (9th Cir. 1958) ("[A]n attorney who assumes the burden of a witness while representing his client in a lawsuit does so at a very great detriment to the credibility of his testimony.").

56. NCRIC provided two different September 1, 2001 reconciliations to Columbia on or about September 1, 2001 with letters demanding payment of Additional Premium due. See NCRIC Facts ¶ 57-58; Fargis Dep. III at 655-57. The remainder of paragraph 56, beginning with the phrase "According to NCRIC...," constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972). See also Response to ¶ 55.

57. Paragraph 57 in its entirety is a conclusion by counsel supported only by cites to his own improper testimony. See Response to ¶ 55. NCRIC provided two different September 1, 2001 reconciliations to Columbia on or about September 1, 2001 with letters demanding

payment of Additional Premium due. See NCRIC Facts ¶ 57-58; Fargis Dep. III at 655-57. The remainder of paragraph 57, beginning with the phrase "Further, despite attempts...," constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972). See also Response to ¶ 55.

58. At the meetings, NCRIC explained the current status of the Retro Plan. See NCRIC Facts ¶¶ 22-23.

59. No changes were made "in an effort to avoid paying the Return Premium" to Columbia. See NCRIC Facts ¶¶ 10-11, 24-26.

60. See NCRIC Facts ¶¶ 10-11, 25-26.

61. The parties agreed that payments would be delayed until all the claims in a particular Experience Period closed or the Retro Plan ended. See NCRIC Facts ¶¶ 10-11, 25-26; Fargis Dep. III at 611-12, 639, 643, 731-32.

62. The parties agreed that payments would be delayed until all the claims in a particular Experience Period closed or the Retro Plan ended. See NCRIC Facts ¶¶ 10-11, 25-26; Fargis Dep. III at 611-12, 639, 643, 731-32.

63. Neither NCRIC nor Columbia made any payments under the Retro Plan as a result of the fall 1996 Reconciliation. See NCRIC Facts ¶ 26. The first sentence of paragraph 63, starting "In consideration for the benefit it received...," constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

64. NCRIC presented Columbia with a Reconciliation dated September 1, 1997 calculating Additional Premium due from Columbia. See Ex. 7 to Columbia Memo.

65. The Reconciliation dated September 1, 1997 is a document which speaks for itself. See Ex. 7 to Columbia Memo. The remainder of paragraph 65 is an impermissible legal conclusion interpreting the Retro Plan which is inappropriate in a statement of material facts, does not require a response, and should be disregarded in its entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

66. During negotiations regarding the possible renewal of the Retro Plan in September 1997, the parties negotiated a partial payment towards Additional Premium due as financial security because of Columbia's impending bankruptcy. See NCRIC Facts ¶¶ 35-36. Contemporancous documents reflecting the parties' negotiations and agreement treat this payment as credit towards premium due from Columbia. See Exs. 8-9 to NCRIC Memo.

67. The $1 million was not a deposit, but was premium owed by Columbia. See NCRIC Facts ¶¶ 35-36; Exs. 8-9 to NCRIC Memo.

68. See NCRIC Facts ¶¶ 37-38; Ex. 10 to NCRIC Memo. To the extent terms are defined in the Retro Plan and its various Amendments and Addenda, these are documents which speak for themselves. See Ex. 4 to NCRIC Memo (Retro Plan); Exs. 10, 20, 23 to NCRIC Memo (Amendments and Addenda to the Retro Plan).

69. The September 1, 1998 document speaks for itself. See NCRIC Facts ¶ 46.

70. The $1 million was not a deposit to be held by NCRIC, but was premium owed by Columbia. See NCRIC Facts ¶ 35-36; Exs. 8-9 to NCRIC Memo.

71. As the final reconciliation for the 1993-94 year revealed that NCRIC owed Columbia $172,815, and NCRIC paid that amount to Columbia. See NCRIC Facts ¶ 46.

16d-001376

72. See NCRIC Facts ¶ 46; see also Response to ¶ 71.

73. NCRIC presented Columbia with a Reconciliation dated September 1, 1999 calculating Additional Premium due from Columbia. See Ex. 8 to Columbia Memo.

74. The entirety of paragraph 74 is an unsupported conclusion put forward by counsel for Columbia without cites to the record which does not require a response. The Reconciliation dated September 1, 1999 is a document which speaks for itself. See Ex. 8 to Columbia Memo.

75. The Reconciliation dated September 1, 2000 is a document which speaks for itself. See NCRIC Facts ¶ 57; Ex. 33 to NCRIC Memo.

76. The Reconciliation dated September 1, 2000 is a document which speaks for itself. See Ex. 33 to NCRIC Memo. As of September 1, 2000, the Retro Plan had expired and all payment of net premium was due. See NCRIC Facts ¶¶ 55-57; Fargis Dep. III at 611-12.

77. The entirety of paragraph 77 constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972). This is also an unsupported conclusion put forward by counsel for Columbia.

78. See NCRIC Facts ¶ 57; Ex. 33 to NCRIC Memo.

79. NCRIC provided two different September 1, 2001 reconciliations to Columbia on or about September 1, 2001 with letters demanding payment of Additional Premium due. See NCRIC Facts ¶ 58, 67-68; Fargis Dep. III at 655-57. The remainder of paragraph 79, beginning with the phrase "However, there is no way to tell...," constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material

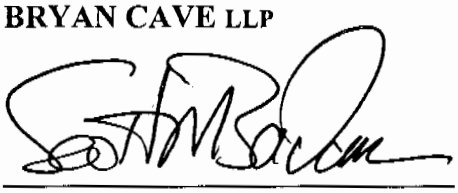
facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

80. The entirety of paragraph 80 constitutes impermissible legal arguments and conclusions interpreting the Retro Plan which are inappropriate in a statement of material facts, do not require a response, and should be disregarded in their entirety by the Court. See NCRIC Opp. at 2-4; Dillard v. Travelers Ins. Co., 298 A.2d 222, 223-24 (D.C. 1972).

81. NCRIC incorporates by reference its Statement of Material Facts submitted with its Motion for Summary Judgment.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: March 28, 2002

16d-001378

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Defendant Columbia's Statement of Material Facts was served this 28 day of March, 2002, via first class mail, postage prepaid, to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

16d-001379

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Replies to Oppositions to Dispositive Motions filed March 28, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

March 28, 2002

KELLOGG, HUBER, HANSEN, TODD & EVANS, PLLC

Mark C. Hansen, D.C. Bar #425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar #465773
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-001380

Table of Contents

Page

Table of Authorities iii

I. NCRIC Miscalculated the Premium Due Under the Retro Plan As a Matter of Law 2

A. There Is No Factual Dispute About How NCRIC Performed Its Calculations 2

B. Whether NCRIC Miscalculated the Premium Due Under the Retro Plan Is a Question of Law, Not a Factual Dispute. 3

1. The Plan's Plain Language, Not Parol Testimony, Is the Proper Basis For Ascertaining the Parties' Intended Minimum Premium Factor – Which Is 60% 4

2. The Parties' Agreement, Not the Opinion of NCRIC's "Expert," Defines the Proper Deposit Premium Factor – 67% 6

3. Exhibit E to the Plan, Not NCRIC's Parol Testimony or Expert Opinions, Governs How the Development Factors Must Be Applied – *After* the End of Each Experience Period 8

C. No Expert Testimony Was Necessary Regarding Retro Plan Damages 10

II. The Uncontested Facts Proffered by Columbia Should Be Deemed Established 11

A. NCRIC Failed to Rebut Most of the Material Facts Proffered by Columbia 11

B. Columbia's SMF Is Proper and May Not Be Disregarded 12

1. The SMF Is Replete with Facts 12

2. Undisputed Statements of Law May Be Considered As Background 15

16d-001381

III. NCRIC Owes Columbia Money Under the Parties' Oral Agreement 16

A. NCRIC's Characterization of The Agreement Is Unsupported and Ineffective 16

B. NCRIC Mischaracterizes Columbia's Testimony Regarding the Agreement 18

IV. NCRIC Cannot Prove That Columbia Owed Premium Effective September 1, 2001 and It Cannot Recalculate the Amount Due Until September 1, 2002 19

Conclusion 22

16d-001382

Table of Authorities

Cases

Page

1010 Potomac Associates v. Grocery Manufacturers of America, Inc.,
485 A.2d 199 (D.C. 1984) 5, 7, 9, 10

Affordable Elegance Travel, Inc. v. Worldspan, L.P.,
774 A.2d 320 (D.C. 2001) 5, 7, 9, 10

Bagley v. Foundation for Preservation of Historic Georgetown,
647 A.2d 1110 (D.C. 1994) 4

Brown v. Union Station Venture Corp. No. P-5,
727 A.2d 878 (D.C. 1999) 4

Carey Canada, Inc. v. Columbia Casualty Co.,
940 F.2d 1548, 291 U.S. App. D.C. 284 (1991) 4

Coates v. Johnson & Johnson,
756 F.2d 524 (7th Cir. 1985). 11

Cooper Cos. v. Transcontinental Insurance Co.,
37 Cal. Rptr. 2d 508 (Cal. Ct. App. 1995) 7

Dahlberg v. Avis Rent a Car System, Inc.,
92 F. Supp. 2d 1091 (D. Colo. 2000) 14

Dawe's Laboratories, N.V. v. Commercial Insurance Co.,
313 N.E.2d 218 (Ill. App. Ct. 1974) 7

Deep South Construction, Inc. v. Slack,
546 S.E.2d 302 (Ga. Ct. App. 2001) 20

Dillard v. Travelers Insurance Co.,
298 A.2d 222 (D.C. 1972) 15

Doggett v. McLachlen Bancshares Corp.,
663 A.2d 511 (D.C. 1995) 4

G.F. Co. v. Pan Ocean Shipping Co.,
23 F.3d 1498 (9th Cir. 1994) 7

Holland v. Hannan,
456 A.2d 807 (D.C. 1983) 4

United States v. Birdman,
602 F.2d 547 (3rd Cir. 1979).....11

United States v. Morris,
714 F.2d 669 (7th Cir. 1983).....11

Williams v. Gerstenfeld,
514 A.2d 1172 (D.C. 1986).....15

Zink v. Maple Investment & Development Corp.,
617 N.E.2d 1269 (Ill. App. Ct. 1993).....8

Rules

Super. Ct. Civ. R. 12 12

Super. Ct. Civ. R. 37 20

Super. Ct. Civ. R. 56 .....11, 12, 15

16d-001384

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Replies to Oppositions to Dispositive Motions Filed, March 28, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The Opposition of Plaintiff NCRIC, Inc. ["NCRIC"] to Defendant Columbia's Motion for Summary Judgment ("NCRIC SJ Opp.") does nothing to undermine Columbia Hospital for Women Medical Center, Inc.'s ("Columbia") argument for summary judgment. While NCRIC claims that there is "no evidence" that it miscalculated premiums due under the Retrospective Rating Plan Agreement ("Retro Plan" or "Plan"), these calculations were governed by the unambiguous Retro Plan, and hence, they were wrong as a matter of law (Point I, *infra*). NCRIC also largely ignored most of Columbia's Statement of Material Facts Not in Dispute ("Columbia's SMF" or "SMF"), thereby conceding those facts for the purpose of Columbia's motion for summary judgment (Point II, *infra*). In addition, NCRIC's argument that the parties' oral agreement ended along with the Retro Plan has no basis in fact, since Columbia never agreed to it, or in law, since the Plan never ended (Point III, *infra*). Finally, there is no evidence that Columbia owed NCRIC premium as of September 1, 2001, regardless of whether NCRIC performed a Reconciliation of the Retro Plan effective on that date (Point IV, *infra*).

I. NCRIC Miscalculated the Premium Due Under the Retro Plan As a Matter of Law

A. There Is No Factual Dispute About How NCRIC Performed Its Calculations

Whether NCRIC correctly calculated the amount of premium due under the Retro Plan is not, as it argues, a "factual issue[] . . . in dispute," NCRIC SJ Opp. at 14. Columbia's claim that NCRIC miscalculated the premium due is founded entirely on (1) underlying dollar amounts that NCRIC calculated itself (and admits are correct); (2) multiplier terms set forth in the Retro Plan, including in the Retrospective Rating Premium Formula ("Retro Formula"); and (3) the addition, subtraction or multiplication of these admitted dollar amounts and/or Retro Plan terms. *See* Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment at 3-10 ("Columbia SJ Mem.") (setting forth terms of the Retro Plan and NCRIC's undisputed calculations); *id.* at 8, 13-17 (explaining how NCRIC misapplied terms of the Plan).

There is not a *single* disputed material fact underlying Columbia's argument that, absent the parties' oral agreement, NCRIC owes approximately $559,000 in Additional Premium to Columbia. *See* Performing a Proper Reconciliation of the Retrospective Rating Plan Agreement at 1, *passim* (Exh. 1 hereto) ("Performing a Proper Reconciliation") (describing each step for performing a Reconciliation, including application of the Retro Formula, using the September 1, 2000 Reconciliation as an example).[1] In particular, there is no dispute about how NCRIC applies the Minimum Premium factor, the Deposit Premium factor and the Development Factors – the key multipliers that it misapplies in all reconciliations of the Plan.[2] NCRIC does not dispute that, for the September 1, 2000 Reconciliation (and all subsequent reconciliations), it (1) applied a Deposit Premium factor of 62%, rather than 67%, for all Experience Periods beginning on or

[1] Further, under the parties' oral agreement to exchange premium only for "closed" Experience Periods, NCRIC owes Columbia about $765,000. *See infra* pp. 10-11.

[2] *See* Columbia SJ Mem. at 5, 8, 13-14 (NCRIC misapplies the Minimum Premium factor); *id.* at 4, 8, 14-15 (NCRIC misapplies the Deposit Premium factor); *id.* at 7, 8, 15-17 (NCRIC misapplies the Development Factors).

after September 1, 1995; (2) applied a Minimum Premium factor of 75%, rather than 60%, for the 1993-94 and 1994-95 Experience Periods; and (3) applied Development Factors the relevant number of months *before*, rather than *after*, the end of each Experience Period – just as Columbia explained in its moving papers, *see* Columbia SJ Mem. at 8.

Nor could NCRIC colorably dispute how it applied these multipliers. Its calculations appear on what it admits are its reconciliation spreadsheets. *See, e.g.*, Responses to Defendant's Requests for Admissions, *passim* ("RFAs" or "RFA Response No.") (Exh. 22 to SMF) (admitting that amounts appearing on the September 1, 2000 Reconciliation and the December 1, 2000 Interim Reconciliation were its Retro Plan calculations); Spreadsheet Entitled "Columbia Hospital for Women Retro-Program Years Sept. 01, 1993 - August 31, 2000" (Sept. 1, 2000) (Exh. 10 to SMF) ("September 1, 2000 Reconciliation").[3] Further, NCRIC has repeatedly admitted that it applies the three above-mentioned multipliers exactly as Columbia describes. *See* SMF ¶¶ 48, 50-54.

B. Whether NCRIC Miscalculated the Premium Due Under the Retro Plan Is a Question of Law, Not a Factual Dispute.

Unable to dispute what its calculations were, NCRIC attempts in vain to create a factual dispute about whether they were correct. A factual dispute exists, NCRIC argues, because "individuals knowledgeable" about "calculations under retrospective plan[s]" testified that the calculations were correct, whereas Columbia offered "no evidence from any witnesses" that the calculations were incorrect. NCRIC SJ Opp. at 13-14.[4]

---

[3] An exact, line-numbered copy of this Reconciliation (with a slightly different date) is attached hereto as Exhibit 2.

[4] *See also* NCRIC SJ Opp. at 14-19 (testimony explaining why NCRIC's calculations purportedly were correct).

In fact, whether NCRIC properly calculated the premium due under the Plan is not a factual question. The process for calculating the amount of premium due under the Retro Plan – a Reconciliation – and all of the correct multipliers to be applied in a Reconciliation, are set by the terms of the Plan. *See* Addendum B to Retrospective Rating Plan Agreement, Exh. A, at 4-8 ("Addendum B") (Exh. 5 to SMF) (describing the process for performing a Reconciliation); Performing a Proper Reconciliation, *passim* (performing the September 1, 2000 Reconciliation, step by step, pursuant to the Plan). Hence, the correct way to perform a Reconciliation and calculate the premium due under the Plan is a matter of contract interpretation – a *pure question of law* for the Court to decide. *See Brown v. Union Station Venture Corp. No. P-5*, 727 A.2d 878, 881 (D.C. 1999); *Doggett v. McLachlen Bancshares Corp.*, 663 A.2d 511, 516 (D.C. 1995).

1. The Plan's Plain Language, Not Parol Testimony, Is the Proper Basis For Ascertaining the Parties' Intended Minimum Premium Factor – Which Is 60%

NCRIC's contention that Columbia has "no testimony" to show that the parties agreed to a Minimum Premium factor of 60%, NCRIC SJ Opp. at 15, is entirely misguided. Because the Retro Plan is unambiguous[5] – as NCRIC readily admits, *see* Memorandum of Law in Support of the Motion for Summary Judgment Filed by Plaintiff NCRIC, Inc. at 44, 45 ("NCRIC SJ Mem.") – this Court must determine what Minimum Premium factor applies *solely* from the language of the Plan, *see Holland v. Hannan*, 456 A.2d 807, 815 (D.C. 1983) ("absent [any] ambiguity, a written contract duly signed and executed speaks for itself and binds the parties without the necessity of extrinsic evidence"); *accord Brown*, 727 A.2d at 881; *Doggett*, 663 A.2d at 516.

[5] The Court should accept NCRIC's admission that the Plan is unambiguous. *Cf. Carey Canada, Inc. v. Columbia Cas. Co.*, 940 F.2d 1548, 1556, 291 U.S. App. D.C. 284, 292 (1991) ("The court may not create ambiguity where none exists."); *Lowman v. United States*, 632 A.2d 88, 92 n.6 (D.C. 1993) (the court must resolve any ambiguity, not beget one). Nor is the Retro Plan rendered ambiguous simply because the parties interpret its terms differently. *See Bagley v. Foundation for Preservation of Historic Georgetown*, 647 A.2d 1110, 1113 (D.C. 1994).

Testimony that NCRIC offers to support its interpretation of the Minimum Premium, *see* NCRIC SJ Opp. at 14-15, is therefore *inadmissible* parol evidence, *see 1010 Potomac Assocs. v. Grocery Mfrs. of Am., Inc.*, 485 A.2d 199, 205-06 (D.C. 1984) ("[e]xtrinsic evidence of the parties' subjective intent may be resorted to only if the [contract] is ambiguous"; if the contract is unambiguous, "its language . . . provid[es] the best objective manifestation of the parties' intent"); *Affordable Elegance Travel, Inc. v. Worldspan, L.P.*, 774 A.2d 320, 327 (D.C. 2001) (under the parol evidence rule, extrinsic evidence of the parties' intent must be excluded, and may not be used to interpret an unambiguous written contract).

Under the unambiguous language of the Retro Plan, the Minimum Premium factor is 60%, not 75%. *See* SMF ¶¶ 32, 34. Each time NCRIC performs a Reconciliation, it must apply that minimum to *every* Experience Period – just as it applies *every* other term of the Plan to *every* Experience Period, unless the term's application is limited to certain Experience Periods by the Plan's language (as with the Attending Faculty discount, *see id.* ¶ 13), or its internal logic (as with the Deposit Premium, *see id.* ¶¶ 26-28). *See* Columbia SJ Mem. at 13-14.

There is no logical basis for applying the new 60% Minimum Premium factor, as NCRIC urges, only to Experience Periods that began *after* the factor was amended, *see* NCRIC SJ Opp. at 14-15. To the contrary, due to the structure of the Retro Plan – essentially, it is a road map for performing each Reconciliation – logic demands that the current terms of the Plan be applied to *every* Experience Period, regardless of what terms applied to those Experience Periods in past reconciliations. This is true even for terms that have been amended, like the Minimum Premium factor. For example, there is no dispute that the new Development Factors (which, like the Minimum Premium factor, were amended in the Addendum effective September 1, 1996, *see* SMF ¶¶ 8, 34, 43) apply to *all* Experience Periods – not just to those periods beginning after the

amendment, *see id.* ¶ 49; *see, e.g.*, September 1, 2000 Reconciliation (applying new Development Factors to all Experience Periods).

Nor would using the current Minimum Premium factor provide Columbia with an "unjustified windfall," as NCRIC contends, NCRIC SJ Opp. at 15. Because the Plan's Maximum Premium factor increased at the same time its Minimum Premium factor decreased (*i.e.*, the new maximum also applies to all years of the Plan), *see* SMF ¶ 34, Columbia took on a greater premium risk (the higher maximum) in return for its greater chance of reward (the lower minimum).[6] Any additional payment to Columbia would be compensation for this greater risk, not a windfall.

2. The Parties' Agreement, Not the Opinion of NCRIC's "Expert," Defines the Proper Deposit Premium Factor – 67%

NCRIC is wrong to claim that the proper Deposit Premium factor is 62% because that number is (it claims) "mathematically correct," *see* NCRIC SJ Opp. at 16-17. The proper factor is the one that the parties *agreed to* – not the "correct" one according to the parol testimony of NCRIC's supposedly "knowledgeable" witnesses.[7] The Court must ascertain what the parties agreed to based on the plain language of the *current* version of the Retro Plan, and nothing

---

[6] It is also plausible that, due to Columbia's dire financial straights, NCRIC simply agreed to share its windfall from the 1993-94 and 1995-96 Experience Periods – when its cost of operating the Plan (*i.e.*, the Retro Premium) was far below the minimum amount of premium it would keep under the Plan, *see* September 1, 2000 Reconciliation. *Cf.* Deposition of Stephen S. Fargis, Tr. at 184-85, 231 ("Fargis Dep.") (Exh. 4 hereto) (stating that NCRIC agreed to lower the minimum premium to benefit Columbia). Indeed, the parties contemplated doing exactly that in Fall 2000, *see* Statement of Material Facts in Dispute ¶ 56 ("SMF2") (discussions about lowering the minimum to 45%).

[7] In fact, there is no "mathematically correct" Deposit Premium factor. To determine (what it calls) the "correct" Deposit Premium factor, NCRIC calculated the value that (it contends) must be used so that the amount of premium it receives from the physicians, due to the increase in the Attending Faculty discount that occurred in the 1995-96 Experience Period, corresponds exactly with the increase in Columbia's liability under the Plan – *i.e.*, so that the increased discount costs NCRIC essentially nothing. *See* Fargis Dep. at 150-51. There is no basis in the Plan for concluding that the discount must cost NCRIC nothing, however. Further, there is no factual connection between the reduced Minimum Premium factor and the increased physician discount. The minimum did not change until Fall 1997, nearly *two years* after the discount changed. *Compare* September 1, 1996 Reconciliation (Exh. 15 to SMF) (applying 75% minimum) *with* September 1, 1997 Reconciliation (Exh. 7 to SMF) (applying 60% minimum).

16d-001390

more.[8] *See 1010 Potomac Assocs.*, 485 A.2d at 205-06; *Affordable Elegance Travel*, 774 A.2d at 327. Indeed, since the interpretation of the Plan is a pure question of law, expert testimony regarding how to perform a Reconciliation is impermissible and subject to a motion to strike. *See G.F. Co. v. Pan Ocean Shipping Co.*, 23 F.3d 1498, 1507 n.6 (9th Cir. 1994) (striking expert affidavit that offered opinion on question of law); *see, e.g., Kmart Corp. v. Fireman's Fund Ins. Co.*, 88 F. Supp. 2d 767, 773 (E.D. Mich. 2000) (excluding testimony when a party tried to "have it both ways" by maintaining that an insurance contract was "unambiguous," yet offering the parol testimony of an insurance expert regarding the proper interpretation of that contract).[9]

NCRIC also argues, incorrectly, that a factual dispute exists because Columbia adduced "no evidence" that the Deposit Premium factor actually listed in the Plan – which NCRIC admits is 67%, not 62% – was *not* "a typographical mistake," *see* NCRIC SJ Opp. at 17 n.5. However, NCRIC offers no legal or factual basis for placing on Columbia the onerous burden of *dis*proving the existence of a unilateral error. In fact, the onerous burden of proving the existence of such a mistake falls on NCRIC. *See Sudul v. Computer Outsourcing Servs., Inc.*, 917 F. Supp. 1033, 1044 (S.D.N.Y. 1996) (unilateral mistake is an affirmative defense); *U.S. Durum Milling, Inc. v.*

---

[8] Moreover, NCRIC's parol testimony explaining why the Deposit Premium factor was initially changed to 62% (to effectuate the 38% discount), even if true, does not prove that the parties intended that factor to remain unchanged for all time. In fact, there is a perfectly logical explanation for the change to 67%: the parties always intended the Deposit Premium factor to be 67% (and correspondingly, the Attending Faculty discount to be 33%) in the long run, but they briefly used a Deposit Premium factor of 62% (and correspondingly, an Attending Faculty discount of 38%), to create the effect of a 33% discount for the 1995-96 Experience Period. *See* SMF ¶¶ 14, 27.

[9] *See, e.g., Cooper Cos. v. Transcontinental Ins. Co.*, 37 Cal. Rptr. 2d 508, 511 (Cal. Ct. App. 1995) (holding that the meaning of an insurance policy "is a question of law about which expert opinion testimony is inappropriate"); *Dawe's Labs., N.V. v. Commercial Ins. Co.*, 313 N.E.2d 218, 226 (Ill. App. Ct. 1974) (expert opinion regarding meaning of language in an insurance contract "is inadmissible and patently unacceptable").

Frescala Foods, Inc., 785 F. Supp. 1369, 1373 (E.D. Mo. 1992) (same). Here, NCRIC has offered no evidence that it made a "typo."[10]

More significantly, even if NCRIC had produced evidence that it made a mistake, no relief would be warranted, because the drafting "error" occurred due to NCRIC's own negligence, through no fault of Columbia. *See Kramer v. Schaeffer*, 751 A.2d 241, 246 (Pa. Super. Ct. 2000) ("unilateral mistake . . . due to the negligence of one now claiming the mistake, affords no basis for relief from an agreement"); *Zink v. Maple Inv. & Dev. Corp.*, 617 N.E.2d 1269, 1274 (Ill. App. Ct. 1993) (unilateral mistake may not be relied upon to relieve a party from the obligations of the contract where the party's own negligence caused the mistake); *see, e.g.*, *Trans World Airlines, Inc. v. Skyline Air Parts, Inc.*, 193 A.2d 72, 74-75 (D.C. 1963) (holding that "the unilateral negligent mistake of appellant did not discharge its duty to carry out the contract terms"). Here, the parties signed an Addendum changing the Deposit Premium factor from 62% to 67%, and then confirmed that change by signing another Addendum. *See* SMF ¶¶ 8, 24, 29. There is simply no evidence that Columbia knew of NCRIC's two-time "typo,"[11] and therefore, no basis for varying the contract's unambiguous terms.

3. Exhibit E to the Plan, Not NCRIC's Parol Testimony or Expert Opinions, Governs How the Development Factors Must Be Applied – *After* the End of Each Experience Period

Nor does a factual dispute exist regarding the correct application of the Development Factors simply because NCRIC presented "testimony regarding the[ir] purpose" whereas Columbia offered "no evidence" of "the parties' intent," NCRIC SJ Opp. at 17-19. Application

[10] NCRIC offered no evidence that the 67% Discount Premium factor did not reflect its intent at the time it drafted the Addenda. (Indeed, there is evidence that it knew the proper Deposit Premium factor was 67%. *See* Fargis Dep. at 475-76 (admitting that NCRIC applied 67% Deposit Premium in one Reconciliation)). Absent any evidence that NCRIC made a "typo," the Addenda must be assumed to reflect the drafter's intent.

of the Development Factors is governed by the terms of the Plan, not the opinion of NCRIC's purported expert. NCRIC cannot create an issue of material fact by offering parole testimony to vary the terms of an unambiguous, integrated contract. *See 1010 Potomac Assocs.*, 485 A.2d at 205-06; *Affordable Elegance Travel*, 774 A.2d at 327; *Kmart Corp.*, 88 F. Supp. 2d at 773.

The only question regarding the proper application of the Development Factors involves textual interpretation: does Exhibit E to the Retro Plan show the Development Factors being applied to the applicable Experience Period the relevant number of months *before* or *after* it ends? As Columbia explained (in a textual analysis – not, as NCRIC describes it, the "lay opinion of counsel"), Exhibit E clearly shows Development Factors being applied the specified number of months *after*, not *before*, the relevant Experience Period. *See* SMF ¶¶ 46-47. NCRIC does not apply the Development Factors this way. *See id.* ¶ 48 (citing Fargis Dep. at 716-18 (admitting NCRIC applies Development Factors differently than called for by Exhibit E)).

Further, NCRIC's claim that the definition of Development Factors in the Plan "undercuts" Columbia's view of how they should be applied, NCRIC SJ Opp. at 18, is belied by NCRIC's own argument. NCRIC admits that the definition of Development Factors "does not address" how they are to be applied, *see* NCRIC SJ Opp. at 18 (citing SMF ¶¶ 42-44). As such, Exhibit E – the "'Example of Operation of the Plan'" included "'for [purpose of] clarification,'" SMF ¶ 45 (quoting Retro Plan at 4, ¶ 13; *id.* at 7) – shows that the Development Factors must be applied the relevant number of months after an Experience Period ends. *See* SMF ¶¶ 44-46. This interpretation of Exhibit E does not "vary, alter or amend" the terms of the Plan, as NCRIC urges, *see* NCRIC SJ Opp. at 18. It simply fills in the gaps.

---

[11] Even if Columbia's management knew the reasons why NCRIC agreed to change the Deposit Premium factor to 62% in 1996, *see* NCRIC SJ Opp. at 16 (arguing that factor was changed for "complicated mathematical" reasons), there is no evidence that Columbia's *new* management knew these reasons in 1998, when the Addenda were signed.

16d-001393

In addition, NCRIC's argument that the parties "inten[ded] not to be bound" by Exhibit E, NCRIC SJ Opp. at 18 n.6, has no evidentiary support. NCRIC cannot create a material dispute of fact regarding Exhibit E by testifying that "it does not know who developed" the exhibit or by asserting that Columbia failed to present "testimony that the parties intended to be bound" by the exhibit, NCRIC SJ Opp. at 18 n.6. NCRIC admits that it entered into the Retro Plan, SMF ¶¶ 3, 8, of which Exhibit E undoubtedly is a part, *see id.* ¶ 45. No other evidence of NCRIC's intent to be bound by Exhibit E is necessary. *See 1010 Potomac Assocs.*, 485 A.2d at 205-06; *Affordable Elegance Travel*, 774 A.2d at 327.

C. No Expert Testimony Was Necessary Regarding Retro Plan Damages

NCRIC's contention that Columbia has "no proof of damages," NCRIC SJ Opp. at 12-13, 14, also rests upon the flawed premise that proper performance of a Reconciliation is a factual issue. As explained above, the entire process for performing a Reconciliation, from start to finish, is set by (1) unambiguous contract language; (2) dollar amounts admitted to by NCRIC; and/or (3) simple math. *See supra* p. 2; *see, e.g.*, Performing a Proper Reconciliation at 1-16 (walking through each step of the September 1, 2000 Reconciliation). As such, there can be no factual dispute about how to perform a Reconciliation properly and obtain the total premium due under the Plan. Therefore, the Court must make this calculation as a matter of law, *without* the assistance of any expert testimony. Indeed, such testimony is inadmissible. *See supra* pp. 6-7.

Further, the result of the September 1, 2000 Reconciliation – that NCRIC owes Columbia over $559,000 absent the parties' oral agreement (or about $765,000 under the oral agreement),

see Performing a Proper Reconciliation at 16; SMF, Exh. 14; Columbia SJ Mem. at 12, 17[12] – *is* Columbia's damage. NCRIC was required to inform Columbia of the correct amount due by November 1, 2000 and pay that amount by December 1, 2000. *See* SMF ¶ 22 (a Reconciliation is due 60 days after September 1 and payment is due 30 days after that). However, NCRIC did neither, *see id.* ¶¶ 76-77, and thereby, damaged Columbia.

II. The Uncontested Facts Proffered by Columbia Should Be Deemed Established

A. NCRIC Failed to Rebut Most of the Material Facts Proffered by Columbia

NCRIC has, to date, filed no counter-statement of material facts in response to Columbia's SMF. Instead, NCRIC has incorporated the Statement of Material Facts ("NCRIC SMF") accompanying its own motion for summary judgment into its opposition brief as a "general refutation." NCRIC SJ Opp. at 2. However, few of the statements in the NCRIC SMF specifically rebut statements of fact in Columbia's SMF. *See* Chart Entitled "Statements in Columbia's SMF," *passim* ("Columbia SMF Chart") (Exh. 3 hereto) (listing numerous statements in Columbia's SMF that NCRIC admitted or failed to contest).[13] NCRIC therefore has failed to comply with its burden under the rules. *See* Super. Ct. Civ. R. 56(e) (non-moving

[12] NCRIC posits, incorrectly, that Exhibits 11 through 14 to Columbia's SMF are inadmissible because they were "not created by an expert witness trained to render an opinion regarding proper insurance premium calculations," NCRIC SJ Opp. at 14 n.4. Retro Premium calculations are not properly the subject of expert testimony, however. *See supra* pp. 6-7. Further, Columbia's exhibits – which mimic NCRIC's Retro Plan calculations except that they employ the proper Minimum Premium factor, Deposit Premium factor and/or Development Factors – are not testimony at all, much less testimony by Columbia's counsel. Rather, these exhibits are charts summarizing Columbia's *legal* argument about the proper Retro Plan calculations. Factual foundation for such legal analysis was unnecessary, and Columbia has provided more than adequate legal foundation to show that the spreadsheets reflect the proper Retro Plan calculations, *see* Exh. 1 (working through the proper Retro Plan premium calculations, step by step; explaining which admitted facts and/or Retro Plan terms are the basis for each calculation; and reaching the same total Return Premium due as SMF Exhibit 14). Further, even if a factual foundation regarding the preparation of the summary exhibits was necessary, it is no barrier to their admission as evidence that counsel's office prepared them. *See, e.g., Coates v. Johnson & Johnson*, 756 F.2d 524, 550 (7th Cir. 1985). Nor was it of any consequence that counsel, rather than a legal assistant, provided that foundation on summary judgment. None of the cases that NCRIC cites involved an even remotely similar situation. *See* NCRIC SJ Opp. at 5 n.2 (citing *United States v. Morris*, 714 F.2d 669, 671 (7th Cir. 1983) (attorney testified at trial in case in chief); *United States v. Birdman*, 602 F.2d 547, 551 (3rd Cir. 1979) (same); *Lau Ah Yew v. Dulles*, 257 F.2d 744, 746 (9th Cir. 1958) (same)).

party "must set forth specific facts showing that there is a genuine issue for trial"); *id.* 12-I(k) (requiring a point by point refutation of the moving party's statement); *Miller v. American Coalition of Citizens With Disabilities, Inc.*, 485 A.2d 186, 191 (D.C. 1984) ("the court will grant the motion [for summary judgment] unless the moving party's factual allegations are countered with specificity"); *see, e.g., Lynch v. Meridian Hill Studio Apts., Inc.*, 491 A.2d 515, 521 (D.C. 1985) (granting summary judgment for this reason).[14] As a result, the Court should treat all of the facts that NCRIC failed to contest specifically as conceded for purposes of Columbia's motion. *See* Super. Ct. Civ. R. 12-I(k) (on a summary judgment motion, "the Court may assume that the facts as claimed by the moving party are admitted" except to the extent that they are "controverted in a statement filed in opposition to the motion"); *see also id.* 56(e) (if the non-moving party fails to set forth "specific facts" showing a genuine factual dispute, "summary judgment . . . shall be entered against" it); *Miller*, 485 A.2d at 191; *Lynch*, 491 A.2d at 521.

B. Columbia's SMF Is Proper and May Not Be Disregarded

1. The SMF Is Replete with Facts

NCRIC cannot escape the effect of its failure to file a counter-statement of material facts by asserting, erroneously, that Columbia's SMF is "replete with legal arguments" and "should be disregarded," NCRIC SJ Opp. at 2, 3.[15] The vast majority of statements in Columbia's SMF are based in objective fact. *See* Columbia SMF Chart, *passim* (list of statements in Columbia's

---

[13] Further, in its opposition brief, NCRIC offered evidence to contest statements in only seven paragraphs of Columbia's SMF. *See* Columbia SMF Chart at 5, 7, 8, 13, 15, 17, 18.

[14] *See also* Super. Ct. Civ. R. 12-I(e) ("If a statement of opposing points and authorities is not filed . . . the Court may treat the motion as conceded.").

[15] Nor does Columbia's SMF contain "arguments . . . not contained" in Columbia's opening brief, as NCRIC asserts, NCRIC SJ Opp. at 2 n.1. In fact, the sole example that NCRIC cites – a factual statement that the December 1, 2001 Interim Reconciliation (performed in January 2002) did not inform Columbia of the premium due effective September 1, 2001, *see id.* (citing SMF ¶ 79) – supports Columbia's argument that NCRIC never informed it of the amount of premium due on September 1, 2001, *see* Columbia SJ Mem. at 12-13. NCRIC offers the Court no reason to ignore Columbia's statement simply because Columbia failed to cite the statement in its brief.

SMF, by paragraph, showing that most if not all are based in fact). Indeed, most of the statements that NCRIC labels as "legal conclusions," NCRIC SJ Opp. at 3-4, are steeped in fact.

First, Columbia's statement that "there is no logical basis for imposing any implicit limitations on the application of the Minimum Premium," SMF ¶ 32, is a logical inference. It is a statement that no *evidence* in the record logically leads to implicit (*i.e.*, factual), as opposed to explicit (*i.e.*, contractual), limitations on the interpretation of the Minimum Premium factor. Such statements, which propose the existence of a fact and are divorced from analysis of legal texts or authority, arguably are factual – and NCRIC cites no authority to the contrary.[16] Other logical inferences stated in Columbia's SMF are similarly proper. *See, e.g.*, SMF ¶ 28.

Second, neither Columbia's discussion of the language of Exhibit E, *see, e.g., id.* ¶ 47, nor its other statements concerning the terms of the Retro Plan, *see generally* Chart of Statements, *passim* (listing statements describing or explaining terms of the Plan) – are, as NCRIC claims, "legal conclusions," *see* NCRIC SJ Opp. at 4. Quotations of the language in a contract, and statements concerning the logical and linguistic effect of such language, are *factual* statements; by contrast, arguments regarding the legal effect of such words are statements of law. As such, the terms of a contract properly may be described and discussed in a statement of material facts. This practice is common, *see, e.g., Oppedahl & Larson v. Network Solutions, Inc.*, 3 F. Supp. 2d 1147, 1155 (D. Colo. 1998) (moving party listed terms of legal agreement in statement of material facts); *Tube City, Inc. v. Boston & Maine Corp.*, 170 F. Supp. 2d 35, 35 (D.

[16] NCRIC is wrong to characterize this statement as "argumentative," NCRIC SJ Opp. at 3. It is no more argumentative than inferential statements that NCRIC makes in its own statement of facts. *Compare* NCRIC SMF ¶ 14 (arguing that "an error . . . uncovered during a quarterly reconciliation of the Retro Plan . . . would not impact Columbia" due to the parties' oral agreement). Further, NCRIC offers no legal authority to support its contention that factual statements may be disregarded by the Court simply because they are unduly "argumentative."

16d-001397

Me. 2001) (non-moving party listed contract terms in statement of material facts)[17] – and NCRIC does it repeatedly in its own statement of material facts, *see, e.g.*, NCRIC SMF ¶¶ 8, 9, 16, 18, 19, 38 (describing and/or discussing terms of Retro Plan).

Third, Columbia's mixed statements of law and fact may not be disregarded, as NCRIC urges, *see* NCRIC SJ Opp. at 4 (citing SMF ¶ 63 (Columbia's description of the oral agreement between the parties)). Mixed statements are based in fact, and therefore, are perfectly appropriate for inclusion in a statement of material facts. *See, e.g., Lloyd v. Alpha Phi Alpha Fraternity*, No. 96-CV-348, 1999 WL 47153, at *9 (N.D.N.Y. Jan. 26, 1999) (describing oral agreement in statement of material facts); *Lehman Bros. v. Canadian Imperial Bank of Com.*, No. 97 Civ. 8226, 2000 WL 1425098, at *1 (S.D.N.Y. Sept. 27, 2000) (same). NCRIC cites no legal authority to the contrary, and in fact, statements mixing law and fact abound in its own statement of facts. *See, e.g.*, NCRIC SMF ¶¶ 6, 8, 11, 14, 18, 19, 21, 45, 50, 55, 57, 58. Indeed, some of the *exact* same types of mixed statements that NCRIC labels "legal conclusions" also appear in its own statement. *Compare* NCRIC SJ Opp. at 4 (criticizing Columbia SMF ¶ 80 ("Columbia does not . . . owe any more money" under the oral agreement)) *with* NCRIC SMF ¶ 68 ("Columbia owes . . . $2.1 million" under the latest reconciliation of the Plan).

Like the foregoing statements, the bulk of the statements in Columbia's SMF set forth undisputed facts, terms of the Plan, logical inferences, or mixed questions of law and fact.[18] *See*

[17] *See also, e.g., Local 1219, AFSCME v. Donovan*, 683 F.2d 511, 514, 221 U.S. App. D.C. 170, 173 (1982) (terms of settlement agreement in statement of material facts); *Dahlberg v. Avis Rent a Car Sys., Inc.*, 92 F. Supp. 2d 1091, 1094 (D. Colo. 2000) (terms of agreement in statement of material facts).

[18] Columbia's statement that the Deposit Premium must be the inverse of the Attending Faculty discount in order to represent the premium deposited by the Attending Faculty, *see* SMF ¶ 26, is not, as NCRIC urges, unsupported, *see* NCRIC SJ Opp. at 16. Rather, this factual statement is based on simple algebra: to represent the premium paid to NCRIC by the physicians, the Deposit Premium must be the difference between 100% and the discount. (*E.g.*, if the discount is 33% of the Subject Premium, the amount the physicians paid NCRIC is 67% of the Subject Premium.)

Chart of Statements, *passim*. These statements must not be disregarded.[19]

2. Undisputed Statements of Law May Be Considered As Background

In addition, even some legal conclusions, if undisputed, are properly included in a statement of material facts. Background legal statements assist the court by clearing away undisputed legal issues, narrowing other legal issues, and setting up the legal framework for understanding the parties' dispute. NCRIC apparently recognizes this, because it makes myriad legal statements (although not all are undisputed) in the NCRIC SMF, including some pure statements of law. *See, e.g.*, NCRIC SMF ¶¶ 5, 15, 20, 55, 57, 60, 64, 68.[20]

Further, neither *Williams v. Gerstenfeld*, 514 A.2d 1172 (D.C. 1986), nor *Dillard v. Travelers Ins. Co.*, 298 A.2d 222 (D.C. 1972), holds that "legal conclusions" in statements of material facts must be "disregarded," as NCRIC argues, NCRIC SJ Opp. at 3. Rather, both cases apply Rule 56(e), which requires that a party opposing summary judgment come forward with "affidavits or other [evidence]." *See Williams*, 514 A.2d at 1176-77 (applying Rule 56(e)) ("failure of a party *opposing* summary judgment" to provide evidentiary support for its legal contentions will result in "acceptance of the movant's statement of facts as undisputed"); *accord Dillard*, 298 A.2d at 224 (applying Rule 56(e) to same effect). That aspect of the rule does not apply to a moving party, which may make its motion "with or without supporting affidavits," Super. Ct. Civ. R. 56(a); *see, e.g., McBride v. Pizza Hut, Inc.*, 658 A.2d 205, 208 n.6 (D.C. 1995). Since Columbia is the moving party here, both *Williams* and *Dillard* are inapposite.

As such, Columbia's statement that "the language of the Plan makes . . . notice a condition precedent," SMF ¶ 22, was proper because there is no dispute that the statement is true,

---

[19] At a minimum, such statements must be considered to the extent that they are factual.

[20] Moreover, even if some statements in Columbia's SMF could be characterized as disputed legal conclusions (and NCRIC points to none), NCRIC does not argue, or offer support for the proposition, that such statements taint the *entire* SMF. At most, this Court may disregard only the statements it deems to be legal conclusions.

16d-001399

see NCRIC SJ Opp. at 9-11 (not disputing that notice is a condition precedent). The few other legal statements in Columbia's SMF also are undisputed background law. *See* Columbia SMF Chart at 3, 5, 6, 7, 13, 15 (listing such statements).

III. NCRIC Owes Columbia Money Under the Parties' Oral Agreement

A. NCRIC's Characterization of The Agreement Is Unsupported and Ineffective

There is simply no "factual dispute," NCRIC SJ Opp. at 5, regarding the terms of the parties' oral agreement. As NCRIC has repeatedly admitted, the parties agreed that no payments would be due for *any* Experience Period until "all the claims for that [P]eriod were closed." NCRIC SJ Opp. at 7; *accord* NCRIC SMF ¶ 10 ("NCRIC and Columbia agreed not to begin making actual payments . . . until "all claims for a certain year . . . were closed."); *id.* ¶ 14 ("NCRIC and Columbia agreed not to pay any Additional Premium or Return Premium [for a particular Experience Period] until the claims were closed"). Further, NCRIC's own calculations show that it owes Columbia money for the Plan's only closed year. *See* September 1, 2000 Reconciliation ($177,806 in Return Premium owed for the 1994-95 Experience Period).[21]

However, NCRIC now urges that premium for each Experience Period was due "*at the end of the Retro Plan*," even if all the claims for the Period were not yet closed. NCRIC SJ Opp. at 7 (bold in original omitted). As such, NCRIC claims that Columbia owes Additional Premium for several unclosed Experience Periods. *See id.* This attempt to create a factual dispute out of whole cloth by adding a second, conflicting clause to the oral agreement must fail. NCRIC's characterization of the terms of the oral agreement cannot be reconciled with its previous concessions that, under the agreement, premium would not be due "until all claims for a certain

[21] In fact, NCRIC owes Columbia about $765,000 for the closed 1993-94 and 1994-95 Experience Periods when the correct Minimum Premium factor is applied. *See* Columbia SJ Mem. at 12.

year reached final resolution, *i.e.*, until all of the pending claims were closed." NCRIC SMF ¶ 10; *accord id.* ¶¶ 11, 14, 26; NCRIC SJ Mem. at 6; Fargis Dep. at 210-15, 220-21, 318-21.

NCRIC's new characterization of the parties' oral agreement also finds no support in the record. None of the testimony that NCRIC cites or quotes, when taken in context, reasonably describes the parties' *agreement*. Rather, that testimony describes: (1) how NCRIC operated the Plan under the oral agreement, *see* Fargis Dep. at 611-12 (describing the meaning of NCRIC's invoices); *id.* at 643 (same); (2) how NCRIC understood its operation of the Plan under the oral agreement, *id.* at 639-40; (3) why NCRIC ceased operating under the oral agreement after September 1, 2000, *see id.* at 729-33; or (4) whether Columbia understood that NCRIC had ceased operating under the oral agreement, *id.* at 731. Crucially, there is no evidence that *Columbia* ever agreed that the oral agreement would remain in effect only until the Plan ended. Indeed, as NCRIC admits, it first informed Columbia that the Plan would cease to operate as it had under the oral agreement in "March or April" of 2000. *Id.* at 731-32. NCRIC's testimony that it unilaterally decided to cease operating the oral agreement in Spring 2000, and informed Columbia of that fact, is not evidence that Columbia *agreed* to the change.

Moreover, even if Columbia had agreed to pay for unclosed Experience Periods once the Plan ended, it owes no money now because *the Retro Plan has not ended*. The parties did not terminate the Retro Plan effective September 1, 2000, because they could not: the Plan "remain[s] in full force and effect until all claims applicable to the final Experience Period . . . are finally closed."[22] Retro Plan at 4, ¶ 12. Instead, the parties simply stopped adding new Experience Periods to the Plan, and thereby discontinued the accrual of future potential obligations for Additional Premium or Return Premium. *See id.* at 4, ¶ 15 (allowing parties to

[22] There is no dispute that all of the claims for several Experience Periods are not yet closed.

discontinue adding new liabilities by not adding more Experience Periods). Though there are no new Experience Periods, the Plan continues to govern the process of performing Reconciliations of past Experience Periods. *See id.*, Exh. A ¶ 5 (explaining that reconciliations "will continue to be conducted . . . until all losses . . . [for] the applicable Experience Periods are finally closed"). Indeed, by continuing to perform reconciliations long after September 1, 2000, and by stating that such reconciliations are "required by" the Plan, *see, e.g.*, NCRIC SMF ¶ 58, NCRIC has implicitly acknowledged that the Plan remains in effect today.[23]

B. NCRIC Mischaracterizes Columbia's Testimony Regarding the Agreement

In addition, Dr. Safa Rifka's testimony is not consistent with NCRIC's interpretation of the oral agreement. Although Dr. Rifka did not testify "that the parties agreed in 1996 to *not* make payments when the Retro Plan ended," NCRIC SJ Opp. at 8 (emphasis added), he said the exact same thing in a different way. Dr. Rifka testified that the parties agreed not to pay money under any circumstances until claims for a given year were closed, *see* Affidavit of Dr. Safa Rifka in Support of Defendant's Motion for Summary Judgment ¶ 6 ("Rifka Aff.") (Exh. 17 to SMF), and that the oral agreement remains in effect, *see id.* ¶ 7. These statements contradict NCRIC's (unsupported) claim that the oral agreement ended when (it claims) the Plan ended.

NCRIC also posits, erroneously, that Dr. Rifka "lacks personal knowledge" as to the scope of the parties' oral agreement because he missed a meeting where the parties "confirmed their understanding" of the agreement in March 2000, NCRIC SJ Opp. at 8 (citing Fargis Dep. at

[23] Columbia does not, as NCRIC argues, "concede that the Retro Plan expired on or about September 1, 2000," NCRIC SJ Opp. at 10 (citing Deposition of Larry Wilson, Jr., Tr., at 129 (Exh. C to NCRIC SJ Opp.). Columbia only admits that NCRIC purported to terminate the Plan on that date. Further, the lay witness whose testimony NCRIC cites for this proposition was not qualified to interpret, and did not purport to interpret, the Retro Plan.

731-32). The parties' oral agreement occurred in November 1996, in Dr. Rifka's presence[24] – and there is no evidence that Columbia agreed to amend it in March 2000 or at any other time. Even if the parties "confirmed" their understanding of their prior agreement in March 2000, as NCRIC contends, *see* NCRIC SJ Opp. at 8, such a confirmation did not change the scope of the existing agreement. Moreover, the record shows that no mutual confirmation actually occurred at the parties' meeting in March 2000. Rather, at that meeting, NCRIC simply expressed to Columbia that, once the Plan "closed," NCRIC would cease to operate under the oral agreement – and, as a result, Columbia "knew . . . that [was] the way it was going to operate." Fargis Dep. at 731-32. There is no evidence whatsoever that Columbia *agreed* to this arrangement.[25] *See id.*

Accordingly, since the parties' oral agreement remains in effect, NCRIC must pay Columbia $765,000 for the closed Experience Periods, *see* Performing a Proper Reconciliation at 16; Columbia SJ Mem. at 12, and continue to perform reconciliations until all periods are closed.

IV. NCRIC Cannot Prove That Columbia Owed Premium Effective September 1, 2001 and It Cannot Recalculate the Amount Due Until September 1, 2002

NCRIC posits that "two reconciliations were sent [to Columbia] as of September 1, 2001; one for settlement purposes and one with [a] letter demanding payment per the Retro Plan."[26] NCRIC SJ Opp. at 10 (citing Fargis Dep. at 655-57). However, this Reconciliation spreadsheet is not in evidence. Further, the only testimony that it ever existed is equivocal at best. *See* Fargis Dep. at 655-56 (accepting Columbia's proffer that Fargis Deposition Exhibit 68 was the

[24] There is no dispute that Dr. Rifka attended the meetings in November and December 1996 at which the agreement was discussed. *See* Rifka Aff. ¶¶ 2-6; *accord* Columbia Hospital for Women Medical Center, Finance Committee Meeting Minutes (Nov. 20, 1996) (Exh. 30 to SMF2) (listing Dr. Rifka as present); Columbia Hospital for Women Foundation, Finance Committee Meeting Minutes (Nov. 7, 1996) (Exh. 29 to SMF2) (same); Columbia Hospital for Women Medical Center, Finance Committee Meeting Minutes (Dec. 18, 1996) (Exh. 31 to SMF2) (same).

[25] At a minimum, there is a sufficient evidence to create a factual dispute in *Columbia's* favor.

[26] Under the Retro Plan (1) NCRIC was required to provide Columbia with a Reconciliation within 60 days of September 1, 2001 and (2) its provision of the Reconciliation was a condition precedent to Columbia owing premium for that Reconciliation 30 days later. *See* Columbia SJ Mem. at 12-13. NCRIC does not dispute this.

only spreadsheet it received purporting to be a September 1, 2001 Reconciliation, and yet, still equivocating about whether that spreadsheet was a settlement document).

Further, even if this equivocal testimony is enough to create a factual dispute regarding whether the September 1, 2001 Reconciliation spreadsheet existed at one time, and was sent to Columbia, there is no evidence that it still exists. Columbia does not have the spreadsheet, *see* SMF ¶ 55, and NCRIC never produced it in discovery, despite Columbia's repeated requests, *see id.* ¶¶ 55-57.[27] Nor did NCRIC attach the spreadsheet to its opposition brief. Indeed, it is implausible that NCRIC would not have produced the spreadsheet by now if it still existed.[28]

Without the September 1, 2001 Reconciliation, NCRIC cannot prove that Columbia owed *any* premium as of September 1, 2001, much less prove how much was due on that date.[29] NCRIC produced no other testimony or documentary evidence showing whether (or how much) premium Columbia owed as of September 1, 2001. This failure to produce *any* evidence that Columbia owed it money under the Retro Plan is fatal to NCRIC's contract claim. *See* Super. Ct. Civ. R. 56(e). Further, since the September 1, 2000 reconciliation is the most recent Reconciliation in evidence, Columbia must prevail on its contract claim. *See* Columbia SJ Mem. at 17 (NCRIC owed Columbia about $559,000 as of September 1, 2000); *id.* at 12 (NCRIC owed about $765,000 as of September 1, 2000 under the parties' oral agreement).[30]

---

[27] NCRIC is wrong to argue that it was improper for Columbia's counsel to testify, in a declaration, that NCRIC never produced the September 1, 2001 Reconciliation. Counsel was the only person in a position to make the statement, and it was well within his ambit. The declaration relates solely to discovery, and does not touch on the merits of the case, so it would never result in counsel testifying at trial. At most, it would be used in a discovery motion (with the Court's permission) or a motion in limine.

[28] If the spreadsheet does exist, NCRIC's failure to produce it renders it subject to a motion in limine or a motion to dismiss. *See* Super. Ct. Civ. R. 37; *see, e.g., Deep South Constr., Inc. v. Slack*, 546 S.E.2d 302, 305-06 (Ga. Ct. App. 2001) (dismissing breach of contract action for failure to produce evidence of the amount due).

[29] NCRIC's refusal to concede that it failed to produce the September 1, 2001 Reconciliation spreadsheet in discovery, *see* NCRIC SJ Opp. at 11, is not *evidence* that it *did* produce the spreadsheet in discovery.

[30] Even if NCRIC had not miscalculated the amount of premium due as of the September 1, 2000 Reconciliation, Columbia would only owe the amount due as of that date, not the amount due as of December 1, 2001.

NCRIC argues, incorrectly, that all it needed to produce was the September 1, 2000 Reconciliation, *see* NCRIC SJ Opp. at 10. However, even if Columbia owed Additional Premium as of September 1, 2000 (and it did not, *see* Columbia SJ Mem. at 17), that is no proof that it *still* owed premium one year later. As NCRIC admits, the amount of premium due can fluctuate from year to year. *See* NCRIC SMF ¶ 11; *compare* September 1, 1996 Reconciliation (showing that NCRIC owed $159,000) *with* September 1, 1997 Reconciliation (showing that Columbia owed $1.77 million).[31] That is why the Plan requires that NCRIC perform a Reconciliation to determine the amount of premium due, *every* year. *See* Addendum B, Exh. A, at 5, ¶ 5 (calling for annual Reconciliation on September 1 of each year). Moreover, there is no basis in the Retro Plan for allowing NCRIC to bill Columbia for premium based on a year-old Reconciliation. *Compare id.* at 5, ¶ 6 ("[t]he amount of additional or return premium due" after *each* Reconciliation is based on the result of that Reconciliation). As such, a Reconciliation from September 1, 2001, and not before, is necessary to prove that Columbia owes money now.

Nor did NCRIC cure its failure to produce a September 1, 2001 Reconciliation, as it contends, by producing an interim reconciliation, effective December 1, 2001, in January 2002, *see* NCRIC SJ Opp. at 11 n.3. Even if NCRIC had performed this interim reconciliation properly (and it did not, *see supra* n.2), Columbia would not owe the amount of Return Premium listed as due. Return Premium is due only once a year, within 90 days of the September 1 Reconciliation. *See* Addendum B, Exh. A, at 5, ¶ 5 (listing annual Reconciliation dates, and stating that the Reconciliation must provided to Columbia within 60 days, and premium is due 30 days after that). Interim reconciliations are not annual Reconciliations for which Additional Premium is due; they are quarterly updates, for informational purposes only. *See* Addendum B

[31] So far as Columbia or this Court knows, the addition of the 1999-2000 Experience Period to the Reconciliation as of September 1, 2001 could have led to a large swing in the amount of premium due, in Columbia's favor.

at 1, ¶ 10 (describing interim calculations as update regarding the "status of the . . . Plan"); *compare id.*, Exh. A, at 5, ¶ 6 (making no mention of premium being due except at each annual Reconciliation). Further, NCRIC provided the interim reconciliation in January 2002, long after the 90-day period during which NCRIC is allowed to bill Columbia for its yearly Reconciliation. *See* SMF ¶ 22. As such, NCRIC missed its opportunity to bill Columbia for any amount it owed on September 1, 2001, and must wait until September 1, 2002.

Yet, even if NCRIC were allowed to cure its error and bill Columbia belatedly for the September 1, 2001 Reconciliation, the December 1, 2001 Interim Reconciliation did not serve that function. There is no way to tell from that spreadsheet what amount was due on September 1, 2001 – and what additional amounts have accrued since then (*e.g.*, new Loss Reserves, new Paid Losses, etc.). *See* SMF ¶ 79. Plus, NCRIC applied the (higher) Development Factors applicable to December 1, 2001, rather than the factors applicable September 1, 2001. *Compare* September 1, 2000 Reconciliation (applying annual Development Factors) *with* Spreadsheet Entitled "Columbia Hospital for Women Retro-Program Years: Sept 30, 1993 – Sept 30, 2000" (Jan. 7, 2002) (applying interim Development Factors). Since there is no evidence of what amount, if any, Columbia owed on September 1, 2001, NCRIC's contract claim must fail.

Conclusion

WHEREFORE, for the foregoing reasons, Columbia's Motion for Summary Judgment should be granted in its entirety. (An errata proposed order is submitted herewith.)

DATED: March 28, 2002

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-001407

Copies to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

EXHIBIT 1

Performing a Proper Reconciliation of the Retrospective Rating Plan Agreement ["Retro Plan"] (Example: September 1, 2000 Reconciliation)

I. **Calculate the Retrospective Rating Premium ("Retro Premium") for each Experience Period by using the Retrospective Rating Premium Formula ("Retro Formula").** *See* Addendum B to Retrospective Rating Plan Agreement, Exh. A at 5, ¶ 3 ("Addendum B") (Exh. 5 to Statement of Material Facts Not In Dispute ("SMF")).

II. **Limit the Retro Premium for each Experience Period by applying the Minimum Premium or Maximum Premium, if applicable.** *See id.*

III. **Calculate the Additional Premium or Return Premium due for each Experience Period by subtracting the Retro Premium (as limited by any applicable minimum or maximum) from the Deposit Premium for each Experience Period.** *See id.* ¶ 6.

IV. **Calculate the total Additional Premium or Return Premium for all Experience Periods that are properly subject to Reconciliation.** *See id.* ¶ 6.

V. **Apply a credit for Columbia's deposit and/or for NCRIC's payment to obtain the current total premium due.** *See* NCRIC's Statement of Material Facts ¶ 68 ("NCRIC SMF").

I. Calculate the Retro Premium for each Experience Period by using the Retro Formula:

Retro Premium **= { [(Loss Reserves x Development Factor) + Paid Losses] x Discount Factor } + Basic Premium.** *See* Addendum B, Exh. A at 5, ¶ 3.

A. Calculate: (Loss Reserves x Development Factor) = "Developed Losses"

1. Obtain NCRIC's Loss Reserves from the applicable reconciliation spreadsheet.

Here, NCRIC's September 1, 2000 Reconciliation is used as an example.[1] *See* Spreadsheet Entitled "Columbia Hospital for Women Retro-Program Years: Sept. 01, 1993 – August 31, 2000" (Sept. 6, 2000) (Exh. 2 to Defendant's Reply in Support of Motion for Summary Judgment ("Reply")) ("Line-numbered September 1, 2000 Reconciliation").

NCRIC's Loss Reserves appear in Row 7 (entitled "Total Reserves") of its reconciliation spreadsheets. *See* Answers of Plaintiff to Interrogatories of Defendant, Interrogatory Response No. 3 (Exh. 21 to SMF) ("Interrogatory Response No.") (explaining that Row 7 is the sum of indemnity and expense reserves – *i.e.*, Loss Reserves as defined in the Plan).

As of September 1, 2000, NCRIC listed its Loss Reserves as:

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
$0	$0	$1,185,000
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$1,352,000	$1,040,000	$3,565,000

See Line-numbered September 1, 2000 Reconciliation (listing Loss Reserves for 1994-95 through 1998-99 Experience Periods); Spreadsheet Entitled "Columbia Hospital for Women Retro-Program Years 9/1/1993 – 8/31/1999" (Oct. 11, 1999) (Exh. 8 to SMF) ("September 1, 1999 Reconciliation") (listing Loss Reserves for 1993-94 Experience Period).[2]

---

[1] This step-by-step Reconciliation also is summarized in spreadsheet form. *See* Spreadsheet Entitled "Se[pt]ember 1, 2000 Reconciliation – NCRIC's Calculations With All Three Changes" (Exh. 14 to SMF) ("Revised September 1, 2000 Reconciliation") (summary exhibit performing Reconciliation using dollar values used by NCRIC, except applying proper Deposit Premium factor, Minimum Premium factor and Development factors).

[2] NCRIC does not list its calculations for the 1993-94 Experience Period on the September 1, 2000 Reconciliation spreadsheet. Instead, those calculations appear on the September 1, 1999 Reconciliation spreadsheet. Because all claims for the 1993-94 period are closed, that year is "closed," and the totals for that period do not change from year to year. *See* Deposition of Stephen S. Fargis, Tr. at 305 ("Fargis Dep.") (Exh. 4 hereto) (explaining that dollar amounts do not change after a year is "closed"). As such, all dollar values for the 1993-94 Experience Period were the same on September 1, 2000, as they were on September 1, 1999.

16d00141111

2. Obtain the proper Development Factors from the Retro Plan, as amended.

The Development Factors used by NCRIC appear in Row 12 (entitled "Development Factor") of its reconciliation spreadsheets.[3] *See* Responses to Defendant's Requests for Admissions, Response Nos. 52-61 ("RFA Response No.") (Exh. 22 to SMF). **However, NCRIC applied those Development Factors incorrectly.** *See* Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment at 8, 15-17 ("Columbia SJ Mem.").

For the September 1, 2000 Reconciliation, the *proper* Development Factors, set by the Retro Plan were:

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
105%	105%	105%
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
80%	65%	55%

See id. (explaining proper application of Development Factors); *see also id.* at 6-8 (explaining Development Factors); Retrospective Rating Plan Agreement, Exh. E at 1-2 (Exh. 1 to SMF) ("Retro Plan") (example of proper application of Development Factors); SMF ¶¶ 46-47 (discussing Exh. E to Retro Plan); Addendum B-1999 to Retrospective Rating Plan Agreement, Exh. A.1., at 1 (Exh. 6 to SMF) ("Addendum B-1999") (definition of Development Factors); Addendum B, Exh. A at 5, ¶ 7 (same); *compare* Revised September 1, 2000 Reconciliation (listing proper Development Factors).

3. For each Experience Period, multiply the applicable Loss Reserve, *see supra*, I.A.1, by the proper Development Factor, *see supra*, I.A.2, to obtain the Developed Losses.[4]

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
$0 x 105% = **$0**	$0 x 105% = **$0**	$1,185,000 x 105% = **$1,244,250**
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$1,352,000 x 80% = **$1,081,600**	$1,040,000 x 65% = **$676,000**	$3,565,000 x 55% = **$1,960,750**

[3] For the September 1, 2000 Reconciliation, NCRIC used the following Development Factors: 105% for the 1993-94 through the 1996-97 Experience Periods, 80% for the 1997-98 Experience Period, and 65% for the 1998-99 Experience Period.

[4] All amounts used throughout this example are rounded to the nearest whole dollar amount.

16d-001412

B. Calculate: [Developed Losses + Paid Losses] = "Total Losses"

1. Obtain NCRIC's Paid Losses from the applicable reconciliation spreadsheet.

NCRIC's Paid Losses appear in Row 10 (entitled "Total Paid") of its reconciliation spreadsheets. *See* Interrogatory Response No. 4 (explaining that Row 10 is total of indemnity and expense payments -- *i.e.*, Paid Losses as defined by the Plan). **As of September 1, 2000, NCRIC listed its Paid Losses as:**

1993-94 Experience Period **$960,368**	**1994-95 Experience Period** **$1,716,454**	**1995-96 Experience Period** **$1,052,447**
1996-97 Experience Period **$1,785,648**	**1997-98 Experience Period** **$648,723**	**1998-99 Experience Period** **$581,307**

See Line-numbered September 1, 2000 Reconciliation (1994-95 through 1998-99 Experience Periods); September 1, 1999 Reconciliation (1993-94 Experience Period).

2. Add the Developed Losses, *see supra*, I.A.3, **to the Paid Losses**, *see supra*, I.B.1, **to obtain the Total Losses.**

1993-94 Experience Period $0 + $960,368 = **$960,368**	**1994-95 Experience Period** $0 + $1,716,454 = **$1,716,454**	**1995-96 Experience Period** $1,244,250+ $1,052,447 = **$2,296,697**
1996-97 Experience Period $1,081,600 + $1,785,648 = **$2,867,248**	**1997-98 Experience Period** $676,000+ $648,723 = **$1,324,723**	**1998-99 Experience Period** $1,960,750 + $581,307 = **$2,542,057**

16d-001413

C. Calculate: { [Total Losses] x Discount Factor } = "Discounted Total Losses"

1. Obtain the Discount Factor from the Retro Plan.

The Discount Factor is the same for every Experience Period – 86.33%. *See* Addendum B, Exh. A at 6, ¶ 7 (definition of Discount Factor). The Discount Factor does not appear on NCRIC's reconciliation spreadsheets.

2. Multiply the Discount Factor, *see* I.C.1, *supra*, by the Total Losses, *see* I.B.2, *supra*, to obtain the Discounted Total Losses.

As of September 1, 2000, the Discounted Total Losses were:

1993-94 Experience Period
$960,368 x 86.33% = **$829,086**

1994-95 Experience Period
$1,716,454 x 86.33% = **$1,481,815**

1995-96 Experience Period
$2,296,697 x 86.33% = **$1,982,739**

1996-97 Experience Period
$2,867,248 x 86.33% = **$2,475,295**

1997-98 Experience Period
$1,324,723 x 86.33% = **$1,143,633**

1998-99 Experience Period
$2,542,057 x 86.33% = **$2,194,558**

16d-001414

D. Calculate: Discounted Total Losses + Basic Premium = *Retro Premium*

1. Obtain the Basic Premium for each Experience Period from the applicable reconciliation spreadsheet.

The Basic Premium is calculated by multiplying the Subject Premium for each Experience Period by the Basic Premium factor. *See* Addendum B, Exh. A at 6, ¶ 7 (definition of Basic Premium listing multiplier known as the "Basic Premium Factor").[5] **However, because Columbia does not dispute NCRIC's Basic Premium calculations,[6] the Basic Premium may be taken directly from the applicable reconciliation spreadsheet.**

The Basic Premium for each Experience Period appears in Row 4 (entitled "Basic") of NCRIC's reconciliation spreadsheets. *See* Interrogatory Response No. 2; RFA Response Nos. 38-51.

As of September 1, 2000, the Basic Premium for each Experience Period was:

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
$465,631	$479,083	$553,728
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$588,609	$562,555	$607,868

See Line-numbered September 1, 2000 Reconciliation (1994-95 through 1998-99 Experience Periods); September 1, 1999 Reconciliation (1993-94 Experience Period).

---

[5] To calculate the Basic Premium: *First*, the Basic Premium factor is 16.84% for every Experience Period. *See* RFA Response Nos. 37, 40, 43, 46, 49 (Basic Premium factor is calculated by adding the administrative expense charge of $14.04% to the insurance charge factor of 2.8%); *see also* Addendum B, Exh. A at 6, ¶ 7. The Basic Premium factor appears in Row 3 (entitled "Basic Premium Ch.") of NCRIC's reconciliation spreadsheets. *See* RFA Response Nos. 37-51. *Second*, the Subject Premium calculated by NCRIC for each Experience Period appears in Row 1 (entitled "Subject (1st 500 Layer)") of its reconciliation spreadsheets, *see* RFA Response Nos. 4-13; Interrogatory Response No. 2 (explaining purported Subject Premium calculations). *Third*, the Basic Premium factor and the Subject Premium are multiplied together to obtain the Basic Premium. *See* RFA Response Nos. 37-51; *see also* Addendum B, Exh. A at 6, ¶ 7 (definition of Basic Premium); Interrogatory Response No. 2. (explaining Basic Premium calculations).

[6] Columbia assumes (but does not admit), for the purposes of its motion, that NCRIC's Subject Premium calculations are correct. *See* SMF ¶ 21.

2. **Add the Discounted Total Losses**, *see* I.C.2, *supra*, **to the Basic Premium**, *see* I.D.1, *supra*, **to obtain the *Retro Premium*.**

1993-94 Experience Period	**1994-95 Experience Period**	**1995-96 Experience Period**
$829,086 + $465,631 = **$1,294,717**	$1,481,815 + $479,083 = **$1,960,898**	$1,982,739 + $553,728 = **$2,536,467**
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$ 2,475,295 + $588,609 = **$3,063,904**	$1,143,633 + $562,555 = **$1,706,188**	$2,194,558 + $607,868 = **$2,802,426**

* * *

Therefore, as of September 1, 2000, the proper Retro Premium for each Experience Period was:

1993-94 Experience Period	***1994-95 Experience Period***	***1995-96 Experience Period***
$1,294,717	***$1,960,898***	***$2,536,467***
1996-97 Experience Period	***1997-98 Experience Period***	***1998-99 Experience Period***
$3,063,904	***$1,706,188***	***$2,802,426***

Compare Revised September 1, 2000 Reconciliation (same Retro Premiums, with minor differences due to rounding).[7]

16d-0014-16

[7] The Revised September 1, 2000 Reconciliation lists the Retro Premium for each Experience Period twice. For the 1993-94 Experience Period, the upper Retro Premium listed is correct; the lower listing is a typographical error. (It is actually the Minimum Premium.) This error has no effect on the overall calculations.

II. Limit the Retro Premium for each Experience Period by applying the Minimum Premium or Maximum Premium, if applicable.

A. Calculate Minimum Premium for each Experience Period.

1. Obtain the Minimum Premium for some Experience Periods from the applicable reconciliation spreadsheet.

The Minimum Premium for each Experience Period is calculated by multiplying the Subject Premium for each Experience Period by the Minimum Premium factor for that Experience Period. *See* Addendum B, Exh. A at 7, ¶ 7 (definition of Minimum Premium listing multiplier known as the "Minimum Premium factor"). **Because Columbia does not dispute NCRIC's Minimum Premium calculations for the 1995-96 Experience Period through the 1998-99 Experience Period,[8] the Minimum Premium for those periods may be taken from the applicable reconciliation spreadsheet.**

The Minimum Premium for each Experience Period appears in Row 18 (entitled "Min. Premium") of NCRIC's reconciliation spreadsheets. *See* RFA Response Nos. 102-03, 106-07, 110-11, 114-15, 118-19.

As of September 1, 2000, the Minimum Premiums for Experience Periods 1995-96 through 1998-99 were:

1995-96 Experience Period		
$1,972,902		
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$2,097,183	$2,004,354	$2,165,800

See Line-numbered September 1, 2000 Reconciliation.

[8] *But see supra*, n.6.

16d-0041417

2. **Calculate the proper Minimum Premium for other Experience Periods.**

a. **Obtain the *proper* Minimum Premium factor for the 1993-94 and 1994-95 Experience Periods from the Retro Plan, as amended.**

The proper Minimum Premium factor for the 1993-94 Experience Period and the 1994-95 Experience Period is the same as for every other Experience Period – 60%. *See* Columbia SJ Mem. at 8, 13-14 (explaining proper application of Minimum Premium factor); *see also* Addendum B, Exh. A at 7, ¶ 7 (definition of Minimum Premium); Addendum to Retrospective Rating Plan Agreement, Exh. A at 6, ¶ 7 (Exh. 4 to SMF) ("Addendum") (same).[9]

b. **Obtain the Subject Premium for the 1993-94 Experience Period and the 1994-95 Experience Period from NCRIC's reconciliation spreadsheet.**

The Subject Premium NCRIC calculates for each Experience Period appears in Row 1 (entitled "Subject (1st 500 Layer)") of its reconciliation spreadsheets. *See* RFA Response Nos. 4-13; Interrogatory Response No. 2.

As of September 1, 2000, NCRIC calculated the Subject Premiums for the 1993-94 and 1994-95 Experience Periods as:

1993-94 Experience Period	1994-95 Experience Period
$2,765,029	**$2,844,913**

See Line-numbered September 1, 2000 Reconciliation (1994-95 Experience Period); September 1, 1999 Reconciliation (1993-94 Experience Period).

c. **Multiply the Subject Premium**, *see* II.A.2.b, *supra*, **by the Minimum Premium factor**, *see* II.A.2.a, *supra*, **to obtain the Minimum Premium.**

1993-94 Experience Period	1994-95 Experience Period
$2,765,029 x 60% = **$1,659,017**	$2,844,913 x 60% = **$1,706,948**

16d-004418

[9] The text in the Addendum is a typographical error, which NCRIC fixed in Addendum B. *See* Fargis Dep. at 453.

3. **Substitute the Minimum Premium for the Retro Premium for any year where the latter falls below the former.** *See* Addendum B, Exh. A at 7, ¶ 7 (Minimum Premium is the minimum Retro Premium).

As of September 1, 2000, the Retro Premium fell below the Minimum Premium for the 1993-94 and 1997-98 Experience Periods. *Compare supra*, I.D.2 *with supra*, II.A.1 & II.A.2.c.

* * *

Therefore, as of September 1, 2000, the proper Retro Premium (as limited by the proper Minimum Premium) for each Experience Period was:

1993-94 Experience Period	***1994-95 Experience Period***	***1995-96 Experience Period***
$1,659,017	***$1,960,898***	***$2,536,467***
1996-97 Experience Period	***1997-98 Experience Period***	***1998-99 Experience Period***
$3,063,904	***$2,004,354***	***$2,802,426***

B. Calculate the Maximum Premium for each Experience Period (not necessary for this Reconciliation).

The Maximum Premium for each Experience Period is calculated by multiplying the Subject Premium for each Experience Period by the Maximum Premium factor for that Experience Period.[10] *See* Addendum B, Exh. A at 7, ¶ 7 (definition of Maximum Premium listing multiplier known as the "Maximum Premium factor"). **However, neither party disputes that, as of September 1, 2000, no Retro Premium for any Experience Period exceeded the Maximum Premium.**[11] *See* Line-numbered September 1, 2000 Reconciliation. **Therefore, as of September 1, 2000, the Maximum Premiums did not impact the calculation of any amount of Additional Premium or Return Premium.**

[10] To calculate the Maximum Premiums: *First*, the proper Maximum Premium factor for every Experience Period is 133%, *see* Addendum B, Exh. A at 7, ¶ 7 (definition); SMF ¶ 33. *Second*, NCRIC's Subject Premium for each Experience Period appears in Row 1 of NCRIC's reconciliation spreadsheet. *See supra*, p. 9; Line-numbered September 1, 2000 Reconciliation. *Third*, these two values for each Experience Period must be multiplied together to obtain the Maximum Premium for each Experience Period.

[11] The Maximum Premium employed by NCRIC for each Experience Period appears in Row 17 (entitled "Max. Premium") of NCRIC's reconciliation spreadsheets, *see* RFA Response Nos. 104-05, 108-09, 112-13, 116-17, 120-21, and the Maximum Premium factor employed by NCRIC appears in Row 19 (entitled "Max Factor") of NCRIC's reconciliation spreadsheet, *see* RFA Response Nos. 84-85, 88-89, 92-93, 96-97, 100-01.

168-001419

III. Calculate the Additional Premium or Return Premium due for each Experience Period by subtracting the Retro Premium (as limited by any applicable minimum or maximum) from the Deposit Premium for each Experience Period.

A. Calculate the proper Deposit Premium.

1. Obtain the proper Deposit Premium for some Experience Periods from the applicable reconciliation spreadsheet.

The Deposit Premium for each Experience Period is calculated by multiplying the Subject Premium for each Experience Period by the Deposit Premium factor for that Experience Period. *See* RFA Response Nos. 14-17, 24-27 (NCRIC's Deposit Premium calculations for the 1993-94 and 1994-95 Experience Periods). **However, because Columbia does not dispute NCRIC's Deposit Premium calculations for the 1993-94 and 1994-95 Experience Periods,[12] the Deposit Premium for those periods may be taken from the applicable reconciliation spreadsheet.**

The Deposit Premium appears in Row 2 (entitled "Deposit") of NCRIC's reconciliation spreadsheets. *See* RFA Response Nos. 14-26.

As of September 1, 2000, the correct Deposit Premiums for the 1993-94 and 1994-95 Experience Periods are:

1993-94 Experience Period	1994-95 Experience Period
$2,246,587	$2,311,491

See Line-numbered September 1, 2000 Reconciliation (1994-95 Experience Period); September 1, 1999 Reconciliation (1993-94 Experience Period).

16d-001420

[12] *But see supra*, n.6.

2. **Multiply the Subject Premium by the Deposit Premium factor for other Experience Periods to Determine Deposit Premium.**

a. **Obtain the Subject Premium for the 1995-96 Experience Period through the 1998-99 Experience Period from NCRIC's reconciliation spreadsheet.**

As of September 1, 2000, NCRIC lists the Subject Premium, *see supra*, p. II.A.2.b., **as:**

1995-96 Experience Period
$3,288,170

1996-97 Experience Period
$3,495,306

1997-98 Experience Period
$3,340,590

1998-99 Experience Period
$3,609,667

See Line-numbered September 1, 2000 Reconciliation.

b. **Obtain the Deposit Premium factor for the 1995-96 Experience Period through the 1998-99 Experience Period.**

NCRIC uses a Deposit Premium factor of about 62% for the 1995-96 through 1998-99 Experience Periods. *See* RFA Response Nos. 18-23, 28-36. **However, the proper Deposit Premium factor for those Experience Periods is 67%.** *See* Columbia SJ Mem. at 8, 14-15 (explaining proper Deposit premium factor); *see also* Addendum B, Exh. A at 6, ¶ 7 (definition of Deposit Premium listing multiplier known as the "Deposit Premium factor").

c. **Multiply the Subject Premium**, *see supra*, III.A.2.a, **by the Deposit Premium factor**, *see supra*, III.A.2.b, **to determine the Deposit Premium.**

1995-96 Experience Period
$3,288,170 x 67% = **$2,203,074**

1996-97 Experience Period
$3,495,306 x 67% = **$2,341,855**

1997-98 Experience Period
3,340,590 x 67% x = **$2,238,195**

1998-99 Experience Period
$3,609,667 x 67% = **$2,418,476**

16d-001421

B. Calculate the proper Additional Premium or Return Premium for each Experience Period.

1. Subtract the Retro Premium (as limited by the minimum) for each Experience Period from the Deposit Premium for that period.[13]

1993-94 Experience Period
$2,246,587 - $1,659,017 = **$587,570**

1994-95 Experience Period
$2,311,491 - $1,960,898 = **$350,593**

1995-96 Experience Period
$2,203,074 - $2,536,467= **($333,393)**

1996-97 Experience Period
$2,341,855 - $3,063,904 = **($722,049)**

1997-98 Experience Period
$2,238,195 - $2,004,354 = **$233,841**

1998-99 Experience Period
$2,418,476 - $2,802,426 = **($383,950)**

2. A positive balance for an Experience Period means that Return Premium is due for that period, whereas a negative balance means that Additional Premium is due for that period. [14]

* * *

Therefore, for the September 1, 2000 Reconciliation, the proper Additional Premium or Return Premium for each Experience Period was:

1993-94 Experience Period
Return Premium $587,570

1994-95 Experience Period
Return Premium $350,593

1995-96 Experience Period
Additional Premium $333,393

1996-97 Experience Period
Additional Premium $722,049

1997-98 Experience Period
Return Premium $233,841

1998-99 Experience Period
Additional Premium $383,950

[13] NCRIC subtracts the Deposit Premium from the Retro Premium. The difference in sign has no effect on the overall premium calculations.

[14] Because NCRIC subtracts backwards, *see supra*, n.13, on its reconciliation spreadsheets, the opposite is true: a negative balance means that Return Premium is due and a positive balance means that Additional Premium is due, *see* SMF ¶¶ 36, 37.

16-06-01422

IV. Calculate the total Additional Premium or Return Premium for all Experience Periods that are properly subject to Reconciliation.

A. Under the Plan as modified by the parties' oral agreement, calculate the Additional Premium and/or Return Premium is due *only* for "closed" Experience Periods. *See* NCRIC SMF ¶ 10; Columbia SJ Mem. at 9, 10-11.

1. Determine which Experience Periods are "closed."

Closed Experience Periods are those for which there are no outstanding claims – and therefore, no Loss Reserves. *See* Fargis Dep. at 648-49.

As of September 1, 2000, only the 1993-94 and 1994-95 Experience Periods had no Loss Reserves, and therefore, were closed. *See* Line-numbered September 1, 2000 Reconciliation (showing no Loss Reserves for 1994-95 Experience Period); September 1, 1999 Reconciliation (showing no Loss Reserves for 1993-94 Experience Period).

2. Obtain the total Additional Premium or Return Premium, *see supra*, III.B.2., **for each closed Experience Period**, *see supra*, IV.A.1. **Add these amounts to obtain the total Additional or Return Premium.**

1993-94 Experience Period		1994-95 Experience Period		**Total Return Premium**
$587,570	+	$350,593	=	**$938,163**

* * *

Therefore, as of September 1, 2000, the proper total Return Premium due under the parties' oral agreement was $ 938,163.

16d-001423

B. Absent the oral agreement, calculate the cumulative Additional Premium or Return Premium for all Experience Periods that are properly subject to Reconciliation.

1. Determine what Experience Periods are subject to Reconciliation.

As of September 1, 2000, all Experience Periods prior to the 1999-2000 Experience Period were properly subject to reconciliation. *See* Addendum B, Exh. A at 5, ¶ 5 (Reconciliation date for experience periods; 1998-99 Experience Period is first subject to reconciliation on September 1, 2000); Addendum B-1999, Exh. A.1., at 1 (1999-2000 Experience Period is first subject to reconciliation on September 1, 2001).

2. Obtain the sum of the Additional Premium and/or Return Premium, *see supra*, III.B.2, **for each Experience Period that is properly subject to Reconciliation,** *see supra*, IV.B.1, **to obtain the cumulative Additional Premium.**

1993-94 Experience Period		1994-95 Experience Period		1995-96 Experience Period
$587,570	+	$350,593	+	($333,393)
1996-97 Experience Period		**1997-98 Experience Period**		**1998-99 Experience Period**
($722,049)	+	$233,841	+	($383,950)

	Cumulative Additional Premium
=	**($ 267,388)**

* * *

Therefore, as of September 1, 2000, the proper cumulative Additional Premium, absent the oral agreement, was $ 267,388.

16d-001424

V. Apply a credit for Columbia's deposit and/or for NCRIC's payment, to obtain the current total premium due.

A. Under the oral agreement, credit NCRIC for the amount it already paid to Columbia.

NCRIC paid Columbia $172,815 for 1993-94 Experience Period. *See* NCRIC SMF ¶ 46; SMF ¶ 71. **This credit must be subtracted from the total Return Premium,** *see supra*, IV.A.2, **to determine the current total due.**

Return Premium		NCRIC Credit		Current Total Premium Due
$938,163	-	($172,815)	=	$765,348

* * *

Therefore, for the September 1, 2000 Reconciliation, under the parties oral agreement, the proper current total Return Premium is $765,348.[15] *Compare* Columbia SJ Mem. at 12.

B. Absent the oral agreement, both NCRIC's payment and Columbia's deposit must be credited.

NCRIC admits that Columbia's deposit must be credited towards any cumulative total due under the Retro Plan. *See* NCRIC SMF ¶ 68; *accord* Line-numbered September 1, 2000 Reconciliation (applying $1,000,000 credit to Columbia).

Additional Premium		Columbia Deposit		NCRIC Credit		Current Total Premium Due
($267,388)	+	$1,000,000	-	($172,815)	=	$559,797

* * *

Therefore, for the September 1, 2000 Reconciliation, absent the oral agreement, the proper current total Return Premium due is approximately $ 559,797.[16] *Compare* Revised September 1, 2000 Reconciliation; (showing amount due of $559,798, due to different rounding); Columbia SJ Mem. at 17.

---

[15] The amount does not include any interest that Columbia is owed for the $1 million deposit, about which there is a dispute of material fact. *See* Statement of Material Facts in Dispute ¶¶ 36, 68.

[16] *See supra*, n.15.

16d-001425

EXHIBIT 2

September 6, 2000
At 4th Qtr 2000 Plan Year

COLUMBIA HOSPITAL FOR WOMEN
RETRO-PROGRAM
Years : Sept 01,1993 - August 31,2000

		A Y 94-95	B Y 95-96	C Y96-97	D Y97-98	E Y98-99	F Cumulative 1994 - 1999
PREMIUM							
Subject (1st 500 Layer)	1	$ 2,844,913	$ 3,288,170	$ 3,495,306	$ 3,340,590	$ 3,609,667	$ 16,578,646
Deposit	2	$ 2,311,491	$ 2,045,242	$ 2,174,080	$ 2,077,847	$ 2,245,213	$ 10,853,873
Basic Premium Chg.	3	16.84%	16.84%	16.84%	16.84%	16.84%	
Basic	4	$ 479,083	$ 553,728	$ 588,609	$ 562,555	$ 607,868	$ 2,791,844
LOSSES							
Indemnity Reserves	5	$ -	$ 725,000	$ 1,070,000	*$ 800,000*	*$ 3,125,000*	$ 5,720,000
ALAE Reserves	6	$ -	*$ 460,000*	*$ 282,000*	*$ 240,000*	*$ 440,000*	$ 1,422,000
Total Reserves	7	$ -	$ 1,185,000	$ 1,352,000	$ 1,040,000	$ 3,565,000	$ 7,142,000
Indemnity Paid	8	$ 1,375,000	$ 600,000	$ 1,050,000	*$ 500,000*	$ 500,000	$ 4,025,000
Expense Paid	9	$ 341,454	$ 452,447	*$ 735,648*	*$ 148,723*	*$ 81,307*	$ 1,759,579
Total Paid	10	$ 1,716,454	$ 1,052,447	$ 1,785,648	$ 648,723	$ 581,307	$ 5,784,579
Total Losses	11	$ 1,716,454	$ 2,237,447	$ 3,137,648	$ 1,688,723	$ 4,146,307	$ 12,926,579
Development Factor	12	105.00%	105.00%	105.00%	80%	65%	
		capped at MIN			*capped at MIN*		
Retro Premium	13	$ 1,960,898	$ 2,536,466	$ 3,355,700	$ 1,840,863	$ 3,110,192	$ 13,140,397
(Refund)/Due	14	$ (177,806)	$ 491,225	$ 1,181,620	$ (73,493)	$ 864,979	$ 2,286,525
Columbia Payment	15						*$ (1,000,000)*
Net (Refund)/Due	16						*$ 1,286,525*
Max. Premium	17	$ 3,271,650	$ 4,373,266	$ 4,648,756	$ 4,442,984	$ 4,800,858	$ 21,537,514
Min. Premium	18	$ 2,133,685	$ 1,972,902	$ 2,097,183	$ 2,004,354	$ 2,165,800	$ 10,373,924
Max. Factor	19	1.15	1.33	1.33	1.33	1.33	
Min. Factor	20	0.75	0.60	0.60	0.60	0.60	

16d-001427

EXHIBIT 3

Statements in Columbia's SMF[1]

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
1	Columbia is a non-profit hospital specializing in care for women.	Fact	None
2	NCRIC provides malpractice liability insurance to physicians in, among other jurisdictions, the District of Columbia.	Fact	None
3	On or about October 23, 1993, Columbia and NCRIC entered into the Retrospective Rating Plan Agreement ("Retro Plan" or "Plan").	Mixed fact and law	None
4	The Plan was drafted by representatives of NCRIC, including David Little and/or David Bickerstaff.	Fact	None
5	The Plan was to be effective for three years, from September 1, 1993 to September 1, 1996.	Terms of Plan	NCRIC SMF ¶ 4 (admitted).[2]
6	The parties agreed to two, related amendments of the Plan in January 1996.	Mixed fact and law	NCRIC SMF ¶¶ 17-18 (admitted).
6	Amendment A was drafted by Mr. Fargis.	Fact	None
7	The Plan initially expired on September 1, 1996.	Mixed fact and law	None
7	Soon thereafter, on November 7, November 20, and December 18, 1996, NCRIC representatives Steve Fargis and William Burgess met with Columbia's Board of Directors, and the Finance Committee of the Board.	Fact	NCRIC SMF ¶ 22 (admitted).
7	Based on NCRIC's representations at that meeting about the cost of the Plan, Columbia agreed to renew the Plan, effective January 1, 1997, for one year	Mixed fact and law	None

[1]All statements are quotations from Defendant's Statement of Material Facts Not in Dispute ("Columbia's SMF" or "SMF") (including errata pages). All citations are omitted.

[2] NCRIC's Statement of Material Facts ("NCRIC SMF").

16d-001429

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
7	The parties engaged in extensive negotiations concerning new terms for the Plan, but did not agree on the terms of the amendment.	Fact	None
8	NCRIC admits that the Retro Plan subsequently was renewed by three separate addenda.	Fact	NCRIC SMF ¶¶ 21, 45, 50 (admitted).
8	First, on or about January 26, 1998, representatives of NCRIC and Columbia signed an addendum with an effective date of September 1, 1996.	Mixed fact and law	NCRIC SMF ¶ 21 (admitted).
8	Second, on or about December 3, 1998, representatives of NCRIC and Columbia signed an addendum with an effective date of September 1, 1998.	Mixed fact and law	NCRIC SMF ¶ 45 (admitted).
8	Third, on or about August 23, 1999, representatives of NCRIC and Columbia signed an addendum with an effective date of September 1, 1999.	Mixed fact and law	NCRIC SMF ¶ 50 (admitted).
8	NCRIC drafted each of these amendments.	Fact	None
9	On June 28, 2000, NCRIC informed Columbia that the Retro Plan was "terminated" effective September 1, 2000.	Fact	NCRIC SMF ¶ 55 (admitted).
9	NCRIC's notice of "termination" failed to provide Columbia with "(90) days' written notice prior to the end of any Experience Period," as required by the Plan.	Mixed fact and law	None
9	Yet, even if the Plan was discontinued, it "remain[s] in full force and effect until . . . [all] Experience Period[s] . . . are finally closed."	Terms of Plan	None
10	Columbia and NCRIC entered into the Plan in order to share the risk of sponsoring a discount on NCRIC medical malpractice liability insurance for a group of physicians practicing at Columbia, known as "Attending Faculty."	Fact	None
10	Under the Plan, each Attending Faculty member was to receive a Retrospective Rating Plan Endorsement from NCRIC, which entitled the holder to a substantial discount off the premium for $500,000 of malpractice coverage by NCRIC.	Terms of plan	None

16d-001430

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
11	When the parties entered into the Retro Plan, the premium discount ("Attending Faculty discount") was 19% off the cost of $500,000 in malpractice coverage.	Mixed fact and law	NCRIC SMF ¶ 5 (admitted).
11	The discount to physicians remained at that level through December 31, 1995.	Mixed fact and law	None
12	The Attending Faculty discount increased to 33% effective September 1, 1995.	Mixed fact and law	None
13	This increase in the Attending Faculty discount was not retroactive.	Undisputed background law	None
13	That is, the discount did not cause NCRIC to refund premium to Attending Faculty.	Fact	None
14	Nor did the increase in the Attending Faculty discount, to 33%, actually occur on September 1, 1995.	Mixed fact and law	None
14	In fact, the discount changed on January 1, 1996.	Mixed fact and law	NCRIC SMF ¶ 20 (admitted).
14	As such, a higher discount – 38% – was used temporarily, to give effect to the 33% discount over the course of the September 1, 1995 to September 1, 1996 year.	Terms of Plan	None
14	Using a 38% discount for three quarters after employing a 19% discount for one quarter resulted in a 33% discount for the year [*i.e.*, (¼ * 19%) + (¾ * 38%) = approximately 33%)].	By calculation	None
15	The Plan was originally comprised of three one-year periods, called Experience Periods.	Terms of Plan	None
15	The first Experience Period ran from September 1, 1993 to September 1, 1994; the second Experience Period ran from September 1, 1994 to September 1, 1995; the third Experience Period ran from September 1, 1995 to September 1, 1996.	Terms of Plan	None
16	Subsequent amendments, NCRIC admits, added the fourth and fifth Experience Periods, from September 1, 1996 to September 1, 1998; the sixth Experience Period, from on September 1, 1998 to September 1, 1999; and the seventh Experience Period from September 1, 1999 to September 1, 2000.	Terms of Plan	None
16	No additional Experience Periods have been added since then.	Mixed fact and law	None

16d-001431

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
17	The Retro Plan calls for NCRIC to perform retrospective calculations, or Reconciliations, each year, starting with September 1, 1996.	Terms of Plan	NCRIC SMF ¶ 7 (admitted).
18	Individual Experience Periods are reconciled separately to determine whether, for that such Period, Columbia owes NCRIC money or vice versa.	Terms of Plan	None
18	Then, the amount for each Experience Period is added up to obtain a cumulative total.	Terms of Plan	None
19	Typically, after each Reconciliation, NCRIC provides Columbia with a spreadsheet listing all the individual Experience Periods, with a cumulative total at the right side.	Fact	None
19	NCRIC is required to provide this spreadsheet, or similar notice, within 60 days of the end of each Experience Period – after which time Columbia has 30 days to pay any premium due.	Terms of Plan	NCRIC SJ Opp. at 9, 10 (admitted).
19	Further, Reconciliations are performed anew, *every year* for every Experience Period.	Terms of Plan	None
19	This repeated recalculation continues to occur until all claims for each Period are closed.	Terms of Plan	None
20	**Subject Premium** is "the total of the undiscounted premiums that would be charged to physician[s] for coverage limits of $500,000 each claim . . . if the physician[s] were not Plan Participants."	Terms of Plan	None
21	All premiums under the Retro Plan are calculated by applying multipliers to the Subject Premium.	Terms of Plan	None
21	As such, it is an extremely important number to be able to evaluate.	Fact	None
21	However, the process by which NCRIC calculates the Subject Premium is opaque, since the Plan only provides a range, not an exact formula.	Logic	None
21	Further, the Plan puts the actual determination of the amount of Subject Premium in the hands of NCRIC's consulting actuary.	Terms of Plan	None
21	Columbia has not, to date, received from NCRIC the data necessary to perform a full audit [of] the Subject Premium number.	Terms of Plan	None

16d-001432

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
21	(Yet, even without performing even a detailed audit, Columbia has identified several errors in NCRIC's past Subject Premium calculations.)	Fact	None
21	Accordingly, Columbia assumes for the purposes of its motion, but does not concede, that NCRIC's Subject Premium numbers are correct.	Fact	None
22	The **Reconciliation Date** is September 1 of each year.	Terms of Plan	None
22	NCRIC must complete its Reconciliation and notify Columbia of the details concerning the amount it owes, in writing, "[w]ithin (60) days" of each Reconciliation Date.	Terms of Plan	None
22	Columbia could not have been expected to make the complicated calculations necessary to determine what was owed at each Reconciliation, particularly since it did not have access to much of the information necessary to make the calculations (*e.g.*, information about Loss Reserves).	Logic	None
22	As such, NCRIC's notice is no mere formality. Indeed, the language of the Plan makes notice a condition precedent to Columbia's being liable for any amount due under the Plan.	Undisputed background law	None
23	In the original Plan, the first Reconciliation of each Experience Period was *two* years after the Period ended.	Terms of Plan	None
23	Since the Plan was (allegedly) amended effective September 1, 1996, Experience Periods are now reconciled for the first time just *one* year after they end.	Terms of Plan	None
24	**Deposit Premium** is "the Subject Premium multiplied [by] sixty-seven (67%)." [alteration in SMF]	Mixed fact and law	NCRIC SJ Opp. at 16 (denied).[3]
24	The current Deposit Premium was first documented in the Addendum, which was signed in January 1998 and retroactive to September 1, 1996 – yet, the actual *effective* date for the current Deposit Premium is September 1, *1995*.	Terms of Plan	None

16d-001433

[3] Opposition of Plaintiff NCRIC, Inc. to Defendant Columbia's Motion for Summary Judgment ("NCRIC SJ Opp.").

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
24	As set forth in the Addendum, the 67% Deposit Premium was to be effective for the "three-year term of the Plan" – that is, for the most recent three Experience Periods only.	Terms of Plan	None
24	This restriction was consistent with the explicit limitation on an earlier, temporary amendment to the Deposit Premium which "[did] not adjust the Agreement prior to [its effective] date" (January 1, 1996).	Mixed fact and law	None
24	Further, the restriction on the new Deposit Premium precisely matched the restriction on the Deposit Premium's mirror term, Attending Faculty discount.	Terms of Plan	None
24	In short, the Addendum modified the Deposit Premium so that – as NCRIC concedes – the 67% number *does not* apply to the 1993-94 and 1994-95 Experience Periods, in any Reconciliation.	Undisputed background law	None
25	Originally, the Plan defined Deposit Premium as "the Subject Premium multiplied by *eighty-one percent (81%).*"	Terms of Plan	None
25	By making Deposit Premium (1) the inverse of the Attending Faculty discount (which is the Subject Premium less a 19% discount and (2) a set-off against the Retrospective Premium (which is the actual cost of providing the insurance, the Plan carefully defined the role of Deposit Premium: it is the total amount on "deposit" with NCRIC as a result of the Attending Faculty premium payments for $500,000 each in medical malpractice coverage.	Terms of Plan	None
25	In short, Deposit Premium is a credit to Columbia for the Attending Faculty's premium.	Mixed fact and law	None
26	In order to retain its function as the Attending Faculty's "deposit," the Deposit Premium multiplier must remain the *inverse* of the Attending Faculty discount.	Fact	None
26	If the Attending Faculty discount changes, the Deposit Premium must change.	Fact	None
26	In fact, throughout the life of the Plan, the terms have moved together: originally, they were 81% and 19%; then, briefly, they were 62% and 38%; finally, they are 67% and 33%.	Terms of Plan	None
26	(This connection is well-known to NCRIC, and particularly, Steve Fargis.)	Fact	None

16d-001434

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
27	Similarly, when the 67% Deposit Premium was amended effective September 1, 1995, the change occurred in exactly the same way as the change to the 33% Attending Faculty discount occurred.	Mixed fact and law	None
27	First, the Deposit Premium actually changed on January 1, 1996.	Mixed fact and law	NCRIC SMF ¶ 20 (admitted).
27	Second, a temporary Deposit Premium multiplier – here, 62% – was used to give effect to the new 67% Deposit Premium multiplier over the course of the full 1995-96 year.	Terms of Plan	NCRIC SJ Opp. at 16-17 (denied).
27	Third, the result was, effectively, a change on September 1, 1995 – because nine months of a 62% Deposit Premium, after three months of an 81% Deposit Premium, is the same as a 67% discount of over 12 months [*i.e.*, (¼ * 81%) + (¾ * 62%) = approximately 67%)].	Mixed fact and law	None
27	In sum, the change in the Deposit Premium to 62% occurred, on its face, simply to effectuate the new 67% Deposit Premium part-way through a Plan year.	Fact	NCRIC SJ Opp. at 16 (denied).
28	Although the Plan does not make the connection between Deposit Premium and Attending Faculty discount explicit, the logic of the Plan makes the connection implicit.	Logic	None
28	Indeed, NCRIC concedes that the connection exists by employing, in current Reconciliations, the 81% Deposit Premium for the Experience Periods where the Attending Faculty discount was 19%.	Mixed fact and law	None
28	Indeed, NCRIC admits that 81% is the correct multiplier to apply for those years.	Mixed fact and law	None
28	As such, there is no doubt: the new Deposit Premium applies *only* to the last five Experience Periods.	Undisputed background law	None
29	In addition, there is no doubt that Deposit Premium factor stated in the Plan is 67%, not 62%.	Terms of Plan	NCRIC SJ Opp. at 17 n.5 (admitted).
29	NCRIC's 30(b)(6) designee, Stephen Fargis, has repeatedly affirmed this.	Fact	None
29	Since NCRIC drafted of the language changing the Deposit Premium – not once but *twice* – and also reviewed it, it *knew* that the Plan said 67%, not 62% from the outset.	Fact	None

16d-001435

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
30	Finally, the Plan's language places no limitations on the applicability of the Deposit Premium to any particular Experience Period.	Terms of Plan	None
30	Yet, the term's role as the inverse of the Attending Faculty discount reflects the parties' intent to limit its applicability, as set forth above.	Mixed fact and law	None
31	**Retrospective Premium** ("**Retro Premium**") represents, for each Experience Period, the total cost of providing $500,000 in malpractice insurance coverage to all the Attending Faculty.	Mixed fact and law	None
31	As such, the Retro Premium is subtracted from the Deposit Premium to determine how much is owed (and by whom) for each year.	Terms of Plan	None
31	Each year, the Retro Premium for each Experience Period is recalculated as of each Reconciliation Date, by applying the **Retrospective Rating Premium Formula** ("**Retro Formula**"): "Retrospective Premium (Subject to established Minimum and Maximum Premium) = {[[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor} + Basic Premium."	Terms of Plan	None
32	**Minimum Premium** is the minimum Retro Premium for a[n] Experience Period, currently, "sixty percent (60%) of the Subject Premium."	Terms of Plan	NCRIC SMF ¶ 16 (admitted).
32	The language of the Plan places no limitations whatsoever on the application of the Minimum Premium to any particular Experience Period(s).	Terms of Plan	None
32	Unlike with the Deposit Premium, there is no logical basis for imposing any implicit limitations on the application of the Minimum Premium to certain Experience Periods.	Logic	NCRIC SJ Opp. at 10 (denied).
33	**Maximum Premium** is the maximum Retro Premium for a particular Experience Period, currently "one hundred and thirty-three percent (133%) of the Subject Premium."	Terms of Plan	NCRIC SMF ¶ 16 (admitted).
33	As with the similar Minimum Premium, the Plan's definition does not limit the applicability of the Maximum Premium to any particular Experience Period(s).	Terms of Plan	None
34	In the original Plan, the Minimum Premium was 75% of the Subject Premium.	Terms of Plan	None

16d-001436

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
34	The Minimum Premium was first changed in January 1998, effective September 1, 1996.	Mixed fact and law	None
34	(In the original Plan, the Maximum Premium was 115% of the Subject Premium; it changed to 133% effective September 1, 1996.)	Terms of Plan	None
35	An obvious typographical error in the first amended definition of Minimum Premium was corrected by the second amendment.	Fact	None
35	(A similar error in the amended definition of Maximum Premium was similarly repaired.)	Fact	None
35	NCRIC caught its prior error, and corrected it, while reviewing the first amendment and drafting the second.	Fact	None
36	**Additional Premium** is indicated by a positive balance (*i.e.*, in NCRIC's favor), either for an individual Experience Period or cumulative for the entire Plan, in a Reconciliation spreadsheet.	Fact	None
36	Additional Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is *greater* than the Deposit Premium.	Fact	NCRIC SMF ¶ 15 (admitted).
37	**Return Premium** is indicated by a negative balance (*i.e.*, in Columbia's favor), either for an individual Experience Period or cumulative for the entire Plan, in a Reconciliation spreadsheet.	Fact	None
37	Return Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is *less* than the Deposit Premium.	Fact	NCRIC SMF ¶ 15 (admitted).
38	**Experience Period**: each year of the Plan is a separate Experience Period.	Terms of Plan	None
39	For each Experience Period, the total Retro Premium and Deposit Premium are both recalculated, *every* year, until all claims for that year are closed.	Terms of Plan	None
40	**Loss Reserves** are "allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid."	Terms of Plan	None

16d-001437

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
40	The reserves (which become **Paid Losses** if paid) fall into two categories, indemnity payments for medical malpractice claims against the Attending Faculty and exp[e]nses for defending those claims.	Terms of Plan	NCRIC SMF ¶ 9 (admitted).
40	In its Reconciliation spreadsheets, NCRIC lists Indemnity Reserves and Expense Reserves ("ALAE Reserves") separately.	Fact	None
40	The two categories are tallied to obtain the total Loss Reserves.	Fact	None
41	**Development Factors** are "the factors by which Loss Reserves are multiplied for purposes" of calculating the Retro Premium.	Terms of Plan	None
41	The Development Factors are a schedule of multipliers that increase as Experience Periods progress, and as a claim matures, to "develop" []NCRIC's Loss Reserves as its level of certainty about the accuracy of the Loss Reserves increases.	Terms of Plan	None
41	Because of the Development Factors, Columbia was responsible (under the Plan as originally drafted) only for developed losses, not for all of NCRIC's Loss Reserves.	Mixed fact and law	None
41	The effect of Development Factors is that, even in the (unlikely) event that the total Loss Reserves for a particular Experience Period remain exactly the same over the course of several Reconciliations, the "developed" losses captured by the Plan will steadily increase.	Mixed fact and law	None
42	Over time, the Plan has been amended to change the value of – but *not* the procedure for applying – the Development Factors.	Mixed fact and law	None
42	Originally, the Development Factors were: Year 1 Reconciliation - 88.5% Year 2 Reconciliation - 87.5% Year 3 Reconciliation - 90.5% Year 4 Reconciliation - 96.0% Year 5 Reconciliation - 100.0% All Subsequent Reconciliations - 100.0%	Terms of Plan	None

16d-001438

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
43	Effective September 1, 1996, the Development Factors were lowered: Year 1 Reconciliation - 55.0% Year 2 Reconciliation - 65.0% Year 3 Reconciliation - 80.0% Year 4 Reconciliation - 105.0% Year 5 Reconciliation - 105.0% All Subsequent Reconciliations - 100.0%	Terms of Plan	None
43	This change in the *amounts* did not effect any substantive change in the *manner* in which the Development Factors were applied.	Mixed fact and law	None
44	In 1999, the parties added interim Development Factors: Months / Factor 12 / 0.55 (unchanged) 15 / 0.58 18 / 0.60 21 / 0.63 24 / 0.65 (unchanged) 27 / 0.69 30 / 0.73 33 / 0.76 36 / 0.81 (unchanged) 39 / 0.86 42 / 0.93 45 / 0.99 48+ / 1.05 (unchanged)	Terms of Plan	None
44	These interim Development Factors were solely for informational purposes, to be used in NCRIC's quarterly updates.	Terms of Plan	None
44	(In 1998, NCRIC start[ed] producing quarterly reports on a regular basis, as required by the Plan.	Fact	None

16d-001439

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
44	The interim factors were merely an informational tool, use[d] to smooth out the quarterly reconciliation updates.)	Fact	None
44	Introduction of the interim factors was not intended to change, and did not in fact change, the manner in which the Development Factors were applied.	Mixed fact and law	None
45	Exhibit E to the Retro Plan is explicitly an "Example of Operation of the Plan."	Terms of Plan	None
45	It also is expressly incorporated into the Plan to be used "for clarification" of concepts like Development Factors.	Terms of Plan	None
46	By showing several cumulative Reconciliations, Exhibit E helps explain how they work over time.	Terms of Plan	None
46	In particular, Exhibit E indicates that Development Factors are to be applied the relevant number of months *after* the end of an Experience Period, not that number of months *before* the end of an Experience Period.	Terms of Plan	None
46	For example, on Exhibit E, the *first* Development Factor – the "Year 1 Reconciliation," or 88.5% Development Factor – is *always* applied to an Experience Period the first time it is reconciled.	Terms of Plan	None
46	To apply the current Development Factors in this way, the 12-month Factor (55%), not the 24-month Factor (65%), would be applied to an Experience Period the first time it is reconciled.	Mixed fact and law	None
46	Indeed, NCRIC admits that the 55% Factor was meant to replace the 88.5% Factor.	Fact	None
47	Of course, Exhibit E, being older, is in a different format, and differs substantively from the NCRIC spreadsheets in some respects.	Fact	None
47	(*I.e.*, Exhibit E, which is part of the original Plan, was drafted to include Experience Periods two years after they were complete, like the original Plan.	Mixed fact and law	None
47	Moreover, Exhibit E is, as an example, based on a 1/1 Reconciliation Date rather than a 9/1 Reconciliation Date.	Terms of Plan	None

16d-001440

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
47	Further, its format is something different than the NCRIC spreadsheets, in that the years move in the opposite direction.)	Fact	None
47	Nonetheless, Exhibit E provides clear guidance that Development Factors are to be applied the relevant number of months *after* the end of an Experience Period, not that number of months *before* the end of a Period.	Terms of Plan	None
48	NCRIC did not comport with Exhibit E in performing any of its recent Reconciliations.	Mixed fact and law	None
49	There is no dispute that the Development Factors apply to all Experience Periods.	Undisputed background law	None
50	In performing Reconciliations, NCRIC uses a Deposit Premium multiplier of 62% for Experience Periods from 1995-96 to the present.	Fact	None
51	NCRIC does not use 67% as the Deposit Premium multiplier for *any* Experience Period, for any Reconciliation.	Fact	None
52	NCRIC applies the 60% Minimum Premium multiplier only for Experience Periods beginning after September 1, 1995.	Fact	None
52	For the first two Experience Periods (one of which it treats as closed) NCRIC uses the old 75% Minimum Premium multiplier.	Fact	None
53	NCRIC did not use the 60% Minimum Premium factor to calculate the $172,815 in Return Premium that it sent to Columbia on November 30, 1998.	Fact	None
53	Rather, it used a 75% factor.	Fact	None
54	NCRIC applies each Development Factor the relevant number of months after an Experience Period *begins*, not the relevant number of months after an Experience Period *ends*.	Fact	None
55	NCRIC did not provide Columbia with the September 1, 2001 Reconciliation.	Fact	NCRIC SJ Opp. at 10 (denied).

16d-001441

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
56	A spreadsheet that NCRIC sent to Columbia on September 5, 2001, which purported to be the September 1, 2001 Reconciliation of the Plan, was not, in fact, the September 1, 2001 Reconciliation.	Fact	None
56	According to NCRIC (through its Rule 30(b)(6) representative Steve Fargis), the September 5 spreadsheet may have contained "certain assumptions to try to reach settlement," and therefore, it could not be counted on to reflect a proper Reconciliation.	Fact	None
56	Indeed, if the spreadsheet were the Reconciliation, it would have included a "letter requesting payment of an amount" – which it did not.	Fact	None
57	Columbia never received from NCRIC any other spreadsheet purporting to be a September 1, 2001 Reconciliation spreadsheet, with or without a letter requesting a payment of an amount.	Fact	None
57	Further, despite attempts to obtain the September 1, 2001 Reconciliation from NCRIC since the issue recently came to light, Columbia has not been able to obtain a September 1, 2001 Reconciliation.	Fact	None
57	Accordingly, Columbia cannot determine the amount of Additional Premium, if any, that was due as of September 1, 2001.	Fact	None
58	NCRIC representatives, including Steve Fargis and Bill Burgess, presented NCRIC's Reconciliation of the first Experience Period of the Retro Plan at meetings with Columbia's Board of Directors and Finance Committee on or about November 20, 1996.	Fact	None
58	At the meetings, NCRIC explained that it currently owed Columbia approximately $159,000 in Return Premium for the first Experience Period.	Fact	NCRIC SMF ¶ 23 (admitted).
59	In an effort to avoid paying the Return Premium that it owed to Columbia, NCRIC proposed the following modification of the Plan: neither party would pay Additional Premium or Return Premium for any Experience Period (regardless of whether, for that Experience Period, the Reconciliation indicated that Additional or Return Premium was due) until *all* claims for that Experience Period were closed.	Fact	NCRIC SJ Opp. at 6-7 (admitted).

16d-001442

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
60	Further, NCRIC's representatives, including Mr. Fargis, proposed that once all claims for an Experience Period were closed (*i.e.*, once the Experience Period was "closed"), the Additional Premium or Return Premium for that Experience Period – and only that Period – would be paid.	Fact	NCRIC SJ Opp. at 6-7 (admitted).
61	Importantly, as part of this proposal, NCRIC's representatives, including Mr. Fargis, indicated to Columbia that the parties' oral agreement would continue to operate until all Experience Periods were closed, regardless of whether the Plan remained in effect.	Fact	NCRIC SJ Opp. at 7-8 (denied).
61	At no point did any NCRIC representative suggest that, under any circumstances, the parties might exchange money for a year of the Plan before all claims for that year closed.	Fact	NCRIC SJ Opp. at 7-8 (denied).
62	Columbia accepted NCRIC's proposed oral modification of the Retro Plan.	Mixed fact and law	NCRIC SJ Opp. at 6-7 (admitted); NCRIC SMF ¶¶ 10, 26 (admitted).
63	In consideration for the benefit it received under the parties' oral agreement, each party gave up the right to demand payment of Additional Premium or Return Premium for any Experience Period until that Period was closed.	Undisputed background law	None
63	In particular, Columbia did not demand, and NCRIC did not pay, the Return Premium that NCRIC otherwise would have owed under the Plan, effective September 1, 1996.	Fact	NCRIC SMF ¶ 26 (admitted).
64	In the Fall of 1997, NCRIC provided Columbia with a Reconciliation effective September 1, 1997.	Fact	None
64	That Reconciliation indicated that approximately $1.77 million in cumulative Additional Premium.	Fact	None
65	None of the Plan's Experience Periods were closed at this time.	Mixed fact and law	None
65	Accordingly, due to the parties' oral agreement to pay premium only for closed years, Columbia did not owe NCRIC any Additional Premium at this time.	Mixed fact and law	NCRIC SJ Opp. at 7 (denied).

16d-001443

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
66	Regardless, NCRIC demanded that, as a condition for adding an additional (1998-99) Experience Period to the Plan, Columbia must pay $1 million as "financial security" for "future liabilit[ies]" under the Plan.	Fact	None
66	This security would remain on deposit with NCRIC, even if Columbia was owed Return Premium by NCRIC under the parties' oral agreement.	Fact	None
66	NCRIC also repeatedly characterized the payment as a deposit in its dealings with Columbia.	Fact	None
67	Columbia paid the $1 million in installments of $250,000 each, between January and March 1998.	Fact	None
67	As NCRIC admits, the $1 million deposit constituted a one-time exception to the parties' oral agreement.	Mixed fact and law	None
68	Subsequently, the parties amended the Plan to reflect that Columbia would, henceforth, provide for its contingent liabilities under the Plan by providing security to NCRIC.	Terms of Plan	None
68	To date, NCRIC has not demanded additional financial security	Fact	None
69	NCRIC presented Columbia with the September 1, 1998 Reconciliation on or about October 23, 1998.	Fact	None
70	In light of Columbia's $1 million payment, the September 1, 1998 Reconciliation showed a balance of $670,000 in cumulative Return Premium.	Fact	None
70	Due to the parties' oral agreement, NCRIC did not pay this amount to Columbia.	Mixed fact and law	None
70	Indeed, NCRIC continued to hold Columbia's $1 million on deposit instead of paying Return Premium.	Fact	None
71	However, the 1993-94 Experience Period had recently closed.	Mixed fact and law	NCRIC SJ Opp. at 7 (admitted).
71	Further, NCRIC's Reconciliation showed a balance $172,815 in Return Premium due for this Experience Period.	Fact	NCRIC SJ Opp. at 7 (admitted).

16d-001444

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
71	Under the parties' oral agreement, this meant NCRIC owed Columbia money.	Mixed fact and law	NCRIC SJ Opp. at 7 (admitted).
72	Sure enough, on about November 30, 1998, NCRIC paid Columbia $172,815 in Return Premium for the 1993-94 Experience Period.	Fact	NCRIC SJ Opp. at 7 (admitted).
73	NCRIC presented Columbia with the September 1, 1999 Reconciliation on or about October 11, 1999.	Fact	None
73	This Reconciliation indicated an amount of $903,814 in Additional Premium due from Columbia ($1,903,814 less Columbia's $1 million deposit), albeit including all of the years (the latest of which was not permitted to be reconciled at that time).	Mixed fact and law	None
74	However, no additional Experience Periods had closed since the 1993-94 period.	Mixed fact and law	None
74	Accordingly, pursuant to the terms of the parties' oral agreement, NCRIC did not demand any money from Columbia at this time.	Mixed fact and law	None
75	NCRIC presented Columbia with the September 1, 2000 Reconciliation on or about September 1, 2000.	Fact	NCRIC SJ Opp. at 10 (admitted); NCRIC SMF ¶ 57 (admitted).
75	This Reconciliation indicated a cumulative amount of $1,286,525.00 in Additional Premium due.	Fact	None
76	As of the September 1, 2000 Experience Period, one additional Experience Period – 1994-95 – was deemed closed by NCRIC.	Fact	None
76	As NCRIC admits, this Experience Period showed a balance of Return Premium due in the amount of $177,806.	Fact	None
76	NCRIC did not pay this amount to Columbia.	Fact	None
77	Since there were no closed Experience Periods for which Additional Premium was due, Columbia owed NCRIC no money under the parties' oral agreement.	Mixed fact and law	NCRIC SJ Opp. at 7-8 (denied).

16d-001445

SMF ¶	Statement in Columbia's SMF	Statement Type	NCRIC Response?
77	Rather, NCRIC owed Columbia Return Premium, because the second (1994-95) Experience Period had recently closed, and Return Premium was due for that Period.	Mixed fact and law	NCRIC SJ Opp. at 7-8 (denied).
78	On October 1, 2000, NCRIC presented Columbia with a bill for $1,285,525.00.	Fact	None
79	Subsequent to the October 1, 2000 bill, NCRIC has provided Columbia with several quarterly reconciliation updates.	Fact	NCRIC SMF ¶ 58 (admitted).
79	The most recent update, dated January 8, 2002, is the quarterly update effective November 30, 2001.	Fact	None
79	This update indicates that the current amount of cumulative Additional Premium due is $2,144,978.	Fact	NCRIC SMF ¶ 68 (admitted).
79	However, there is no way to tell from this spreadsheet what the amount due was, as of September 1, 2001.	Fact	None
79	Since that time, the Loss Reserves could have increased; NCRIC undoubtedly has incurred more Paid Losses, if just for ALAE Expenses – and the Development Factors have changed due to the passage of time.	Fact	None
79	Columbia therefore cannot discern what it owes from this spreadsheet.	Fact	None
80	Columbia does not, however, owe any more money under the parties['] oral agreement.	Mixed fact and law	NCRIC SJ Opp. at 7-8 (denied).
80	As the most recent spreadsheet shows, no additional Experience Periods have closed since the September 1, 2000 Reconciliation.	Mixed fact and law	None

16d-001446

EXHIBIT 4

Page 150

that means there is more money at NCRIC credited towards losses. Is that correct?
A. That means this plan shows that there is more money. However, I believe your question asked if you raise that factor but kept the credit at 30 percent, which you couldn't do. That is illogical.
Q. This would simply mean that NCRIC -- strike that.
When you say it is illogical, you mean it is not neutral with regard to the amount of money that NCRIC has. NCRIC would have to give up more cash. Correct?
A. What NCRIC would be doing is crediting premium that isn't there. It would be putting in saying there is more premium, because we would not have actually received that premium because it has given that credit away to the physicians. It is giving 30 cents on the dollar off but yet it is saying only 19 cents on a dollar is given up or 15 cents on the dollar.

Page 151

Q. So, in effect, NCRIC would be providing the discount to the doctors and not Columbia?
A. Correct.
Q. And in 1996, or late 1995 when this agreement or the discussions with regard to the agreement of reducing -- excuse me, increasing the premium discount from 15 to 30 percent occurred, NCRIC, to your recollection, was not willing to provide the discount to the physicians, it wanted Columbia to provide the discounts to the physicians. Is that correct?
A. You will have to restate that. That was lengthy.
Q. Let me rephrase it. By reducing the subject premium from 81 percent to 62 percent -- I am sorry, the deposit premium, reducing that from 81 to 62 percent in order to increase the discount from 15 to 30 percent for the physicians, Columbia was providing the discount in its entirety to the physicians.

Page 152

Is that correct?
A. No, that is not -- that is not how I would phrase it. That is not correct.
Q. With regard to the amount of deposit premium -- strike that. Would it be a fair characterization to say by reducing the deposit premium from 81 percent to 62 percent it neutralized the increase in premium discount to the physicians such that it did not increase NCRIC's financial stake in the discount to the physicians?
A. No, that is not a correct way.
Q. What was NCRIC's additional financial stake in the discount to the physicians as a result of the change in the reduction of premium discount as long as a corresponding change was made in the discount premium?
A. Again, restating, in a retrospective rating plan, normally you receive all of your premium up front. So whether the discount was 1, 2, 10 or 30 percent, in a retro plan, we

Page 153

are not receiving that money that we would otherwise have received because we have given that credit up front.
Q. So that is cash flow effect. Is that correct?
A. That is right.
Q. It is true, though, isn't it, that that effect was necessitated because of the fact there were three parties in this retro plan, the discount was not provided to the same party that was guaranteeing the risk, the discount was provided to the physicians and Columbia Hospital was providing the risk?
MR. NIEDERMAYER: Objection. Argumentative.
MR. LEAHY: You can answer.
THE WITNESS: The discount was provided to the physicians. Columbia was at risk to make up additional premium dollars if losses went beyond or increased above what it calculated as retrospective plan premium due or refund.

Page 182

Q. I am sorry?
A. There is a current list.
Q. What person at NCRIC keeps the list up-to-date?
A. No one person keeps the list up-to-date. It is in the system. We keep a list on the system. Grant Sohm maintains a list but he is not the keeper.
Q. He doesn't enter the data into the computer, you are saying?
A. The underwriters would renew files every year. We can go back by pulling out a list of who is in the plan.
Q. When, in the past, during the period of the plan, when someone at Columbia sent to NCRIC additional members who have been added to the attending faculty in the retro plan, who then adjusted this list?
A. I guess it would depend on the underwriter. Likely it could have been Grant. I don't know who it was prior to me.
Q. But it would have been an

Page 183

underwriter, even if it wasn't at the time of the renewal but rather in the middle of a cycle?
A. Yes.
Q. Referring you back to Exhibit 4, this letter, the 19th of December, 1995, were there any negotiations between NCRIC and Columbia with regard to any of these terms listed in the letter?
A. No.
Q. Did NCRIC simply inform Columbia what the terms of the change would be?
A. Yes.
Q. Who at NCRIC made that determination? Was that Dave Little?
A. Dave made these terms, Dave made the terms with regards to this letter.
Q. After this letter you said there were further conversations. Were there negotiations of the terms of the agreement that were going to occur after the December 19th letter?

Page 184

A. There weren't negotiations. They were accommodations that we made for the hospital that were to benefit the hospital and the plan.
Q. Did some representative of Columbia request that those accommodations be made?
A. No.
Q. Who came up with the accommodations?
A. Ray and I discussed those accommodations that might be fair for the hospital and more accommodating for the hospital under the terms of the plan than they were otherwise stated in the plan.
Q. Was Columbia informed --
A. Yes.
Q. -- that these were accommodations?
A. Yes.
Q. What was the subject of the discussion? Did any discussions occur with regard to the accommodations?
A. No, we informed them of what we felt we could do for the plan to just be more

Page 185

accommodating for the plan.
Q. Was it Susan Hansen that you informed?
A. Well, we informed Sue as well as we informed continually all of the CEOs what we have had over the history of the plan.
(Document referred to marked Deposition Exhibit No. 7 for identification.)
BY MR. LEAHY:
Q. If I can now refer to Exhibit 6 which is -- Exhibit 7, which is a fax message from Jim Rogers to Steve Fargis, if you could just check that out for a minute.
A. (Witness reviewing document.)
Q. Have you had an opportunity to familiarize yourself with it? Do you recognize this fax?
A. Yes.
Q. Did you receive this?
A. I did.
Q. The first line there, Jim Rogers says "Attached is my spreadsheet analysis."

Page 210

the minimum premium irregardless of when it showed that change to Columbia?
A. We did it at the time we implemented the new deposit.
Q. So was NCRIC contemplating the change around the time of January, 1996?
A. I think so. Yes.
Q. But didn't express that change until later?
A. Well, I am not sure if we didn't express the change until later.
Q. You don't recall expressing it until later?
A. That is what I recall.
Q. You also mentioned the basic premium charge. Do you recall any other changes in the retro formula besides the subject premium -- besides the deposit premium, the minimum, and the basic premium charges?
A. Yes, in front of the finance committee we also discussed at the first reconciliation that we would not move into

Page 211

affecting the payments, the premium due or premium refund, until all claims were closed out in the year. In essence, the decision made at that meeting is that we would actually wind up operating this as an actual paid/loss retro.
Q. How was that issue initiated at the meeting? Did NCRIC bring that up?
A. We brought it up because it was shown what was going to be due to Columbia at the end of this reconciliation. I think at the first year of that period they were due a bonus. But we also showed them that the trend for the most recent two years showed they would then owe us money on those years. Since all claims weren't closed out, what would wind out happening is that every quarter of reconciliation moneys, checks would just be going back and forth until all claims were closed and settled out. So we suggested, again in accommodating the hospital, we would wait until all claims were closed and paid out

Page 212

in the final year and then payments were made and refunds would be due.
Q. So your recollection is at the time of the first reconciliation there was an amount of a return premium owed to Columbia?
A. There was. But there were still outstanding claims. And, again, I am trying to recall this, I want to say, for instance, it was $150,000 in that first year that NCRIC owed Columbia at the reconciliation. However there were a number of claims still outstanding where it could have been six months later when that year closed out they could owe us money. And the next two years, the 1994/1995, 1995/1996 year showed pretty heavy amounts of what they owed us. So if you look at it on a cumulative basis for the three years of the program they would owe us money.
But, tending on how losses -- particularly in the most recent years, the losses were green, meaning we just put up reserves on it and there may not have been a

Page 213

lot of developed information just on it yet. Actually, we keep that year out of it. But as we went forward, what you would wind up doing is until all claims were closed and settled, checks going back and forth. If we had sent them a check for $150,000, I think we later paid them 177,000 on that year, that we could have been back at the table a short time later saying it is really 140,000, they send us $10,000 back, and then a short time later it is 170 and we send them 10,000 back. And then you get into your second year. Now they owe us $1 million. Well, we still will send you a check for $10,000 and you send another one -- it is just --
So, really, trying to keep the accounting a little simpler and seeing where the losses were going, particularly in that one year that was turning out to be a bad year for them, we would wait to see how the total claims closed out.
Q. It was an accommodation to Columbia

Page 214

because, although Columbia was owed money at first, in the long run NCRIC was also saying, a couple of years down the road, it is already looking to turn out badly and we won't ask money from you then. Is that correct?

A. No, what we were saying -- yes, we were saying when the reconciliation period came up, because there were a lot of open claims in it and the year was bad, we wouldn't be asking for a check. Whether we owe you money or you owe us money, what we will do is wait until all of the claims are closed out in a year.

Q. So NCRIC actually expressed to Columbia it could get its money now, but as part of the agreement, NCRIC would not pay money now. That was an agreement that was made then?

A. Yes, we agreed. And the finance committee acknowledged that that made sense. We give them $150,000 now and six months later they give us $1 million. But at the same

Page 215

time, that million, or whatever that amount is, would be a different number later. So we agreed that it made sense.

What it does for NCRIC it actually puts us a little behind. Because if we paid, say, in the first year, we already paid $1 million in claims on the '93 year but we are making this accommodation in 1996, we have been out that million dollars for two years, we already paid, we have not received any money.

Let me put the example this way. We received 2 million premium and the losses are 2 million. If that is the case, then we are even. But if losses are still outstanding and open claims for another million, we have got to wait, we are waiting years afterwards to see how that year closes out before we see if Columbia pays us any money or not.

Q. Columbia would have gotten some money out front but it would just have to return it and you are saying there wasn't much

Page 216

time to develop interest on that?

A. Yes. And when we did that first reconciliation, they would -- the next couple of years were not looking good.

Q. Were there a lot of claims?

A. I think --

Q. If you recall?

A. I think the second or third year it was beginning to turn sour.

Q. You have mentioned many checks going back and forth. Was it contemplated that a check would be exchanged for each experience period or that they all be added up after each reconciliation?

A. It was first contemplated, the plan designed for it would do it on each reconciliation period. And then what we felt would be better is, since we were actually doing it as actual running it as if it was a paid loss plan, that we would do it on a cumulative basis.

Q. So, you are saying originally it was

Page 217

contemplated that for 1995 you might send a check -- for 1995 to 1996 you might send a check to Columbia, but Columbia at the same time would be sending you a check for the next year?

A. That is originally how the plan was set up. It could have been operated that way. What we are saying is when the year finally closes out -- for instance, we did this. We sent them a check for the 1993/1994 year, even though on a cumulative basis. Because of open claims in all of the other years that were still open, they owed us money.

(Document referred to marked Deposition Exhibit No. 10 for identification.)

BY MR. LEAHY:

Q. I will show you what we have marked as Exhibit 10. Is this the reconciliation that you have been referring to? Take some time to look at it.

A. I think this is it.

Q. I am not going to proffer that it

16d-001451

Page 218

is. You make your own judgment there.
A. I believe this is.
Q. Again, I will come around because I have misplaced my spreadsheets. You believe this is the first reconciliation?
A. Yes, I think this is the one that we presented to the finance committee.
Q. And when you say the money was owed by NCRIC to Columbia, what amount are you referring to?
A. This. (Indicating.) The 159,093 would be owed by NCRIC to Columbia. But we were showing years two and three that, in fact, the way the losses were, they would owe us money.
Q. At this time, you are saying that is a positive number, it is not surrounded by parenthesis. But that meant -- strike that. This positive number indicated an amount to go from NCRIC to Columbia. Is that correct?
A. Yes.
Q. That isn't the way the plan operates

Page 219

currently, right? You use a parenthesis to indicate a negative number for returned premium. Right?
A. Correct.
Q. So, the next two years --
A. I think so.
Q. I will show you some spreadsheets either later today or later tomorrow.
MR. NIEDERMAYER: You won't be showing him tomorrow, I can guarantee that.
MR. LEAHY: Later in the deposition. If you are wrong you can always correct your testimony. I will make a proffer that is my understanding of the way it works.
BY MR. LEAHY:
Q. You are saying at the bottom of the second column, 651,000, that is what Columbia was going to be owing on the 1994/1995 year?
A. Yes.
Q. But that year was not yet reconciled, only the 1993 year was reconciled at the time of 1996?

Page 220

A. Reconciled, what I mean by that, in accordance with the plan, we were at the end of two years. I think the first reconciliation date was -- I forget what it was, but it began two years after the start of the year. You would go two years, and we were in 1996 and a reconciliation was, quote, due. And in this case we were owing at that time, it showed 159,000, but you see there was still almost one million dollars, 883,500, still in reserves out there that would influence what that number would be.
Q. Even that year might not turn out positive for Columbia is what you are saying?
A. I would have to do the analysis.
Q. It was possible at the time?
A. It is possible that this number could be a lot lower.
Q. And looking at the next column you had already had large amounts. I just want to make sure, I want to make sure I know what the paid items for each year were at this time.

Page 221

ALAE, that is a reserve item, under loss reserves?
A. Yes.
Q. Total, that is indemnity reserves, ALAE reserves, and total reserves, those three items in the second group?
A. That is just the total of loss reserves and ALAE.
Q. And it guess into indemnity paid, expense paid, total paid. Total paid is the addition of the two lines before it. Correct?
A. Yes.
Q. What does this at the right column mean, per loss run, do you know? Do you recall? Let me back up. Did you do this, perform this spreadsheet?
A. Yes, I did. I think I may have been referring to this, right here.
Q. So you are now referring to the pages after the first page of the spreadsheet?
A. Yes.
Q. And that is what you would be

Page 302

still exists in NCRIC, who is still an executive, let's say, who would be familiar with the Sibley retro plan that existed prior to the Columbia plan?
A. Bill Burgess may have some knowledge of that. He was there during the time. I don't know how involved he was with the Sibley retro plan.
MR. LEAHY: Can I mark the next exhibit here?
(Document referred to marked Deposition Exhibit No. 16 for identification.)
BY MR. LEAHY:
Q. I am showing you what has been marked as Exhibit 16. Do you recognize this being a letter from you to Sue Hansen dated March 6, 1996?
A. Yes.
Q. Do you remember sending this letter to Ms. Hansen?
A. No, I don't really. But it is my signature.

Page 303

Q. With regard to the first sentence, do you remember having a meeting with her in March of 1996 with regard to, quote, unquote, progress with the retro program?
A. I don't recall the details of that meeting.
Q. Did you discuss renewing and expanding the program with Ms. Hansen around March of 1996?
A. We must have for me to write this letter.
Q. Is it possible that the minimum premium was also discussed at this meeting, if you recall?
A. I don't recall.
(Document referred to marked Deposition Exhibit No. 17 for identification.)
BY MR. LEAHY:
Q. I am showing you what has been marked as Exhibit 17. Do you know who Lynn Petersons is?
A. Yes.

Page 304

Q. Can you tell me who she is?
A. She was a consultant to Columbia Hospital for Women and had had a prior working relationship with Melinda Murray who was then the risk manager at Columbia Hospital. And Melinda brought Lynn in to -- I think Lynn primarily was handling some of the placement for the reinsurance and Melinda engaged her on Columbia's behalf with regard to the retro plan, no longer Jim Rogers at SIMA, from what I understood.
Q. Do you recall receiving this memorandum from Lynn Petersons in the fall of 1996?
A. I don't recall receiving it but I must have received it.
Q. Do you remember the substance of the first sentence speaking with her and her request for quotes for various retro options?
A. I think I recall this.
Q. Now, she next says in that sentence one of the proposals is a one year option

Page 305

effective 1/1/97 with a current deposit premium percentage of 67 percent. Do you know who indicated to her that the current deposit premium percentage was 67 percent?
A. No, I don't.
Q. Do you know if you sent her a copy of, right or wrong, Exhibit Number 10?
A. I don't know if I sent it or not.
Q. The paragraph below the bottom indicates that Columbia would prefer not to have another incurred loss retro.
A. I am sorry, where are you?
Q. Second paragraph from the bottom, "Though, we would obviously prefer not to have another incurred loss retro, dollars are exchanged in a pay loss retro." Isn't that correct?
A. Depending on how you set it up. But not necessarily because once a year it is closed out, it is closed out. That year can't be effected up our down anymore.
Q. Did you understand this to mean not

Page 318

sentence? Without regard to the amount of the number, is it correct that there was a representation by the consultant, and here I assume they mean Lynn Petersons, that this, the cumulative number was the worst case scenario? Do you recall that being said at the meeting?

A. Lynn Petersons didn't participate in our presentation on this, so I don't know who they were referring to, consultants or us.

Q. Do you recall saying that?

A. This is what I have referred, that we were recommending, because of the projection of how the years look, that we don't begin a reconciliation now on year one, that we wait until the years begin to close out.

Q. The next sentence, the however sentence?

A. I am sorry, maybe I was reading the wrong sentence.

Q. Yes, that is what you were referring

Page 319

to previously, that you suggested no interim settlement be made. I was referring to the prior sentence. Do you remember saying that?

A. I don't. Again, I don't know if their consultants -- if they are referring to -- again, Lynn didn't participate with this. I don't know who they are referring to there.

Q. Can you tell me about the next -- the final sentence on the first page, the final complete sentence on the first page, "they also noted." Is that a correct statement of what NCRIC presented at the meeting?

A. No. I can state that if we were earning 12 percent on our average investments, it would be -- it would be great. 6 percent is our average return. I don't know where the 12 percent came from.

Q. But is it a correct statement that the amount due -- it was said by that the amount due to the hospital would accrue an

Page 320

interest rate at whatever NCRIC's rate of earnings was irregardless of the 12 percent figure?

A. No, what we are referring to here is what is in the retro plan, which is there is a discount factor and we applied on the loss side relative to -- at that time the plan was established I think it was a 6 percent factor which earns a discount factor of .8633. So I will try to explain it this way, as opposed to giving interest credit on the premium side we take it down on the loss side.

Q. I am just trying to get at how that sentence is to be read as to what you said. Is that a correct statement if you read it that 6 percent is applied to the 159,000, would that be a correct statement of what you said?

A. No. Unfortunately, it is misstated.

Q. With regard to the next sentence, Is that a correct -- I will go line by line -- statement of what was said by NCRIC, either

Page 321

yourself or I guess Mr. Burgess was there? I am sorry, of what transpired at the meeting.

MR. NIEDERMAYER: Excuse me.

MR. LEAHY: The next sentence after the discussion or after discussion.

THE WITNESS: I don't -- I don't know.

BY MR. LEAHY:

Q. Were you there when they agreed to leave 159,000 on deposit? Did they do that?

A. I recall them being in agreement on us not starting the checks going back and forth on the reconciliations.

Q. How about with regard to the current plan expired on 9/30/96? Is that something that you or Mr. Burgess said?

A. Well, what is confusing is -- well. The plan expired on 1996. The physicians were continuing with their discount and plan, to just continue the plan. We would continue to roll it forward on the September 1 date. I don't recall a discussion about changing the

Page 450

regard to the time, with regard to the does the date of Columbia's informing NCRIC of its going into bankruptcy help you place in time when NCRIC decided not to become a creditor?
A. No.
Q. Mr. Fargis, there came a time when Columbia Hospital and NCRIC did enter into an amendment of the plan which renewed it from September of '96 to September of '98. Is that correct?
A. Yes.
MR. LEAHY: Can we go off th record?
(Discussion off the record.)
BY MR. LEAHY:
Q. Mr. Fargis, I'm showing you what is marked as Exhibit 25, a letter from yourself to Mr. Beaulieu, as we discussed earlier. Can you take a minute to look at the attachment to that letter.
A. Okay.
Q. Do you remember approximately the

Page 451

date on which this agreement was countersigned by NCRIC?
A. I don't. I would think it would be around this January date, though.
Q. Your letter says that this language was approved by the NCUI board. Do you recall about when the board approved the language for the renewal?
A. I don't. I'd have to refer to the minutes.
Q. Mr. Pate signed this on behalf of NCRIC. Correct?
A. Correct.
Q. But am I correct that it's your recollection that you expressed that you drafted this addendum?
A. I believe I did.
Q. And you attend NCUI board meetings generally, right, you did?
A. Yes.
Q. When the board approved the agreement here would the board have looked at

Page 452

the language at the meeting?
A. I can't recall.
Q. Would everyone at the meeting have received a copy of the language?
A. I can't recall.
Q. Do you recall if you read this before Mr. Pate signed it?
A. Yes, I did.
Q. I'm going to just refer you to Page 5 of the agreement and the definition for deposit premium. You see there it says, "Deposit premium means subject premium multiplied by 67," and then in parentheses, 67 percent, do you see that sentence?
A. Yes.
Q. Do you recall seeing this sentence before Mr. Pate signed the agreement?
A. I don't recall seeing the sentence before Mr. Pate signed the agreement.
Q. Do you have any reason to doubt that this sentence was in the agreement at the time Mr. Pate signed it?

Page 453

A. I don't have any doubt that it was in the agreement.
Q. Let's go to Page 6. There's the definition for maximum and minimum premiums there. Can you read those definitions?
A. Yes.
Q. Do you see how it says the maximum premium shall be equal to 115 percent and then in brackets it says 133 percent?
A. Yes.
Q. Had you changed that 133 percent but not, just as an oversight, not changed the 115 percent?
A. Obviously.
Q. And the same thing with the minimum. It says "shall be equal to 75 percent" and 60 percent is in brackets. It was actually changed to 60 percent. Correct?
A. Correct.
Q. Do you see anything in that sentence which refers to which years of the plan the minimum must be applied when

Page 474

was asked and answered.
MR. LEAHY: You can answer, because I don't remember it being asked and answered.
MR. NIEDERMAYER: If you can remember your prior answer.
THE WITNESS: Exhibit 10 would appear to be October 1st, 1996. I'm just looking at the date at the top. I don't recall when Exhibit 18 was performed.
BY MR. LEAHY:
Q. So your recollection is that's the actual date of the spreadsheet, not the effective date of when you were looking at the reserves.
A. No, it's not the -- I don't believe it would be the effective date we're looking at the reserves.
Q. Can you tell whether from looking at this -- and actually I have a calculator if you wanted to use that because I don't want to make misrepresentations to you -- the same

Page 475

deposit factor is used in both these spreadsheets or can you tell that without a calculator?
A. It appears that it is. The deposit factors are the same. Each of the years one, two and three on Exhibit 18 match up with the year one, year two, year three on Exhibit 10.
Q. And on Exhibit 10 it says use 81 percent for the first year and second year and 67 percent for the third year. Do you want to verify, can you verify with regard to whether or not that's correct? Would you do that for me?
MR. NIEDERMAYER: Off the record.
(Discussion off the record.)
(Mr. Wilson departs.)
THE WITNESS: 81 percent on Exhibit 10. It would be the same on Exhibit 18.
BY MR. LEAHY:
Q. For which years?

Page 476

A. Year one. I get .80999, et. cetera, on year two. And year three is 67.5. I'm not sure of the exact, I'd have to recalculate that.
Q. So it's approximately 81 percent for the first two years and 67 percent, 67.5 percent you said, for the third year on both spreadsheets?
A. Yes.
Q. I'm going to ask you to look then at the maximum-minimum on the spreadsheets. Do you see that those are also the same? The maximum, the row maximum-minimum for both spreadsheets is the same except for the cumulative year on Exhibit 18?
A. Yes. They're not exactly the same, but years one, two and three are -- it looks like the Exhibit 18 is rounded.
Q. And do you see that on Exhibit 10 it says that 75 percent of subject premium is used for the minimum? If I represent to you that I've done those calculations and that is

Page 477

in fact 75 percent, would you accept that or would you like to confirm for your own self whether or not 75 percent was used?
A. I'll confirm. Okay.
Q. So would you agree that on both spreadsheets 75 percent was used as the minimum factor for all three years?
A. Yes.
Q. If you could take a moment to look at Exhibit 10, in the row that says ALAE it says, "Per Loss Run." Earlier you testified that that means that comes from the loss run that's attached here. Is that correct?
A. I believe I testified that it would appear that it may come from this.
Q. Could I ask you to look at Page 2 of the loss run and see if you can determine if in fact it does come from there, referring you to the bottom three rows on that second page in the loss run. See how the total for ALAE, reserve total is 358,500? And that's the number that you have there for ALAE for

Page 610

that they could still need a reserve if they were above the actual amount, if the losses were high.

Now, what I can answer because we're talking about theory is that are we talking about an incurred or paid loss or reconciliation periods, one year, two years, three years, I don't know. I mean this is all theory.

Q. I'm trying to get a narrow point which my understanding is previously you had testified that in the fall of 1996 the parties agreed to operate as effectively an actual loss retro program. Is that right?

A. In the late fall of '96 we did not change the terms of the agreement and agreed in principal with them that we would, in effect, almost operate this as a paid loss Retro Plan.

Q. If I'm speaking correctly, a paid loss Retro Plan that may be confusing. In such a paid loss retro program the point is

Page 611

you pay after all the years are closed. Correct?

A. You pay after all the years are closed. You pay -- reconciliations are made when all the claims are closed, in a period year.

Q. So when there are a lot of reserves for a particular experience period and therefore there is a large additional premium due on a cumulative basis, and in a paid loss program you wouldn't necessarily pay it if those claims weren't closed. Correct?

A. You don't pay it but what the plan shows you is there are indications of what your liability potential is because we're not saying it is all of those reserves against just that premium. We actually bring those reserves down by a development factor.

Q. Right. I guess what I'm saying is when you send someone a reconciliation, a paid loss program, it's not an invoice. It's an accounting of how much each party should be

Page 612

reserving for their potential future liabilities.

A. The only exception to that is if the plan ends.

Q. In which case everything has to be paid. Correct?

A. That's correct.

(Marked, Exhibit # 60, Slide Presentation Document.)

BY MR. LEAHY:

Q. I'm showing you what is marked as Fargis 60. Do you know what this is? Strike that.

Is this a draft of the PowerPoint that you later showed at that September 9th meeting?

A. I'm not sure.

Q. Do you know if this was ever shown to the attending faculty?

A. I'm not sure.

Q. Let me go to the second slide. You see the first bullet point?

Page 613

A. Yes.

Q. That's a true statement. Correct?

A. That's correct.

MR. PAGE: That's the second slide you're referring to?

MR. LEAHY: Yes.

MR. PAGE: Okay. Go ahead.

BY MR. LEAHY:

Q. Let's go to the fourth page, which should be the eighth slide, the bottom slide on the fourth page. Was this particular slide ever shown to the attending faculty?

A. I'm not sure.

Q. Do you know if this information was conveyed in that September 9th, '98 meeting by NCRIC to the attending faculty?

A. I believe several of these points were made.

Q. Was it NCRIC's understanding at that point that all these were true?

A. Our understanding at the time is that all of these were true.

Page 638

BY MR. LEAHY:
Q. And, again, you'll note that on the left-hand side near the bottom left, kind of the middle bottom left, it says, "Columbia Deposit." And that's, again, referring to what you've expressed to the Insurance Commissioner as paid premium. Correct? That's that $1 million?
A. It's not what we expressed to the Insurance Commission. It was what was deemed by the Retro Plan and in an agreement with the Commissioner.
Q. The Commissioner agreed --
A. That it's premium.
Q. Premium.
A. Correct.
Q. Now, the one line there that's 669,403, can you explain to me what that is?
A. That line reflects whether money is at the balance of the plan to be refunded or due, refunded to Columbia or due to NCRIC.
Q. But that money wasn't actually

Page 639

refunded to Columbia. Correct?
A. No.
Q. Was that because there was the understanding that the $1 million would be kept by NCRIC?
A. The understanding is that the plan would not settle until all claims were closed and paid or until the agreement ended.
Q. So what I was getting at earlier, this Page 2 of Exhibit 65 is not an invoice. Columbia wasn't owed 669,403 by NCRIC at that time. Correct?
A. This Page 2 is not an invoice.
Q. Especially because if you look at the '97-98 year that is included, that's not supposed to be included under the plan. Right?
A. Again, this is where I would have to look at the calculation, but the most recent year is to be excluded.
Q. I'll represent to you I've done the math and that includes, the 330,597 number

Page 640

includes the 81,640 number, in which case you would agree with me, if that is true, that the 330 number is not the amount that is reconciled for that year under the plan. Correct?
A. If the '97-98 year is included in the cumulative calculation, then it's inaccurate.
Q. Well, it's not inaccurate if this isn't being presented to Columbia as a bill. Correct?
A. It's inaccurate in calculating the cumulative amount, refund or due.
Q. That would be due under the Retro Program as originally drafted. Correct?
A. As the plan is operating at this time without reconciling those periods and exchanging monies, it would be an inaccurate reflection of what is net refund or due if the '97-98 year is included in the cumulative amount.
Q. Right. But if this is not viewed

Page 641

as cumulative amount that is due, it's not inaccurate; it is simply a representation of the current status of each year of the plan. Correct?
A. That is correct.
Q. And so because this is the way the plan was being operated, that you're only exchanging for closed years, this including the '97-98 year is not inaccurate in this particular spreadsheet. Correct?
THE WITNESS: Can you read that back?
(The pending question was read.)
THE WITNESS: Correct.
BY MR. LEAHY:
Q. Did you say not accurate?
A. Yes.
Q. That is not what I meant to ask. So let me ask it again. Let me do it a different way. You created this spreadsheet. Correct?
A. Correct.

16d-001458

Page 642

Q. You knew when you created this spreadsheet at around the time of the date on the top left-hand corner that you wouldn't include the '97-98 year in the cumulative total owed. Correct?
A. That would have been the correct calculation. I was just looking at the letter to see if for some reason the hospital wanted to see it on a cumulative basis, since the plan ends on a plan year at August 31st, and wanted to have the final year end. I don't see an indication of that.
Q. If you look at the second sentence in the paragraph that's under Point A.
A. Yes.
Q. Does that indicate that this spreadsheet is just a current status, an explanation of what the potential adjustment would be including all years of the plan?
A. This includes all years of the plan.
Q. And I'll represent to you that

Page 643

330,000 number does. You wouldn't have included that last year if you were billing Columbia, correct, at that time?
A. At that time if we were to present them with an invoice in the instance of, A, either the plan ending, the agreement ending or, B, that all the years had been closed out, we would have only presented them with a bill for the years through '96-97.
Q. So what I'm getting at is because you weren't overbilling them, the fact that '97-98 is included indicates that this is just an accounting, an explanation of where the plan stands.
A. The quarterly reconciliations are to provide both parties with an understanding of the balance of the plan.
Q. Right. But if you hadn't been operating under the system where you weren't going to exchange premiums except for in closed years, you would have had to give them a bill at every quarterly reconciliation.

Page 644

Correct? Or you were entitled to give them a bill.
A. I would have to refer back to the plan for that. I'd have to refer back to when the balance of the reconciliations begin. And I know that was changed at one time from a 24-month to a 12-month period. I'm not sure what period we were operating with under this time.
Q. Let me refer you to Exhibit 1 of your deposition. We're going to go to the page which says, it's the second page of Exhibit A, or Modifications to Exhibit A. The page actually says 4 at the bottom. On that Page 4 look at No. 5, Reconciliations.
A. Yes.
Q. Does that refresh your memory with regard to at this time whether there was a 24-month delay or a 12-month delay? Is that not dated? If you look on the Page 1 that says Addendum to Retro Plan, it's been marked as Exhibit 1-B, you'll see it's the addendum

Page 645

that goes from September 1 of '96 to September 1 of '98, which is not, unfortunately, dated.
A. Okay.
Q. So that's the one that was signed in January of '98. Right?
A. Right.
Q. So this was in effect in October of '98, which is when this spreadsheet was.
A. Okay.
Q. So it was one year back.
A. It was one year back.
Q. Is that correct?
A. That's correct.
Q. I'm trying to establish here that certainly you weren't trying to overbill Columbia with Exhibit 65, Page 2. Right?
A. This is not an invoice.
Q. Right, okay. By the way, what was Mr. Marsh's involvement at around that time, fall of '98, with regard to the Retro Plan?
A. Mr. Marsh had assumed responsibilities in the policyholder services

Page 646

area. And part of his responsibilities were related to Columbia Hospital for Women.
Q. But he didn't have anything to do with performing the calculations on the Retro Plan, did he?
A. I can't recall if Mr. Marsh did any calculations on the plan.
Q. If you could turn to Exhibit 66 now, you see it's a spreadsheet with a date of October 11, 1999.
A. Yes.
Q. Do you recognize this to be the fall 1999 reconciliation?
A. I don't know if it's the final or working draft.
Q. Does NCRIC know, is your information, as NCRIC's representative?
A. Looking at this one sheet of paper, I can't state that. I would have to review my files to try to determine the sequence of orders in my files.
Q. If I represented to you that this

Page 647

is the only spreadsheet from the fall of 1999 that we received that was produced to us by you, NCRIC, would that cause you to believe that this is the fall of 1999 reconciliation?
A. It most likely may be.
Q. Again, looking at the column that says "Y98-99," you're including the final year in -- let me represent to you that the cumulative total includes that year, you've included that on the spreadsheet. Correct?
A. The year is on the spreadsheet, yes.
Q. If I represent to you, again, that in the cumulative total the 1,903,814 that is listed as Retro Premium there, if I represent to you that that one million is included in that 1 million 9 number, it must be true that this is not a bill to Columbia. Correct?
A. This is not an invoice.
Q. This is, again, an accounting of the status of the plan including all years?
A. Including all years, yes.

Page 648

Q. And it didn't matter that you put all five years because Columbia wasn't going to have to pay that total amount anyway. Correct?
A. Not until all claims are closed and paid.
Q. So, for example, on this '99 spreadsheet no years other than the year that you have in the far right-hand side, the '93-94 year, had closed. That was the only year that payment should have been exchanged for. Correct?
A. I'm sorry?
Q. As of the time of this 1999 spreadsheet the only year that any payment under the plan should have been exchanged was that closed year on the far right-hand side, because if you look there are loss reserves, right, for each of the other years? If you need me to rephrase that question, I'll be glad to.
A. Okay. Could you restate the

Page 649

question?
Q. Do you see that for all the years except for the far -- all the experience periods except for the far right hand experience period, being '93-94, all the other experiences have loss reserves stated under the rows for loss reserves. Is that correct?
A. That's correct.
Q. So those years would not be closed. Correct?
A. Those years are not closed.
Q. As of the time of this spreadsheet.
A. That's correct.
Q. So for none of those years should the two parties as of this time have exchanged money. Correct?
A. That's correct.
Q. On the other hand, the far right-hand column, there are no loss reserves. Correct?
A. That's correct.
Q. So for that year the parties should

Page 654

is so much going all over the place. Is that the fall of 2001 reconciliation?
MR. PAGE: That being 68?
MR. LEAHY: 68.
BY MR. LEAHY:
Q. Do you recall?
A. Can I have a -- I'm a little perplexed right here for a minute on a legality issue which I don't know.
Q. Do you want to speak with your counsel?
A. Yes, if I can.
Q. There's a question pending. I'd appreciate if you answer the question to the best of your ability. If you then speak with your counsel after that and you need to change your answer because there's some legality problem, that's fine.
MR. PAGE: Let's do that. The question was, as I understand it, what is this document, basically?
MR. LEAHY: Yes.

Page 655

MR. PAGE: What do you remember this being?
THE WITNESS: This is a reconciliation on the plan, I believe, as it stood through the end of August 31st, 2001.
MR. LEAHY: Okay. Do you want to talk with your counsel?
THE WITNESS: Yes.
MR. LEAHY: Go ahead.
(Recessed from 12:39 to 12:41 p.m.)
THE WITNESS: Exhibit 68 was developed during settlement discussions with Mr. Wilson. I would need to take a look and see within this spreadsheet if we were making certain assumptions to try to reach settlement. So I'm not certain that this spreadsheet in and of itself contains certain assumptions outside of the way that we had settled and ended the Retro Plan.
The reason I state that is that Mr. Wilson was provided a reconciliation at this period that was also accompanied with a

Page 656

letter requesting payment of an amount. That's not what is presented here. This is something that was presented during settlement.
BY MR. LEAHY:
Q. Let me just make a representation to you. My understanding was he did not receive that, and I will check with my client to make sure I'm not wrong; the "that" being what you have described, which is a letter requesting payment. So this was the only thing that we had as the September 1st, 2001 reconciliation.
Do you have any reason to believe that this is not, being that it was sent on September 5, that this does not actually accurately reflect the August 31, 2001 reconciliation?
A. Again, Mr. Wilson and I were in discussions about settlement. And there were during those discussions iterations and assumptions made to try to reach settlement on

Page 657

worksheets. And since this cover letter refers to the settlement and a counteroffer from Mr. Wilson, I'm not sure if this spreadsheet contains some of those assumptions.
Q. What I want to represent to you is, I didn't mean to present you with the spreadsheet. There were others where I know you made assumptions. So I thought this was your reconciliation. I will not ask you about this any further then until I get word from my client whether or not he got an actual reconciliation from you. But that was my understanding. So I just want to put your mind to ease there that we weren't trying to catch you on something. We're not going to talk about 68 any more. Let's come back to some of these other ones. Okay.
If you can just refer back to 66. 65, I'm sorry.
A. 65?
Q. Page 2. The top column there is

16d-001461

Page 714

Q. If you look, do you see how the columns, would you agree the 1/1/93 column applies all the way down and therefore looks like an experience period being reconciled?
A. It could be.
Q. If that is in fact true -- I guess we've got to ask for an "if." It is true then that the first development factor listed as the year one development factor is applied to the first year being reconciled 1/1/96. Correct?
A. Are we assuming that this is looking at a January 1, 2000 date?
Q. I was starting up at 1/1, the 1/1/96 date.
A. But I'm not sure. Obviously you got to look -- you're asking me to look back and I don't know what date I'm looking back from.
Q. If this is an operation of the plan the 1/1/96 under the plan, you would just be reconciling one year. So that makes sense.

Page 715

Although they're running out a January calendar because everything is 1/1, it makes sense that's the first year reconciliation and when they reconcile two years, that's the second year reconciliation.
A. Whoever is doing this should be applying a third year factor three years out not one year out from your reserves.
Q. The first year factor is actually applied one year out. Correct?
A. No. According to what you're saying if this is 1996 and it's the '93 year you should be three years out. It should be .905 not .885.
Q. Wouldn't you use .55? If you were running this on the Retro Plan you would use .65 in that situation, wouldn't you, for the 1/1/96?
A. .80.
Q. .80, because you're three years out.
A. You're three years out.

Page 716

Q. What has subsequently changed is now they're the first year being reconciled which is just one year out. Right?
A. Apparently what it looks like is that they're applying a first year to a year three years later.
Q. If you go to 1/1/97 they're applying to the first year --
A. Three years later.
Q. And then if you go to 1/1/98, it's always the first year being reconciled. Right?
A. It appears that they're applying it to two years after the end of the period.
Q. Right, which is not the way you do it. You do it one year after the period. Correct?
A. Right.
Q. So in any event, whatever the value of this is, this appears to be operating different than the way you currently do the Retro Plan.

Page 717

A. It not only operates different but, again, if you applied our factors they'd still be lower, we'd be applying a .80 and not a .885. But that's beside the point, because we never used this as a form for which we would do a reconciliation. Again, I'm not sure who developed the form or their intent behind it, but studying it it appears that they're not applying development factors until the reconciliation period starts, which was 24 months at that time. And I would disagree that you can't do that because you're not giving your client the benefit of the doubt of what is happening with their reserves for 24 months.
Q. But I guess putting aside, I just want to establish that it's done differently. I can't prove to you with this document what it is, but I do want to ask you have you ever seen this spreadsheet that we're talking about, Exhibit 1-A, before?
A. Yes.

Page 718

Q. Does NCRIC have a copy of it?
A. Yes.
Q. But you don't know as you stand here who created it and what its purpose is. Correct?
A. No. I mean that's evident because we've never reproduced this.
Q. I'm going to show you again what's marked as Exhibit 50. And I'm going to ask you to look at the spreadsheet. First of all, I'm going to ask you to look at the letter and the spreadsheet. And the font is a little different. It may or may not refresh you. This is a letter from Bickerstaff & Whatley. Correct?
A. Yes.
Q. Do you see the format the spreadsheet is done in, the next two pages? That's the same format although a different font and adding bar lines as the Exhibit 1-A that we're looking at. Correct?
A. It looks different to me.

Page 719

Q. That's all I can ask is your opinion.
A. Yes.
Q. You just said whoever was doing Exhibit 1-A you think they applied it wrong. Is that right?
A. Our interpretation of how this applies, we would not apply it this way simply because you're given no indication of what you're using as your first year development factor. It gives no indication really what happens in that first year or the second year or third year or subsequent. In addition though, what these development factors are, which are one of the reasons why we changed it, we felt like they were too high to apply in that manner.
And even looking at this today and recognizing that if you went out three years and utilized this, compared it to how the plan operates today, again, which is really all that matters, even the .80 is a lower

Page 720

development factor. So, again, emphasizing the point that we felt that, senior management at the time after Dave Little, we felt that these were too high.
Q. But I guess what I'm trying to get at is your decision to change the development factors and Columbia went along with it with regard to the amount of each development factor. You did not go about explicitly intending to change the application of the development factors as to when the first development factor applied and the second and so on. Is that correct?
A. No.
Q. Okay. Previously you've talked at length about the agreement between the parties to operate I think as a paid loss retro. Correct?
A. We didn't agree to operate it as a paid loss retro. The manner in which we agreed to operate the plan is in effect like a paid loss retro.

Page 721

Q. As we discussed before, you testified that that occurred in November of 1996. Correct?
A. Yes.
Q. Approximately. Do you recall who on NCRIC's side gave NCRIC's agreement as a factual matter to that operation, that setup? Was that yourself?
A. Yes.
Q. Who else was there from NCRIC to -- I think this was at the finance meeting, as I recall that you testified. Who else was there to give NCRIC's ascent?
A. Bill Burgess was also there. But I gave the ascent on behalf of NCRIC.
Q. Do you remember who gave Columbia's ascent? And if you don't remember a person, do you remember a position?
A. I can't recall if they gave immediate ascent or they came back to us later after discussing it. But Sue Hansen was at that meeting as well as their CFO or head of

Page 726

without the assumption that the program was operating and leap to a year later and say had it been operating that would have been returned. Under that assumption they would have paid far more than that a year prior.
Q. Right. So my point is isn't it true then that this million dollars, the reason it wasn't paid back is because it wasn't part of the existing agreement which was to exchange only for closed years, it was an exception made to provide security for Columbia's future liability? Correct?
A. Correct.
Q. And let's go to 1999, Exhibit 66. If you look at this exhibit you see the '98-99 year was not to be recycled. If the plan was operating as originally it kind of washes with the million dollar deposit, but someone would have owed money were it not for the fact that you were rolling the million dollars forward and operating on what effectively was a paid loss basis. Correct?

Page 727

A. You mean the '96-97 year.
Q. What I'm saying is for the full, the 1999 reconciliation, you didn't exchange money at that time between Columbia and NCRIC. Right?
A. No, we did not.
Q. And the only money that had been exchanged is for the one closed year. Right?
A. That's correct.
Q. And the reason this occurred was because this was operating that you were only paying each other for paid years, correct, and the million dollars was to be kept by NCRIC to roll it forward? That's two questions.
A. We only paid on closed years. Secondly, the million dollars is shown here to show what has been paid into the program just like any other premium. It wasn't to show that "we've got your money and we're holding it over here in a little account." It is to give Columbia credit, if you will, for what has been paid against the losses for the

Page 728

program.
Q. Right. But under the way you were operating it wasn't due, it was a credit for a future amount that you expected to be due.
A. Well, we were showing what could be applied against what was expected to be due.
Q. Right. That's a security.
A. It's more.
Q. The point is they didn't owe you the million dollars at that point. It was a security because you knew that down the road they were going to owe a million dollars.
A. No. It was a security because of the financial situation. And they weren't booking a contingent liability for this.
Q. You essentially had to keep their reserves for them.
A. In essence, that's what the million dollars wound up becoming is a credit for them against the program; security because they couldn't otherwise book the contingent liability.

Page 729

Q. They would have spent the million dollars is your concern. Right?
A. No. Our concern is that they had no reserve for that. And, you know, we benefited them through this time period because we never went to the Bankruptcy Court and said "There's further outstanding liabilities in this program."
Q. So what I want to ask you now is if you turn to Exhibit 67, this is after the plan ended but Columbia actually was billed 1 million 286. Why at this time was NCRIC billing Columbia even though there were years that were not closed?
A. Because the plan had ended. The plan ended. They needed to pay the money. But we would continue to operate the plan and depending on if they owed us more money we would bill them more. If it went less than 1.286525, then we would pay that money back. But if the expectation was if those reserves or losses changed again and we needed more

Page 730

money, we would come back for more money.
Q. Let me back up. To understand this, you see that the 1994-95 year had been September 1, 2000 closed. Correct?
A. Correct.
Q. There's no reserves but you didn't send Columbia a check for 177,806. Right?
A. No. We gave that in as a credit against the 1.2 million.
Q. Because as of this point the plan was no longer operating as a paid loss retro.
A. No. We weren't going to send them a check for 177,806 and ask them to pay us 1.4 million when you add that back in.
Q. Right. But what I'm asking is, I'm sorry to jump in, what I'm asking is previously you had not billed Columbia for unclosed years.
A. That's correct.
Q. Now you're billing them for unclosed years.
A. Correct.

Page 731

Q. What was the basis for that?
A. There is no plan.
Q. And was it NCRIC's understanding that once the plan had closed the operational agreement was over?
A. Absolutely. Once the plan closed then they need to secure that. The agreement was prior to this and with their consent that they wanted to end the plan, settle that plan and start a new plan in 2000. We never reached that agreement with Columbia on a new plan because they could never secure the amount in the old plan. We did not want to take that financial risk with the hospital.
Q. I'm trying to figure out when did you express to Columbia, if ever, that once the plan closed the paid retro aspect would no longer be in effect?
A. I believe it was in a meeting with Michael Feldman and Bill Morton from Riggs Counselman representing the Hospital in, it may have been as early as March of that year,

Page 732

March or April of that year.
Q. They knew though when you were closing it that's the way it was going to operate if the plan was terminated.
A. Absolutely.
Q. Sometimes the questions seem dumb, but I was never there. And who else was there? It was Morton and Feldman and yourself and who else?
A. Dave Osborn.
Q. Subsequently you've continued to operate the plan as it was originally drafted not as a paid retro paying for only paid years because the plan has ended. Correct?
A. The plan has ended. We have continued to provide quarterly reconciliations with an invoice for the amount that is due.
Q. Just to be picky on a fine point though, under the plan as written there wouldn't be a quarterly amount due, it would be a reconciliation every year. Right?
A. Well, the plan has ended. So they

Page 733

need to pay what needs to be secured for that program.
Q. I guess what I'm saying is it's only a reconciliation every fall, correct? There are interim reconciliations and obviously you contend they owe a bill.
A. That's correct.
Q. But the reconciliation officially under the plan only happens once a year. Right?
A. No. When the plan ends they need to pay what is due under the plan.
(Marked, Exhibit # 74, Fax, 1/27/98, Attachments.)
BY MR. LEAHY:
Q. I'm showing you now what's been marked as Fargis 74. Do you know what this is? I'm now referring to the first page.
A. Yes.
Q. What is it?
A. A fax, it looks like, from Tom Hampton to Jeff Marsh.

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 28th day of March, 2002, a copy of the Reply in Support of Defendant's Motion for Summary Judgment and proposed Order (errata) were served upon the following by first class United States mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on the 29th day of March 2002, a courtesy copy of all of the aforementioned papers will be served upon the Chambers for Judge Anna Blackburne-Rigsby by hand delivery.

Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MAR 28 11 30 AM 02
ADMINISTRATIVE DIVISION

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburn-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Oppositions to Dispositive Motions Filed, March 28, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER (ERRATA)

WHEREFORE, upon consideration of the points and authorities submitted by the parties, and any oral argument presented by the parties, Defendant's Motion for Summary Judgment is hereby GRANTED, and it is hereby ORDERED that:

1. As to Count I (Breach of Contract), the sole count of Plaintiff NCRIC's Amended Complaint for Damages, judgment is hereby entered in favor of Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia").

2. And FURTHER, in any future Reconciliations of the Retrospective Rating Plan Agreement, the following terms have been adjudicated to have the following meanings:

a. the Deposit Premium multiplier shall be 67% for all Experience Periods beginning on or after September 1, 1995, and 81% for all other Experience Periods;

b. the Minimum Premium multiplier shall be 60% for all Experience Periods;

c. each Development Factor shall be applied to an Experience Period the relevant number of months after the Experience Period ends.

3. And FURTHER, as to Count I (Breach of Contract) of Defendant's Amended Answer and Counterclaims, judgment is entered in favor of Columbia as to liability alone. Damages will be determined at the close of this case.

SO ORDERED.

Judge Anna Blackburn-Rigsby

Dated: _____, 2002.

16d-001468

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Dispositive Motions Decided
	)	
	)	
Defendant/Counter-Plaintiff.	)	

COPY

RECEIVED
Civil Clerk's Office
MAY 20 2002
Superior Court of the
District of Columbia

PRAECIPE

The Clerk of said Court will hereby enter the appearance of Eli C. Schulman, D.C. Bar No. 472879, as attorney for the defendant, Columbia Hospital for Women Medical Center, Inc., in the above-captioned matter.

DATED: May 20, 2002

Respectfully submitted,

Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 20th day of May 2002, a copy of the attached Praecipe was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

In addition, on the same date, a courtesy copy of the aforementioned Praecipe was served on the chambers of Judge Blackburne-Rigsby by hand delivery.

Eli C. Schulman

COPY

CONFIDENTIAL SETTLEMENT STATEMENT

RECEIVED
2002 MAY 20 P 4:01
MULTI-DOOR DISPUTE RESOLUTION DIVISION

Judge Blackburne-Rigsby Calendar # 8

Case Number 00-7308

Case Caption
NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.

This case is scheduled for a:
☒ Mediation Conference on TBD at ☐ 9:00 ☐ 11:00

☐ Case Evaluation Conference on _____ at ☐ 9:00 ☐ 11:00

Check Case Type: ☐ Personal Injury ☒ Contract ☒ Other Tort

Special Mediator Expertise Needed: _____
(please specify)

Submitted by:
Eli C. Schulman
Attorney or *Pro Se* Party

Check one
☐ Plaintiff ☒ Defendant
☐ 3rd party Plaintiff
☐ 3rd party Defendant

Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
Firm

1615 M Street, N.W., Suite 400
Address

Washington DC 20036
City State Zip

(202) 326-7900
Telephone

List below the names of all parties you represent. (Attach an additional page if necessary). The filing of one settlement statement will suffice for all of the parties that you represent in this matter, provided all of the parties are listed.

Columbia Hospital for Women Medical Center, Inc.
Name of party

_____
Name of party

_____
Name of party

_____
Name of party

_____
Name of party

_____
Name of party

16d-001471

Plaintiff Only: (including Counter-Plaintiff)

1. Describe in detail the facts of the case and the claims being raised:

As set forth in Columbia's counter-claims, Columbia has provided high-quality medical care to women and newborns for the last 130 years. But the not-for-profit hospital encountered serious financial difficulties in the early 1990s. At the same time, Columbia entered into an agreement with NCRIC to provide discounted medical malpractice insurance for Columbia's faculty. NCRIC drafted the agreement and took responsibility for administering it and performing the necessary bookkeeping. Because of the structure of the agreement, and because of NCRIC's superior knowledge and skill with regard to the agreement, the parties' working relationship developed into a confidential relationship. NCRIC breached that relationship. When it came time to renew the plan, Columbia relied on NCRIC's calculations, which erroneously made the plan appear economical for Columbia. In violation of the parties' earlier agreements, NCRIC also demanded payment of a $1 million deposit as a condition for continuing the plan.

In 1998, Columbia arranged for discounted insurance with a different company. Upon hearing about Columbia's new insurance program, NCRIC called secret meetings of Columbia's faculty, at which it urged the physicians to leave Columbia if NCRIC's agreement was not renewed. NCRIC made false, disparaging statements and employed scare tactics at the meetings, in an effort to induce the doctors to leave. In retaliation for Columbia's failure to renew the insurance plan with NCRIC, NCRIC canceled the policy it provided for Columbia's Ambulatory Care Clinic. In the Summer and Fall of 2000, NCRIC insiders among the faculty began circulating rumors that Columbia would close and that its clinic was uninsured. Nearly 30 faculty members moved their practices to other D.C. hospitals. The departure of these physicians caused patient admissions and revenues at Columbia to drop drastically. The departures also forced Columbia to cancel a fundraising gala and prevented it from securing a low-interest HUD loan.

2 (a). Describe the type and scope of injuries and any monetary and/or equitable relief being sought (please list items separately, such as lost wages, medical costs, etc.):

Columbia seeks actual and punitive damages, as well as costs, including reasonable attorney fees. Columbia estimates its lost revenue damages attributable to physicians leaving the hospital to be $21.5 million. Columbia also was damaged by the need to cancel its gala fundraiser, through which it reasonably expected to raise $1.5 million, and by its failure to obtain a HUD loan with an interest rate of 4.5% rather than Columbia's usual 10.5% cost of capital. Further, Columbia is entitled to the interest on a $1 million deposit that it furnished NCRIC in 1998, and to $765,346 - the amount due under the agreement when the proper contractual calculations are performed.

2(b). List any expert witnesses and the claims their testimony will support:

Mr. Peter Ben Ezra's testimony will support Columbia's calculation of damages resulting from the lost revenue it suffered following the departure of certain physicians from Columbia.

3. Describe any settlement offers that have been made and the current status of settlement discussions:

During the Summer and Fall of 2001, the parties engaged in substantial discussions toward a settlement involving voluntary dismissal (without prejudice) of the parties' respective claims and an agreement not to sue until all claims at issue in the contract had closed. Columbia made a number of settlement offers, but the negotiations broke off when NCRIC insisted upon Columbia's posting a bond as security for any settlement. The parties have not engaged in settlement discussions since that time.

4. How do you assess the value of this case for settlement purposes?

minimum $ 1.7 million maximum $ 25 million +

5(a). What additional information, if any, is required by you in order to engage in meaningful settlement negotiations? (Remember that the discovery deadline precedes the mediation date.)

None, though an audit of NCRIC's calculation of "subject premium" under the agreement would be useful.

5(b). Describe any pending motions:

Columbia has opposed NCRIC's motion for summary judgment as to Columbia's counter-claims.

Eli P. Schulman 5-20-02

Signature Date

Defendant Only: (including Counter-Defendant)

1. Describe the facts of the case and the contentions of the opposing part(ies) as you understand them:

In 1993, Columbia and NCRIC entered into an agreement through which they would share the risk of providing medical malpractice insurance for Columbia's attending faculty. The parties subsequently agreed orally that neither party would pay the other any money due for a particular period until all claims for that period had closed. According to NCRIC, the parties also agreed orally that money could, alternatively, be due when the agreement between the parties ended. The contract expired on September 1, 2000, and NCRIC contends that Columbia now owes NCRIC $1,943,530. Columbia maintains that there are no exceptions to the oral agreement providing that no money is due until all claims have closed for a given period. Accordingly, no money is due for 2000; to the contrary, NCRIC owes Columbia $177,806 for the 1994-95 period, for which it is undisputed that all claims have closed and for which NCRIC's calculations have determined that money is owed to Columbia. Columbia contends that NCRIC has in any event miscalculated - to NCRIC's advantage - the amount NCRIC argues is due pursuant to the agreement.

2. Describe the defenses or counterclaims being raised:

Columbia maintains that NCRIC, not Columbia, breached the contract. Columbia's defenses also include NCRIC's failure to satisfy conditions precedent; estoppel, waiver, and/or unclean hands; unenforceability; and duress. Columbia has raised counter-claims for breach of contract; breach of implied covenant of good faith and fair dealing; breach of fiduciary duty; tortious interference with business relations; tortious interference with prospective business advantage; fraud; negligent misrepresentation; defamation; commercial disparagement; and conversion. These counter-claims have survived a Rule 12(b)(6) motion to dismiss filed by NCRIC.

3. Describe any settlement offers that have been made, and the current status of settlement discussions:

During the Summer and Fall of 2001, the parties engaged in substantial discussions toward a settlement involving voluntary dismissal (without prejudice) of the parties' respective claims and an agreement not to sue until all claims at issue in the contract had closed. Columbia made a number of settlement offers, but the negotiations broke off when NCRIC insisted upon Columbia's posting a bond as security for any settlement. The parties have not engaged in settlement discussions since that time.

4. How do you assess the value of this case for settlement purposes?

minimum $_____ maximum $_____

Because the contract at issue covers many claims that have not yet closed, it is not presently possible to determine the value of the case; the value will continue to change as claims close until all claims from periods covered by the contract ultimately close.

5(a). What additional information, if any, is required by you in order to engage in meaningful settlement negotiations? (Remember that the discovery deadline precedes the mediation

date.)

None, though an actuarial estimate as to the anticipated final value of the claims at issue could potentially be useful.

5(b). Describe any pending motions:

Columbia has moved for summary judgment with respect to NCRIC's contract claim.

6(a). Are the claims at issue covered by insurance? ☐ yes ☒ no

6(b). If yes, what are the policy limits?

6(c). If yes, please identify the insurance company and the name of the claims representative or any other entities that must approve any settlement, and indicate their availability during the session.

	In Person	**By Phone**
_____	_____	_____

name and title

7. For purposes of mediation, is liability at issue? ☒ yes ☐ no

Eli C. Schulman — 5-20-02

Signature Date

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	*	
	*	
Plaintiff	*	Civil Action No. 00ca7308
	*	Calendar 8
v.	*	Judge Blackburne-Rigsby
	*	
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	*	
	*	
	*	
Defendant	*	

ORDER

The parties Consent Motion to Clarify that Mediation has been Postponed is **GRANTED.** The scheduling order dated December 20, 2001, postponed the due date for the parties' Confidential Settlement Statements to May 19, 2002. The Mediation in the above-captioned matter, which was previously scheduled for February 28, 2002, at 11:00 a.m., is therefore continued. The Clerk's Office shall reschedule Mediation within 30 days and send notices to the parties.

9/20/02
DATE

A. Blackburne-Rigsby
ANNA BLACKBURNE-RIGSBY
JUDGE

cc: Joseph K. Leahy, Esquire
1615 M Street, N.W., Suite 400
Washington, DC 20036

Scott M. Badami, Esquire
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

DOCKETED SEP 23 2002

MAILED SEP 23 2002

16d-001476

Superior Court of the District of Columbia

500 Indiana Ave N.W.
Washington, D.C. 20001

8

9/24/02

The civil action case captioned at the right has been RESCHEDULED for an ADR session on the date and time shown. All parties and counsel of record are required to attend. The Confidential Settlement Statement (CSS) must be RE- SUBMITTED by the date indicated at right.

CASE NUMBER: 00ca007308
NCRIC, Inc. vs Columbia Hospital for

CSS RETURN: 9/20/02

MEDIATION: 10/31/02 11:00am
check-in for 9:00am cases at 8:45am
check-in for 11:00am cases at 10:45am

00ca007308 D001 PRU.0118bsw 8
Joseph K Leahy
1615 M Street NW
Ste 400
Washington, DC
20036

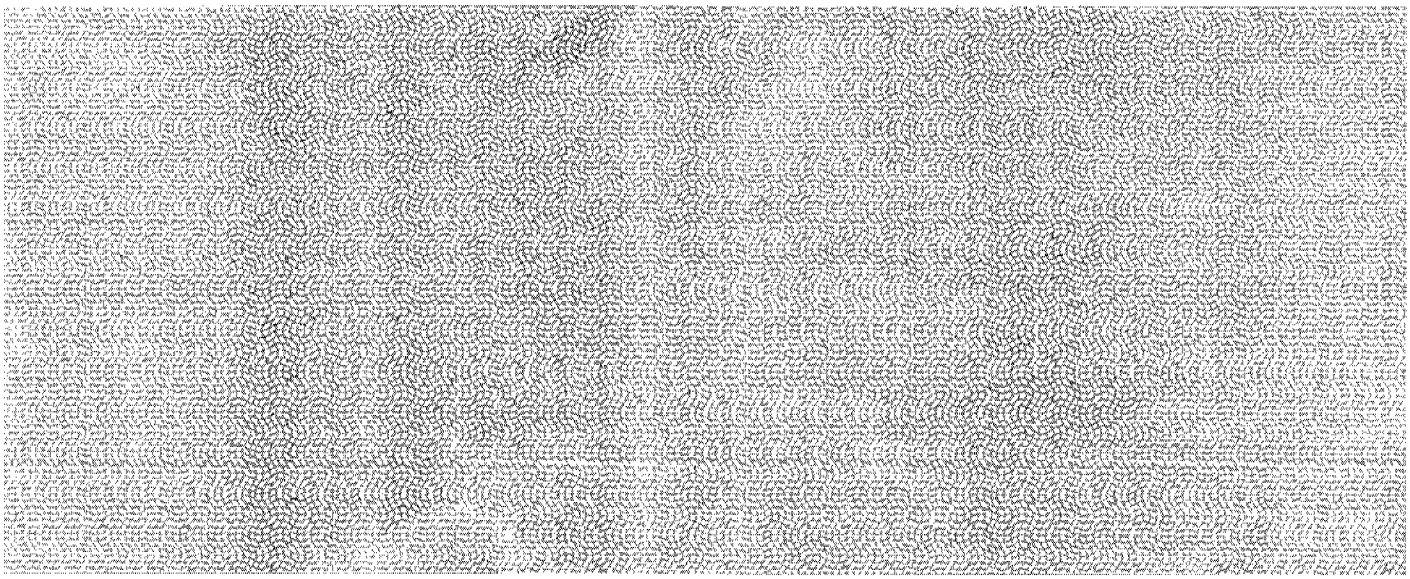
Judge BlackburneRigsby (202)879-1751
REPORT TO: Room 112, 1St Fl 515 5th St. NW NW
PLEASE BRING THIS NOTICE WITH YOU WHEN YOU APPEAR.

D.C. Superior Court
500 Indiana Ave N.W.
Washington D.C. 20001

First Class Mail
U.S. Postage
Paid
Washington D.C.
Permit No. 1726

00ca007308 D001 PRU.0118bsw 8
Joseph K Leahy
1615 M Street NW
Ste 400
Washington, DC
20036

ca JM-130



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

RECEIVED
Civil Clerk's Office

OCT 0 9 2002

Superior Court of the
District of Columbia

NCRIC, INC., Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar #8 Judge Blackburne-Rigsby Next Event: Mediation Rescheduled – 10/31/02

PLAINTIFF NCRIC, INC.'S MOTION TO ENLARGE TIME FOR DISCOVERY

Pursuant to D.C. Superior Court Rule of Civil Procedure 26(e), Plaintiff NCRIC, Inc. ("NCRIC") moves this Court for an Order enlarging the time for discovery in this matter. As set forth in the accompanying Memorandum of Points and Authorities, "good cause" exists within the meaning of Rule 26 for limited additional discovery to take place. Pursuant to Rule 12I-(e), a proposed Order setting forth the specific discovery NCRIC seeks is attached.

Accordingly, NCRIC moves for leave to take additional discovery as indicated in the proposed Order.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: October 9, 2002

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Enlarge Time for Discovery was served this 9 day of October 2002, via facsimile ([202] 326-7999) and first class mail, postage prepaid, to:

Eli Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

RECEIVED
Civil Clerk's Office
OCT 09 2002
Superior Court of the District of Columbia
Superior Court of the District of Columbia

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-8908
v.	Calendar #8
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Mediation Rescheduled – 10/31/02
Defendant.	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF NCRIC, INC'S MOTION TO ENLARGE TIME FOR DISCOVERY

Following the close of discovery as well as briefing on the motions for summary judgment (which remain pending), Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") publicly announced in May 2002, that the hospital had suspended operations and abruptly closed its facility. In September 2002, Columbia announced that it is in the process of selling, or indeed has sold, its real estate assets and that it will shortly dissolve and distribute any remaining assets it may have to "charity." See Exhibit 1.

Given the significant change in circumstances, Plaintiff NCRIC, Inc. ("NCRIC") has moved to re-open discovery for the limited purpose of determining what the closure of Columbia and sale of Columbia's assets mean to its claims. In this case, Columbia has maintained in its pleadings and briefs that NCRIC is the cause of much of its financial distress because of a contract dispute over Columbia's failure to pay insurance premiums for physician malpractice coverage. Since the recent events may bear directly on any claims that Columbia

may ultimately have for damages in the unlikely event that its claims survive summary judgment and or other scrutiny as to liability, NCRIC has moved the Court, pursuant to District of Columbia Superior Court Rules of Civil Procedure 12-I(e) and 26(e), for leave to take additional, limited discovery for the purpose of examining the recent events. NCRIC believes that this additional discovery will further demonstrate that Columbia's own gross mismanagement and intervening causes inherent in the healthcare marketplace are the real cause of Columbia's demise, not alleged unfair behavior by NCRIC.

In addition, Columbia's damage theory in this case was premised on its continuing operations as a hospital. The principal damage evidence on which Columbia relies in this case is the testimony of its own Chairman of the Board, designated by the hospital as an "expert" for these purposes, who submitted a report analyzing Columbia's claimed losses over a twenty year period. The recent transactions will have a direct bearing on any such claims, since the hospital is no longer in operation. The nature of any redeployment or reinvestment of its assets, whether in a new "charity" or not, would bear directly on the claims made by Columbia in this case about future losses.

Accordingly, NCRIC seeks discovery on the following topics:

1. The May 2002 closing of Columbia Hospital for Women;

2. The September 2002 sale of the real estate assets of Columbia to Trammell Crow Co. and the subsequent distribution of sale proceeds by Columbia; and

3. The proposed dissolution of Columbia.

NCRIC moves the Court for leave to serve ten (10) interrogatories, ten (10) requests for production of documents, and conduct two depositions, including a Rule 30(b)(6)

corporate designee deposition on these topics. NCRIC intends to complete the discovery within 45 days of an order permitting it to begin.

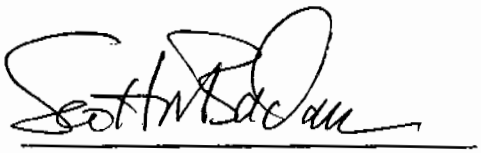
This case is not presently scheduled for trial or pretrial conference. The discovery proposed here will not unduly delay the resolution of this matter. The evidence sought is, in fact, necessary to an appropriate disposition at trial of the claims made by Columbia and could not have been obtained sooner. Moreover, Columbia will not be prejudiced by the additional discovery, since it is specific and limited in its nature to materials relevant or likely to be relevant to its claim for damages.

In these circumstances, "good cause" within the meaning of Rule 26(e) exists to grant additional discovery, and the discovery plan listed above is specific and time-limited, as required by the Rule. This motion is filed at a practicable time, since the apparent sale of assets by Columbia was just concluded and was announced only in late September 2002.

Wherefore, Plaintiff NCRIC moves for leave to take additional discovery as indicated in the proposed order filed herewith. An appropriate Order is attached.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: October 9, 2002

CERTIFICATION REQUIRED BY D.C. SUPERIOR COURT RULE 12-I(a)

Counsel for Plaintiff NCRIC, Inc. certifies pursuant to Rule 12-I (a) that, despite diligent efforts to obtain consent to this motion, consent from counsel for Defendant Columbia Hospital for Women could not be and was not obtained. Accordingly, this motion is necessary for Plaintiff NCRIC, Inc. to obtain the necessary relief.

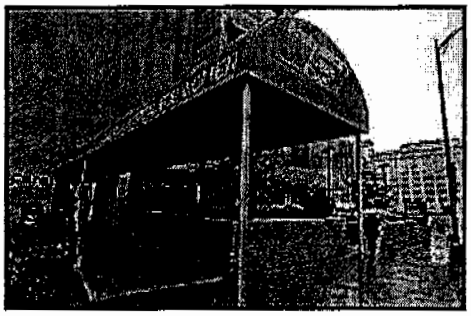
EXHIBIT 1

News Home Page
Nation
World
Metro
Schools
Crime
Government
Traffic
Lottery
Obituaries
Religion
Columnists
The District
Maryland
Virginia
Special Reports
Photo Galleries
Live Online
Metro Index
Business
Technology
Sports
Style
Education
Travel
Health
Real Estate
Home & Garden
Food
Opinion
Weather
Weekly Sections
News Digest
Classifieds
Print Edition
Archives
Site Index
Help

YOU VOTED. NOW FIND OUT WHO WON.

Developer Pays $26 Million For Columbia Hospital Site

By Avram Goldstein
Washington Post Staff Writer
Thursday, September 26, 2002; Page B01



Trammell Crow Co. plans to build condominium apartments above street-level shops on the Columbia Hospital for Women site. (Lucian Perkins - The Washington Post)

The nonprofit board that ran Columbia Hospital for Women until its financial collapse in May has sold the site to a developer for $26.2 million, likely clearing the way for luxury apartments in the District's posh West End.

District officials appraised the land and buildings at $40.8 million for the 2003 tax year. However, that apparently does not account for a 1987 covenant that restricts a developer from building anything larger than the existing 230,000-square-foot building, which is set back from L Street NW between 24th and 25th streets.

——More in Health——
• Health Care Issues

E-Mail This Article
Printer-Friendly Version
Subscribe to The Post

People familiar with the deal said the purchaser, Trammell Crow Co., a publicly traded real estate firm, is interested in building condominium apartments above street-level shops. The oldest part of the hospital is not designated for historic preservation, but developers have assumed that it will be and are planning accordingly, officials said.

The sale price is relatively high compared with other residential land in Washington, said Jim Abdo, whose firm, Abdo Development, was a bidder on the Columbia site. It might have been higher were it not so much more expensive to renovate a building that may receive historic designation.

"Any time you're taking a building built in the early 1900s and transforming it into something it was never intended to be, from a hospital to a residential building, systems are going to have to be very

16d-001487

creatively designed," Abdo said.

The closing of the sale began last week, and the purchase price was filed with the District on Friday. By yesterday, however, the money remained in escrow because of pending title searches.

Since the sale, lawyers for 28 creditors of the hospital have been sorting out their claims with attorneys for Columbia and Trammell Crow. Safa Rifka, Columbia's board chairman, said yesterday it is not yet clear how much money will be left after all the liens are satisfied and the money is released today.

"We will see when the money changes hands," he said.

Officials at Trammell Crow, which manages 25 million square feet of real estate in the Washington area, declined to comment.

Columbia once was a strong institution with a healthy balance sheet and an adjacent medical office building for its doctors. But in the past 10 years, Columbia has been saddled with financial crises, including bankruptcy, poor management and damaging internal battles for control of the board of directors.

After delivering more than 275,000 babies in its 136 years, Columbia shut down when it ran out of cash.

Proceeds of the sale of land and medical equipment will be used to pay off the hospital's many creditors, said Michael M. Barch, Columbia's chief executive. Remaining funds will be donated to a nonprofit group to be chosen later, he said, and the Columbia corporation will be dissolved.

Staff writer Neil Irwin contributed to this report.

© 2002 The Washington Post Company

Related Links

District News
District Crime Watch (The Washington Post, 9/26/02)

District Home Sales (The Washington Post, 9/26/02)

Rock of Faith Foils Land Grab by City (The Washington Post, 9/26/02)

washingtonpost
Personalize Your Post | Go to mywashingt
Home News OnPolitics Entertainment Live Online Camera Works Marketplace Jobs

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

RECEIVED
Civil Clerk's Office
OCT 09 2002
Superior Court of the
District of Columbia

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-00007308**
v.	**Calendar #8**
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Mediation Rescheduled -- 10/31/02**
Defendant.	

ORDER EXTENDING DISCOVERY

This matter is before the Court on the Motion of Plaintiff NCRIC, Inc. to Enlarge the Time for Discovery pursuant to D.C. Superior Court Rule of Civil Procedure 26(e), together with the Memorandum of Points and Authorities in Support of the Motion and the response of Defendant Columbia Hospital for Women Medical Center, Inc. For the reasons stated in the Motion, and the issues being fully considered, the Court finds that good cause exists to grant the Motion, and, therefore, it is this ___ day of October 2002,

ORDERED, that Plaintiff NCRIC, Inc. may proceed to initiate discovery for a period of 45 days from the entry of this Order concerning:

1. The May 2002 closing of Columbia Hospital for Women;

2. The September 2002 sale of the real estate assets of Columbia Hospital for Women to the Trammell Crow Co. and the subsequent distribution of sale proceeds by Columbia; and

3. The proposed dissolution of Columbia Hospital for Women Medical Center, Inc.

NCRIC is permitted leave of Court to serve ten (10) interrogatories, ten (10) requests for production of documents, and conduct two depositions, including a Rule 30(b)(6) corporate designee deposition on these topics.

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

RECEIVED
Civil Clerk's Office
OCT 24 2002
Superior Court of the
District of Columbia
Washington, D.C.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 -- Judge Blackburne-Rigsby Next Event: Mediation, October 31, 2002

OPPOSITION TO NCRIC'S MOTION TO ENLARGE TIME FOR DISCOVERY

In response to recent reports of Columbia's closing and the unfortunate realization that Columbia's liabilities exceed its assets, NCRIC has decided to utilize every litigation tool at its disposal to learn about Columbia's finances – for reasons that have nothing to do with this litigation, but everything to do with seeking alternate ways to pursue Columbia's (non-existent) money. Under this guise, NCRIC seeks not to enlarge the time allotted to ongoing discovery, but to re-open already-closed discovery after summary judgment has been fully briefed. This motion, NCRIC's transparently improper opening salvo in that effort, should be denied.

PRELIMINARY STATEMENT

On September 26, 2002, an article appearing in *The Washington Post* reported on the sale of Columbia's property to a real estate developer. Exh. 1. Reacting to a portion of the article that suggested Columbia would donate any remaining proceeds from its sale to charity, NCRIC that day wrote to Columbia threatening action: "This letter is notice to Columbia and its officers and directors that NCRIC will look to any responsible individual or corporate entity for redress if the distribution of Columbia's assets are [sic] not handled in the manner required by D.C. law." Exh. 2 (Letter from Page to Hansen and Schulman of 9/26/02) at 2.

Columbia responded by assuring NCRIC of Columbia's unqualified intent to act lawfully: "Columbia has every intention of complying fully with all applicable provisions of law. The Hospital has no intention of donating any money to charity before meeting its obligations to secured and unsecured creditors." Exh. 3 (Letter from Schulman to Page of 9/27/02) at 1.[1] Columbia added that, regrettably, it "in fact expects its liabilities to exceed its assets," *id.*, making the hypothetical donation of any remaining assets a non-issue. In multiple conversations with NCRIC, Columbia reaffirmed both that it intended to comply fully with applicable law and that, in any event, Columbia would not have any assets remaining to donate to charity or to use for any other purpose.

But neither these repeated assurances, nor the obligations imposed by law, are enough for NCRIC. Instead, NCRIC has made clear that it will employ any and all means available to learn the details of Columbia's finances and then to act against Columbia on the basis of that information. After expressing "skeptic[ism]" concerning Columbia's reply to NCRIC's letter, *see* Exh. 4 (Letter from Page to Schulman of 9/27/02), NCRIC now repeats in its present motion papers as a purported basis for re-opening discovery what it knows to be untrue: "The nature of any redeployment or reinvestment of its assets, whether to a new 'charity' or not, would bear directly on the claims made by Columbia in this case about future losses." NCRIC Mem. at 2. As Columbia has made clear to NCRIC (and as NCRIC could readily determine on the basis of public sources), there simply will not be any Columbia assets to redeploy or reinvest, whether to a new charity or not.

---

[1] Columbia's letter explained that its CEO, Mr. Michael Barch, had been misquoted in the article: "Mr. Barch indicated to the reporter that in the event there remain any proceeds after Columbia pays all debts and liens, the Hospital – as a 501(c)(3) not-for-profit entity – could not keep those funds, but rather would be obligated under applicable law to donate the money to another charitable cause. This was misquoted in the newspaper." Exh. 3 at 1 (emphasis added).

It is not surprising, then, that much as it tries, NCRIC cannot articulate any connection between the discovery it seeks and this litigation. NCRIC fails to articulate any coherent theory of causation (Point 1, *infra*) or damages (Point 2, *infra*) that would justify re-opening discovery. Moreover, an enlargement of time at this juncture would prejudice Columbia (Point 3, *infra*), and NCRIC's sudden interest in re-opening discovery flies in the face of its intransigence vis-à-vis the discovery that Columbia has requested from NCRIC (Point 4, *infra*). Accordingly, the Court should deny NCRIC's motion to enlarge time for discovery.

ARGUMENT

1. First, NCRIC claims that additional discovery will demonstrate that "*the real cause* of Columbia's demise" was Columbia's own mismanagement and (unspecified) "intervening causes inherent in the healthcare marketplace" rather than "alleged unfair behavior by NCRIC." NCRIC Mem. at 2 (emphasis added). But facts relating to the topics about which NCRIC claims to desire further discovery – the closing, sale, and dissolution of Columbia – on their face have no connection whatsoever to the *causes* of Columbia's demise, only its *results*. Take, for instance, the distribution of the proceeds from the sale of Columbia's property. NCRIC nowhere explains (nor could it) how an inquiry into the selling off of assets after the hospital has closed somehow could shed light on the causes for the closing. Had *Columbia* sought to re-open discovery on the grounds that its damages were now greater in light of the hospital's closing, then NCRIC would have had a right to pursue further discovery seeking to undermine such a theory. But Columbia has not made such a motion, preferring instead to proceed to trial without unnecessary delay. Of course, facts about the distribution of the sale proceeds would be relevant to NCRIC's future interest in such funds – the true motivation underlying this motion, but one having nothing to do with the merits of this litigation.

2. Second, NCRIC theorizes that Columbia's damages theory "was premised on its continuing operations as a hospital." NCRIC Mem. at 2. Therefore, NCRIC contends, "[t]he recent transactions will have a direct bearing on any such claims, since the hospital is no longer in operation." *Id.* But this theory is a non-starter for at least two reasons. First, it could hardly be the case that Columbia could be entitled to damages only if NCRIC harmed Columbia *and* Columbia also survived, but that because Columbia has not survived it is then as though no harm occurred. To borrow an analogy from the medical malpractice context: it is inconceivable that in the event a doctor's tortious conduct caused the loss of a limb the doctor might be liable for damages, but that if the patient died, the doctor would be liable for lesser damages. Likewise, Columbia's closing could not somehow lessen NCRIC's damages. Indeed, NCRIC fails to cite a single case supporting its untenable damages theory. Moreover, to the extent NCRIC wishes to prove at trial that the hospital closed, that is a matter of public record and one to which Columbia of course would stipulate. No discovery is necessary to prove that point, and certainly not discovery into the unrelated details of Columbia's finances.

3. Re-opening discovery at this juncture would prejudice Columbia. NCRIC speculates that "[t]he discovery proposed here will not unduly delay the resolution of this matter." *Id.* at 3. But, of course, the opposite is true. What NCRIC seeks is hardly some limited discovery with no collateral impact on the litigation. On the contrary, NCRIC seeks a wholesale re-opening of the case purportedly to explore evidence going to the very merits of the most fundamental issues, including "*the real cause* of Columbia's demise." NCRIC Mem. at 2 (emphasis added). To the extent that is NCRIC's intent, NCRIC could easily seek to re-open summary judgment itself following a new phase of discovery, causing Columbia further prejudice. But summary judgment has been fully briefed. After the Court rules on those

motions, Columbia expects a trial on the merits of its counterclaims, without NCRIC injecting unnecessary delay for an improper purpose.

4. Finally, NCRIC's sudden desire to re-open discovery carries more than a small dose of irony, for before NCRIC's recent interest in the disposition of Columbia's assets, NCRIC repeatedly rebuffed *Columbia's* efforts to obtain additional discovery. *See, e.g.*, Exh. 5 (Letter from Leahy to Badami of 4/18/02). Were the Court to order further discovery, it should also order NCRIC to comply with the 15-plus long-outstanding discovery requests detailed in Columbia's correspondence, attached as Exhs. 5 & 6.

In sum, the Court should not permit NCRIC's transparent ploy. Rule 26(e) firmly places the burden of this motion on NCRIC, and NCRIC has failed to cite any authority whatsoever that would justify re-opening discovery, let alone any authority supporting the proposition that the discovery NCRIC now seeks is somehow relevant to NCRIC's damages theory or otherwise appropriate. NCRIC should not be permitted to re-open discovery to undertake a fishing expedition of Columbia's finances in order to facilitate collateral litigation aimed at obtaining Columbia's assets. Columbia is entitled to its day in court without the delay that a re-opening of discovery undoubtedly would engender.

Conclusion

For the foregoing reasons, NCRIC's Motion To Enlarge Time for Discovery should be denied.

DATED: October 24, 2002

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-001497

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Mediation, October 31, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of NCRIC's Motion To Enlarge Time for Discovery, the opposition thereto, the record herein, and for good cause shown, it is hereby ORDERED, that the Motion is DENIED.

ENTERED this ____ day of _____, 2002.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 24th day of October, 2002, a copy of the foregoing Opposition to NCRIC's Motion To Enlarge Time for Discovery was served upon the following by first class United States mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

I further certify that, on this 24th day of October, 2002, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Eli C. Schulman

EXHIBIT 1

Developer Pays $26 Million For Columbia Hospital Site

By Avram Goldstein
Washington Post Staff Writer
Thursday, September 26, 2002; Page B01

Trammell Crow Co. plans to build condominium apartments above street-level shops on the Columbia Hospital for Women site. (Lucian Perkins - The Washington Post)

The nonprofit board that ran Columbia Hospital for Women until its financial collapse in May has sold the site to a developer for $26.2 million, likely clearing the way for luxury apartments in the District's posh West End.

District officials appraised the land and buildings at $40.8 million for the 2003 tax year. However, that apparently does not account for a 1987 covenant that restricts a developer from building anything larger than the existing 230,000-square-foot building, which is set back from L Street NW between 24th and 25th streets.

——About Columbia——

• **Columbia Hospital to Become Condos** (The Washington Post, Oct 2, 2002)

——More in Health——

• **Health Care Issues**

E-Mail This Article
Printer-Friendly Version
Subscribe to The Post

People familiar with the deal said the purchaser, Trammell Crow Co., a publicly traded real estate firm, is interested in building condominium apartments above street-level shops. The oldest part of the hospital is not designated for historic preservation, but developers have assumed that it will be and are planning accordingly, officials said.

The sale price is relatively high compared with other residential land in Washington, said Jim Abdo, whose firm, Abdo Development, was a bidder on the Columbia site. It might have been higher were it not so much more expensive to renovate a building that may receive historic designation.

"Any time you're taking a building built in the early 1900s and transforming it into something it was never intended to be, from a hospital to a residential building, systems are going to have to be very creatively designed," Abdo said.

The closing of the sale began last week, and the purchase price was filed with the District on Friday. By yesterday, however, the money remained in escrow because of pending title searches.

Since the sale, lawyers for 28 creditors of the hospital have been sorting out their claims with attorneys for Columbia and Trammell Crow. Safa

16d-001502

Rifka, Columbia's board chairman, said yesterday it is not yet clear how much money will be left after all the liens are satisfied and the money is released today.

"We will see when the money changes hands," he said.

Officials at Trammell Crow, which manages 25 million square feet of real estate in the Washington area, declined to comment.

Columbia once was a strong institution with a healthy balance sheet and an adjacent medical office building for its doctors. But in the past 10 years, Columbia has been saddled with financial crises, including bankruptcy, poor management and damaging internal battles for control of the board of directors.

After delivering more than 275,000 babies in its 136 years, Columbia shut down when it ran out of cash.

Proceeds of the sale of land and medical equipment will be used to pay off the hospital's many creditors, said Michael M. Barch, Columbia's chief executive. Remaining funds will be donated to a nonprofit group to be chosen later, he said, and the Columbia corporation will be dissolved.

Staff writer Neil Irwin contributed to this report.

© 2002 The Washington Post Company

16d-001503

EXHIBIT 2

BRYAN CAVE

Rodney F. Page
Partner
Voice: 202-508-6002
rfpage@bryancave.com

September 26, 2002

Bryan Cave LLP
700 Thirteenth Street N.W.
Washington, DC 20005-3960
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
Los Angeles
New York
Overland Park
Phoenix
Riyadh
Shanghai
St. Louis
United Arab Emirates
Abu Dhabi
Dubai
Washington, DC

In Association With Bryan Cave (Illinois)
Chicago

and Bryan Cave, A Multinational Partnership
London

BY FACSIMILE AND U.S. MAIL

Mark Hansen, Esquire
Eli Schulman, Esquire
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 "M" Street, N.E.; Suite 400
Washington, D.C. 20036

Re: *NCRIC, Inc. v. Columbia Hospital for Women*

Gentlemen:

An article in *The Washington Post* reports that Columbia Hospital for Women ("Columbia") has completed a sale of the hospital property to Trammell Crow Co. for a sale price of $26.2 million. Today's article repeats a statement made on previous occasions by Columbia CEO Michael Barch that any sale proceeds remaining after secured liens on the property are satisfied will be "donated to a nonprofit group to be chosen later" and that the corporation will be dissolved.

As you are well aware, NCRIC, Inc. is a creditor of Columbia and has been seeking payment due under the Retro Plan for over two years. Despite our requests, Columbia has not provided NCRIC with any information regarding the distribution of sale proceeds or the dissolution of the corporation, although you have told me your client may be willing to discuss this matter in person. (I am awaiting word from you on this point.)

We believe Columbia has a legal duty to provide for all creditors, including NCRIC, before any final dissolution or donation of the sale proceeds to another charity. Under D.C. Code § 29-301.48, a non-profit must first make full payment of all liabilities and obligations of the corporation before proceeds may be donated to another charity upon corporate dissolution. Pursuant to D.C. Code § 29-301.47, Columbia has an obligation to immediately notify NCRIC, as a known creditor, of its intent to dissolve and distribute all corporate assets. Columbia cannot legally dissolve the corporation while NCRIC's lawsuit is pending and unresolved. D.C. Code § 29-301.51. Finally, Columbia cannot convey property with an actual intent to hinder, delay, or defraud NCRIC as one of its creditors. D.C. Code § 28-3104.

This letter is notice to Columbia and its officers and directors that NCRIC will look to any responsible individual or corporate entity for redress if the distribution of Columbia's assets are not handled in the manner required by D.C. law.

I have enclosed copies of this letter for Safa Rifka M.D. and Michael Barch. Since you are counsel for the corporation, I ask that you forward these notices to them and advise them of our position immediately.

Sincerely yours,

Rodney F. Page

RFP/cas
Enclosures
Cc: Safa Rifka, M.D.
Mr. Michael Barch

EXHIBIT 3

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

September 27, 2002

By Facsimile and U.S. Mail

Rodney F. Page, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Rodney:

I write in response to your letter of yesterday, which raised concerns about statements attributed to Michael Barch in a *Washington Post* story suggesting that Columbia Hospital for Women ("Columbia," or the "Hospital") intends to donate to charity proceeds from the sale of Columbia's property.

I have looked into your concerns and am advised that Mr. Barch was misquoted. Mr. Barch indicated to the reporter that in the event there remain any proceeds after Columbia pays all debts and liens, the Hospital – as a 501(c)(3) not-for-profit entity – could not keep those funds, but rather would be obligated under applicable law to donate the money to another charitable cause. This was misquoted in the newspaper.

Let me therefore assure you that Columbia has every intention of complying fully with all applicable provisions of law. The Hospital has no intention of donating any money to charity before meeting its obligations to secured and unsecured creditors. I might add that I have also been advised that Columbia in fact expects its liabilities to exceed its assets – unless, perhaps, it secures a judgment against NCRIC on the Hospital's counterclaims, which Columbia continues to believe have merit.

Finally, I was puzzled by your assertion that "[d]espite [y]our requests," Columbia had not provided NCRIC with any information but "may be" willing to discuss this matter in person. In fact, as I indicated to your colleague Mr. Badami on September 20, 2002, Columbia welcomes

the opportunity to address NCRIC's requests for information and, indeed, to discuss the possible resolution of this matter. Until you contacted me yesterday, I had been waiting to hear back from Mr. Badami as to when *NCRIC* might be willing to meet in order to do so. I am pleased that both parties are now working to make such a meeting occur as soon as possible.

Please feel free to be in touch if you would like to discuss your concerns further.

Sincerely,

Eli C. Schulman

Eli C. Schulman

cc: Dr. Safa Rifka
Mr. Michael Barch

EXHIBIT 4

BRYAN CAVE

Rodney F. Page
Partner
Voice: (202) 508-6002
rfpage@bryancave.com

September 27, 2002

VIA FACSIMILE

Eli Schulman, Esquire
Kellogg, Huber, Hansen, Todd &
Evans, PLLC
1615 "M" Street, N.E.; Suite 400
Washington, D.C. 20036

Re: *NCRIC, Inc. v. Columbia Hospital for Women*

Dear Mr. Schulman:

Thank you for your letter of today's date.

I am skeptical of your clients' explanation that Mr. Barch was simply misquoted in yesterday's *Washington Post* article regarding Columbia's intent to donate sale proceeds to charity. This statement by Mr. Barch has been repeated in a number of articles in the last few months. As such, it seems unlikely that yesterday's article simply misquoted Mr. Barch.

In any event, I request that Columbia provide NCRIC with the details regarding its secured liabilities. If it is true, as you assert in your letter, that "Columbia in fact expects its liabilities to exceed its assets," then there is little reason not to share Columbia's schedule of assets and liabilities with NCRIC. This information would also facilitate a discussion between our clients when they meet.

We continue to be available to meet with you in person on a phone call's notice to discuss these issues.

Sincerely,

Rodney F. Page

Bryan Cave LLP
700 Thirteenth Street N.W.
Washington, D.C. 20005-3960
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
Los Angeles
New York
Overland Park
Phoenix
Riyadh
Shanghai
St. Louis
United Arab Emirates
Abu Dhabi
Dubai
Washington, DC

In Association With Bryan Cave (Illinois)
Chicago

and Bryan Cave, A Multinational Partnership
London

EXHIBIT 5

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

April 18, 2002

By Facsimile

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Scott:

As you will recall, in our telephone conversation on January 31, 2002, you and I agreed to continue our dialogue about whether NCRIC would produce certain outstanding discovery after it completed its summary judgment briefs. As we discussed, it made more sense to find out what further agreements could be reached regarding outstanding discovery before engaging in discovery motion practice. As such, you promised to speak with your client about certain discovery compromises that I proposed in our conversation, and in return, I agreed that Columbia would not move to compel production of outstanding discovery at that time.

Now that NCRIC has filed its summary judgment briefs, I ask that you respond to my compromise proposals promptly, so that we may conclude discovery. (If you do not respond by April 26, 2002, I will assume that NCRIC will not agree to any of the proposals.) For your assistance, I have summarized my January 31 proposals below (they are numbered to correspond to the paragraphs of my January 31, 2002 letter regarding outstanding discovery issues).

1. Columbia would agree to forgo its right to depose NCRIC's Vice President of Information Services as part of its Rule 30(b)(6) deposition if NCRIC would agree to produce either Kevin O'Shaunessey (or, preferably, Ed Livingston – who Bill Burgess testified works as a consultant for NCRIC regarding the PLUS/OASIS systems) for a frank, two-hour telephone interview. As I explained, this interview is necessary to allow Columbia to understand NCRIC's contention that some documents cannot be produced by the PLUS or OASIS systems.

(15) Please inform me whether NCRIC intends to produce any other rebuttal expert(s) in response to Peter Ben Ezra's expert report, and if so, please immediately provide Columbia with a detailed Rule 26(b)(4) rebuttal statement regarding such expert(s).

(20) Rather than producing all documents related to investment income NCRIC earned on the $1 million (regardless of what fund it was placed into), please just provide an accurate estimate of the income earned on that money over the past four years.

9(1) Please confirm that James Hurley is a consultant for NCRIC, and that his files were searched for responsive documents.

9(8)+ Please confirm that NCRIC will make documents that were tabbed but not produced available for re-review by Columbia, if it determines that such a review is necessary.

10. Please confirm that NCRIC will produce responsive documents in the possession of Deloitte & Touche, in particular that memorandum that I requested.

11. Instead of producing David Osborne's forwarding address, which I understand NCRIC may not have, please produce his last known address.

12. Please confirm that NCRIC will produce the missing claim files for Columbia to review and copy if it determines that such a review is necessary.

Finally, I made several other follow-up requests for outstanding discovery items (*e.g.*, the list of all NCRIC endorsements and the list of Columbia physicians who had the Retro Plan endorsement) in January 2002. Please respond to this correspondence by April 26, 2002, as well.

I look forward to speaking with you about these matters.

Sincerely,

Joseph K. Leahy

cc: Roy I. Niedermayer

Superior Court of the District of Columbia

500 Indiana Ave N.W.
Washington, D.C. 20001

100

11/01/02

The civil action case captioned at the right has been scheduled for a PRETRIAL hearing before Civil Calendar #8
Judge BlackburneRigsby
for the date and time shown.

CASE NUMBER: 00ca007308
NCRIC, Inc. vs Columbia Hospital for

PRETRIAL DATE: 1/21/03 TIME: 4:00pm

00ca007308 D001 PRT.0103b2H 100
Mark C. Hansen, Esq.
1615 M ST., N.W.
Suite #400
Washington, D.C.
20036

PLEASE REPORT TO:
JM-13 Juryrom
500 Indiana Ave, NW
Civil Assignment Office,
Phone (202) 879-1696

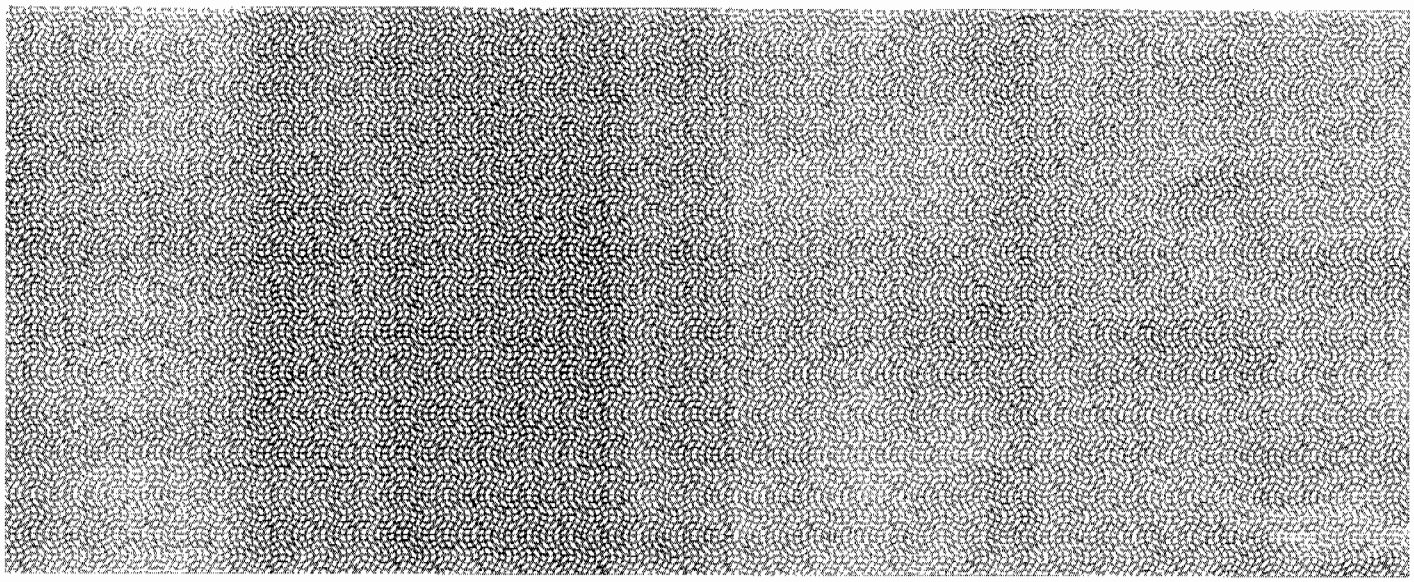
PLEASE BRING THIS NOTICE WITH YOU WHEN YOU APPEAR.

D.C. Superior Court
500 Indiana Ave N.W.
Washington D.C. 20001

First Class Mail
U.S. Postage
Paid
Washington D.C.
Permit No. 1726

00ca007308 D001 PRT.0103b2H 100
Mark C. Hansen, Esq.
1615 M ST., N.W.
Suite #400
Washington, D.C.
20036

ca JM-130



Superior Court of the District of Columbia

500 Indiana Ave N.W.
Washington, D.C. 20001

64

11/14/02

The civil action case captioned at the right has been scheduled for a MOTION hearing before Civil Calendar #8
Judge BlackburneRigsby
on the date and time shown.

MOTION hearing @11:00am

CASE NUMBER: 00ca007308
NCRIC, Inc. vs Columbia Hospital for

HEARING DATE: 12/12/02 TIME: 11:00am

TO:

00ca007308 D001 PRT.0111b2H 64
Mark C. Hansen, Esq.
1615 M ST., N.W.
Suite #400
Washington, D.C.
20036

PLEASE REPORT TO:
COURTROOM #48 2nd Fl
515 5th Street, NW
Civil Assignment Office, Phone: (202) 879-1696
PLEASE BRING THIS NOTICE WITH YOU WHEN YOU APPEAR.

12/20/02 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

The civil action case captioned at the right has been RESCHEDULED for a PRETRIAL hearing before Civil Calendar #8
Judge BlackburneRigsby
for the date and time shown.

CASE NUMBER: 00ca007308
NCRIC, Inc. vs Columbia Hospital for

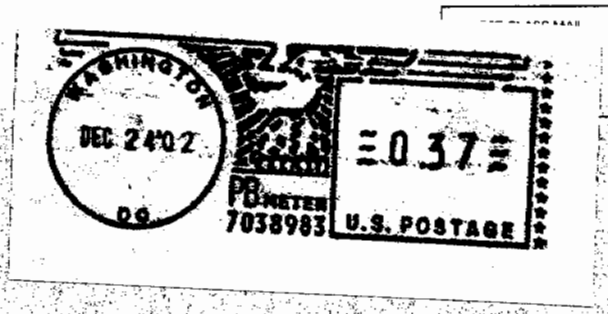
PRETRIAL DATE: 3/21/03 TIME: 3:00pm

TO:
00ca007308 D001 PRU.0103b2H 117
Eli C Schulman
1615 M Street, NW
Suite 400
Washington, DC
20036

PLEASE REPORT TO:
Courtroom #211 juryroom, 2nd Fl
500 Indiana Ave, NW
Civil Assignment Office, Phone: (202) 879-1696
PLEASE BRING THIS NOTICE WITH YOU WHEN YOU APPEAR.

SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

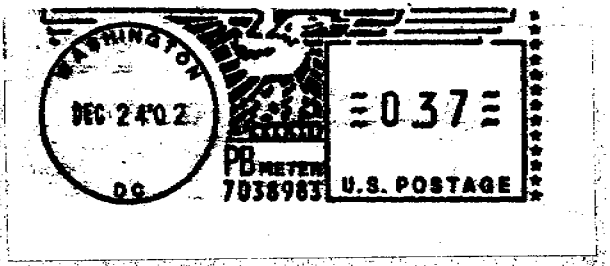
Room JM 130

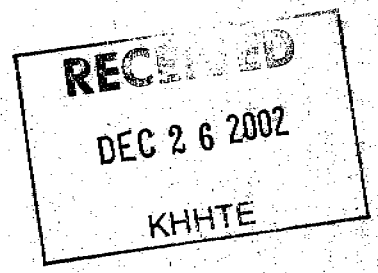


TO:
00ca007308 D001 PRU.0103b2H 117
Eli C Schulman
1615 M Street, NW
Suite 400
Washington, DC
20036

16d-001518

SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001





TO:
00ca007308 D001 PRU.0103b2H 119
Mark C. Hansen, Esq.
1615 M ST., N.W.
Suite #400
Washington, D.C.
20036

12/20/02 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TO EU SCHWUMPF

The civil action case captioned at the right has been RESCHEDULED for a PRETRIAL hearing before Civil Calendar #8
Judge BlackburneRigsby
for the date and time shown.

CASE NUMBER: 00ca007308
NCRIC, Inc. vs Columbia Hospital for

PRETRIAL DATE: 3/21/03 TIME: 3:00pm

TO:
00ca007308 D001 PRU.0103b2H 119
Mark C. Hansen, Esq.
1615 M ST., N.W.
Suite #400
Washington, D.C.
20036

PLEASE REPORT TO:
Courtroom #211 juryroom, 2nd Fl
500 Indiana Ave, NW
Civil Assignment Office, Phone: (202) 879-1696
PLEASE BRING THIS NOTICE WITH YOU WHEN YOU APPEAR.

16d-001519

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, Inc.,	*	
	*	
Plaintiff	*	Civil Action: 00ca7308
	*	Judge A. Blackburne-Rigsby
v.	*	Calendar 8
	*	Next Event: Pretrial May 6, 2003
	*	
Columbia Hospital for Women	*	
Medical Center, Inc.	*	
Defendant	*	

ORDER DENYING COLUMBIA'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on defendant, Columbia Hospital for Women's ("Columbia") Motion for Summary Judgment. A motions hearing on the cross summary judgment motions in this case was held on December 12, 2002. Columbia argues that there are no genuine issues of material fact concerning NCRIC, Inc.'s ("NCRIC") breach of contract claim or Columbia's counter-claim for breach of contract against NCRIC. Specifically, Columbia argues that based on the November 1996 oral agreement between Columbia and NCRIC, and alleged miscalculations performed by NCRIC, Columbia is entitled to judgment as a matter of law on NCRIC's breach of contract claim. Many material facts are disputed in this case and the Court therefore **denies** Columbia's Motion for Summary Judgment.

Background

In October of 1993, Columbia, a non-profit hospital specializing in care for women and NCRIC, a provider of malpractice liability insurance to physicians in the District of Columbia, established the Retrospective Rating Plan ("Retro Plan"). The purpose of the plan was to establish a malpractice liability program for the physicians at

Columbia (the "Attending Faculty") to help reduce the costs to physicians through a sharing of malpractice risk between the hospital and physicians. The Attending Faculty benefited by receiving a *Retrospective Rating Plan Endorsement* from NCRIC, which entitled the holder to a discount off the premiums up to $500,000. Physicians not participating in the Retro Plan would have to pay Subject Premiums, a total of undiscounted premiums that would be charged to physicians for coverage limits of $500,000 for each claim.

September 1996 Amendment

The Retro Plan was devised of three one–year periods, called *Experience Periods*. Originally, the Retro Plan was to be effective from September 1, 1993 to September 1, 1996. Subsequently, the parties agreed to amend and renew the Retro Plan in September1996. The Retro Plan amended the *Deposit Premium* (subject premium multipled by Deposit Premium Multiplier) and increased the physician's discount that was origionally 19% to 30%. The parties also agreed to renew the Retro Plan for one year, effective September 1, 1996.

The Reconciliation Process

The Retro Plan is retrospective in that it required NCRIC to perform calculations or Reconciliations at the end of each Experience Period and compare the cost to the amount of premium NCRIC received from the Attending Faculty. If the cost of providing the malpractice insurance to the Attending Faculty exceeded the total amount of premium NCRIC received, Columbia was required to pay the difference, up to a set maximum. The difference was called *Additional Premium*. If the Attending Faculty paid NCRIC more than it cost to provide them with the malpractice coverage, under the Retro

16d-001521

Plan, NCRIC was required to pay Columbia a refund or Return Premium, as limited by a set minimum.

Included in the Retro Plan was a measure to self-check the correctness of the calculations. To determine if the appropriate amount of premium was collected to pay losses under the Retro Plan, the Retro Premium was compared to the Deposit Premium. The Retro Premium represents for each Experience Period the total cost of providing $500,000 in malpractice insurance coverage to all of the Attending Faculty. The Deposit Premium was the Subject Premium multiplied by the *Deposit Premium Multiplier* (Columbia claims that the Deposit Premium Multiplier should be 67% and NCRIC claims it should be 62% in the Reconciliations over the disputed Experience Periods). If the Retro Premium is less than the Deposit Premium, the Return Premium is due to Columbia. If the Retro Premium is more than the Deposit Premium, Columbia owes NCRIC Additional Premium to pay against the losses.

According to the original plan, an exchange of cumulative premium or return premium was to be reconciled for each experience period. According to Columbia, NCRIC typically would provide them with a spreadsheet listing all the individual Experience Periods, with the corresponding cumulative total. Additionally, Columbia argues that NCRIC is obligated as a condition precedent to provide Columbia with this spreadsheet or similar notice within sixty days of the end of each Experience Period before Columbia is required to pay any premium due within thirty days. NCRIC asserts that Columbia was provided all quarterly and annual reconciliation calculations required by the Retro Plan and such reports or notice was not a condition precedent that needed to be performed before Columbia would be obligated to pay NCRIC any premium owed.

16d-001522

November 1996 Oral Agreement

In November 1996, NCRIC and Columbia agreed orally that neither party would pay premium for any Experience Period until it was "closed" regardless of whether the Reconciliation for any given Experience Period, indicated that Additional or Return Premium was due. In September 1997, the parties negotiated a partial payment towards Additional Premium due as financial security. According to Columbia, this $1 million dollars was a deposit to renew the Retro Plan and to NCRIC it was premium owed by Columbia. On June 28, 2000, NCRIC informed Columbia that the Retro Plan would end as of its expiration date of September 1, 2000.

However, based on the parties oral agreement, Columbia argues that they do not owe NCRIC any money because no additional Experience Periods have closed since the September 1, 2000 Reconciliation. Instead, Columbia argues that NCRIC owes Columbia for the closed Experience Period of the 1994-1995 term. Columbia argues that pursuant to the oral agreement, NCRIC has paid Columbia $172,815 for the first Experience Period, but it has paid Columbia nothing for the second Experience Period.

NCRIC interpreted the oral agreement differently. According to NCRIC, there was an oral agreement that premium was not to be paid by either party until the close of an Experience Period *unless* the Retro Plan ended. Because of this difference in interpretation, Columbia has not paid any premium to NCRIC since September 1, 2002. NCRIC then responded with this instant lawsuit for breach of contract against Columbia for premium due now that the Retro Plan has been terminated and while expectancy periods are still open.

Columbia also argues that absent the parties' oral agreement, Columbia still does

16d-001523

not owe NCRIC the amount of Additional Premium that NCRIC demands at this time, because NCRIC failed to provide within sixty days of the Reconciliation date, notice of any Additional Premium due following the September 1, 2001 Reconciliation. This, Columbia argues is a condition precedent to Columbia's obligation to pay, which is due and payable within thirty days after it receives NCRIC's notice. Thus, Columbia argues that the 2001 payment is not due.

In opposition NCRIC argues that Columbia's arguments are based on factual questions rather than the amendment and administration of the Retro Plan. NCRIC argues that notice was not a condition precedent and that it should be stricken from Columbia's pleadings as a factual conclusion. Despite this contradiction, NCRIC declares that even if notice was not produced in discovery that this is not conclusive evidence that such notice was never given.

Miscalculations

Columbia also moves the Court to grant summary judgment on its breach of contract claim against NCRIC, alleging that NCRIC misapplied the Minimum Premium Factor, the Deposit Premium Factor and the Development Factors. Columbia argues that NCRIC misapplied the original 75% Minimum Premium factor to the first two years of the Plan after the 1996 amendment reduced the Minimum Premium to 60%. NCRIC argues that the 1996 change was to be interpreted prospectively from the amendment made in 1996 forward—not retrospectively. NCRIC claims that Columbia wrongfully relies upon its counsel's unsupported argument that the amendment does not expressly prohibit the Minimum Premium Factor from being applied to all Experience Periods. However, NCRIC argues that the whole purpose for amending certain figures was the

16d-001524

mathematical consequence of the increased premium discount effective from 1996 forward.

Next, Columbia argues that NCRIC uses a Deposit Premium multiplier of approximately 62% for all Experience Periods beginning after 1995-1996 when the Retro Plan states that the multiplier should be 67%. By employing the wrong Deposit Premium factor, Columbia claims that NCRIC credits Columbia with five percent less Deposit Premium than it should for each of the five most recent Experience Periods. As a result, when the Deposit Premium is subtracted from the Retro Premium for each Experience Period, Columbia is billed substantially more than required by the Plan. Columbia demonstrated that when NCRIC's September 1, 2000 Reconciliation applies the correct deposit premium factor, the cumulative amount due drops from $1,286,524 to $627,304.

NCRIC argues that Columbia relies only on its counsel's interpretation instead of expert testimony regarding the complex analysis of retrospective insurance. Columbia argues that the Deposit Premium must be the inverse of the 19% discount originally provided to physicians under the Retro Plan. Thus, when the discount increased to 33%, the Deposit Premium must be 67%. NCRIC argues that this interpretation comes from a "simple" reading of the Retro Plan, but that this evidence cannot counter NCRIC's testimony by "individuals knowledgeable about retrospective insurance plan calculations, as to why 62% is the proper Deposit Premium to properly arrive a the reduced premium for physicians affected by the 1996 Amendment to the Retro Plan."

Finally, Columbia claims that NCRIC applies each Development Factor to the relevant number of months after an Experience Period begins, rather than after it ends. Columbia bases this opinion on the comparison of Exhibit E of the 1993 Retro Plan to

16d-001525

NCRIC's reconciliation calculations. Columbia argues that the effect of this is a substantial decrease in the cumulative additional premium that drops from $1, 286,524 to $686,961. In response, NCRIC argues that even if Exhibit E of the Retro Plan, a tabbed example of the Retro Plan operation, shows the Development Factor being applied at the end of the years, NCRIC is not in breach of contract by not following the calculation examples in Exhibit E. NCRIC argues that the Retro Plan states that Exhibit E is "not to vary alter or amend the terms hereof or of the Plan." Moreover, NCRIC asserts that Columbia is using exhibit E to impose additional obligations and not merely to clarify the application of the Development Factors. Further, NCRIC highlights again that Columbia has no lay or expert testimony in support of its interpretation that the Development Factors are correct.

Summary Judgment Standard

Summary judgment is proper under Rule 56(b) where the record shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Big Builders, Inc. v. Israel*, 709 A.2d 74 (D.C. 1998). The court must view all facts and inferences in the light most favorable to the non-movant, and summary judgment should not be granted unless the moving party can show that no reasonable juror could find for the non-moving party. *Big Builders*, 709 A.2d 74, 76 (D.C. 1998). Once the movant has met the burden of demonstrating the absence of material disputed issues and the right to judgment as a matter of law, the nonmovant has the burden of producing adequate evidence to support a factual dispute requiring the trier of fact to resolve the dispute. *Graff, v. Malawer*, 592 A.2d 1038, 1040 (D.C. App. 1991).

The party opposing summary judgment may not rest upon the mere allegations or

16d-001526

denials of his pleading but must come forward with affidavits or other evidence to controvert the movant's showing that there is a genuine issue of material fact for trial. *Graff*, 592 A.2d 1038, 040 (D.C. App. 1991). It is therefore imperative upon the non-movant to disclose credible evidence of it position because summary judgment cannot be defeated by conclusive allegations. *Id.* A motion for summary judgment is therefore properly granted if taking all reasonable inferences in the light most favorable to the nonmoving party, a reasonable juror, acting reasonably could not find for the nonmoving party, under the appropriate burden of proof. *Id.*

Analysis

There are material issues of fact in dispute, and therefore the Court denies Columbia's Motion for Summary Judgment. First, there is a factual dispute whether NCRIC gave notice to Columbia that premium was due, and whether such notice was a condition precedent to NCRIC's ability to receive the owed premium. Columbia says it did not get notice and NCRIC claims that notice was not a condition precedent but that they complied with all the requirements under the Retro Plan. Both parties rely on their interpretation of the oral agreement in support to their argument that there was or was not a condition precedent.

Under D.C. law, for a contract to exist, there must be both agreement to all material terms and the intention of the parties to be bound. "Absent any contrary requirement under the statute of frauds, parties may enter into enforceable oral contracts, as long as the parties agree to all material terms and intend to be bound by their oral agreement." *Baker v. Office Space Dev. Corp.,* 664 A. 2d 1236, 1238 (D.C. 1995).

Here, both parties agree that an oral contract exists and have made such in-court

16d-001527

representations before the Court at the December 12, 2002 motions hearing on the cross summary judgment motions in this case. Thus, the statute of frauds is satisfied. *Wemhoff v. Investors Management Corporation of America, et al.*, 528 A.2d 1205, 1208 (DC 1987). The determination therefore, is whether the parties agreed to all of the material terms and intended to be bound by their agreement. The jury should make this determination.

Here, the contract is ambiguous. The parties did not appear to consider the ramifications of their oral contract if the Retro Plan was terminated. The parties agree that no premium would be due by either party until all Experience Periods had closed. This agreement seems to have been made in light of the Retro Plan being in existence. However, the parties have different interpretations as to what would happen if the Retro Plan ended and open Experience Periods still existed.

Issues of fact regarding oral contract ambiguity are for the jury to resolve. The use of extrinsic evidence is permitted "to determine the circumstances surrounding the making of the agreement, so that it may be ascertained what a reasonable person in the position of the parties would have thought the words meant." *Noonan v. Williams*, 688 A.2d 237 (DC 1996) (citing *Lamphier v. Washington Hospital Center*, 524 A.2d 729 (D.C. 1987).

The different interpretations by the parties are an ambiguity in the contract, as opposed to a failure to agree to all material terms of the contract. "The policy favoring freedom of contract requires that within broad limits, the agreement of the parties should be honored even though forfeiture results. When, however, it is doubtful whether or not the agreement makes an event a condition of an obligor's duty, an interpretation is

16d-001528

preferred that will reduce the risk of forfeiture." RESTATEMENT (SECOND) OF CONTRACTS § 227(1) (1971).

Here, Columbia argues that the closing of an Experience Period, is the event that must occur before Columbia must pay NCRIC any owed premium. On the other hand, NCRIC argues that whether an Experience Period is closed or open, Columbia owes NCRIC now because the Retro Plan has been terminated. Because of this factual dispute, the Court will not decide the harsher alternative that no contract was formed. The intent of the parties is a factual issue for the jury to decide.

There are additional factual disputes for a jury to resolve such as whether notice was ever given. There is also a factual dispute regarding the mechanics of the calculations. Specifically, there is a dispute regarding whether the 1996 Amendment decreasing the Minimum Premium to 60% should be applied prospectively or retrospectively and whether the Deposit Premium Multiplier was properly adjusted from 67% to 62% to comply with the 1986 amendment, reducing the premium for the Attending Faculty. Finally, there is a factual dispute as to the whether Exhibit E is a controlling example of how the Reconciliations should be performed.

16d-001529

Accordingly, for the foregoing reasons and upon consideration of Plaintiffs' Motion for Summary Judgment[1], and Opposition thereto, it is by the Court this 2nd day of April, 2003

ORDERED, that the Motion is **DENIED**.

A. Blackburne-Rigsby

JUDGE A. BLACKBURNE-RIGSBY
Signed in Chambers

Copies To:

Marc C. Hansen
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

DOCKETED APR 03 2003

MAILED APR 3 2003

Eli C. Shulman
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Scott M. Badami
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Roy I. Niedermayer
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

[1] The Court will issue a separate order on NCRIC's Motion for Summary Judgment.

16d-001530

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Next Event: Mediation, October 31, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

CIVIL AC...
APR 0 4 2003
Superior Court of the District of Washington

ORDER

UPON CONSIDERATION of NCRIC's Motion To Enlarge Time for Discovery, the opposition thereto, the record herein, and for good cause shown, it is hereby ORDERED, that the Motion is DENIED.

ENTERED this 2nd day of April, 2002.

A. Blackburne-Rigsby
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

DOCKETED APR 0 8 2003

MAILED APR 8 2003

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	Civil Action No. 00-007308 Calendar #8 Judge ~~Linda Kay Davis~~ Blackburne-Rigsby Next Event: Discovery close 5/12/01

ORDER GRANTING MOTION FOR PROTECTIVE ORDER BARRING INQUIRY INTO SUBJECT MATTER AREAS FOR 30(b)(6) DEPOSITION OF PLAINTIFF

This matter came before the Court on plaintiff's Motion for Protective Order Barring Inquiry into Subject Matter Areas for 30(b)(6) Deposition of Plaintiff, and the Court having reviewed the Motion and any opposition thereto, it is this 2nd day of April 2003, ~~2001~~

ORDERED that the plaintiff's Motion for Protective Order Barring Inquiry into Subject Matter Areas for 30(b)(6) Deposition of Plaintiff be and the same is hereby GRANTED.

A. Blackburne-Rigsby
~~Linda Kay Davis~~, Superior Court Judge

DOCKETED APR 07 2003

MAILED APR 7 2003

16d-001532

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, Plaintiff	*	
	*	Civil Action: 00ca7308
	*	Judge A. Blackburne-Rigsby
v.	*	Calendar 8
	*	Next Event: Pretrial Conference,
	*	May 6, 2003
Columbia Hospital for Women Medical Center, Inc. Defendant	*	
	*	

ORDER GRANTING IN PART AND DENYING IN PART NCRIC's MOTION TO COMPEL DISCOVERY BY DESIGNATION UNDER SCR 30(b)(6) AND APPEARANCE AT DEPOSITION

On August 7, 2001, NCRIC filed this instant Motion to Compel Discovery By Designation Under SCR 30(b)(6) and Appearance at Deposition. Specifically, NCRIC asks the Court to compel Columbia to designate persons to appear at deposition and answer questions about subject matters described in plaintiff's Notice of 30(b)(6) Deposition pertaining to numbers 1-14, 28-29, 51-52, 56-57. On November 19, 2001, Columbia filed its Memorandum of Law in Opposition to Plaintiff's Motions to Compel. The Court has reviewed the motion and the particular objections. The Court's disposition on these issues is detailed below:

#1: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories[1] specific to this subject area. Such information should be obtained from interrogatories. The Court has considered Columbia's objections based on work product privilege. However, certain underlying facts must have been the basis for Columbia's eleven-count counterclaim. Thus, the Court does not recognize a work-product privilege as to this

[1] The Court will allow NCRIC to reopen discovery in the form of interrogatories only for the specified areas. This is not an opportunity for NCRIC to inquire more broadly than the subject matter stated in

specific area.

#2: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories to this subject area. (*See* #1 above).

#3: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories to this subject area. (*See* #1 above).

#4: Granted. Columbia is instructed to provide designees to be deposed on this specific subject area.

#5: Granted. Certain underlying facts as these must have been the basis for Columbia to file an eleven-count counterclaim. Columbia is instructed to provide designees to be deposed on this specific subject area.

#6: The Court will reserve ruling on these issues until this issue is addressed in the Court's ruling on NCRIC's Summary Judgment Motion.

#7: The Court will reserve ruling on these issues until this issue is addressed in the Court's ruling on NCRIC's Summary Judgment Motion.

#8: Denied: The Court agrees with Columbia that this subject area improperly asks the designees to speak to the law of fiduciary relationships.

#9: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories specific to this subject area. Such information should be obtained from interrogatories. The Court has considered Columbia's objections based on work product privilege. However, certain underlying facts must have been the basis of the eleven-count counterclaim. Thus, the Court does not recognize a work-product privilege as to this specific area. Moreover, the Court compels Columbia to provide financial accounts or

---

plaintiff's Notice of Deposition pursuant to Rule 30(b)(6), but only to allow such relevant and pertinent information to be obtained properly through limited interrogatories.

16d-001534

statements as to their financial situation at the time Columbia authorized the $1 million check to be given to Columbia.

#10: Granted in part. Certain underlying facts, such as these, must have the basis of Columbia's eleven-count counterclaim. The Court reserves ruling on the remaining issue until it issues a ruling on NCRIC's Summary Judgment Motion.

#11: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories specific to this subject area. Such information should be obtained from interrogatories. The Court has considered Columbia's objections based on work product privilege. However, certain underlying facts must have been the basis of Columbia's eleven-count counterclaim. Thus, the Court does not recognize a work-product privilege as to this specific area.

#12: Denied. NCRIC already has within its possession the allegations of errors by plaintiff from the pleadings.

#13: Granted. Columbia counter-claimed that NCRIC knew about Columbia's financial situation. Columbia should designate person(s) to speak to the underlying facts regarding the "bases for the allegations of plaintiff's knowledge about defendant's financial situation."

#14: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories specific to this subject area. Such information should be obtained from interrogatories. The Court does not recognize a work-product privilege as to this specific area.

#28: The Court will permit NCRIC ten days leave to file limited interrogatories to this subject area. (*See* #1 above).

16d-001535

#29: Denied. The Court acknowledges Columbia's objection that this is a moot issue. However, the Court agrees with Columbia's objection that NCRIC will only be able to obtain information concerning the *results* of Columbia's insolvency, not the *cause*.

#51: Granted. Columbia is instructed to provide designees to be deposed on this specific subject area.

#52: Denied. Columbia can not be expected to testify as to the intent of NCRIC.

#56: Granted: Columbia is instructed to provide designees to be deposed on this specific subject area.

#57: Denied. The Court acknowledges that Columbia's prayer for attorney's fees was dismissed and therefore this subject area is moot.

So Ordered.

April 3, 2003
Date

A Blackburne-Rigsby
Judge A. Blackburne-Rigsby

DOCKETED APR 7 2003

MAILED APR - 7 2003

Copies To:

Joseph K. Leahy, Esq.
Kellog, Huber, Hansen, Todd
& Evans, P.L.L.C
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Rodney Page, Esq.
Bryan Cave LLP
700 13th Street, N.W.
Washington, D.C. 20005-3960

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

16d-001536

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC,	*	
Plaintiff	*	Civil Action: 00ca7308
	*	Judge A. Blackburne-Rigsby
v.	*	Calendar 8
	*	
	*	
Columbia Hospital for Women	*	
Medical Center, Inc.	*	
Defendant		

ORDER DENYING NCRIC's MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on National Capital Reciprocal Insurance Company, Inc.'s ("NCRIC") motion for summary judgment against Columbia Hospital for Women Medical Center ("Columbia")[1]. A motions hearing on the cross summary judgment motions in this case was held on December 12, 2002. NCRIC seeks summary judgment on Columbia's counterclaims for breach of contract (count I), breach of implied covenant of good faith and fair dealing (count II), breach of fiduciary duty (count III), tortious interference with business relations (count four), prospective business advantage (count five), negligence (count six)[2], actual and constructive fraud (count seven), negligent misrepresentation (count eight), defamation and libel (count nine), injurious falsehood (count 10), and conversion (count 11).

Background

In September of 1993, NCRIC, a provider of medical malpractice insurance, and Columbia, a not-for-profit hospital in the District of Columbia negotiated the

[1] To the extent that there are newly alleged counterclaims, i.e. retaliation, discussed in Columbia's Opposition to NCRIC's Motion for Summary Judgment that were not designated as a counterclaim, these counterclaims will not be discussed in this order or entertained at trial. (*See* Columbia's description of retaliation).

Apr 21 03 03:37p Judge Blackburne-Rigsby 202 879-0041 p.2

16d-001537

Retrospective Rating Plan Agreement ("The Retro Plan"). The purpose of the Retro Plan was to provide to certain physicians, a reduction or discount on their insurance premiums on a preferred risk basis by participating in the Attending Faculty Program. The Retro Plan was originally designed to last for three one-year periods, known under the plan as *experience periods*. Columbia agreed to be solely responsible for any additional premium due in accordance with the terms of the Plan. Columbia would also be entitled to receive any return premium or return investment.

Summary Judgment Standard

Super. Ct. Civ. R. 56(c) provides for summary judgment when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment is warranted after "(1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the non-moving party, (3) under the appropriate burden of proof. *Sherman v. Adoption Ctr. Of Washington, Inc.*, 741 A.2d 1031 (D.C. 1999). In responding to a motion for summary judgment, the non-moving party may not rest upon mere allegations or conclusory statements but must, through affidavits or as otherwise provided in Rule 56, set forth specific facts showing there is a genuine issue for trial. *Beard v. Goodyear Tire & Rubber Co.*, 587 A.2d 195, 198-99 (D.C. 1991).

A. Count One: Breach of Contract

Columbia claims that NCRIC breached the Retro Plan in three regards. As a result, Columbia claims that NCRIC caused Columbia damages to the point of filing for bankruptcy. First, Columbia argues that NCRIC breached their oral agreement by failing

[2] To the extent that the summary judgment motion and the opposition thereto discussed only discussed negligence in regards to negligent misrepresentation (count 8), the Court will not discuss negligence, count

p.3 202 879-0041 Judge Blackburne-Rigsby Apr 21 03:38p
16d-001538

to notify and pay Columbia $765,000 in return premium for the 1993-1994 and 1994-1995 closed experience periods. Absent the oral agreement, Columbia argues that because NCRIC failed to perform the September 1, 2001 reconciliation, NCRIC would still owe Columbia $560,000.

Second, Columbia alleges that NCRIC breached the Retro Plan by performing a series of miscalculations of the Retro Premium in quarterly reports and annual reconciliations. Specifically, NCRIC allegedly used a greater percentage of its loss reserves than it was allowed to consider, "added extra years" to the Plan and/or reconciled too few years in the calculations, did not apply the corrected Deposit Premium and did not apply the proper Minimum premium.

NCRIC supports their calculations and argues that Columbia has not proffered any evidence to disprove NCRIC's miscalculations. Columbia argues that NCRIC has admitted that they made a mistake in calculating the reconciliations. Further, Columbia argues that the Court should determine the accuracy of the calculations. Columbia believes that the one million dollars that it deposited to NCRIC, was a contributing cause to Columbia's bankruptcy. Also, Columbia argues that had NCRIC performed the 1997 reconciliation correctly, the spreadsheet would have shown that Columbia owed NCRIC $1.2 million instead of $1.8 million.

Clearly, there is a material dispute as to how the reconciliations should be calculated. Each party has their own theory but the Retro Plan says nothing as to how the calculations are to be performed. Although Exhibit E of the Retro Plan is identified as an example, the Retro Plan negates any complete, and total reliance on Exhibit E, when it states "Exhibit E is not meant to vary, alter or amend the terms of the Plan." Exhibit E,

---

six in this opinion. The issue of negligence will be presented at trial.

P.4 202 879-0041 Jude, Blackburne-Rigsby Apr 21 03 03:38p
16d-001539

according to the Retro Plan, is meant to clarify the manner of calculations. Therefore, the parties are in disagreement on the "how" to perform reconciliations, and therefore the formula is one that must be decided by the jury.

Third, Columbia claims that NCRIC breached the Retro Plan by refusing to provide Columbia with reports concerning the loss reserves as required under the Retro Plan. On the other hand, NCRIC argues that they provided Columbia with quarterly reports reflecting the current status of claims under the Retro Plan. Further, NCRIC argues that it was at Columbia's request that the parties did not always meet to discuss the quarterly reports provided by NCRIC. Here, there is obviously a dispute as to whether NCRIC provided Columbia with the necessary reports concerning loss reserves required under the Retro Plan, and therefore summary judgment is denied.

B. Breach of Implied Covenant of Good Faith and Fair Dealing (Count II)

Columbia claims that NCRIC evaded the spirit of the contract when they demanded that NCRIC pay $1.7 million in October of 1997 to renew the Retro Plan because it denied Columbia the benefit of the oral agreement[3]. Columbia was only able to pay $1 million dollars but argues that even if this amount was negotiated, Columbia still had no choice but make the payment, or lose its physicians. Columbia argues that NCRIC used the oral agreement to avoid paying money when it was convenient and demanded money as an *exception* to the oral agreement at the height of Columbia's fiscal woes. Further, Columbia argues that NCRIC rendered imperfect performance by performing reconciliations inaccurately.

NCRIC refutes Columbia's allegations that it breached the duty of good faith and

[3] This refers to the oral agreement made in November 1996 that claimed that no premium would be paid until all experience periods were closed.

P.5 202 879-0041 Judge Blackburne-Rigsby Apr 21 03 03:38p
16d-001540

fair dealing. NCRIC argues that it simply wanted a security payment before Columbia filed for bankruptcy. In addition, NCRIC emphasizes that the $1 million dollars was negotiated between the parties and that Columbia was under no obligation to renew the Retro Plan. Moreover, NCRIC denies that it "evaded the spirit of the contract" because it consistently provided the Attending Faculty with discounted insurance premiums: the purpose of the Retro Plan.

NCRIC's motion for summary judgment on Columbia's claim that NCRIC breached the implied covenant of good faith and fair dealing must fail because there is a factual dispute regarding whether the $1 million Columbia gave to NCRIC was a deposit or a payment on outstanding premium.

Under District of Columbia law, "every contract contains an implied covenant that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, which means that in every contract there exists an implied covenant of good faith and fair dealing." *Hais v. Smith*, 547 A.2d 986,987 (D.C. 1988) *See Steele v. Issikoff*, 130 F. Supp. 2d 23, 32 (D.D.C. 2000); *Paul v. Howard Univ.*,754 A. 2d 297, 310 (D.C. 2000). The implied duty of good faith and fair dealing "prevents a party from evading the spirit of the contract, willfully rendering imperfect performance or interfering with the other party's performance. *Id.* at 987.

Here, the issue of whether the $1 million dollars was intended to be a deposit or payment is a material issue in dispute. Both parties dispute how the million dollars was classified in the negotiations. The classification is material because if the $1 million dollars was negotiated security payment, agreed to by Columbia, the grounds for this

p.6
Apr 21 03 03:38p Judge Blackburne-Rigsby 202 879-0041
16d-001541

breach of good faith and fair dealing is not viable because there was no deception. This is true despite Columbia's allegation that they were forced to pay the amount to renew the plan. Other medical malpractice insurance companies exist in the District. However, if the money is a deposit, one that Columbia thought that they would able to receive back and was not a payment, NCRIC's refusal to return the $1 million supports the allegation that such a covenant has been breached.

Therefore, the counterclaim for implied covenant of good faith and fair dealing must be reserved for the jury to decide and NCRIC's summary judgment fails.

C. Breach of Fiduciary Duty (Count Three)

Columbia claims that NCRIC owed a fiduciary duty to Columbia by:

> NCRIC's responsibility, stated in the Plan to perform all bookkeeping on behalf of Medical Center[4] under the Plan; b) Medical Center's trust and reliance on NCRIC to administer the Plan, of which NCRIC was fully aware; c) Medical Center's reliance on NCRIC to properly and honestly perform reconciliations and accurately calculate Additional or Return Premium, of which NCRIC was fully aware; and d) Medical Center's dependence on NCRIC for certain information necessary to perform retro calculations under the Plan, of which NCRIC was fully aware. *See* Retrospctive Rating Plan.

First, Columbia asserts that because NCRIC was to perform all bookkeeping, including all Reconciliation calculations for *both* parties and Columbia never received adequate information to audit the calculations[5], the Retro Plan was structured in a way that acknowledged NCRIC's superior skill and knowledge. Second, Columbia argues that even if the original Retro Plan had not envisioned a fiduciary relationship, the evolution of their relationship into a "joint undertaking" gave rise to such a duty.

[4] It is inferred from the Retro Plan provided by the parties that Columbia Hospital For Women is the "Medical Center" depicted in the Plan.

P.7 202 879-0041 Judge, Blackburne-Rigsby Apr 21 03 03:38p
16d-001542

Columbia describes the evolutionary circumstances as the time period around late 1997 when Columbia changed their administration dramatically, and new management had to familiarize itself with the Retro Plan[6].

Further, Columbia argues that the parties fiduciary relationship was reinforced when the parties met at quarterly meetings to review the reconciliation process. Columbia asserts that NCRIC represented to them that: 1) the calculations were accurate; 2) all errors had been corrected; 3) and that they were watching out for Columbia's best interest when performing the reconciliations. Moreover, Columbia argues that although Columbia was present at the quarterly meeting concerning reconciliations, a fiduciary duty still existed because the parties' bargaining power was not equal.

NCRIC does not concede that the parties bargaining power was unequal, instead NCRIC views the Retro Plan as a negotiated agreement between two distinct and sophisticated corporate entities. NCRIC argues that Columbia was not obligated to renew their plan with Columbia, as there were other professional malpractice insurance companies in the District.

A fiduciary relation exists when one party "is under a duty to act for or give advice for the benefit of another upon matters within the scope of the relation. *Church of Scientology Int'l v. Eli Lilly & Co.*, 848 F. Supp. 1018, 1028 (D.D.C. 1994)." Whether there exists a fiduciary relationship is a fact-intensive question, involving a searching inquiry into the nature of the relationship, the promises made, the type of services or advice given and the legitimate expectations of the parties. *Id.* However such

[6] Columbia claims that members of their personnel were unable to audit NCRIC's numbers because the spreadsheets do not show all of the multipliers used in the Retro formula, and Columbia did not have access to any of the underlying data.

Apr 21 03 03:39p Judge Blackburne-Rigsby 202 879-0041 p.8
16d-001543

parties, through past history of the relationship and their conduct, had extended the relationship beyond the limits of the contractual obligations. *Id.*

The Court does not believe that a fiduciary relationship was envisioned from the inception of the Retro Plan. The Retro Plan envisioned NCRIC to be the book and record keeper in the administration of the Retro Plan, but does not deprive Columbia of an opportunity to review these books and records. Although NCRIC may have been more familiar with retrospective insurance, this did not diminish Columbia's bargaining power. Further, the Retro Plan is a negotiated instrument, as agreed by all the parties. Columbia did not raise a concern of unequal bargaining power at the inception of the Retro Plan. This considerably weakens Columbia's claim that the parties bargaining power was unequal because of its failure to exercise in more depth its contractual rights to inquire into and review the records and calculations made by NCRIC.

However, the Court denies summary judgment on the counterclaim for breach of fiduciary duty because there is a factual dispute as to whether such a relationship could have evolved beyond the four corners of the contract. Columbia claims that through its fiscal woes, it trusted the representations NCRIC made to Columbia, and NCRIC was aware of this reliance. To the extent that Columbia will proffer testimony to the alleged deception and misrepresentation at trial, and that a fiduciary duty is inherently a factual inquiry, this counterclaim will survive the motion for summary judgment.

D. Summary Judgment is Denied as to Columbia's Tortious Interference With Business Relations (Count Four) and Tortious Interference With Prospective Business Advantage Claims (Count Five)

Based on the statements, Columbia claimed that NCRIC interfered with its

[6] This included the resignation of the entire board of directors; the departure of several CEOs; a crisis concerning the Bank of Tokyo; and Columbia's filing for bankruptcy.

Apr 21 03 03:39p Judge Blackburne-Rigsby 202 879-0041 p.9
16d-001544

business relationships with Columbia's Attending Faculty, and Columbia's expectancy of business from patient referrals by using scare tactics to make the Attending Faculty move their practices to George Washington University ("GW") and Sibley Memorial Hospital ("Sibley").

NCRIC argues that there is no evidence demonstrating that any physician terminated his or her relationship with Columbia because of the alleged defamatory statements. Additionally, NCRIC argue that there is no evidence that Columbia physicians left because NCRIC representatives urged them to do so or because NCRIC decided not to renew the Retro Plan. Specifically, NCRIC argues failure to renew the Retro Plan was lawful and can not be the basis of tortious interference with a business relationship. Moreover, NCRIC argues that if a disputed issue of material fact exists as to whether the alleged statements were false, there is no evidence that NCRIC knew that at the time they were allegedly published. Specifically, NCRIC argues that since Columbia's defamation and injurious falsehood claims fail as a matter of law, so too must its tortious interference claims to the extent they rely on those alleged statements.

Columbia argues that their damages are not speculative, but rather unambiguous, based on their long-standing relationship with their physicians. Specifically, Columbia argues that they had a long-standing relationship with at least sixty physicians, who referred many, if not all, of their patients to Columbia. Additionally, Columbia argues that Columbia has a history of many of its physicians staying until retirement. Further, Columbia argues that historically admission patterns and the number of births had remained stable. Moreover, Columbia argues that they have not seen such a drastic leave of physicians since September 2000 when about one-third of its patient referrals

p.10 202 879-0041 Judge Blackburne-Rigsby Apr 21 03 03:39p
16d-001545

leave of physicians since September 2000 when about one-third of its patient referrals and a substantial number of the Attending Faculty left Columbia, all within two months.

Columbia also alleges that every group of physicians that left Columbia in September 2000 told a Columbia Board Member that they were leaving due to the alleged rumors spread by Dr. Glassman. Columbia asserts that the rumors and scare tactics had a direct effect of the rumors and the physicians leaving, based on the immediate timing that several physicians left and moved to GW and Sibley.

NCRIC's summary judgment motion must fail because there are factual disputes as to whether NCRIC's tactics amounted to untruthful scare tactics and whether these tactics ultimately caused the physicians to leave. To establish a claim for tortuous interference with prospective economic advantage, a plaintiff ordinarily must plead 1) the existence of a valid business relationship or expectancy, 2) knowledge of the relationship or expectancy on the part of the interferer, 3) intentional interference inducing or causing a breach or termination of the relationship or expectancy, and or 4) resultant damage. *Genetic Systems Corp. v. Abott Laboratories*, 691 F. Supp. 407, 423 (D.D.C. 1988).

Unfair competition is essentially an unprivileged interference with prospective advantage. *Id.* A general intent to interfere or knowledge that conduct will injure the plaintiff's business dealings is insufficient to impose liability. *Id.* A competitor's conduct must be more egregious, for example, it must involve libel, slander, physical coercion, fraud, misrepresentation, or disparagement. *Id.*

There are factual disputes concerning whether the statements were truthful, as to provide a qualified privilege and not interfere with business relations. If the comments were not truthful, there is a dispute as to whether NCRIC knew that the statements would

P.11
Jude Blackburne-Rigsby 202 879-0041
Apr 21 03 03:39p
16d-001546

interfere with Columbia's business relations. There is also an issue in dispute as to whether Dr. Glassman spoke as a Columbia physician or a NCRIC representative.

D. Summary Judgment is Denied As to Columbia's Fraudulent (Count 7) and Negligent Misrepresentation Claims (Count 8)

In counts seven and eight of their counterclaim, Columbia alleges that NCRIC fraudulently and negligently misrepresented that Columbia owed more money than that which was due and that NCRIC was not due any money. NCRIC stands behind their calculations in arguing that at all times they used due care when calculating the premiums and corrected any minor miscalculations immediately.

Columbia alleges that NCRIC falsely represented that Columbia owed additional premium for each closed experience period, and that a cumulative amount was due. Columbia claims that they were financially injured because NCRIC demanded more money than that which was owed. Further, Columbia argues that had NCRIC correctly represented to them, Columbia would have paid the correct amount of additional premium or would have demanded the correct amount of return premium. Moreover, Columbia asserts that they relied on these false reconciliations by paying or collecting the wrong amounts, and that this reliance was known to NCRIC.

Columbia also asserts that at minimum, the evidence shows that NCRIC's misrepresentations were negligent. Specifically, Columbia argues that NCRIC's failure to check its work gave rise to a claim for negligent misrepresentation.

To prove fraud, the proponent must prove by clear and convincing evidence: 1) a false representation; 2) in reference to a material fact; 3) made with knowledge of its

P.12 202 879-0041 Judge Blackburne-Rigsby Apr 21 03 03:39p
16d-001547

falsity; 4) with intent to deceive; 5) reliance upon the representation; and 6) resulting provable damages. *Railan v. Katyal,* 766 A.2d 998, 1009 (D.C. 2001). Here, there are material issues as to whether NCRIC made false representations and knew those representations were false.

To prove negligent misrepresentation the proponent must prove: 1) the negligent communication of false information; 2) which defendant intended or should have recognized that plaintiff would take actions in reliance upon, and 3) reasonable detrimental reliance.

NCRIC's motion for summary judgment fails because there is a material dispute in regard to each element of Columbia's counterclaim for fraud and negligent misrepresentation. First, there is a factual dispute as to whether a false representation was made. Second, if a false representation was made, there is a factual dispute regarding NCRIC's intent. Third, the parties dispute whether Columbia could plausibly argue that they relied on any misrepresentation. NCRIC argues that Columbia is an independent entity from NCRIC. Further, NCRIC argues that a fiduciary relationship was never formed.

E. Summary Judgment is Granted in part as to Columbia's Defamation Claims (Count 9) and Denied as to Columbia's Injurious Falsehood Claims (Count 10)

In its counterclaim, Columbia claims NCRIC committed defamation and injurious falsehood against them through two distinct episodes of communication, in 1998 and in 2000. NCRIC moves the court to grant summary judgment because there are no material issues of fact concerning these statements. NCRIC refutes the defamation claim because the alleged statements are true and constitutionally protected. In addition, NCRIC argues that Columbia is a public figure and that Columbia would have to prove by clear and

Apr 21 03 03:40p Judge Blackburne-Rigsby 202 879-0041 p.13
16d-001548

convincing evidence that NCRIC committed actual malice when making these statements. The Court will first settle the issue of whether Columbia is a public figure, and then address Columbia's claims of defamation (Count 9) and injurious falsehood (Count 10) claims.

The Court finds that Columbia is not a public figure and Columbia must prove NCRIC committed defamation and injurious falsehood by a preponderance of the evidence. In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341, 41 L. Ed. 2d 789, 94 S. Ct. 2997 (1974), the Supreme Court classified two distinct types of public figures. "For the most part those who attain this status have assumed roles of special prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classified as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." The other type is a limited public figure. Here, the Court must determine whether 'an individual has assumed a role of special prominence in the affairs of society... that invites attention and comment." *Pearce v. E.F. Hutton Group, Inc., et al*, 664 F. Supp. 1490 (D.D.C. 1997).

In the instant case, Columbia does not meet the Supreme Courts standard for either type of public figure. Columbia is a private, not-for-profit institution which provides medical care and services appear to be involved or at the forefront of any important public issues nor do they shape events of society in any kind of large scale. It appears that NCRIC's attempt to classify Columbia as a public figure is nothing more than a strategic ploy to make Columbia's defamation claim more burdensome. A plaintiff who is a public figure has significantly more demanding burden of proof than a

Apr 21 03 03:40p Jude Blackburne-Rigsby 202 879-0041 p.14
16d-001549

private plaintiff. *Id.* A public figure must prove that the publication was false *and* the defendants published it in knowing or reckless disregard as to its falsity, that is "with a high degree of awareness of its probable falsity." *Joseph v. Xerox Corporation, et al.* 594 F. Supp. 330, 334 (D.D.C. 1984). Moreover, those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure. Thus, the Court finds that Columbia is not a public figure and therefore Columbia must prove defamation and injurious falsehood by a preponderance of the evidence.

Summary Judgment is Appropriate Regarding the alleged August 1998 Defamatory Statements

The basis of Columbia's counterclaims of defamation and injurious falsehood surround two different episodes of communications. First, in August 1998, Columbia decided that it could no longer afford to continue the Retro Plan because it had entered into bankruptcy proceedings. Thereafter, Columbia worked out a deal with another insurance carrier, Medical Inter-Insurance Exchange ("MIIX"). Columbia alleges that upon hearing this, NCRIC called a secret meeting of the Attending Faculty where NCRIC made false disparaging statements and used scare tactics in efforts to make the doctors leave Columbia. NCRIC allegedly made the following statements at the August 1998 meeting:

> 1)MIIX would not remain in the District of Columbia insurance market; 2) That MIIX would not stand by its guarantee not to raise premiums for two years; 3) that MIIX was an unreliable insurance company; 4) that MIIX planned to raise premiums once it cornered the District of Columbia MMLI market; 5) that the MIIX proposal was a cronyism which would benefit members of [Columbia Board as opposed to] Attending Faculty; 6) that [Columbia] had lied to the Attending Faculty by stating that it could not afford to continue the Plan; and 7) that the lawyers which whom NCRIC contracted to defend physicians against medical malpractice claims would not work with MIIX.

NCRIC's summary judgment motion is granted as to the 1998 alleged defamatory

p.15 202 879-0041 Judge Blackburne-Rigsby Apr 21 03 03:40p
16d-001550

statements but fails as to the defamatory statements of the second episode of communication. The Court finds that the 1998 statements can not be defamatory to Columbia as a matter of law because the alleged statements were not concerning Columbia. To prove defamation there must be: 1) false statements, 2) published, 4) which caused the plaintiff to receive damages. *Crowley v. North Am. Telecomms. Ass'n*, 691 A.2d 1169, 1173 (D.C. 1997).

NCRIC argues that the August 1998 statements do not concern Columbia and therefore could not disparage Columbia. Further, NCRIC argues that statements about MIIX do not concern Columbia because they don't concern Columbia's business reputation. NCRIC claims that defamation must be personal, and that allegations concerning these statements are too remote to assert that Columbia was defamed. Columbia argues that a "rumor mill" allegedly began circulating that Columbia would close and that their Clinic was uninsured. Columbia contends that NCRIC's Chairman of the Board, Dr. Leonard Glassman and NCRIC's Policyholder Services Department spread this rumor.

According to Columbia, these statements were false when they were made at the alleged secret meeting. Further, on the expiration date of the final Experience Period of the Retro Plan, nearly thirty Attending Faculty moved their practices to other hospitals. Columbia points out that the rumors caused many of the Attending Faculty, which had been practicing for many years to leave. However, because these statements were not against Columbia, but another separate and distinct insurance company, summary judgment is granted with respect to the 1998 statements.

Summary Judgment is Denied Regarding the September 2000 Alleged Defamatory Statements

p.16 202 879-0041 Judge Blackburne-Rigsby Apr 21 03 03:40p
16d-001551

Columbia alleges that in September 2000, NCRIC made the following statements in Columbia's cafeteria:

> that the [Medical Entity] Policy had expired; (2) that CPG physicians... were not covered by NCRIC's [individual insurance] policy while practicing at the [ambulatory clinic]; (3) that [Columbia's] self-insurance trust was insufficiently funded to insure the [physicians], and (4) that [Columbia's ambulatory clinic was a dangerous place to work

Also in September 2000, Dr. Glassman allegedly stated, with his door open so staff members in Columbia's Radiology Department could hear him telling patients to pick up their films and bring them to his office in the suburbs because Columbia was planning to close and telling physicians employed by the hospital to start looking for jobs elsewhere for the same reason. Around the same time, Dr. Glassman, in the presence of other physicians, allegedly told physician, Dr. Gideon Kioko to move to Sibley because Columbia was about to close. Finally, Dr. Glassman told a physician in the hallway that because the hospital was closing, Dr. Evelyn Karson was leaving.

NCRIC argues that the September 2000 statements are true statements. Specifically, NCRIC asserts that the Medical Entity Policy was no longer in effect after September 15, 2000. Further, NCRIC allege that Columbia's self-insurance trust was under funded. Moreover, NCRIC argue that these statements were truthful and don't give rise to defamation.

Columbia disagrees that the 2000 statements were true. First, Columbia asserts that Dr. Glassman's statement that the Entity Policy had expired was false, when the Entity Policy actually was terminated by NCRIC two weeks after the statements were made. Columbia also denies that the self-insurance trust was ever under funded. Columbia argues that the trust was always funded precisely to the level necessary to pay

P.17
Jude Blackburne-Rigsby 202 879-0041
Apr 21 03 03:41p
16d-001552

the claim.

Summary Judgment is Denied Regarding Columbia's Injurious Falsehood

Even if the Court conceded the facts underlying to 1998 and 2000 statements, NCRIC argues that Columbia's injurious falsehood claims still fail as matter of law because the 1998 and 2000 statements do not concern a product or service of Columbia as a required element in proving injurious falsehood. Further, NCRIC points out that even if the Court were to find that NCRIC made the statements, a complete and absolute defense is that the statements were true.

The distinguishing element between defamation and injurious falsehood is that the later adds the element that false statements must disparage the claimant's property, goods and services. Thus, injurious falsehood is a disparagement of quality of property. This business tort may consist of an adverse expression of opinion, and the prerequisites for liability are falsity, special damages and lack of privilege. *Golden Palace, Inc. v. National Broad Co.*, 386 F. Supp. 107, 108 (D.D.C. 1974). Columbia argues that by disparaging Columbia's brand of insurance, NCRIC disparaged Columbia's service. Further, Columbia argues that NCRIC's statements concerning Columbia were false. Hence, any qualified privilege NCRIC would have had in making commercial speech is inapplicable since the statements were false.

There are several material disputes regarding the defamation issue. First, there is a defense as to whether the statements made were true at the time they were made as opposed to some of the statements becoming true after the statements were made. Second, there is a dispute as to whether the statements physicians made, were made as representatives of NCRIC. Third, the parties dispute whether certain statements were

p.18 202 879-0041 Jude, Blackburne-Rigsby Apr 21 03 03:41p
16d-001553

even published. There is also a dispute as to damages and whether NCRIC's alleged statements were the cause for many of the Attending Faculty decision to leave Columbia, and the snowball effect it may have had to Columbia's patient referrals, annual fundraiser and prospective loan. Thus, summary judgment on the defamation and injurious falsehood claims are denied.

F. Summary Judgment is Denied with respect to Columbia's Conversion Claim (Count Eleven)

In count eleven of their counterclaim, Columbia alleges that NCRIC converted money from them when they paid the $1 million dollar negotiation deposit to renew the Retro Plan in 1998. NCRIC argues that the $1 million dollars was not a deposit but a negotiated premium payment towards Columbia's debt to NCRIC. NCRIC moves the Court to grant summary judgment in their favor on this counterclaim because it does not matter whether the $1million dollars is classified as a deposit or payment, the money represents a payment that Columbia owed to NCRIC and by law can not be considered converted.

Columbia alleges that the parties agreed that the money would be treated as a deposit. Thereafter, Columbia argues that they became aware that NCRIC was handling reconciliations incorrectly and asked that the money be returned. As a result of requesting the money be returned in vein, Columbia claims injury due to the loss of interest on the deposit. Further, Columbia refutes NCRIC's explanation that the money was a premium payment because at the time the money was paid, no experience period had closed as of September 1, 1997 and because of the oral contract, premium would not be due until experience periods had closed. Columbia distinguishes their case from a situation where a debtor owes money. Columbia argues that they did not owe NCRIC any

Apr 21 03 03:41p Judge Blackburne-Rigsby 202 879-0041 p.19
16d-001554

money and that the deposit was not intended for NCRIC to cash the check and take some of the money for itself.

Damages

There are material issues in dispute over the damages element to all of Columbia's counterclaims. Generally, NCRIC argues that Columbia fails to prove the essential damages element as to all of the counterclaims. First, there is a dispute as to whether Columbia accomplished what their expert witness Ben Ezra was expected to do in his 26(b)(4) statement[7]. Thus, there are general issues of dispute as to the damage elements for all claims.

Accordingly, for the foregoing reasons, plaintiff NCRIC's Motion for Summary Judgment is DENIED.

April 10, 2003
Date

A. Blackburne-Rigsby
Judge A. Blackburne-Rigsby

Copies To:

Marc C. Hansen
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Eli C. Shulman
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

---

[7] In its Rule 26(b)(4) statement, Columbia informed NCRIC and this Court that its proposed expert damages witness would provide testimony:

> With regard to the calculation of damages proximately caused by NCRIC's torts, including 1) economic effects, such as lost revenue from deceased patient volume, of certain practice groups moving their practices from Columbia to competing hospitals, and any reputational harms stemming from related events; 2) the lost revenue resulting from the non-occurrence of specific fundraising activities and events; and 3) the loss of specific sources of financing and partnership opportunities that otherwise would have been available to Columbia.

Apr 21 03 03:41p Judge Blackburne-Rigsby 202 879-0041 p.20
16d-001555

Scott M. Badami
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Roy I. Niedermayer
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Apr 21 03:42p Judge Blackburne-Rigsby 202 879-0041 p.21

FAX COVER SHEET

CHAMBERS OF
JUDGE ANNA BLACKBURNE-RIGSBY
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
500 INDIANA AVENUE, N.W.- ROOM 3540
WASHINGTON, DC 20001

TO: Mr. Shulman

FAX#: 326-7999

DATE: 4/21/03

SUBJECT: NCRTC's Motion For Summary Judgment

FROM: _____

PHONE# (202)879-0055

FAX# (202)879-0041

NUMBER OF PAGES AFTER COVER SHEET: _____

Apr 21 03 03:37p Judg. Blackburne-Rigsby 202 879-0041 p.1

16d-001557

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

April 11, 2003

By Hand

Clerk of the Court
Civil Division Clerk's Office
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room JM170
Washington, D.C. 20001

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***
Civil Action No. 0007308-00

Dear Sir or Madam:

Enclosed for filing is the original and one copy of Defendant Columbia Hospital for Women Medical Center, Inc.'s *Consent Motion to Continue Pretrial Hearing*. Please date-stamp one of the copies and return it to the messenger in the enclosed self-addressed envelope.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me at (202) 326-7936.

Sincerely,

Eli C. Schulman

16d-001558

RECEIVED
Civil Clerk's Office
APR 11 2003
Superior Court of the
District of Columbia
Washington, D.C.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

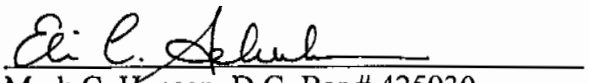
NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 -- Judge Blackburne-Rigsby Next Event: Pretrial Hearing, May 6, 2003

CONSENT MOTION TO CONTINUE PRETRIAL HEARING

The Superior Court Clerk's Office has issued a notice scheduling a pretrial hearing in this matter before the Honorable Anna Blackburne-Rigsby on May 6, 2003. Counsel for NCRIC, Inc. has authorized counsel for Columbia Hospital for Women Medical Center, Inc. ("Columbia") to move this Court on behalf of both parties to continue the pretrial hearing pending decision by the Court of outstanding motions. Because the Court's rulings will substantially frame the issues for trial, rescheduling the pretrial hearing upon issuance of those rulings will promote efficiency and conserve resources by allowing the parties to undertake the extensive preparations provided for in Rule 16 of the Superior Court Rules of Civil Procedure at such time as it becomes clear which claims must be readied for trial. Alternatively, because of scheduling conflicts, Columbia requests that the pretrial hearing be rescheduled for a date following June 9, 2003.

DATED: April 11, 2003

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-001560

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Hearing, May 6, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of the Consent Motion To Continue Pretrial Hearing, the record herein, and for good cause shown, it is hereby ORDERED that the Motion is GRANTED, and it is FURTHER ORDERED that the pretrial hearing in this matter is continued pending resolution of outstanding motions, at which time the clerk's office will be directed to issue notice of a new date.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 11th day of April, 2003, a copy of the foregoing Consent Motion To Continue Pretrial Hearing was served upon the following by first class United States mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

I further certify that, on this 11th day of April, 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Eli C. Schulman

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Washington, D.C. 20001

NRTC, Inc.
Plaintiff

vs.

Civil Action No. 02ca7328

Columbia Hospital For Women Medical Center
Defendant

ORDER denying motion to continue trial

Upon consideration of the motion to Continue Retrial Hearing (...)

~~filed by~~ _____

and after hearing argument on behalf of all parties concerned, it is, by the Court, this 14th

day of April, 2003,

ORDERED:

(1) That the motion be, and it is hereby, ☐ GRANTED ☑ DENIED

~~(2) That~~ because all outstanding motions have been ruled

on as of April 10 2003.

Copies to:

A. Blackburn-Rigsby
JUDGE

DOCKETED APR 15 2003

White - Plaintiff Canary - Defendant Pink - Court File Goldenrod - Attorney

Form CV-545/May '00

MAILED APR 15 2003

16d-001564

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Washington, D.C. 20001

Nicole T. _____
Plaintiff

vs. Civil Action No. _____

_____
Defendant

ORDER Denying motion to compel

Upon consideration of the motion _____

~~filed by~~ _____

and after hearing argument on behalf of all parties concerned, it is, by the Court, this _____

day of _____, 20 _____,

ORDERED:

(1) That the motion be, and it is hereby, ☐ GRANTED ☑ DENIED

~~(2) That~~ _____

_____

_____

_____

_____

_____

Copies to:

A Blackburn Esq

_____
JUDGE

DOCKETED APR 15 2003

White - Plaintiff Canary - Defendant Pink - Court File Goldenrod - Attorney

Form CV-545/May '00

MAILED APR 15 2003

16d-001565

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Date – 5/6/03**
Defendant.	

MOTION BY NCRIC, INC. TO RESCHEDULE PRETRIAL HEARING

1. Pursuant to the notice issued from Superior Court Clerk's Office on February 26, 2003, the above captioned case is scheduled for a pretrial hearing before Judge Blackburne-Rigsby on May 6, 2003 at 4:30 pm.

2. On October 26, 2000, NCRIC filed its Motion to Compel Discovery By Designation under SCR 30(b)(6) and Appearance at Deposition ("Motion to Compel").

3. On April 7, 2003, the Court granted in part, and denied in part, NCRIC's Motion to Compel. The Court ordered Columbia to respond to provide supplemental interrogatory responses, produce Rule 30(b)(6) designees on various topics and to provide certain financial accounts or statements.

4. On April 11, 2003 the parties filed a Consent Motion to Move the Pretrial Conference as cross-motions for summary judgment were outstanding. At that time, neither counsel for NCRIC or Columbia had received the Court's Order regarding NCRIC's Motion to Compel Discovery.

5. On April 14, 2003 the Court denied the parties' Consent Motion to Postpone the Pretrial Conference because all outstanding motions had been ruled upon. Counsel for NCRIC

did not receive a copy of the Order from the Court and only learned of it in a telephone conference with counsel for Columbia on April 28, 2003.

6. In accordance with the Court's Order compelling discovery, NCRIC timely served its Supplemental Interrogatories and Rule 30(b)(6) Deposition Notice on April 21, 2003. Ex. 1.

7. D.C. Superior Court Rule 33 requires that Columbia respond to NCRIC's interrogatories within thirty days after service or May 22, 2003 which is sixteen (16) days after the currently scheduled pretrial conference. Counsel for Columbia has represented that it will serve complete interrogatory responses at some time during the week of May 6, 2003. Ex. 2.

8. NCRIC has previously been required to engage in lengthy negotiations and motions practice regarding Columbia's failure to respond completely to NCRIC's discovery requests.

9. NCRIC intends to take the 30(b)(6) deposition(s) promptly after it has had an opportunity to review complete discovery responses from Columbia.

10. On April 29, 2003, NCRIC proposed and sent to Columbia a draft Consent Motion to Postpone the Pretrial Conference in light of the Court's Order compelling discovery. Ex. 3.

11. The supplemental interrogatory responses and deposition testimony will likely have a bearing on the parties' pretrial preparation and will assist the parties and this Court in conducting a meaningful pretrial conference.

12. Among the discovery compelled are explanations from Columbia regarding all facts and reasons forming the basis for Columbia's claim that the amounts NCRIC claims are due under the Retro Plan are incorrect and the amounts and calculations Columbia alleges are proper.

Ex. 1. These responses will inevitably have a significant impact on the parties' pretrial preparation and the issues to be resolved at trial

13. Columbia was also compelled to identify, for the first time, the amount of damages it claims based on each of its counterclaims. Ex. 1.

14. D.C. Superior Court Rule 16 requires that three weeks before the pretrial conference, the parties exchange exhibits and agree on various matters including, but not limited to, the formulation and simplification of issues for trial, the avoidance of unnecessary proof, and the form and substance of the pretrial order.

15. Columbia's responses will likely have an impact on the tasks required under Rule 16 including motions in limine required under Rule 16(d).

16. On May 1, Columbia's counsel rejected the Consent Motion and proposed to meet the following day or the following Monday.

17. NCRIC informed Columbia that it doubted either a meaningful pre-conference meeting or pretrial conference could take place given the outstanding discovery and contemporaneously served Columbia with a copy of the underlying motion. Ex. 4.

18. Any items accomplished at a pretrial meeting and conference at this stage would likely have to be significantly revised depending on the discovery Columbia has been compelled to produce.

19. NCRIC seeks to postpone the pretrial conference only so long as necessary to accomplish those tasks required under Rule 16 in the manner intended. Doing so will enable the parties to conduct pretrial preparation in accordance with the timeframe laid out in the Rule.

20. Based on the above facts and representations, counsel for NCRIC proposes a new pretrial conference date during the week of July 14th or at a subsequent date as the Court deems

proper and convenient. This would provide sufficient time after the completion of discovery for the parties to satisfy their pretrial obligations in accordance with D.C. Superior Court Rule 16.

21. In the alternative, NCRIC requests that the pretrial conference scheduled for May 6, 2003 be reset as a status conference at which time a revised pretrial schedule can be set.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: May 2, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion by NCRIC to Reschedule Pretrial Hearing was served this 2nd day of May 2003, via facsimile and first class mail, postage prepaid, to:

Eli Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Rodney F. Page

16d-001570

EXHIBIT 1

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	**Judge Blackburne-Rigsby**
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Consent Motion to Continue Pretrial Conference Filed April 11, 2003.**
Defendant.	

NCRIC'S SUPPLEMENTAL INTERROGATORIES TO COLUMBIA SERVED PURSUANT TO THE COURT'S ORDER DOCKETED APRIL 7, 2003

Pursuant to the Court's Order docketed April 7, 2003 and Rule 33 of the District of Columbia Superior Court Rules of Civil Procedure, plaintiff, counter-defendant NCRIC, Inc. ("NCRIC") requests that defendant, counter-plaintiff Columbia Hospital for Women Medical Center, Inc. ("Columbia") answer separately and fully in writing, under oath, each of the following interrogatories and serve the answers on the undersigned within 30 days after service.

DEFINITIONS

1. "NCRIC" means plaintiff, counter-defendant NCRIC, Inc. and its owner(s), agent(s), subcontractor(s), employees, affiliate(s), predecessor(s), officer(s), director(s) and persons acting on its behalf.

2. "You" or "your" or "Columbia" means defendant, counter-plaintiff Columbia Hospital for Women Medical Center and your agent(s), attorney(s), employee(s) and persons acting on your behalf.

3. The "Complaint" means the complaint filed by NCRIC in this action. The "Counterclaim(s)" means the counterclaim(s) filed by Columbia in this action.

4. "Contract" refers to the Retrospective Rating Plan entered into between Columbia and NCRIC in 1993.

5. "Person" means a natural person, and a corporation, partnership, joint venture, unincorporated association, estate, trust, or other entity recognized in law, and shall include the owners, directors, employees, agents, trustees, parents, subsidiaries, affiliates, assigns, predecessors and successors of such "person."

6. "Document" is used in the broadest sense of that term and includes, but is not limited to, the complete original and each non-identical copy (whether different from the original because of notes made on the copy or otherwise) of any writings or recordings of any kind and description in any language including, but not limited to, all notes, correspondence, memoranda, drawings, graphs, books, charts, maps, pamphlets, periodicals, telegrams, studies, reports, records, books of account, ledgers, vouchers, checks, drafts, bankbooks, plant logs, telephone logs, worksheets, diaries, calendars, invoices, notebooks, films, photographs, audio tapes, video tapes, digital tapes, analog tapes, computer print-outs, computer disks, or any other information whether inscribed by hand or by mechanical, digital, electronic, computer, photographic or other means.

7. The term "communication(s)" means, without limitation of its generality, letters, notes, memoranda, telefaxes, statements, discussions, meetings, face to face conversations, telephone conversations, speeches, remarks, questions, answers, panel discussions, symposiums or any other kind of transmittal of information, whether written or oral.

8. "Relates" or "relating to" means constituting, defining, containing, embodying, discussing, referencing, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

9. "And" shall include "or" and vice versa; the singular shall include the plural and vice versa.

10. The term "describe" means to set forth in detail all known facts and circumstances related to the subject of the interrogatory, including, but not limited to, the date,

time and place of any oral or written statement, conversation, report, study or meeting, the identify of the participants, and the substance and purpose of the events or communications so described.

11. "Identify" or "identity" when used in reference to a natural person, means to state the following:

(a) the person's full name;

(b) the person's present or last known home address and telephone number;

(c) the person's present or last known employer, title, business address and telephone number;

(d) the person's employer at the time to which the interrogatory relates.

12. "Identify" or "identity" when used in reference to an entity other than a natural person, means to state the following:

(a) the full name of the entity;

(b) the legal form of the entity (e.g., corporation, partnership, committee);

(c) a brief description of the nature and business purpose of the entity;

(d) the present or last known address of the entity's principal office, principal place of business, and other places of business.

13. "Identify," when used in reference to a document means to state the following:

(a) the date the document was prepared;

(b) the author(s) of the document;

(c) the identity of the addressees of the document;

(d) the identity of the persons or entities that received copies of the document;

(e) the subject matter and substance of the document;

(f) a description of the document (i.e. memorandum, letter, etc.);

(g) the name and address of the custodian of the document.

14. In lieu of providing a full description of a document in accordance with paragraph 13 you may attach a copy of the document for which a description is requested, and in your answer to the interrogatory only provide those items of description requested which do not appear on the face of the document.

INSTRUCTIONS

A. Each interrogatory is to be answered separately and as completely as possible. The omission of any name, fact, or other item of information from the answers shall be deemed a representation that such name, fact or item is not known to you or counsel at the time of the service of your answer to the interrogatory.

B. To the extent that you believe that an interrogatory is objectionable, answer so much of the interrogatory as is, in your view, not objectionable and separately state the portion of each interrogatory to which you object and the grounds for your objection.

C. To the extent that you believe that an interrogatory calls for information subject to a privilege, answer so much of each interrogatory that is, in your view, not privileged and separately set forth the basis of your claim of privilege with respect to the specific information you refuse to give and set forth the nature of the material claimed to be privileged (e.g., documents, conversations, etc.).

D. Words used in the plural shall include the singular; words used in the singular shall include the plural; and the words "and" and "or" shall be construed liberally, in the conjunctive and disjunctive, depending on the context, to bring within the scope of

these interrogatories any information that might otherwise be construed to be outside their scope.

E. These interrogatories are continuing in nature and must be supplemented promptly if the plaintiff obtains additional or different information related to any response at any time before the termination of this action.

INTERROGATORIES

Supplemental Interrogatory No. 1: Identify and describe all facts and reasons forming the basis for Columbia's claim that any of the calculations or numbers in Columns A-E, lines 1-20 of Exhibit A attached to Columbia's Answer to Interrogatories and Responses and Requests for Admissions are incorrect or fail to comply with the terms, provisions or formulas of the contract between the NCRIC and Columbia.

Answer:

Supplemental Interrogatory No. 2: Identify and describe the amounts Columbia believes to be the correct amounts in Columns A-E, lines 1-20 of Exhibit A attached to Columbia's Answer to Interrogatories and Responses and Requests for Admissions to comply with the terms, provisions or formulas of the Contract between the NCRIC and Columbia.

Answer:

16d-001577

Supplemental Interrogatory No. 3: Describe and identify the facts and reasons why Columbia believes the amounts contained in your response to Supplemental Interrogatory No. 2 to be the proper amounts and calculations to be used in calculating the amount of premium due Columbia under the Contract.

Answer:

16d-001578

Supplemental Interrogatory No. 4: Identify and describe the amount of premium that should have been charged to Columbia in each year of the Contract and the method of calculation of any refund premium Columbia claims it is owed.

Answer:

16d-001579

Supplemental Interrogatory No. 5: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 1 of its counterclaim and describe how that amount has been calculated.

Answer:

16d-001580

Supplemental Interrogatory No. 6: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 2 of its counterclaim and describe how that amount has been calculated.

Answer:

16d-001581

Supplemental Interrogatory No. 7: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 3 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 8: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 4 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 9: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 5 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 10: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 7 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 11: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 8 of its counterclaim and describe how that amount has been calculated.

Answer:

16d-001586

Supplemental Interrogatory No. 12: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 9 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 13: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 10 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 14: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 11 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 15: Identify each and every individual who made any of the statements alleged to be defamatory that remain in Columbia's counterclaim and provide the statement or statements each individual is alleged to have made.

Answer:

16d-001590

Supplemental Interrogatory No. 16: Identify each and every individual who heard any of the statements alleged to be defamatory that remain in Columbia's counterclaim and indicate what statement was allegedly heard.

Answer:

16d-001591

Supplemental Interrogatory No. 17: Identify and describe the substance of each and every statement made by anyone identified in the answer to Supplemental Interrogatory No. 15 that Columbia claims to be defamatory.

Answer:

Supplemental Interrogatory No. 18: Describe how Columbia claims NCRIC should have calculated: (a) its loss reserves; (b) adjustment of loss reserves; (c) positive loss experiences of Columbia under the Contract; (d) use of additional years in calculating premiums, and (e) each element of the formula or other requirements for reconciliation of premiums due under the Retro Plan.

Answer:

16d-001593

Supplemental Interrogatory No. 19: Identify the specific errors, miscalculations and overstatements in the statement(s) from NCRIC referenced in paragraphs 72 and 101 of the counterclaim including the reasons and bases for the errors and the corrections required to make the bill accurate.

Answer:

16d-001594

Supplemental Interrogatory No. 20: Identify the amount of Return Premium Columbia claims it is owed from 1993 to date and describe how each amount was calculated.

Answer:

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Jenifer Berger, D.C. Bar No. 471722
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: April 21, 2003.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NCRIC's Supplemental Interrogatories to Columbia Served drafted pursuant to the Court's Order docketed April 7, 2003 was served this 21st day of April 2003, via facsimile and first class mail, postage prepaid, to:

Eli Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

16d-001596

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	**Judge Blackburne-Rigsby**
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Consent Motion to Continue Pretrial Conference Filed April 11, 2003.**
Defendant.	

SUPPLEMENTAL NOTICE OF DEPOSITION

Please take notice that pursuant to the Court's Order docketed April 7, 2003 and Rule 30(b)(6) of the District of Columbia Superior Court Rules of Civil Procedure, plaintiff/counter-defendant NCRIC, Inc. ("NCRIC") will take the supplemental deposition upon oral examination of defendant, counter-claimant Columbia Hospital for Women Medical Center, Inc. ("Columbia") before a notary public or duly authorized officer authorized to administer oaths. The deposition will begin on Monday, June 16, 2003 at 10:00 a.m., or at another mutually agreed upon day after the documents identified in Attachment A are produced, at the offices of Bryan Cave LLP, 700 Thirteenth St., N.W., Suite 700, Washington, D.C. 20005.

Pursuant to the Court's order, Columbia shall designate one or more officers, agents, or other persons who can testify on its behalf with respect to the following matters and produce the documents referred to in Attachment A.

1. The identity, terms, and facts concerning any contract, business relationship, or business expectancy between Columbia and each of the doctors identified in paragraphs 14-18 and 124 of Columbia's amended counterclaims.

2. The specific actions and acts of NCRIC constituting the interference with the contract between Columbia and the doctors identified in paragraph 14-18 and 124 of Columbia's counterclaims.

3. The bases for the allegations regarding NCRIC's knowledge about Columbia's financial condition as alleged in paragraph 43 of the amended counterclaims.

4. Performances under the Retrospective Rating Plan prevented, excused or waived by NCRIC.

5. Concealment of facts by NCRIC from Columbia including the identity and substance of the facts concealed, method/means/acts of concealment, persons concealing, and reasons for concealment.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Jenifer Berger, D.C. Bar No. 471722
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

16d-001599

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: April 21, 2003.

16d-001600

ATTACHMENT A

1. All documents evidencing or concerning the contracts or business relationships Columbia claims to have existed with each of the doctors identified in paragraphs 14-18 and 124 of Columbia's amended counterclaims.

2. Any documents evidencing the specific acts Columbia claims to form the basis of its claims in paragraphs 123 through 134 of the amended counterclaims.

3. Any documents evidencing that NCRIC had knowledge about Columbia's financial condition as alleged in paragraph 43 of the amended counterclaims.

4. Any documents evidencing that NCRIC excused, waived or prevented performance under the Retrospective Rating Plan.

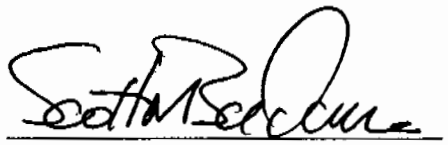
16d-001601

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NCRIC's Notice of Deposition was served this 21st day of April 2003, via facsimile and first class mail, postage prepaid, to:

Eli Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women



Scott M. Badami

EXHIBIT 2

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Sumner Square
1615 M Street, N.W.
Suite 400
Washington, DC 20036
---
(202) 326-7900
Facsimile:
(202) 326-7999

FACSIMILE TRANSMISSION

TO: Jenifer Berger, Esq. **FAX NO.:** (202) 508-6200

FROM: Eli C. Schulman **CLIENT NO.:** 00198

PHONE: (202) 326-7936

DATE: April 30, 2003

RE: *NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.*

MESSAGE:

TOTAL NUMBER OF PAGES: 2 (INCLUDING THIS SHEET)

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US IMMEDIATELY OR CONTACT OUR COPY SERVICE CENTER:

(202) 326-7949
or Carol Inniss: (202) 367-7728

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE CONTAINS PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATIONS AND/OR ATTORNEY WORK PRODUCT. THIS INFORMATION INTENDED ONLY FOR THE USE OF THE ADDRESSEE. PERSONS RESPONSIBLE FOR DELIVERING THIS COMMUNICATION TO THE INTENDED RECIPIENT ARE HEREBY NOTIFIED NOT TO READ THE ATTACHED AND THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND PLEASE RETURN THE ORIGINAL MESSAGE TO US AT OUR LETTERHEAD ADDRESS VIA THE U.S. POSTAL SERVICE.

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

April 30, 2003

By Facsimile and U.S. Mail

Jenifer Berger, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Jenifer:

I write in response to your proposal that the parties move jointly to continue the pretrial conference scheduled for May 6, 2003 before Judge Blackburne-Rigsby. In light of the Court's explicit denial of the most recent motion to continue the pretrial conference, I believe that it would be inappropriate to ask the Court for the same relief that it denied just days ago. Moreover, your proposed schedule would create months of unnecessary delay in bringing this matter to trial. Barring unforeseen circumstances, Columbia expects to complete the recently propounded written discovery and identify its corporate designees the week of the May 6, 2003 conference, and the 30(b)(6) deposition can be held any agreeable day thereafter.

Accordingly, rather than putting off the pretrial preparations any further, we believe that those preparations should begin immediately. We therefore propose that the parties meet prior to the May 6, 2003 conference in order to complete the preparations envisioned by Rule 16(c). We are available to meet at any time other than Saturday, May 3, 2003 to accomplish this.

Please let me know when you would be prepared to meet pursuant to Rule 16(c) to move this matter to a resolution.

Sincerely,

Eli C. Schulman

Eli C. Schulman

EXHIBIT 3

BRYAN CAVE

Jenifer Berger
Direct Dial:: (202) 508-6040
jeberger@bryancave.com

April 29, 2003

Bryan Cave LLP
700 Thirteenth Street NW
Washington, DC 20005-3960
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

Associated Offices
Chicago
Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
Leawood
London
Los Angeles
New York
Phoenix
Riyadh
St. Louis
Shanghai
United Arab Emirates
Abu Dhabi
Dubai
Washington, DC

VIA FACSIMILE AND FIRST CLASS MAIL

Eli Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington D.C. 20036

Re: NCRIC v. Columbia Hospital, C.A. No. 00-0007308

Dear Eli:

In accordance with my letter of yesterday's date, I think it is imperative that we promptly advise the Court of the status of pretrial preparation and jointly propose a revised pretrial schedule. I have taken the liberty of drafting the attached Consent Motion to Continue the Pretrial Hearing based on the fact that the Court ordered additional discovery that is currently outstanding. Please let me know if you disagree with this approach, and if not, please provide any edits or comments you have by May 1, 2003.

I look forward to hearing from you.

Sincerely yours,

Jenifer Berger

Jenifer Berger

cc: Rodney F. Page, Esq.
Scott M. Badami, Esq.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Date – 5/6/03**
Defendant.	

CONSENT MOTION TO RESCHEDULE PRETRIAL HEARING

1. Pursuant to the notice issued from Superior Court Clerk's Office on February 26, 2003, the above captioned case is scheduled for a pretrial hearing before Judge Blackburne-Rigsby on May 6, 2003 at 4:30 pm.

2. Counsel for Columbia Hospital for Women Medical Center, Inc. ("Columbia") has authorized counsel for NCRIC, Inc. ("NCRIC") to move this Court on behalf of both parties to continue the pretrial hearing pending completion of outstanding discovery.

3. On October 26, 2000, NCRIC filed its Motion to Compel Discovery By Designation under SCR 30(b)(6) and Appearance at Deposition ("Motion to Compel").

4. On April 7, 2003, the Court granted in part, and denied in part, NCRIC's Motion to Compel. The Court ordered Columbia to respond to provide supplemental interrogatory responses, produce Rule 30(b)(6) designees on various topics and to provide certain financial accounts or statements . NCRIC timely served its Supplemental Interrogatories and Rule 30(b)(6) Deposition Notice on April 21, 2003. Ex. 1.

5. D.C. Superior Court Rule 33 requires that Columbia respond to NCRIC's interrogatories within thirty days after service or May 22, 2003 which is sixteen (16) days after

the currently scheduled pretrial hearing. Counsel for Columbia has represented that it will serve complete interrogatory responses in a timely manner.

6. NCRIC intends to take the 30(b)(6) depositions promptly after it has had an opportunity to review those responses. The parties believe those depositions will be completed by June 16, 2003.

7. On April 11, 2003 the parties filed a Consent Motion to Move the Pretrial Conference as cross-motions for summary judgment were outstanding. At that time, neither counsel for NCRIC or Columbia had received the Court's Order regarding NCRIC's Motion to Compel Discovery.

8. On April 14, 2003 the Court denied the parties' Consent Motion to Postpone the Pretrial Conference because all outstanding motions had been ruled upon. Counsel for NCRIC did not receive a copy of the Order from the Court and only learned of it in a telephone conference with counsel for Columbia on April 28, 2003.

9. The supplemental interrogatory responses and deposition testimony will likely have a bearing on the parties' pretrial preparation and will assist the parties and this Court in conducting a meaningful pretrial hearing.

10. Based on the above facts and representations, counsel for Columbia and NCRIC propose a new pretrial conference date during the week of July 14th or at a subsequent date as the Court deems proper and convenient. This would provide sufficient time after the completion of discovery for the parties to satisfy their pretrial obligations in accordance with D.C. Superior Court Rule 16.

11. In the alternative, counsel jointly request that the pretrial conference scheduled for May 6, 2003 be reset as a status conference at which time a revised pretrial schedule can be set.

16d-001609

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: April ___, 2003

16d-001610

EXHIBIT 4

BRYAN CAVE

Jenifer Berger
Direct Dial:: (202) 508-6040
jeberger@bryancave.com

May 2, 2003

Bryan Cave LLP
700 Thirteenth Street NW
Washington, DC 20005-3960
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

Associated Offices
Chicago
Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
Leawood
London
Los Angeles
New York
Phoenix
Riyadh
St. Louis
Shanghai
United Arab Emirates
Abu Dhabi
Dubai
Washington, DC

VIA FACSIMILE AND FIRST CLASS MAIL

Eli Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington D.C. 20036

Re: NCRIC v. Columbia Hospital, C.A. No. 00-0007308

Dear Eli:

I received your letter dated April 30 on May 1 as it was not faxed until after the close of business on April 30. While I understand your concern regarding the Court's denial of the Motion to Postpone the Pretrial Conference filed on April 11, I believe that should not impact our obligation to inform the Court of the current issues regarding the outstanding discovery. In fact, as I stated in my letter dated April 29, I believe it is incumbent upon the parties to fully advise the Court where both parties stand with respect to their obligations under Rule 16 and the impact the outstanding discovery will have on those obligations.

While I appreciate your suggestion to meet before the pretrial conference, that only leaves us the possibility of meeting today or Monday as the conference is scheduled for Tuesday, May 6. As you may be aware, at the meeting, each party must provide to opposing counsel all documentary exhibits intended for use at trial. I assume you would agree that it is impossible for NCRIC to know what exhibits it intends to use until Columbia has complied with the Court's order compelling discovery, including production of those documents requested as part of the Rule 30(b)(6) notice as well as the financial documents for which the Court compelled production in its Order. In addition, a meeting at this stage would not comply with Rule 16(c) as the parties are obligated to make a good faith effort to reach agreement on a variety of issues which we firmly believe will be impacted by the discovery Columbia was compelled to produce. As you are aware, that discovery goes to the heart of this case and includes, among other things, Columbia's calculation of the amounts it deems proper under the Retro Plan (an obviously integral component of the parties' breach of contract claims), as well as Columbia's claim for damages under each of its counterclaims. Agreement on

these issues is necessary for the joint pretrial statement that Rule 16(e) requires be delivered to the Court one week before the pretrial conference (*i.e.* April 29).

NCRIC does not intend to unnecessarily delay the pretrial but seeks from the Court a revised pretrial schedule in the spirit of Rule 16. The DC Rules clearly contemplate that all discovery be completed prior to the pretrial conference and that various other tasks are accomplished prior to that date. While I appreciate your effort to begin pretrial preparation immediately, NCRIC would prefer to ensure that it is done in a manner that is not only expeditious but also meaningful so that the parties are not forced to revisit the issues after NCRIC receives Columbia's discovery responses and conducts the 30(b)(6) depositions ordered by the Court. Accordingly, please find attached NCRIC's Motion to Postpone the Pretrial Conference currently scheduled for May 6.

Sincerely yours,

Jenifer Berger

Jenifer Berger

Enclosure

cc: Rodney F. Page, Esq.
Scott M. Badami, Esq.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial – 5/06/03**
Defendant.	

ORDER RESCHEDULING PRETRIAL CONFERENCE

Pending before the Court is the motion of plaintiff NCRIC Inc. to Reschedule the Pretrial Conference in the above-captioned action. For the reasons stated in the Motion, and the issues being fully considered, the Court finds that good cause exists to grant the Motion, and, therefore it is so:

ORDERED, that the Pretrial Conference is rescheduled for _____, 2003 at _____ p.m.

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

BRYAN CAVE

Jenifer Berger
Direct: 202-508-6040
jeberger@bryancave.com

May 2, 2003

Clerk of the Court
Superior Court of the District of Columbia
Civil Division
H. Carl Moultrie I Courthouse
500 Indiana Avenue, NW
Washington, DC 20001

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.
CA No. 00-0007308, Calendar 8, Judge Blackburne-Rigsby

Dear Sir or Madam:

Please find enclosed the original and one copy of the Motion by NCRIC, Inc. to Reschedule Pretrial Hearing and Proposed Order to be filed in the above-referenced matter. Should any questions arise concerning this filing, please let me know.

Sincerely yours,

Jenifer Berger

JB:mld
Enclosures

cc: Roy I. Niedermayer, Esq.
✓Eli Schulman, Esq.

Bryan Cave LLP
700 Thirteenth Street NW
Washington, DC 20005-3960
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

Associated Offices
Chicago
Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
Leawood
London
Los Angeles
New York
Phoenix
Riyadh
St. Louis
Shanghai
United Arab Emirates
Abu Dhabi
Dubai
Washington, DC

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	**Judge Blackburne-Rigsby**
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial – 5/06/03**
Defendant.	

ORDER RESCHEDULING PRETRIAL CONFERENCE

Pending before the Court is the motion of plaintiff NCRIC Inc. to Reschedule the Pretrial Conference in the above-captioned action. For the reasons stated in the Motion, and the issues being fully considered, the Court finds that good cause exists to grant the Motion, and, therefore it is so:

ORDERED, that the Pretrial Conference is rescheduled for a date within ~~2003 at~~ ~~p.m.~~ 30 days from the date of this order. The clerk's office shall issue notice.

May 2, 2003

A. Blackburne-Rigsby
The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

DOCKETED MAY 06 2003

MAILED MAY 06 2003

16d-001617

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
MAY 19 2003
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Hearing, May 19, 2003
	)	
Defendant.	)	
	)	

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 14th day of May 2003, I served on opposing counsel, by FedEx, *Defendant's Objections and Responses to Plaintiff's Supplemental Interrogatories*. I certify that I will retain the aforementioned documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: May 15, 2003

Respectfully submitted,

Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

May 15, 2003

Clerk of the Court
Civil Division Clerk's Office
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room JM170
Washington, D.C. 20001

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.,***
Civil Action No. 0007308-00

Dear Sir or Madam:

Enclosed for filing please find an original and one copy of Columbia Hospital for Women Medical Center Inc.'s *Certificate Regarding Discovery.* Please date stamp the copy and return it to us in the enclosed self-addressed, stamped envelope.

Thank you for your assistance in this matter. If you have any questions or concerns, please feel free to contact me at (202) 326-7936.

Sincerely yours,

Eli C. Schulman

Eli C. Schulman

Enclosures

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Hearing, May 19, 2003
	)	
Defendant.	)	
	)	

CERTIFICATE REGARDING DISCOVERY

I hereby certify that on the 14th day of May 2003, I served on opposing counsel, by FedEx, *Defendant's Objections and Responses to Plaintiff's Supplemental Interrogatories*. I certify that I will retain the aforementioned documents in my possession, without alteration, until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

Dated: May 15, 2003

Respectfully submitted,

Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	**Judge Blackburne-Rigsby**
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

NCRIC'S MOTION FOR LEAVE TO AMEND THE COMPLAINT

Pursuant to D.C. Superior Court Rule 15(a), Plaintiff NCRIC, Inc. ("NCRIC") hereby seeks leave to amend the Complaint to include the recovery of reasonable attorneys' fees for breach of contract by Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), as contracted for by the parties pursuant to their October 20, 1993 agreement. Pursuant to D. C. Superior Court Rule 12-I(e), a Proposed Order and Statement of Points and Authorities in Support of this Motion are also attached.

Oral Hearing Requested.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

CERTIFICATION REQUIRED BY D.C. SUPERIOR COURT RULE 12-I

Counsel for Plaintiff NCRIC, Inc. certifies pursuant to Rule 12-I that counsel for the parties met in person on May 29, 2003 and via telephone conference on June 3, 2003 but could not resolve this matter. Accordingly, this motion is necessary for Plaintiff NCRIC, Inc. to obtain the relief it seeks.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	**Judge Blackburne-Rigsby**
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT
OF THE NCRIC'S MOTION FOR LEAVE TO AMEND THE COMPLAINT

D.C. Superior Court Rule 15(a) provides that a party may request leave of the Court to amend its pleadings. Such leave "shall be freely given when justice so requires." *See* Rule15(a). Plaintiff NCRIC, Inc. ("NCRIC") hereby seeks leave to amend its Complaint to include the recovery of reasonable attorneys' fees for breach of contract by Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), as contracted for by the parties pursuant to their original October 20, 1993 agreement.

Specifically, NCRIC seeks to add a paragraph 10 in its Complaint as the following: "As a result of Columbia's failure and refusal to pay NCRIC the amount owed in conjunction with the contracted provisions of the Retrospective Ratings Plan (the "Retro Plan"), Columbia must pay NCRIC's reasonable attorneys' fees incurred in this legal dispute." Additionally, the term "reasonable attorneys' fees" would be added to the conclusion. The Second Amended Complaint is attached as Exhibit A. If leave to amend is denied, NCRIC would be forced to file a separate action against Columbia to assert its rights to attorneys' fees.

Granting leave to amend will serve the interests of justice and judicial economy by deciding the issue in conjunction with the pending case.

I. Background

NCRIC is a provider of medical professional liability insurance to District of Columbia licensed physicians on a claims-made basis, for which contracted parties pay annual premiums. Columbia has been a District of Columbia not-for-profit hospital utilizing physicians insured with NCRIC. By establishing and participating in a plan for the Attending Faculty at Columbia, a program designed to reduce the risks associated with patient care, certain physicians secured a reduction or discount on their insurance premiums on a preferred risk basis. NCRIC provided such a reduction or discount on said insurance premiums to those physicians, on the condition that Columbia agreed to assume financial responsibility for certain premium amounts as provided in the contracted Retro Plan.

As contracted in the Retro Plan, paragraph 6 provides the parties agree that "[i]n the event [Columbia] fails to make any payment for which it is responsible hereunder when due, [NCRIC] shall have the right to recover reasonable attorneys' [sic] fees incurred in recovering such payment from Medical Center." *See* Ex. B, Retro Plan, ¶ 6.

As stated in NCRIC's Complaint, Columbia owes NCRIC the sum or $1,943,530 or such amount as is currently due from defendant to plaintiff after calendar quarterly recalculations of premium pursuant to the contract between the parties.[1] *See* Second Amended Complaint For Damages, ¶ 8. As a result of this failure to pay, NCRIC is entitled to reasonable attorneys' fees incurred in litigating its cause of action.

[1] The most recent reconciliation reveals that Columbia owes NCRIC $2.8 million.

II. Argument

Pursuant to District of Columbia Superior Court Rule 15(a), "leave [to amend] shall be freely given when justice so requires." The D.C. Court of Appeals has expressed a "virtual presumption" that leave should be granted in the absence of sound reasons which necessitate denial of the request. *See Crowley v. North Am. Telecomm. Ass'n*, 691 A.2d 1169, 1174 (D.C. 1997) (citations omitted). The relevant factors for granting a leave to amend are: "(1) the number of requests to amend; (2) the length of time that the case has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amended pleading; and (5) any prejudice to the non-moving party." *See id.* (citations omitted).

None of the reasons historically used to deny motions for leave to amend are present in this case. As an initial matter, this request for leave to amend is the first such request to this Court, nor has this motion been brought before any other judge or in any other court involving the instant proceeding.

The second factor, the length of time that the case has been pending, also does not prohibit the granting of NCRIC's motion. To illustrate, in *Johnson v. Fairfax Vill. Condo. IV Unit Owners Ass'n,* 641 A.2d 495, 501 (D.C. 1994), the court affirmed that the trial court reasonably exercised its discretion to allow a leave to amend despite the fact the case had been pending nearly four years. The court reasoned that the balancing of factors favored a leave to amend when weighed against the other considerations. *Id*; s*ee also District of Columbia v. Tinker*, 691 A.2d 57, 61 (D.C. 1997) (denial of leave to amend on the basis of undue delay would only be warranted "if that delay had caused substantial prejudice"). The Court should follow these principles because the amendment is not prejudicial to Columbia (as NCRIC could simply

file another lawsuit for these fees) and judicial efficiency supports resolving all the matters between the parties in this one single case.

Next, there are no issues of bad faith or dilatory reasons for the request. In the case at hand, there are no indications of such motives on NCRIC's part. Additionally, no "undue delay" will be caused by NCRIC adding a claim for attorneys' fees as no additional discovery or briefing is necessary. NCRIC is either entitled to its attorneys' fees pursuant to this contractual claim or it is not. Columbia cannot argue that NCRIC intends this motion as a means to stall litigation, as no trial date has yet been set for the case.

The fourth factor weighs the merit of the proffered amended pleading, which strongly tips in favor of NCRIC because, as stated above, Columbia and NCRIC specifically contracted for the attorneys' fees provision. NCRIC's demand for such compensation falls within Columbia's expectancy for litigation regarding its breach of contract.

Finally, Columbia will not be prejudiced if the Court grants NCRIC's leave to amend because the amendment triggers no additional discovery. The provision regarding attorneys' fees in the Retro Plan should come as no surprise to Columbia. The simple amendment adding a demand for such fees does not change any of the parties' positions or analysis of this case and should not affect any preparation for trial that Columbia has completed thus far. Indeed, amendment of the complaint at this time would be more efficient for all parties and the Court as it will obviate the need for NCRIC to file a second complaint against Columbia for recovery of attorneys' fees under the Retro Plan once this Court has ruled that Columbia is liable for additional premium due.

In light of the relative strength of four of the five factors in favor of NCRIC, including the lack of prejudice that would result to Columbia, leave to amend should be granted

in adoption of a meritorious result of adding attorneys' fees as a component of the Second Amended Complaint For Damages. By doing such, this Court would procure the expectation of the contract as agreed to by NCRIC and Columbia, and follow the precedence established by the District of Columbia Court of Appeals as aforementioned for analogous situations.

III. Conclusion

Accordingly, for the reasons set forth above, NCRIC respectfully requests that this Court allow the Motion for Leave to Amend the Complaint to include the recovery of reasonable attorneys' fees.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

DC244597

16d-001628

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INC., **Plaintiff,** **v.** **COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,** **Defendant.**	**Civil Action No. 00-0007308** **Calendar #8** **Judge Blackburne-Rigsby** **Next Event: Pretrial Conference -- June 19, 2003**

ORDER

Upon Consideration of NCRIC's Motion for Leave to Amend the Complaint and any opposition thereto, it is this _____ day of _____, 2003 hereby

ORDERED, that NCRIC's Motion for Leave to Amend the Complaint is GRANTED. The following allegations are hereby included in the Complaint:

"Paragraph 10. As a result of Columbia's failure and refusal to pay NCRIC the amount owed in conjunction with the contracted provisions of the Retro Plan, Columbia must pay NCRIC's reasonable attorneys' fees incurred in this legal dispute."; and

The phrase: "such reasonable attorneys' fees and costs incurred herein as may be proved at trial" is added to the *ad damnum* clause at the end of the Complaint.

_____

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

16d-001630

EXHIBIT A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

SECOND AMENDED COMPLAINT FOR DAMAGES

NCRIC, Inc., Plaintiff, by counsel, sues Columbia Hospital for Women Medical Center, Inc. as follows:

1. NCRIC, Inc. ("NCRIC") is a corporation in the business of providing liability insurance and doing business in the District of Columbia. It is the successor in interest to National Capital Reciprocal Insurance Company.

2. Columbia Hospital for Women Medical Center, Inc. ("Hospital") is a medical hospital with its principal place of business in the District of Columbia.

3. This Court has jurisdiction pursuant to D.C. Code § 11-921.

4. NCRIC and Hospital are parties to Retrospective Rating Plan Agreement for insurance (the "Agreement") by which NCRIC provided medical doctors at the Hospital with certain insurance against liability resulting from described events, including professional negligence in consideration for which Hospital agreed to pay certain premiums. A copy of the Agreement is attached hereto as Exhibit A.

5. Pursuant to the terms of the Agreement, Hospital owed NCRIC payment of additional insurance premiums based on the Agreement.

6. NCRIC performed all its obligations pursuant to the Agreement by providing the agreed insurance coverage.

7. Hospital breached the Agreement by failing to pay NCRIC the additional premiums due under the Agreement.

8. Hospital owes NCRIC the sum of $1,943,530 or such amount as is currently due from defendant to plaintiff after calendar quarterly recalculations of premium pursuant to the contract between the parties.

9. Despite written demand for payment therefore, and compliance with all its other obligations under the Agreement, Hospital has failed and refused to pay NCRIC the amount owed.

10. As a result of Columbia's failure and refusal to pay NCRIC the amount owed in conjunction with the contracted provisions of the Retro Plan, Columbia must pay NCRIC's reasonable attorneys' fees incurred in this legal dispute.

WHEREFORE, NCRIC demands judgment against Hospital in the amount One Million Nine Hundred Forty-three Thousand Five Hundred Thirty Dollars ($1,943,530) or such amount as is currently due from defendant to plaintiff after calendar quarterly recalculations of premium pursuant to the contract between the parties, interest, such reasonable attorneys' fees and costs incurred herein as may be proved at trial.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

16d-001634

EXHIBIT B

National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue • Washington, D.C. 20007 • (202) 342-6690 • Fax: 338-0437

93-9C

October 20, 1993

G. Patrick Kane, FACHE
President & Chief Executive Officer
Columbia Hospital for Woman
2425 L Street, N.W.
Washington, D.C. 20037

Dear Mr. Kane:

I am enclosing two copies of the signed retrospective rating plan agreements accompanied by two copies of Exhibit A, policy endorsement and example of plan operation.

Based on the list of plan participants provided under cover of your letter dated October 15, the Underwriting Department will proceed with the implementation of premium discounts effective September 1, 1993. There are several participants not currently insured with NCRIC that will require some additional time to process but the discount will be effective at the same time as the policy effective date.

We are proceeding with the discounts with the understanding that executed copies of attending faculty program agreements between Columbia Hospital and each plan participant will be provided to me by not later than December 1, 1993. 1994 discounts will otherwise have to be withheld until the documents are received.

I sincerely hope this to be the beginning of a long and mutually beneficial agreement.

Sincerely,

David K. Little
President
National Capital Underwriters, Inc.

Enclosures

KiKa
3 EXHIBIT 4
CASE# 1-18-02a

RETROSPECTIVE RATING PLAN AGREEMENT

This Retrospective Rating Plan Agreement ("Agreement") is made and entered into effective the first day of September, 1993, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

WHEREAS, NCRIC offers medical professional liability insurance to physicians duly licensed as such by the District of Columbia Government ("physicians") on a claims-made basis, for which an annual premium is assessed and paid; and

WHEREAS, Medical Center operates and conducts a not-for-profit hospital in the District of Columbia which has on its medical staff duly licensed physicians who are insured with NCRIC; and

WHEREAS, certain of these physicians desire to secure a reduction or discount on their insurance premiums on a preferred risk basis through the establishment of and participation in an Attending Faculty Program ("AFP"), which shall be designed to reduce the risks involved in the delivery of medical care to patients as set forth in the Attending Faculty Program Agreement entered into between the physicians and Medical Center; and

WHEREAS, NCRIC is willing to provide such a reduction or discount on said insurance premiums to those physicians who agree to participate in the AFP on condition that Medical Center agrees to be financially responsible for certain premium amounts as hereinafter provided; and

WHEREAS, as a mechanism for reducing its own exposure for professional liability, Medical Center is willing to assume such responsibility;

NOW, THEREFORE, the parties hereto agree as follows:

1. NCRIC has established a three-year Retrospective Rating Plan, a copy of which is attached hereto as Exhibit A (the "Plan") and incorporated herein by reference. NCRIC makes available the benefits of the Plan to its physician insureds who are parties to the AFP Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and who are issued a Retrospective Rating Plan Endorsement, a copy of which is attached hereto as Exhibit C. With the exception of the Plan Participants

listed on Exhibit D, attached hereto and incorporated herein by this reference, the effective date of any Plan Participant's participation, or termination of participation, in the Plan shall be the date on which NCRIC receives notice thereof from Medical Center.

2. NCRIC agrees to issue Retrospective Rating Plan Endorsements to its physician insureds who otherwise qualify in accordance with the standard underwriting practices of NCRIC and who are members of the AFP.

3. As an inducement to NCRIC to cause it to issue the Retrospective Rating Plan Endorsements to its physician insureds who are members of the AFP, Medical Center agrees to be solely responsible for, and to pay, any Additional Premium due in accordance with the terms of the Plan.

4. Medical Center shall correspondingly be entitled to receive Return Premium, if any, and investment return thereon, if any, in accordance with the terms of the Plan.

5. Notice of any Additional Premium due from Medical Center, or any Return Premium due to Medical Center, shall be provided to Medical Center within 60 days following the close of the Reconciliation Period, and payment due, whether to Medical Center or from Medical Center, shall be due and payable within 30 days of receipt of said notice.

6. Medical Center's obligations hereunder are primary, and not secondary, and NCRIC shall have no right to seek recourse or payment of any Additional Premium due pursuant to the Plan from any Plan Participant. In the event Medical Center fails to make any payment for which it is responsible hereunder when due, the Company shall have the right to recover reasonable attorneys fees incurred in recovering such payment from Medical Center.

7. NCRIC hereby represents and warrants that any claims made against Plan Participants will be processed, including the setting of loss reserves, in the normal and ordinary course of the Company's business, without consideration of the insured's status as a Plan Participant.

8. Medical Center hereby represents and warrants that it has made, and will continue to make, adequate provision for the contingent liabilities it has assumed hereunder.

9. Medical Center will provide NCRIC with the following:

   a. a list of all Plan Participants, and any additions or deletions thereto;

b. copies of Medical Center's Agreement between Medical Center and Participants in the Attending Faculty Program who are Insured with NCRIC, and amendments, if any, as made from time to time, with each Plan Participant, which contract shall include an authorization by the Plan Participant in form and substance satisfactory to NCRIC to release to Medical Center the information set forth in Paragraph 10(a)(iii) below;

c. copies of, and any amendments to, the AFP Agreement; and

d. a review and summary of risk management activities undertaken pursuant to the Attending Faculty Program Agreement.

10. NCRIC and a Medical Center representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

a. At such meetings, NCRIC will provide Medical Center with the following:

i. for purposes of cross-reference and confirmation of participation or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

ii. the aggregate amount of losses reserved under the Plan, and the verification thereof by NCRIC's consulting actuary;

iii. with respect to any medical incident or professional liability claim reported to NCRIC by a Plan Participant under the Plan (hereinafter, "incident"), and subject to a Plan Participant's authorization to release same to Medical Center, the name of the physician, the date of the incident, the date said incident was reported to NCRIC, any complaint or suit filed in a court of law with respect to such claim; and any payments made on behalf of said Plan Participant by NCRIC; and

iv. a review of Medical Center risk management activities.

b. Annually, at such meeting taking place in the first quarter of each year, Medical Center will provide NCRIC with the statement of Medical Center's consulting actuary that adequate reserves have been made for the contingent liabilities Medical Center has assumed under this Agreement.

11. This Agreement shall remain in full force and effect as to any renewal, extension or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, or new issuances.

12. This Agreement shall remain in full force and effect until all claims applicable to the final Experience Period of the Plan are finally closed or upon payment of maximum premium amount required by paragraph 3 hereof applicable to the final Experience Period, whichever occurs first. For purposes of this Paragraph 12, any claim "closed" without payment made to, and a release having been signed by, the claimant shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the retrospective adjustment according to the Plan.

13. For purposes of clarification, and not to vary, alter or amend the terms hereof or of the Plan, attached hereto as Exhibit B and incorporated herein by reference is an example of the operation of the Plan.

14. All bookkeeping and record keeping shall be handled by NCRIC.

15. Upon ninety (90) days' written notice prior to the end of any Experience Period, to be effective after the last day of such Experience Period, the Plan may be discontinued by either party for cause, provided that such discontinuance shall not affect any obligation or liability accrued prior to the date of such discontinuance. For purposes of this Paragraph 15, "cause" shall mean any material breach of the terms of this Agreement, or any change in any applicable federal, state or local law which would render any of the terms of this Agreement unlawful.

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

REDACTED

REDACTED

If to NCRIC:

Mr. David K. Little
President
National Capital Underwriters, Inc.
Attorney-in-fact for
National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, D.C. 20007

If to Medical Center:

Mr. G. Patrick Kane, FACHE
President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, N.W.
Washington, D.C. 20037

The date of service of any such notice shall be the date that such notice is deposited with the U.S. Postal Service or the date of personal delivery, as applicable.

17. Medical Center hereby warrants and represents that it has made, and agrees to provide NCRIC with its auditor's or actuary's annual statement reflecting, adequate provision for the contingent liabilities it has assumed hereunder.

18. This Agreement constitutes the entire agreement between the parties and no modifications, amendments or additions thereto shall be binding unless in writing and executed by all the parties hereto.

19. This Agreement shall not be assignable without the prior written consent of the parties hereto.

20. The agreements, terms and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, if any.

21. This Agreement is made and executed in the District of Columbia, and shall be governed by the law of the District of Columbia.

IN WITNESS WHEREOF, the parties have caused their corporate names to be subscribed hereto by their duly authorized officers or attorneys-in-fact, and their corporate seal to be hereunto affixed effective the day and year first above written.

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

BY: _____
David K. Little, President

(Corporate Seal)

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST:

BY: _____

(Corporate Seal)

List of Exhibits

A Retrospective Rating Plan

B Attending Faculty Program Agreement

C Retrospective Rating Plan Endorsement

D List of Initial Plan Participants

E Example of operation of the Plan

CHW MC 000042

16d-001643

EXHIBIT A

THREE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center dated September 1, 1993, (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be three years, beginning on September 1, 1993 and ending on September 1, 1996. The Plan shall consist of three separate and distinct Experience Periods of:

Beginning 12:01 A.M. on	and Ending 12:01 A.M. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19% of the otherwise applicable premium for such coverage. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return premium (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =

((((Loss Reserves) x (Development Factor)) + Paid Losses) x Discount Factor) + Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

REDACTED

REDACTED

REDACTED

CHW MC 000043

16d-001644

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedule:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1996
September 1, 1994 to September 1, 1995	September 1, 1997
September 1, 1995 to September 1, 1996	September 1, 1998

Additional reconciliations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall not be deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the Reconciliation Date, Reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"Basic Premium" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by

REDACTED

multiplying the Subject Premium by the insurance charge factor set forth below:

Three(3) Year Subject Premium	Insurance Charge Factor
$ 1,539,000 - $ 2,565,999	20.7%
$ 2,566,000 - $ 3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"Deposit Premium" means the Subject Premium multiplied by eighty-one percent (81%). This percentage shall remain unchanged for the three year term of the Plan.

"Development Factor" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and shall remain unchanged for the three year term of the Plan and all reconciliations applicable thereto:

Year 1 Reconciliation	-	88.5%
Year 2 Reconciliation	-	87.5%
Year 3 Reconciliation	-	90.5%
Year 4 Reconciliation	-	96.0%
Year 5 Reconciliation	-	100.0%
All Subsequent Reconciliations	-	100.0%

REDACTED

"Discount Factor" means a factor of 86.33%. This factor shall remain unchanged for the three-year term of the plan.

"Experience Period" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the pro-rated period involved shall be deemed to be an Experience Period.

"Insurance Policy" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"Losses" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"Loss Limitation" - for the purpose of application of the

retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (i) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"Loss Reserves" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"Maximum Premium" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (115%) of the Subject Premium amount.

"Minimum Premium" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (75%) of the Subject Premium amount.

"Paid Losses" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid Losses are subject to Loss Limitation, defined above.

"Plan Participants" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"Subject Premium" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insureds were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall be determined by NCRIC's consulting actuary, but shall not exceed 83%, nor be less than 77%, of the undiscounted premium charged for coverage limits of $1 million each claim/$3 million aggregate.

REDACTED

REDACTED

RETROSPECTIVE RATING PLAN
PREMIUM ADJUSTMENT ENDORSEMENT

Policy Number:

Effective Date:

This endorsement forms a part of the Policy issued by the National Capital Reciprocal Insurance Company (the "Company") and takes effect as of the effective hour and date of said policy unless another effective date is stated herein.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

1. The premium for Coverage A stated in the declarations is a provisional premium and is contingent upon participation by the named insured in a retrospective rating plan. Upon the Company's receipt of notice of the termination of the participation of the named insured in the retrospective rating plan the premium for Coverage A will be adjusted to 100% of the Company's otherwise applicable premium then in effect.

2. All other premiums listed in the declarations and any additional premiums resulting from any policy endorsements are not affected as a result of the named insured's participation in a retrospective rating plan.

This endorsement shall not be binding unless countersigned by a duly authorized Company representative; provided, however, that if this endorsement takes effect as of the effective date of the policy and, at issue of said policy, forms a part thereof, countersignature on the declarations of said policy by a duly authorized Company representative shall constitute valid countersignature of this endorsement.

Countersigned by: _____
Authorized Company Representative

NCRIC-51
(1/93)

Please read the entire policy, including endorsements, carefully.

COLUMBIA GROUP RETRO RATING PLAN — $500,000 LIMIT
66 GP'GYN'S
$2.0 MILLION LOSSES PER YEAR

MINIMUM PREMIUM - 75% OF SUBJECT PREMIUM
MAXIMUM PREMIUM -115% OF SUBJECT PREMIUM
DEPOSIT PREMIUM - 81% OF SUBJECT PREMIUM

LOADING 17.54%

DISCOUNT FACTOR - 85.33%

	1/1/93	1/1/94	COMBINED	1/1/95	COMBINED
SUBJECT PREMIUM	$3,000,000	$3,300,000	$6,300,000	$3,630,000	$9,930,000
DEPOSIT PREMIUM	$2,430,000	$2,673,000	$5,103,000	$2,940,300	$8,043,300
MAX PREMIUM	$3,450,000	$3,795,000	$7,245,000	$4,174,500	$11,419,500
MIN PREMIUM	$2,250,000	$2,475,000	$4,725,000	$2,722,500	$7,447,500
BASIC PREMIUM	$526,200	$578,820	$1,105,020	$636,702	$1,741,722

	1/1/96				
LOSSES PAID	$0				
LOSSES RESERVED	$2,000,000				
DEVELOPMENT FACTOR	.885				
DEVELOPED LOSSES	$1,770,000				
DISCOUNTED LOSSES	$1,528,041				
RETRO PREMIUM	$2,054,241				
SUBJECT TO MIN/MAX	$2,250,000				
ADJ(RET) PREMIUM	($180,000)				
TOTAL PREM TO DATE	$2,250,000				

		1/1/97			
LOSSES PAID	$1,000,000	$0			
LOSSES RESERVED	$1,000,000	$2,000,000			
DEVELOPMENT FACTOR	.875	.885			
DEVELOPED LOSSES	$1,875,000	$1,770,000			
DISCOUNTED LOSSES	$1,618,688	$1,528,041			
RETRO PREMIUM	$2,144,888	$2,106,861	$4,251,749		
SUBJECT TO MIN/MAX			$4,725,000		
ADJ(RET) PREMIUM			($198,000)		
TOTAL PREM TO DATE			$4,725,000		

			1/1/98		
LOSSES PAID	$1,500,000	$1,000,000		$0	
LOSSES RESERVED	$500,000	$1,000,000		$2,000,000	
DEVELOPMENT FACTOR	.305	.875		.885	
DEVELOPED LOSSES	$1,952,500	$1,875,000		$1,770,000	
DISCOUNTED LOSSES	$1,685,593	$1,618,688		$1,528,041	
RETRO PREMIUM	$2,211,793	$2,197,508		$2,164,743	$6,574,044
SUBJECT TO MIN/MAX					$7,447,500
ADJ(RET) PREMIUM					($217,800)
TOTAL PREM TO DATE					$7,447,500

CHW MC 000048

16d-001649

1/1/99

LOSSES PAID	$2,000,000	$1,500,000	$1,000,000	
LOSSES RESERVED	$0	$500,000	$1,000,000	
DEVELOPMENT FACTOR	.960	.905	.675	
DEVELOPED LOSSES	$2,000,000	$1,952,500	$1,875,000	
DISCOUNTED LOSSES	$1,726,600	$1,685,593	$1,618,686	
RETRO PREMIUM	$2,252,800	$2,264,413	$2,255,390	$6,772,603
SUBJECT TO MIN/MAI				$7,447,500
ADD(RET) PREMIUM				$0
TOTAL PREM TO DATE				$7,447,500

1/1/00

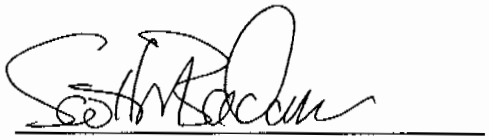
LOSSES PAID	$2,000,000	$2,000,000	$2,000,000	
LOSSES RESERVED	$0	$0	$0	
DEVELOPMENT FACTOR	1	.960	.905	
DEVELOPED LOSSES	$2,000,000	$2,000,000	$2,000,000	
DISCOUNTED LOSSES	$1,726,600	$1,726,600	$1,726,600	
RETRO PREMIUM	$2,252,800	$2,305,420	$2,363,302	$6,921,522
SUBJECT TO MIN/MAI				$7,447,500
ADD(RET) PREMIUM				$0
TOTAL PREM TO DATE				$7,447,500

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion, Statement of Points and Authorities in Support, and Proposed Order were served this 5th day of June 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center



Scott M. Badami

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

NCRIC'S MOTION FOR REFERENCE TO A SPECIAL MASTER

Pursuant to D. C. Superior Court Rule 53, Plaintiff NCRIC, Inc. ("NCRIC"), moves this Court to issue an order referring certain calculations critical to the resolution of this case to an appointed Special Master to determine the complicated issues of fact and law surrounding the operation of the Retrospective Ratings Plan (the "Retro Plan") and the calculations of additional or return premium due under the Retro Plan. The operation of the Retro Plan is a specialized and complicated issue, and reference to a Special Master would promote judicial efficiency and simplify the presentation of evidence at trial. Pursuant to D. C. Superior Court Rule 12-I(e), a Proposed Order and Statement of Points and Authorities in Support of this Motion are also attached.

Oral Hearing Requested.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

CERTIFICATION REQUIRED BY D.C. SUPERIOR COURT RULE 12-I

Counsel for Plaintiff NCRIC, Inc. certifies pursuant to SCR 12-I that, counsel has conferred with counsel for Defendant Columbia Hospital for Women. Counsel for the parties met in person on May 29, 2003 and via telephone conference on June 3, 2003 and were unable to resolve the issues raised in this motion.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF NCRIC'S MOTION FOR REFERENCE TO A SPECIAL MASTER

Pursuant to D. C. Superior Court Rule 53, Plaintiff NCRIC, Inc. ("NCRIC"), moves this Court to issue an order referring certain calculations critical to the resolution of this case to an appointed Special Master to determine complicated issues of fact and law surrounding the operation of the Retrospective Ratings Plan (the "Retro Plan") and the calculations of additional or return premium due under the Retro Plan. In its April 2, 2003 Order Denying Defendant Columbia Hospital for Women Medical Center, Inc.'s ("Columbia's") Motion for Summary Judgment, the Court stated there remains "a factual dispute regarding the mechanics of the [Retro Plan] calculations," which must be decided at trial. *See* April 2, 2003 Order at 10. The operation of the Retro Plan is a specialized and complicated issue, and reference to a Special Master would promote judicial efficiency and simplify the presentation of evidence at trial.

I. THE RETRO PLAN CALCULATIONS

Both NCRIC's claim against Columbia and Columbia's counterclaim counts 1-3, 7-8 and 11 (the "Retro Plan Claims") rely upon the calculations of premium

under the Retro Plan. A brief summary of the positions of the two parties with respect to the Retro Plan's calculations is required to illustrate why these factual matters are so complicated that the interests of judicial efficiency and economy would be served by reference to a Special Master.

The original three-year Retro Plan between NCRIC and Columbia in 1993 was a malpractice insurance program for physicians at Columbia to help reduce the cost of insurance to the doctors through a sharing of the malpractice risk between Columbia and the physicians. A copy of the original Retro Plan is attached as Exhibit 1. The Retro Plan provided a 19% (later increased to 30%) discount to physicians on their malpractice premiums. Columbia agreed to pay the amount of such discount should losses from claims under the Retro Plan reach a certain level.

A Retro Plan, such as the one at issue here, requires a "reconciliation" that looks back over the term of each year to compare the premiums to the claims to determine: (1) if additional premium amounts are due to the insurance company because losses under the plan exceeded the physician premiums by a predetermined calculated amount ("Additional Premium"); or (2) if a return of premium is due the hospital, should losses have been less than the predetermined calculated amount ("Return Premium").

Thus, the Retro Plan is driven by two key financial factors: (1) the premiums paid by the physicians; and (2) the claimed losses incurred by the physicians. The reconciliation includes setting a "reserve" amount for claims that represents the potential liability and the associated expenses of handling the claims, such as attorneys' fees and costs. NCRIC and Columbia agreed to defer making actual payments to one another until all claims arising in a certain year reached final resolution, *i.e.*, until all of

16d-001655

the pending claims were closed. This was largely because the parties expressly recognized that reserve amounts could change, which would cause fluctuations in the reconciliation that could result in payments being made simultaneously between the parties at the time of a reconciliation.

Every three months, a reconciliation is made for each year of the Retro Plan to determine the amount of the Additional Premium or Return Premium. This is called the Retro Premium. Those calculations are, in part, based on open claims, and are correct to the best of NCRIC's knowledge. The Retro Premium formula contained in Exhibit A to the Retro Plan is:

Retro Premium (subject to Minimum and Maximum Premiums) = [(Loss Reserves) x (Development Factor) + Paid Losses] x Discount Factor + Basic Premium

See Exhibit 1 at Exhibit A, ¶ 3.

Each of these factors is a defined term within the Retro Plan as agreed by the parties. *See* Exhibit 1 at Exhibit A, ¶ 7.

- "Minimum Premium" is defined as the "minimum retrospective premium which shall be due under the Plan" and was defined as 75% of the Subject Premium in the 1993 Retro Plan (later reduced to 60%).
- "Maximum Premium" is defined as "the maximum retrospective premium which shall be due under the Plan."
- "Loss Reserves" is defined as "allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid."
- "Development Factor" is defined as "the factors by which Loss Reserves are multiplied for purposes of determining developed losses." A specific list of development factors to be applied to each year of a reconciliation (ranging from 88.5% to 100%) are listed in the 1993 Retro Plan.
- "Paid Losses" is defined as "loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A . . . . "

- "Discount Factor" is defined as "a factor of 86.33%."
- "Basic Premium" is defined as "the combined amount of the administrative expense charge and the insurance charge due to NCRIC."

To determine if the appropriate amount of premium was collected to pay losses under the Retro Plan, the Retro Premium is then compared to the "Deposit Premium." *See* Exhibit 1 at Exhibit A, ¶ 6. The "Deposit Premium" is defined in the 1993 Retro Plan as "the Subject Premium multiplied by eighty-one (81%)." *See* Exhibit 1 at Exhibit A, ¶ 7. If the Retro Premium is less than the Deposit Premium, Return Premium is due to Columbia. If the Retro Premium is more than the Deposit Premium, Columbia owes NCRIC Additional Premium to pay against the losses. *See* Exhibit 1 at Exhibit A, ¶ 6. A "floor" and a "ceiling" are set to financially protect both Columbia and NCRIC from large swings in risk (the Minimum and Maximum Premiums).

These calculations under the Retro Plan were performed by NCRIC and provided to Columbia both as interim quarterly statements and as annual Reconciliations. Examples of the quarterly reports and annual reconciliations performed by NCRIC are attached as Exhibits 2 & 3.

The Retro Plan originated as a three-year plan, beginning September 1, 1993. At that time, the plan provided that NCRIC would provide a 19% discount on malpractice insurance premiums to physicians at Columbia. In late 1995, Columbia requested that the Retro Plan be amended to increase the physicians' premium discount to 30%. NCRIC and Columbia negotiated the accompanying changes to the Deposit Premium, from 81% to 62%, to accommodate the increased discount. The parties amended the Retro Plan to reflect the revised discount and Deposit Premium in effect

16d-001657

beginning January 1, 1996. The documents reflecting this amendment and renewal are attached as Exhibits 4 & 5.

Another renewal and modification of the Retro Plan was ultimately signed in January 1998. The 1996 changes also were reflected in this Addendum to the Retro Plan signed in January 1998 which extended the expiration of the Retro Plan to September 1, 1998. This Addendum is attached as Exhibit 6. The modifications to the Retro Plan applied the revised 30% discount for claims in 1996, 1997 and 1998 and made appropriate mathematical changes to the Retro Premium calculations for those years. *See id.* at 5. Amendments were also signed in 1998 and 1999 to extend the Retro Plan for additional years. These amendments are attached as Exhibits 7 & 8. As NCRIC and Columbia could not agree on terms to again renew the Retro Plan, the insurance program ended in September 2000.

The dispute between NCRIC and Columbia focuses on the interpretation and application of three of the components of the Retro Plan Formula: (1) the Minimum Premium, (2) the Deposit Premium, and (3) the Development Factors. The parties dispute the proper values of these factors and how these factors were or were not changed during the subsequent amendments to the 1993 Retro Plan. Columbia has also alleged that NCRIC improperly set and maintained Loss Reserves such that the final Retro Premium calculations provided by NCRIC were improper.

Finally, although the parties agree that NCRIC and Columbia entered into an oral agreement in November 1996 to avoid interim payments of Retro Premium by exchanging money only when a year was "closed-out" under the plan, the parties disagree about the specific terms of that agreement. NCRIC contends that it was agreed that

premium would be exchanged when a period was "closed-out" *or* when the Retro Plan ended; Columbia contends that there was no arrangement requiring payment when the Plan ended if all years were not yet "closed-out."

II. REFERENCE TO A SPECIAL MASTER IS APPROPRIATE HERE

D.C. Superior Court R. Civ. P. 53(a) authorizes this Court to appoint and refer certain matters to a "Special Master" for consideration of testimony and documents and findings of fact. The Special Master's authority and the scope of the tasks assigned are defined by a court order of reference. *See* Rule 53(c). Once reference to a Special Master is made, the Special Master may convene proceedings to hear testimony of live witnesses and the parties' presentation of evidence on the factual issues listed in the order of reference. *See* Rule 53(d). The Special Master's findings are contained in a report which is submitted as evidence to the jury at trial. *See* Rule 53(e).

Use of a Special Master promotes judicial efficiency and helps to simply a jury's task of understanding complicated matters outside the experience of a lay person. Rule 53(b) provides the standard for when reference to a Special Master is appropriate:

> A reference to a master shall be the exception and not the rule. *In actions to be tried by a jury, a reference shall be made only when the issues are complicated*; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

See Rule 53(b) (emphasis added); *House of Wines, Inc. v. Sumter*, 510 A.2d 492 (D.C. 1986).

Some examples of the "complicated issues" which have been held appropriate for reference to a Special Master are: the accounting of a dissolution of a partnership and distribution of assets (*Beckham v. Farmer*, 579 A.2d 618 (D.C. 1990));

the accounting of assets of an estate (*In re Estate of Elkins*, 692 A.2d 910 (D.C. 1995)); the accounting of amount of proceeds realized from the sale of wine (*House of Wines*, 510 A.2d at 496)); and the determination of individual's income for purposes of determining child support amounts (*Quarles v. Quarles*, 353 A.2d 285 (D.C. 1976)). In each of these cases, the fact-finding burden required specialized calculations and a level of sophistication and comfort with accounting which most juries lack. Therefore, a Special Master was appointed to consider the evidence from each side and provide a reasoned and knowledgeable finding of fact and accounting to clarify issues for the finder of fact.

The Retro Plan calculations are prime examples of "complicated" matters which would be better served by reference to a Special Master. Although there does not appear to be any published opinion in D.C. where a Special Master was appointed for a insurance premiums calculation case, at least one case with similar facts was found where a Special Master was used pursuant to the Federal Rule of Civil Procedure 53. *See Kentucky Carbon Corp. v. Tennessee Valley Auth.*, 875 F.2d 865 (6th Cir. 1989) (unpublished) (magistrate sitting as Special Master to determine claims regarding price adjustments and possible overpayment of premium paid under insurance plans, including a retrospective rating plan for workers compensation insurance).

Similarly, the Retro Plan requires complex accounting and understanding of insurance premiums, loss reserves, allocations of risk, and the application of specific mathematical factors which would be very difficult for the average juror to comprehend without expert help. The crux of the dispute in this case is that the parties differ as to their interpretation of the Retro Plan and the appropriate use of the various factors. A

Special Master would be able to sort through the evidence submitted by both the parties, including the calculations done by NCRIC over the years of the Retro Plan, and make factual findings as to the specific methodology and calculations which are proper under the Retro Plan. The Special Master can also issue a finding of fact as to the final amount of Additional or Return Premium due at this time under the proper methodology and calculations. These findings would be presented to the jury as *prima facie evidence* on these points and would greatly simplify the presentation of evidence and conduct of trial. *House of Wines*, 510 A.2d at 497.

The most appropriate Special Master for this case would be an individual familiar with the medical malpractice insurance industry and knowledgeable about premium calculations in general, the setting and adjustment of loss reserves, and other workings of such plans.[1/] The parties can work to submit a joint nomination for an individual so qualified, or, if the parties cannot agree on the nomination, the Court may appoint an individual after considering the merits of various nominations from both parties. *Beckman*, 579 A.2d at 633.

The methodology and calculations of the Retro Plan are at least as complicated as the other accounting cases which have been held by D.C. Courts to warrant the appointment of a Special Master. Not only do these calculations require sophisticated accounting, but these issues arise in the specialized field of malpractice insurance, and the proper interpretation of the Retro Plan calculations requires an understanding of that particular industry. Both parties and this Court would be best

---

1/ Although Rule 53(a) provides than an Auditor-Master is available as an employee of D.C. Superior Court, the specialized nature of the Retro Plan calculations requires that it would be more appropriate to appoint a Special Master with specific qualifications and experience relevant to this case. *See* Rule 53(a).

16d-001661

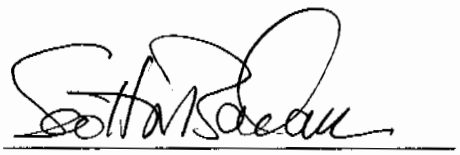
served by appointment of a Special Master to make findings regarding the Retro Plan calculations.

III. CONCLUSION

Accordingly, for the reasons stated throughout, the Retro Plan calculations and methodology are sufficiently complicated such that the Court and the finder of fact in this matter will be greatly assisted by reference of these matters to a Special Master. Additionally, referring the Retro Plan matters to a Special Master will be an appropriate effort to conserve judicial resources while providing the parties with an expert knowledgeable in a complex field.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

DC244408

16d-001662

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

ORDER OF REFERENCE TO A SPECIAL MASTER

The Court having reviewed NCRIC's Motion to Refer to a Special Master and any opposition thereto, it is this ____ day of _____, 2003,

ORDERED that NCRIC's Motion for Reference to a Special Master is hereby GRANTED; and it is further

ORDERED that the parties shall each submit nominations for individuals which the Court will consider in appointing a Special Master to assist in this case; and it is further

ORDERED that the Special Master shall conduct proceedings in accordance with Superior Court Rule of Civil Procedure 53, receive evidence and hear witness testimony, and prepare and file a report of his findings regarding the following issues:

1. The application of the Deposit Premium, Minimum Premium, and Developmental Factors in the calculation of Additional and/or Return Premium under the Retro Plan;

2. The reconciliation of all Experience Periods under the Retro Plan from 1993 to the end of the plan in 2000, as of June 2003;

3. The amount of Return Premium due to Columbia, or Additional Premium due to NCRIC, as of June 2003;

4. The proper adjustments to loss reserves that might or might not have been required throughout the time of the Retro Plan;

5. Whether or not NCRIC's Retro Plan calculations presented to Columbia from 1993 to the present were in compliance with the terms of the Retro Plan.

The Honorable Anna Blackburne-Rigsby
Superior Court for the District of Columbia

16d-001664

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

16d-001665

EXHIBIT 1

National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue • Washington, D.C. 20007 • (202) 342-6690 • Fax: 338-0437

93-96

October 20, 1993

G. Patrick Kane, FACHE
President & Chief Executive Officer
Columbia Hospital for Woman
2425 L Street, N.W.
Washington, D.C. 20037

Dear Mr. Kane:

I am enclosing two copies of the signed retrospective rating plan agreements accompanied by two copies of Exhibit A, policy endorsement and example of plan operation.

Based on the list of plan participants provided under cover of your letter dated October 15, the Underwriting Department will proceed with the implementation of premium discounts effective September 1, 1993. There are several participants not currently insured with NCRIC that will require some additional time to process but the discount will be effective at the same time as the policy effective date.

We are proceeding with the discounts with the understanding that executed copies of attending faculty program agreements between Columbia Hospital and each plan participant will be provided to me by not later than December 1, 1993. 1994 discounts will otherwise have to be withheld until the documents are received.

I sincerely hope this to be the beginning of a long and mutually beneficial agreement.

Sincerely,

David K. Little
President
National Capital Underwriters, Inc.

Enclosures

Kitka
3 EXHIBIT 4/5
CASE# 1-18-020a

RETROSPECTIVE RATING PLAN AGREEMENT

This Retrospective Rating Plan Agreement ("Agreement") is made and entered into effective the first day of September, 1993, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

WHEREAS, NCRIC offers medical professional liability insurance to physicians duly licensed as such by the District of Columbia Government ("physicians") on a claims-made basis, for which an annual premium is assessed and paid; and

WHEREAS, Medical Center operates and conducts a not-for-profit hospital in the District of Columbia which has on its medical staff duly licensed physicians who are insured with NCRIC; and

WHEREAS, certain of these physicians desire to secure a reduction or discount on their insurance premiums on a preferred risk basis through the establishment of and participation in an Attending Faculty Program ("AFP"), which shall be designed to reduce the risks involved in the delivery of medical care to patients as set forth in the Attending Faculty Program Agreement entered into between the physicians and Medical Center; and

WHEREAS, NCRIC is willing to provide such a reduction or discount on said insurance premiums to those physicians who agree to participate in the AFP on condition that Medical Center agrees to be financially responsible for certain premium amounts as hereinafter provided; and

WHEREAS, as a mechanism for reducing its own exposure for professional liability, Medical Center is willing to assume such responsibility;

NOW, THEREFORE, the parties hereto agree as follows:

1. NCRIC has established a three-year Retrospective Rating Plan, a copy of which is attached hereto as Exhibit A (the "Plan") and incorporated herein by reference. NCRIC makes available the benefits of the Plan to its physician insureds who are parties to the AFP Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and who are issued a Retrospective Rating Plan Endorsement, a copy of which is attached hereto as Exhibit C. With the exception of the Plan Participants

listed on Exhibit D, attached hereto and incorporated herein by this reference, the effective date of any Plan Participant's participation, or termination of participation, in the Plan shall be the date on which NCRIC receives notice thereof from Medical Center.

2. NCRIC agrees to issue Retrospective Rating Plan Endorsements to its physician insureds who otherwise qualify in accordance with the standard underwriting practices of NCRIC and who are members of the AFP.

3. As an inducement to NCRIC to cause it to issue the Retrospective Rating Plan Endorsements to its physician insureds who are members of the AFP, Medical Center agrees to be solely responsible for, and to pay, any Additional Premium due in accordance with the terms of the Plan.

4. Medical Center shall correspondingly be entitled to receive Return Premium, if any, and investment return thereon, if any, in accordance with the terms of the Plan.

5. Notice of any Additional Premium due from Medical Center, or any Return Premium due to Medical Center, shall be provided to Medical Center within 60 days following the close of the Reconciliation Period, and payment due, whether to Medical Center or from Medical Center, shall be due and payable within 30 days of receipt of said notice.

6. Medical Center's obligations hereunder are primary, and not secondary, and NCRIC shall have no right to seek recourse or payment of any Additional Premium due pursuant to the Plan from any Plan Participant. In the event Medical Center fails to make any payment for which it is responsible hereunder when due, the Company shall have the right to recover reasonable attorneys fees incurred in recovering such payment from Medical Center.

7. NCRIC hereby represents and warrants that any claims made against Plan Participants will be processed, including the setting of loss reserves, in the normal and ordinary course of the Company's business, without consideration of the insured's status as a Plan Participant.

8. Medical Center hereby represents and warrants that it has made, and will continue to make, adequate provision for the contingent liabilities it has assumed hereunder.

9. Medical Center will provide NCRIC with the following:

a. a list of all Plan Participants, and any additions or deletions thereto;

b. copies of Medical Center's Agreement between Medical Center and Participants in the Attending Faculty Program who are Insured with NCRIC, and amendments, if any, as made from time to time, with each Plan Participant, which contract shall include an authorization by the Plan Participant in form and substance satisfactory to NCRIC to release to Medical Center the information set forth in Paragraph 10(a)(iii) below;

c. copies of, and any amendments to, the AFP Agreement; and

d. a review and summary of risk management activities undertaken pursuant to the Attending Faculty Program Agreement.

10. NCRIC and a Medical Center representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

a. At such meetings, NCRIC will provide Medical Center with the following:

i. for purposes of cross-reference and confirmation of participation or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

ii. the aggregate amount of losses reserved under the Plan, and the verification thereof by NCRIC's consulting actuary;

iii. with respect to any medical incident or professional liability claim reported to NCRIC by a Plan Participant under the Plan (hereinafter, "incident"), and subject to a Plan Participant's authorization to release same to Medical Center, the name of the physician, the date of the incident, the date said incident was reported to NCRIC, any complaint or suit filed in a court of law with respect to such claim; and any payments made on behalf of said Plan Participant by NCRIC; and

iv. a review of Medical Center risk management activities.

b. Annually, at such meeting taking place in the first quarter of each year, Medical Center will provide NCRIC with the statement of Medical Center's consulting actuary that adequate reserves have been made for the contingent liabilities Medical Center has assumed under this Agreement.

11. This Agreement shall remain in full force and effect as to any renewal, extension or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, or new issuances.

12. This Agreement shall remain in full force and effect until all claims applicable to the final Experience Period of the Plan are finally closed or upon payment of maximum premium amount required by paragraph 3 hereof applicable to the final Experience Period, whichever occurs first. For purposes of this Paragraph 12, any claim "closed" without payment made to, and a release having been signed by, the claimant shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the retrospective adjustment according to the Plan.

13. For purposes of clarification, and not to vary, alter or amend the terms hereof or of the Plan, attached hereto as Exhibit B and incorporated herein by reference is an example of the operation of the Plan.

14. All bookkeeping and record keeping shall be handled by NCRIC.

15. Upon ninety (90) days' written notice prior to the end of any Experience Period, to be effective after the last day of such Experience Period, the Plan may be discontinued by either party for cause, provided that such discontinuance shall not affect any obligation or liability accrued prior to the date of such discontinuance. For purposes of this Paragraph 15, "cause" shall mean any material breach of the terms of this Agreement, or any change in any applicable federal, state or local law which would render any of the terms of this Agreement unlawful.

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

REDACTED

REDACTED

If to NCRIC:

Mr. David K. Little
President
National Capital Underwriters, Inc.
Attorney-in-fact for
National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, D.C. 20007

If to Medical Center:

Mr. G. Patrick Kane, FACHE
President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, N.W.
Washington, D.C. 20037

The date of service of any such notice shall be the date that such notice is deposited with the U.S. Postal Service or the date of personal delivery, as applicable.

17. Medical Center hereby warrants and represents that it has made, and agrees to provide NCRIC with its auditor's or actuary's annual statement reflecting, adequate provision for the contingent liabilities it has assumed hereunder.

18. This Agreement constitutes the entire agreement between the parties and no modifications, amendments or additions thereto shall be binding unless in writing and executed by all the parties hereto.

19. This Agreement shall not be assignable without the prior written consent of the parties hereto.

20. The agreements, terms and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, if any.

21. This Agreement is made and executed in the District of Columbia, and shall be governed by the law of the District of Columbia.

IN WITNESS WHEREOF, the parties have caused their corporate names to be subscribed hereto by their duly authorized officers or attorneys-in-fact, and their corporate seal to be hereunto affixed effective the day and year first above written.

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

BY: _____
David K. Little, President

(Corporate Seal)

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST:

BY: _____

(Corporate Seal)

List of Exhibits

A Retrospective Rating Plan

B Attending Faculty Program Agreement

C Retrospective Rating Plan Endorsement

D List of Initial Plan Participants

E Example of operation of the Plan

CHW MC 000042

16d-001674

EXHIBIT A

THREE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center dated September 1, 1993, (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be three years, beginning on September 1, 1993 and ending on September 1, 1996. The Plan shall consist of three separate and distinct Experience Periods of:

Beginning 12:01 A.M. on	and Ending 12:01 A.M. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19% of the otherwise applicable premium for such coverage. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return premium (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =

((((Loss Reserves) x (Development Factor)) + Paid Losses) x Discount Factor) + Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

REDACTED

REDACTED

REDACTED

CHW MC 000043

16d-001675

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedule:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1996
September 1, 1994 to September 1, 1995	September 1, 1997
September 1, 1995 to September 1, 1996	September 1, 1998

Additional reconciliations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall not be deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the Reconciliation Date, Reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"Basic Premium" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by

REDACTED

multiplying the Subject Premium by the insurance charge factor set forth below:

Three(3) Year Subject Premium	Insurance Charge Factor
$ 1,539,000 - $ 2,565,999	20.7%
$ 2,566,000 - $ 3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"Deposit Premium" means the Subject Premium multiplied by eighty-one percent (81%). This percentage shall remain unchanged for the three year term of the Plan.

"Development Factor" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and shall remain unchanged for the three year term of the Plan and all reconciliations applicable thereto:

Year 1 Reconciliation	-	88.5%
Year 2 Reconciliation	-	87.5%
Year 3 Reconciliation	-	90.5%
Year 4 Reconciliation	-	96.0%
Year 5 Reconciliation	-	100.0%
All Subsequent Reconciliations	-	100.0%

REDACTED

"Discount Factor" means a factor of 86.33%. This factor shall remain unchanged for the three-year term of the plan.

"Experience Period" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the pro-rated period involved shall be deemed to be an Experience Period.

"Insurance Policy" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"Losses" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"Loss Limitation" - for the purpose of application of the

retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (i) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"Loss Reserves" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"Maximum Premium" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (115%) of the Subject Premium amount.

"Minimum Premium" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (75%) of the Subject Premium amount.

"Paid Losses" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid Losses are subject to Loss Limitation, defined above.

"Plan Participants" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"Subject Premium" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insureds were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall be determined by NCRIC's consulting actuary, but shall not exceed 83%, nor be less than 77%, of the undiscounted premium charged for coverage limits of $1 million each claim/$3 million aggregate.

REDACTED

REDACTED

RETROSPECTIVE RATING PLAN
PREMIUM ADJUSTMENT ENDORSEMENT

Policy Number:

Effective Date:

This endorsement forms a part of the Policy issued by the National Capital Reciprocal Insurance Company (the "Company") and takes effect as of the effective hour and date of said policy unless another effective date is stated herein.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the policy, other than as herein stated.

1. The premium for Coverage A stated in the declarations is a provisional premium and is contingent upon participation by the named insured in a retrospective rating plan. Upon the Company's receipt of notice of the termination of the participation of the named insured in the retrospective rating plan the premium for Coverage A will be adjusted to 100% of the Company's otherwise applicable premium then in effect.

2. All other premiums listed in the declarations and any additional premiums resulting from any policy endorsements are not affected as a result of the named insured's participation in a retrospective rating plan.

This endorsement shall not be binding unless countersigned by a duly authorized Company representative; provided, however, that if this endorsement takes effect as of the effective date of the policy and, at issue of said policy, forms a part thereof, countersignature on the declarations of said policy by a duly authorized Company representative shall constitute valid countersignature of this endorsement.

Countersigned by: _____
Authorized Company Representative

NCRIC-51
(1/93)

Please read the entire policy, including endorsements, carefully.

COLUMBIA GROUP RETRO RATING PLAN — $500,000 LIMIT
EG OB'GYN'S
$2.0 MILLION LOSSES PER YEAR

MINIMUM PREMIUM - 75% OF SUBJECT PREMIUM
MAXIMUM PREMIUM -115% OF SUBJECT PREMIUM
DEPOSIT PREMIUM - 81% OF SUBJECT PREMIUM

LOADING 17.54%

DISCOUNT FACTOR - 85.33%

	1/1/93	1/1/94	COMBINED	1/1/95	COMBINED
SUBJECT PREMIUM	$3,000,000	$3,300,000	$6,300,000	$3,630,000	$9,930,000
DEPOSIT PREMIUM	$2,430,000	$2,673,000	$5,103,000	$2,940,300	$8,043,300
MAX PREMIUM	$3,450,000	$3,795,000	$7,245,000	$4,174,500	$11,419,500
MIN PREMIUM	$2,250,000	$2,475,000	$4,725,000	$2,722,500	$7,447,500
BASIC PREMIUM	$526,200	$578,820	$1,105,020	$636,702	$1,741,722

	1/1/96
LOSSES PAID	$0
LOSSES RESERVED	$2,000,000
DEVELOPMENT FACTOR	.885
DEVELOPED LOSSES	$1,770,000
DISCOUNTED LOSSES	$1,528,041
RETRO PREMIUM	$2,054,241
SUBJECT TO MIN/MAX	$2,250,000
ADJ(RET) PREMIUM	($180,000)
TOTAL PREM TO DATE	$2,250,000

	1/1/97				
LOSSES PAID	$1,000,000	$0			
LOSSES RESERVED	$1,000,000	$2,000,000			
DEVELOPMENT FACTOR	.875	.885			
DEVELOPED LOSSES	$1,875,000	$1,770,000			
DISCOUNTED LOSSES	$1,618,688	$1,528,041			
RETRO PREMIUM	$2,144,888	$2,106,861	$4,251,749		
SUBJECT TO MIN/MAX			$4,725,000		
ADJ(RET) PREMIUM			($198,000)		
TOTAL PREM TO DATE			$4,725,000		

	1/1/98				
LOSSES PAID	$1,500,000	$1,000,000		$0	
LOSSES RESERVED	$500,000	$1,000,000		$2,000,000	
DEVELOPMENT FACTOR	.905	.875		.885	
DEVELOPED LOSSES	$1,952,500	$1,875,000		$1,770,000	
DISCOUNTED LOSSES	$1,685,593	$1,618,688		$1,528,041	
RETRO PREMIUM	$2,211,793	$2,197,508		$2,164,743	$6,574,044
SUBJECT TO MIN/MAX					$7,447,500
ADJ(RET) PREMIUM					($217,800)
TOTAL PREM TO DATE					$7,447,500

CHW MC 000048

16d-001680

		1/1/99		
LOSSES PAID	$2,000,000	$1,500,000	$1,000,000	
LOSSES RESERVED	$0	$500,000	$1,000,000	
DEVELOPMENT FACTOR	.960	.905	.875	
DEVELOPED LOSSES	$2,000,000	$1,952,500	$1,875,000	
DISCOUNTED LOSSES	$1,726,600	$1,685,593	$1,618,686	
RETRO PREMIUM	$2,252,800	$2,264,413	$2,255,390	$6,772,603
SUBJECT TO MIN/MAX				$7,447,500
ADD(RET) PREMIUM				$0
TOTAL PREM TO DATE				$7,447,500

		1/1/00		
LOSSES PAID	$2,000,000	$2,000,000	$2,000,000	
LOSSES RESERVED	$0	$0	$0	
DEVELOPMENT FACTOR	1	.960	.905	
DEVELOPED LOSSES	$2,000,000	$2,000,000	$2,000,000	
DISCOUNTED LOSSES	$1,726,600	$1,726,600	$1,726,600	
RETRO PREMIUM	$2,252,800	$2,305,420	$2,363,302	$6,921,522
SUBJECT TO MIN/MAX				$7,447,500
ADD(RET) PREMIUM				$0
TOTAL PREM TO DATE				$7,447,500

EXHIBIT 2

COLUMBIA HOSPITAL

FOR WOMEN

RETROSPECTIVE RATING PLAN

5/31/99

HOSPITAL

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - MAY 31, 1999

Contract Period - September 1, 1993 to September 1, 1999

Claims Report

Claims Experience Period:
September 1, 1993 to September 1, 1994

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.	
2414-1	Virginia Thompson	6	19-Jul-93	10-Nov-93	0.00	12,847.04	
2451-1	Sylvester Booker	6	16-Nov-93	23-Dec-93	0.00	3,110.31	
2472-1	Douglas Kalesh	6	13-Jul-92	01-Mar-94	0.00	75.00	
2476-1	John Bressette	6	27-Jul-93	21-Jan-94	0.00	0.00	
2489-1	Kathleen Bis	6	17-Mar-94	22-Mar-94	0.00	7.00	
2499-1	Robert Bridges	6	23-Jan-94	09-Mar-94	0.00	0.00	
2515-1	Cesare Santangelo	6	21-May-91	24-May-94	0.00	94,391.41	
2528-1	Robert Bridges	6	15-May-94	03-Jun-94	0.00	1,940.22	
2583-1	Rebecca Busch	6	01-Aug-92	06-Jul-94	75,000.00	90,425.11	
2587-1	Marciana Wilkerson	6	09-Aug-93	22-Jul-94	500,000.00	77,444.31	+
2591-1	Stanley Marinoff	6	09-Mar-94	13-Apr-94	40,000.00	17.44	
2601-1	Linwood Turner	6	21-Jul-93	08-Jun-94	20,000.00	45,109.78	
Total					635,000.00	325,367.62	

Indemnity Reserve Open Files (0) (Pro-Rated)	$	0.00
Indemnity Reserve Closed Files (12) (Pro-Rated)	$	1,490,000.00
Indemnity Reserve Total:	$	1,490,000.00
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	$	0.00
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	$	441,500.00
Allocated Loss Adjustment Expense Reserve Total:	$	441,500.00
Allocated Loss Adjustment Expense Reserve Applied to Retro Plan	$	0.00
Allocated Loss Adjustment Expense Paid Applied to Retro Plan	$	325,367.62

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - MAY 31, 1999

Contract Period - September 1, 1993 to September 1, 1999
Claims Report

Claims Experience Period:
September 1, 1994 to September 1, 1995

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.	
1966-2	Katherine Alley	6	12-Feb-92	7-Apr-95	0.00	57,604.35	
2594-1	Douglas Kalesh	6	7-Sep-94	28-Sep-94	0.00	0.00	
2622-1	Conrad Hicks	6	14-Dec-93	17-Nov-94	0.00	82.40	
2631-1	Katherine Alley	6	3-May-94	28-Nov-94	0.00	0.00	
2654-1	Rebecca Douglas	6	9-Jan-95	3-Feb-95	0.00	0.00	
2655-1	Rebecca Douglas	6	19-Jan-95	3-Feb-95	0.00	82.40	
2657-1	John Niles	6	27-Jun-94	16-Jan-95	475,000.00	101,193.10	
2662-1	Janet Schaffel	6	30-Nov-94	6-Dec-94	0.00	0.00	
2662-2	Heather Johnson	6	30-Nov-94	6-Dec-94	0.00	0.00	
2667-1	John Berryman	6	10-Mar-92	9-Mar-95	500,000.00	142,816.90	+
2684-1	John Niles	6	1-May-89	27-Sep-94	0.00	0.00	
2688-1	George Samman	6	11-Jul-94	20-Mar-95	0.00	44.90	
2693-1	Morton Roberts	6	1-Apr-94	3-Apr-95	0.00	75.00	
[illegible]695-1	April Rubin	6	11-Mar-95	26-Apr-95	0.00	82.50	
[illegible]4-1	Gideon Kioko	6	05-Jun-92	09-Jun-95	0.00	1,358.10	
[illegible]5-1	Nancy Sanders	6	28-Nov-94	09-Jun-95	0.00	75.00	
2732-1	Conrad Hicks	6	11-Nov-94	11-Aug-95	0.00	4,124.05	
2737-1	Richard Guy	4	17-May-95	14-Jul-95	0.00	10,720.95	
2738-1	Julian Safran	6	23-Jul-92	18-Aug-95	0.00	0.00	
2740-1	Richard Flax	6	06-Jun-95	23-Aug-95	0.00	0.00	
2746-1	Robert Greenfield	6	12-Sep-94	01-Mar-95	0.00	75.00	
2754-1	Sylvester Booker	6	07-Aug-94	20-Jan-95	0.00	82.00	
2760-1	Raymond Cutts, Jr.	6	12-Jul-93	03-Apr-95	0.00	75.00	
2778-1	Sylvester Booker	6	18-Jun-95	20-Jun-95	0.00	75.00	
Total:					**975,000.00**	**318,566.65**	

Indemnity Reserve Open files (1) (Pro-Rated)	**$**	**100,000.00**
Indemnity Reserve Closed Files (23) (Pro-Rated)	**$**	**3,130,000.00**
Indemnity Reserve Total:	**$**	**3,230,000.00**
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**60,000.00**
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**373,430.00**
Allocated Loss Adjustment Expense Reserve Total:	**$**	**433,430.00**
Allocated Loss Adjustment Expense Reserve Applied to Retro Plan	**$**	**60,000.00**
Allocated Loss Adjustment Expense Paid Applied to Retro Plan	**$**	**307,845.70**

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - MAY 31, 1999
Contract Period - September 1, 1993 to September 1, 1999
Claims Report

Claims Experience Period:
September 1, 1995 to September 1, 1996

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
2488-2	Joseph Afram	6	14-Feb-94	10-Jan-96	225,000.00	27,805.94
2756-1	Florie Hirsch	4	30-Aug-95	11-Sep-95	0.00	48,639.86
2758-1	Janet Schaffel	6	29-Sep-92	29-Sep-95	0.00	25,991.80
2767-3	Lewis Townsend	6	01-Aug-95	16-Nov-95	0.00	148,466.40
2773-1	Nancy Sanders	4	14-Sep-95	11-Oct-95	0.00	19,632.44
2777-1	George Samman	6	28-Apr-95	06-Dec-95	0.00	75.00
2786-1	Steele Stewart Jr.	6	25-Aug-95	26-Dec-95	0.00	75.00
2796-1	Martin Dukes	4	08-Dec-95	22-Jan-96	0.00	91,311.81
2807-1	Lewis Townsend	6	25-Jan-96	29-Jan-96	0.00	0.00
2813-1	Norman Neches	6	04-Feb-93	21-Feb-96	0.00	1,142.00
2815-1	Katherine Alley	6	02-Mar-94	19-Jan-96	0.00	0.00
2815-2	Richard Flax	6	02-Mar-94	19-Jan-96	0.00	0.00
2818-1	Norman Neches	6	07-Jul-95	14-Feb-96	0.00	375.00
2819-1	Marciana Wilkerson	6	08-Nov-93	27-Feb-96	375,000.00	72,590.12
2821-1	John H. Niles, Jr.	6	08-Nov-94	14-Feb-96	0.00	17,801.98
2823-1	Sara L. Imershein	6	26-Feb-96	07-Mar-96	0.00	0.00
2824-1	Alan Bimkrant	6	15-Aug-95	05-Mar-96	0.00	75.00
2824-3	Sara L. Imershein	6	15-Aug-95	05-Mar-96	0.00	0.00
[illegible]-1	Joan Redfearn	4	10-Oct-94	15-Apr-96	0.00	30,095.47
[illegible]-1	Joan Redfearn	6	11-Apr-93	26-Apr-96	0.00	2,523.17
2842-1	Conrad Duncan	6	13-Jun-94	30-Apr-96	0.00	33,897.35
2858-1	Steve Dixon	6	10-May-94	23-Apr-96	0.00	0.00
2894-1	Richard Peters	4	21-Jul-88	17-Jun-96	0.00	61,957.83
2897-1	Richard Newman	6	05-Jul-93	08-Jul-96	0.00	4,308.15
2897-2	Stephen Horwitz	6	05-Jul-93	08-Jul-96	0.00	4,308.14
2898-1	Joseph Afram	6	24-Jan-96	10-Jul-96	0.00	12.00
2902-1	Shen-Tso Tseng	6	03-Dec-95	19-Jul-96	0.00	0.00
2905-1	Richard Flax	3	05-Jun-96	18-Jul-96	0.00	345.00
2908-1	Deena Kleinerman	6	19-Sep-95	06-Jun-96	0.00	75.00
2918-1	Deena Kleinerman	6	30-May-96	06-Jun-96	0.00	0.00
2922-1	Pamela Coleman	6	09-Feb-96	25-Mar-96	0.00	562.50
2926-1	Sylvester Becker	6	07-Aug-96	21-Aug-96	0.00	0.00
2950-1	Marcianna Wilkerson	6	9-June-96	27-Jun-96	0.00	0.00
Total:					600,000.00	592,066.96

ndemnity Reserve Open Files (6) (Pro-Rated)	$ 945,000.00
ndemnity Reserve Closed Files (27) (Pro-Rated)	$ 4,487,000.00
ndemnity Reserve Total:	$ 5,432,000.00
llocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	$ 267,000.00
llocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	$ 707,667.00
[illegible]ed Loss Adjustment Expense Reserve Total:	$ 974,667.00
llocated Loss Adjustment Expense Reserve Applied To Retro Plan	$ 267,000.00
llocated Loss Adjustment Expense Paid Applied To Retro Plan	$ 340,084.55

16d-001686

le: Columbia.sheet3(3 of 3)(C)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - MAY 31, 1999

Contract Period - September 1, 1993 to September 1, 1999

Claims Report
Claims Experience Period:
September 1, 1996 to September 1, 1997

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
2948/1	Lewis Townsend	6	14-Dec-95	11-Nov-96	0.00	75.00
2951/1	Gideon Kioko	6	19-Jan-96	20-Sep-96	0.00	0.00
2961/1	Rebecca Douglas	6	20-Nov-96	3-Dec-96	0.00	0.00
2972/1	Gideon Kioko	4	5-Feb-93	3-Jan-97	0.00	28,609.59
2973/1	Kenneth Blank	4	14-Nov-94	28-Jan-97	0.00	72,059.73
2973/2	Julian Safran	6	14-Nov-94	28-Jan-97	0.00	15,717.25
2988/2	Janet Schaffel	6	1-Mar-97	3-Mar-97	0.00	75.00
2988/3	Nancy Sanders	6	1-Mar-97	3-Mar-97	0.00	75.00
2988/4	Heather Johnson	6	1-Mar-97	3-Mar-97	0.00	75.00
2989/1	Stanley Marinoff	6	23-Aug-96	22-Jan-97	0.00	0.00
2993/1	David Powers	4	29-Apr-94	17-Mar-97	0.00	48,150.14
2998/1	Richard Footer	6	24-Mar-97	31-Mar-97	0.00	0.00
3017/1	Peter Gross	6	10-Oct-95	2-May-97	0.00	0.00
3030/1	Israel Kogan	4 6	25-Jul-94	5-Jun-97	0.00	51,807.71
3031/1	Margaret Byrne	6 8	22-Jan-97	10-Jun-97	0.00	0.00
3034/1	Steven Dixon	6	11-Jun-97	17-Jun-97	0.00	0.00
3035/1	Steven Dixon	4	16-Jun-97	17-Jun-97	0.00	2,291.82
3035/4	Alan Birnkrant	4	16-Jun-97	28-Jul-97	0.00	5,198.20
3037/1	Linwood Turner	6	23-Feb-94	2-Jun-97	0.00	4,563.27
3047/1	Morton Roberts	6	7-Aug-95	25-Jun-97	0.00	0.00
3051/1	Linwood Turner	6	6-Jul-96	10-Jul-97	0.00	3,030.78
3057/1	Katherine Alley	3	18-Dec-96	16-Jul-97	0.00	37.50
3057/2	Joseph Gutierez	3	24-Jan-97	13-Jun-97	0.00	37.50
3059/1	Marciana Wilkerson	4	18-Sep-96	28-Jul-97	0.00	57,643.23
3061/1	Stanley Knoll	4	25-Jul-97	6-Aug-97	0.00	101,465.59
3067/1	Marciana Wilkerson	4	20-Sep-96	14-Aug-97	0.00	7,606.66
3076/1	Norman Neches	3	30-May-97	9-Jul-97	0.00	1,440.00
3077/1	Sylvester Booker	3	8-Jul-97	22-Aug-97	0.00	0.00
3120/1	John Niles, Jr.	3	30-Oct-96	29-Jan-97	0.00	85.50
			Total:		**0.00**	**400,044.47**

Indemnity Reserve Open Files (14) (Pro-Rated)	**$**	**2,515,000.00**
Indemnity Reserve Closed file (15) (Pro-Rated)	**$**	**1,635,000.00**
Indemnity Reserve Total:	**$**	**4,150,000.00**
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**617,000.00**
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**209,500.00**
Allocated Loss Adjustment Expense Reserve Total:	**$**	**826,500.00**
cated Loss Adjustment Expense Reserve Applied To Retro Plan	**$**	**617,000.00**
ted Loss Adjustment Expense Paid Applied To Retro Plan	**$**	**23,611.30**

File: Columbia.sheet 4.(3of 3)(D)

16d-001687

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - MAY 31, 1999

Contract Period - September 1, 1993 to September 1, 1999
Claims Report

Claims Experience Period:
September 1, 1997 to September 1, 1998

Case/File	Physician	Status	Inc.Dt.	Rept.Dt.	Ind.Pd.	Exp.Pd.	
2773/4	Constance Bohon	6	21-Sep-95	10-Dec-97	0.00	7,462.12	
2773/5	Nancy Ripp	6	18-Sep-95	10-Dec-97	0.00	7,462.14	
3075/1	Robert Greenfield	6	11-Jul-94	04-Sep-97	0.00	4,551.54	
3078/1	Rufus Rosser, Jr.	4	28-Apr-97	02-Sep-97	0.00	1,068.40	
3138/1	Norman Neches	4	01-Jan-97	07-Jan-98	0.00	7,470.35	
3143/1	Steven Dixon	6	12-Apr-93	27-Jan-98	0.00	5,625.39	
3145/1	Richard Falk	4	09-Nov-95	06-Feb-98	0.00	4,953.18	
3155/1	Lorraine Gillian	4	02-Oct-96	05-Mar-98	0.00	2,250.89	
3156/1	Deena Kleinerman	6	31-Jan-98	12-Mar-98	0.00	0.00	
3185/1	Marciana Wilkerson	4	18-Jul-96	21-May-98	0.00	13,434.80	
3186/1	Israel Kogan	3	27-Jan-96	28-May-98	0.00	4,566.88	+
3206/1	Deena Kleinerman	4	08-Jul-95	10-Jul-98	0.00	11,746.46	
3215/1	Florie Hirsch	4	05-May-97	17-Aug-98	0.00	3,288.60	
[illegible]7/1	Richard Peters	2	02-Jul-98	18-Aug-98	0.00	75.00	
	Total:				**0.00**	**73,955.75**	

ndemnity Reserve Open Files (9) (Pro-Rated)	**$**	**1,430,000.00**
ndemnity Reserve Closed Files (5) (Pro-Rated)	**$**	**365,000.00**
ndemnity Reserve Total:	**$**	**1,795,000.00**

llocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**385,000.00**
llocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**132,500.00**
llocated Loss Adjustment Expense Reserve	**$**	**517,500.00**

llocated Loss Adjustment Expense Reserve Applied to Retro Plan	**$**	**385,000.00**
llocated Loss Adjustment Expense Paid Applied to Retro Plan	**$**	**25,101.19**

Capped at $500,000

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - MAY 31, 1999

Contract Period - September 1, 1993 to September 1, 1999
Claims Report

Claims Experience Period:
September 1, 1998 to September 1, 1999

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
3226-1	Robert Greenfield	3	03-Nov-97	03-Sep-98	0.00	0.00
3226-2	Sylvester Booker	3	03-Nov-97	03-Sep-98	0.00	0.00
3236-1	Deena Kleinerman	1	10-Sep-98	14-Oct-98	0.00	0.00
3247-1	Kenneth Blank	4	24-Oct-95	03-Nov-98	0.00	1,438.81
3247-2	Richard Newman	4	24-Oct-95	03-Nov-98	0.00	1,213.81
3247-3	Stephen Horwitz	4	24-Oct-95	03-Nov-98	0.00	1,213.82
3247-4	Julian Safran	4	24-Oct-95	03-Nov-98	0.00	1,213.31
3266-1	George Samman	2	16-Dec-98	23-Dec-98	0.00	0.00
3275-1	David Powers	3	15-Apr-98	07-Jan-99	0.00	0.00
3277-1	Nabil Asterbadi	3	07-Jun-97	20-Jan-99	0.00	0.00
3277-2	Hrant Semerjian	3	07-Jun-97	21-Jan-99	0.00	0.00
[illegible]-1	Earl Horton	2	10-Nov-98	28-Jan-99	0.00	0.00
[illegible]-1	Rebecca Douglas	2	02-Nov-98	05-Feb-99	0.00	0.00
3288-2	Joseph Afram	4	10-Jan-99	27-Apr-99	0.00	0.00
3322-1	Sefa Rifka	3	29-Oct-98	07-Apr-99	0.00	0.00
3325-1	Nancy Sanders	2	03-Mar-99	19-Mar-99	0.00	0.00
3335-1	Nabil Asterbadi	3	22-May-98	25-Feb-99	0.00	0.00
3340-1	Marciana Wilkerson	3	03-Sep-98	02-Jun-99	0.00	0.00
			Total:		**0.00**	**5,079.75**

ndemnity Reserve Open Files (18) (Pro-Rated)	$	2,750,000.00
ndemnity Reserve Closed file (0) (Pro-Rated)	$	0.00
ndemnity Reserve Total:		2,750,000.00
llocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	$	200,000.00
llocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	$	0.00
llocated Loss Adjustment Expense Reserve Total:		200,000.00
Allocated Loss Adjustment Expense Reserve Applied To Retro Plan	$	200,000.00
Allocated Loss Adjustment Expense Paid Applied To Retro Plan	$	0.00

[illegible]nbia.sheet 7.(3 of 3)(G)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - MAY 31, 1999

Contract Period - September 1, 1993 to September 1, 1999
Claims Report

Claims Experience Period:
September 1, 1993 to September 1, 1999

SUMMARY

Indemnity Paid To Date: (Pro-Rated)	$	2,210,000.00
Allocated Loss Adjustment Expenses Paid To Date: (Pro-Rated)	$	1,715,081.20
Total Allocated Loss Adjustment Expense Paid Applied To Retro Plan	$	1,022,010.36
Total Allocated Loss Adjustment Expense Reserves Applied To Retro Plan	$	1,529,000.00

Indemnity Reserve Totals For Contract Period

Open Files: (48 Files)	$	7,740,000.00
Closed Files (82 Files)	$	11,107,000.00
Total (130 Files)	$	18,847,000.00

Allocated Loss Adjustment Expense Reserve Totals For Contract Period

Open Files (48 Files)	$	1,529,000.00
Closed Files (82 Files)	$	1,864,597.00
Total (130 Files)		3,393,597.00

NCRIC Status Key and Footnotes:

+Loss Capped at $500,000
and Expenses Pro-Rated

NCRIC Status Key:
1. Incident Reported
2. Possible Claim
3. Formal Claim Submitted
4. Case in Suit–Lawsuit or Arbitration Panel Filing
5. Case on Appeal
6. Case Closed

File: Columbia.sheet 6.(1 of 1)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - MAY 31, 1999

Contract Period - September 1, 1993 to September 1, 1999

Claims Report
Claims Experience Period:
September 1, 1996 to September 1, 1997

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
2948/1	Lewis Townsend	6	14-Dec-95	11-Nov-96	0.00	75.00
2951/1	Gideon Kioko	6	19-Jan-96	20-Sep-96	0.00	0.00
2961/1	Rebecca Douglas	6	20-Nov-96	03-Dec-96	0.00	0.00
2972/1	Gideon Kioko	4	05-Feb-93	03-Jan-97	0.00	28,609.59
2973/1	Kenneth Blank	4	14-Nov-94	28-Jan-97	0.00	72,059.73
2973/2	Julian Safran	6	14-Nov-94	28-Jan-97	0.00	15,717.25
2988/2	Janet Schaffel	6	01-Mar-97	03-Mar-97	0.00	75.00
2988/3	Nancy Sanders	6	01-Mar-97	03-Mar-97	0.00	75.00
2988/4	Heather Johnson	6	01-Mar-97	03-Mar-97	0.00	75.00
2989/1	Stanley Marinoff	6	23-Aug-96	22-Jan-97	0.00	0.00
2993/1	David Powers	4	29-Apr-94	17-Mar-97	0.00	48,150.14
2998/1	Richard Footer	6	24-Mar-97	31-Mar-97	0.00	0.00
3017/1	Peter Gross	6	10-Oct-95	02-May-97	0.00	0.00
3030/1	Israel Kogan	4	25-Jul-94	05-Jun-97	0.00	51,807.71
3031/1	Margaret Byrne	6	22-Jan-97	10-Jun-97	0.00	0.00
3034/1	Steven Dixon	6	11-Jun-97	17-Jun-97	0.00	0.00
3035/1	Steven Dixon	4	16-Jun-97	17-Jun-97	0.00	2,291.82
3035/4	Alan Birnkrant	4	16-Jun-97	28-Jul-97	0.00	5,198.20
3037/1	Linwood Turner	6	23-Feb-94	02-Jun-97	0.00	4,563.27
3047/1	Morton Roberts	6	07-Aug-95	25-Jun-97	0.00	0.00
3051/1	Linwood Turner	6	06-Jul-96	10-Jul-97	0.00	3,030.78
3057/1	Katherine Alley	3	18-Dec-96	16-Jul-97	0.00	37.50
3057/2	Joseph Gutierez	3	24-Jan-97	13-Jun-97	0.00	37.50
3059/1	Marciana Wilkerson	4	18-Sep-96	28-Jul-97	0.00	57,643.23
3061/1	Stanley Knoll	4	25-Jul-97	06-Aug-97	0.00	101,465.59
3067/1	Marciana Wilkerson	4	20-Sep-96	14-Aug-97	0.00	7,606.66
3076/1	Norman Neches	3	30-May-97	09-Jul-97	0.00	1,440.00
3077/1	Sylvester Booker	3	08-Jul-97	22-Aug-97	0.00	0.00
3120/1	John Niles, Jr.	3	30-Oct-96	29-Jan-97	0.00	85.50
			Total:		**0.00**	**400,044.47**

Indemnity Reserve Open Files (14) (Pro-Rated)	**$ 2,515,000.00**
Indemnity Reserve Closed file (15) (Pro-Rated)	**$ 1,635,000.00**
Indemnity Reserve Total:	**$ 4,150,000.00**
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$ 617,000.00**
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$ 209,500.00**
Allocated Loss Adjustment Expense Reserve Total:	**$ 826,500.00**
ocated Loss Adjustment Expense Reserve Applied To Retro Plan	**$ 617,000.00**
ated Loss Adjustment Expense Paid Applied To Retro Plan	**$ 23,611.30**

File: Columbia.sheet 4.(3of 3)(D)

EXHIBIT 3

NCRIC Group. Inc.

September 1, 2000

Mr. Larry Wilson, Jr.
President & CEO
Columbia Hospital for Women Medical Center
2425 L Street, NW
Washington, D.C. 20037

Re: Physicians' Professional Liability Retrospective Rating Plan Agreement
Reconciliation Statement for Years 1994-1995 through 1998-1999

Dear Larry:

In accordance with the above-mentioned Retrospective Rating Plan Agreement between NCRIC, Inc. and Columbia, attached is the reconciliation calculation for the years 1994-1995, 1995-1996, 1996-1997, 1997-1998, and 1998-1999. This calculation utilizes loss information valued as of August 31, 2000.

The balance of $1,286,525 is due and payable on or before October 01, 2000.

Should you have any questions regarding this calculation, please contact me at (202) 969-3145.

Sincerely,

Dave Osborn
Vice President

cc: R.Ray Pate, Jr.

Enclosure

-EXHIBIT-
Witness Wilson 24
Date 7/26/01
Lynell C.S. Abbott, RMR

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000

Claims Report

Claims Experience Period:
September 1, 1993 to September 1, 1994

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.	
2414-1	Virginia Thompson	6	19-Jul-93	10-Nov-93	0.00	12,847.04	
2451-1	Sylvester Booker	6	16-Nov-93	23-Dec-93	0.00	3,110.31	
2472-1	Douglas Kalesh	6	13-Jul-92	01-Mar-94	0.00	75.00	
2476-1	John Bressette	6	27-Jul-93	21-Jan-94	0.00	0.00	
2489-1	Kathleen Bis	6	17-Mar-94	22-Mar-94	0.00	7.00	
2499-1	Robert Bridges	6	23-Jan-94	09-Mar-94	0.00	0.00	
2515-1	Cesare Santangelo	6	21-May-91	24-May-94	0.00	94,391.41	
2528-1	Robert Bridges	6	15-May-94	03-Jun-94	0.00	1,940.22	
[illegible]-1	Rebecca Busch	6	01-Aug-92	06-Jul-94	75,000.00	90,425.11	
[illegible]-1	Marciana Wilkerson	6	09-Aug-93	22-Jul-94	500,000.00	77,444.31	+
2591-1	Stanley Marinoff	6	09-Mar-94	13-Apr-94	40,000.00	17.44	
2601-1	Linwood Turner	6	21-Jul-93	08-Jun-94	20,000.00	45,109.78	
	Total:				**635,000.00**	**325,367.62**	

ndemnity Reserve Open Files (0) (Pro-Rated)	**$**	**0.00**
ndemnity Reserve Closed Files (12) (Pro-Rated)	**$**	**1,490,000.00**
ndemnity Reserve Total:	**$**	**1,490,000.00**
\llocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**0.00**
\llocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**441,500.00**
\llocated Loss Adjustment Expense Reserve Total:	**$**	**441,500.00**
\llocated Loss Adjustment Expense Reserve Applied to Retro Plan	**$**	**0.00**
\llocated Loss Adjustment Expense Paid Applied to Retro Plan	**$**	**325,367.62**

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1994 to September 1, 1995

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
2737-1	Richard Guy	6	17-May-95	14-Jul-95	390,000.00	31,899.47
2754-1	Sylvester Booker	6	07-Aug-94	20-Jan-95	0.00	82.00
2778-1	Sylvester Booker	6	18-Jun-95	20-Jun-95	0.00	75.00
2746-1	Robert Greenfield	6	12-Sep-94	01-Mar-95	0.00	75.00
2740-1	Richard Flax	6	06-Jun-95	23-Aug-95	0.00	0.00
2654-1	Rebecca Douglas	6	09-Jan-95	03-Feb-95	0.00	0.00
2655-1	Rebecca Douglas	6	19-Jan-95	03-Feb-95	0.00	82.40
2760-1	Raymond Cutts, Jr.	6	12-Jul-93	03-Apr-95	0.00	75.00
2715-1	Nancy Sanders	6	28-Nov-94	09-Jun-95	0.00	75.00
2693-1	Morton Roberts	6	01-Apr-94	03-Apr-95	0.00	75.00
1966-2	Katherine Alley	6	12-Feb-92	07-Apr-95	0.00	57,604.35
2631-1	Katherine Alley	6	03-May-94	28-Nov-94	0.00	0.00
2738-1	Julian Safran	6	23-Jul-92	18-Aug-95	0.00	0.00
2657-1	John Niles	6	27-Jun-94	16-Jan-95	475,000.00	101,193.10
2684-1	John Niles	6	01-May-89	27-Sep-94	0.00	0.00
2[illegible]-1	John Berryman	6	10-Mar-92	09-Mar-95	500,000.00	142,816.90 +
266[illegible]-1	Janet Schaffel	6	30-Nov-94	06-Dec-94	0.00	0.00
2662-2	Heather Johnson	6	30-Nov-94	06-Dec-94	0.00	0.00
2714-1	Gideon Kioko	6	05-Jun-92	09-Jun-95	0.00	1,358.10
2688-1	George Samman	6	11-Jul-94	20-Mar-95	0.00	44.90
2594-1	Douglas Kalesh	6	07-Sep-94	28-Sep-94	0.00	0.00
2622-1	Conrad Hicks	6	14-Dec-93	17-Nov-94	0.00	82.40
2732-1	Conrad Hicks	6	11-Nov-94	11-Aug-95	10,000.00	5,833.05
2695-1	April Rubin	6	11-Mar-95	26-Apr-95	0.00	82.50
	Total:				**1,375,000.00**	**341,454.17**

demnity Reserve Open files (0) (Pro-Rated)	**$**	**0.00**
demnity Reserve Closed Files (24) (Pro-Rated)	**$**	**3,230,000.00**
demnity Reserve Total:	**$**	**3,230,000.00**
located Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**0.00**
located Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**433,430.00**
located Loss Adjustment Expense Reserve Total:	**$**	**433,430.00**
located Loss Adjustment Expense Reserve Applied to Retro Plan	**$**	**0.00**
located Loss Adjustment Expense Paid Applied to Retro Plan	**$**	**341,454.17**

[illegible]a.sheet2.(3 of 3)(B)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000
Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1995 to September 1, 1996

ase/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
2756-1	Florie Hirsch	4	30-Aug-95	11-Sep-95	0.00	176,414.34
2773-1	Nancy Sanders	4	14-Sep-95	11-Oct-95	0.00	52,176.51
2836-1	Joan Redfearn	4	10-Oct-94	15-Apr-96	0.00	46,223.48
2894-1	Richard Peters	4	21-Jul-88	17-Jun-96	0.00	97,554.37
2488-2	Joseph Afram	6	14-Feb-94	10-Jan-96	225,000.00	29,305.94
2758-1	Janet Schaffel	6	29-Sep-92	29-Sep-95	0.00	25,991.80
2767-3	Lewis Townsend	6	01-Aug-95	16-Nov-95	0.00	148,466.40
2777-1	George Samman	6	28-Apr-95	06-Dec-96	0.00	75.00
2786-1	Steele Stewart Jr.	6	25-Aug-95	26-Dec-95	0.00	75.00
2796-1	Martin Dukes	6	08-Dec-95	22-Jan-96	0.00	110,517.86
2807-1	Lewis Townsend	6	25-Jan-96	29-Jan-96	0.00	0.00
2813-1	Norman Neches	6	04-Feb-93	21-Feb-96	0.00	1,142.00
2815-1	Katherine Alley	6	02-Mar-94	19-Jan-96	0.00	0.00
2815-2	Richard Flax	6	02-Mar-94	19-Jan-96	0.00	0.00
2818-1	Norman Neches	6	07-Jul-95	14-Feb-96	0.00	375.00
2819-1	Marciana Wilkerson	6	08-Nov-93	27-Feb-96	375,000.00	72,590.12
282[illegible]	John H. Niles, Jr.	6	08-Nov-94	14-Feb-96	0.00	17,801.98
28[illegible]	Sara L. Imershein	6	26-Feb-96	07-Mar-96	0.00	0.00
2824-1	Alan Birnkrant	6	15-Aug-95	05-Mar-96	0.00	75.00
2824-3	Sara L. Imershein	6	15-Aug-95	05-Mar-96	0.00	0.00
2839-2	Joan Redfearn	6	11-Apr-93	26-Apr-96	0.00	2,523.17
2842-1	Conrad Duncan	6	13-Jun-94	30-Apr-96	0.00	33,897.35
2858-1	Steve Dixon	6	10-May-94	23-Apr-96	0.00	0.00
2897-1	Richard Newman	6	05-Jul-93	08-Jul-96	0.00	4,308.15
2897-2	Stephen Horwitz	6	05-Jul-93	08-Jul-96	0.00	4,308.14
2898-1	Joseph Afram	6	24-Jan-96	10-Jul-96	0.00	12.00
2902-1	Shen-Tso Tseng	6	03-Dec-95	19-Jul-96	0.00	0.00
2905-1	Richard Flax	6	05-Jun-96	18-Jul-96	0.00	345.00
2908-1	Deena Kleinerman	6	19-Sep-95	06-Jun-96	0.00	75.00
2918-1	Deena Kleinerman	6	30-May-96	06-Jun-96	0.00	0.00
2922-1	Pamela Coleman	6	09-Feb-96	25-Mar-96	0.00	562.50
2926-1	Sylvester Booker	6	07-Aug-96	21-Aug-96	0.00	0.00
2950-1	Marcianna Wilkerson	6	19-June-96	27-Jun-96	0.00	0.00 +
	Total:				**600,000.00**	**824,816.11**

emnity Reserve Open Files (4) (Pro-Rated)	**$**	**725,000.00**
emnity Reserve Closed Files (29) (Pro-Rated)	**$**	**4,707,000.00**
emnity Reserve Total:	**$**	**5,432,000.00**
ocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**460,000.00**
o[illegible] Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**769,667.00**
ocat[illegible] Loss Adjustment Expense Reserve Total:	**$**	**1,229,667.00**
ocated Loss Adjustment Expense Reserve Applied To Retro Plan	**$**	**460,000.00**
ocated Loss Adjustment Expense Paid Applied To Retro Plan	**$**	**452,447.41**

16d-001696

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000

Claims Report
Claims Experience Period:
September 1, 1996 to September 1, 1997

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
3077/1	Sylvester Booker	3	08-Jul-97	22-Aug-97	0.00	0.00
2961/1	Rebecca Douglas	4	20-Nov-96	03-Dec-96	0.00	12,920.07
2989/1	Stanley Marinoff	4	23-Aug-96	22-Jan-97	0.00	18,635.58
3057/2	Joseph Gutierez	4	24-Jan-97	13-Jun-97	0.00	7,382.39
3067/1	Marciana Wilkerson	4	20-Sep-96	14-Aug-97	0.00	29,649.79
3076/1	Norman Neches	4	30-May-97	09-Jul-97	0.00	3,547.50
2948/1	Lewis Townsend	6	14-Dec-95	11-Nov-96	0.00	75.00
2951/1	Gideon Kioko	6	19-Jan-96	20-Sep-96	0.00	0.00
2972/1	Gideon Kioko	6	05-Feb-93	03-Jan-97	300,000.00	38,390.69
2973/1	Kenneth Blank	6	14-Nov-94	28-Jan-97	50,000.00	91,009.44
2973/2	Julian Safran	6	14-Nov-94	28-Jan-97	0.00	16,704.99
2988/2	Janet Schaffel	6	01-Mar-97	03-Mar-97	0.00	75.00
2988/3	Nancy Sanders	6	01-Mar-97	03-Mar-97	0.00	75.00
2988/4	Heather Johnson	6	01-Mar-97	03-Mar-97	0.00	75.00
2993/1	David Powers	6	29-Apr-94	17-Mar-97	0.00	91,038.60
2998/1	Richard Footer	6	24-Mar-97	31-Mar-97	0.00	0.00
[illegible]17/1	Peter Gross	6	10-Oct-95	02-May-97	0.00	0.00
[illegible]030/1	Israel Kogan	6	25-Jul-94	05-Jun-97	250,000.00	87,263.47
3031/1	Margaret Byrne	6	22-Jan-97	10-Jun-97	0.00	0.00
3034/1	Steven Dixon	6	11-Jun-97	17-Jun-97	0.00	0.00
3035/1	Steven Dixon	6	16-Jun-97	17-Jun-97	0.00	11,218.64
3035/4	Alan Birnkrant	6	16-Jun-97	28-Jul-97	0.00	12,871.87
3037/1	Linwood Turner	6	23-Feb-94	02-Jun-97	0.00	4,563.27
3047/1	Morton Roberts	6	07-Aug-95	25-Jun-97	0.00	0.00
3051/1	Linwood Turner	6	06-Jul-96	10-Jul-97	0.00	3,030.78
3057/1	Katherine Alley	6	18-Dec-96	16-Jul-97	0.00	37.50
3059/1	Marciana Wilkerson	6	18-Sep-96	28-Jul-97	0.00	77,433.15
3061/1	Stanley Knoll	6	25-Jul-97	06-Aug-97	450,000.00	301,700.45
3120/1	John Niles, Jr.	6	30-Oct-96	29-Jan-97	0.00	85.50
	Total:				**1,050,000.00**	**807,783.68**

Indemnity Reserve Open Files (6) (Pro-Rated)	**$ 1,070,000.00**
Indemnity Reserve Closed file (23) (Pro-Rated)	**$ 3,230,000.00**
Indemnity Reserve Total:	**$ 4,300,000.00**
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$ 282,000.00**
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$ 839,500.00**
Allocated Loss Adjustment Expense Reserve Total:	**$ 1,121,500.00**
[illegible]ted Loss Adjustment Expense Reserve Applied To Retro Plan	**$ 282,000.00**
[illegible]ted Loss Adjustment Expense Paid Applied To Retro Plan	**$ 735,648.35**

File: Columbia.sheet 4.(3of 3)(D)

16d-001697

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1997 to September 1, 1998

se/File	Physician	Status	Inc.Dt.	Rept.Dt.	Ind.Pd.	Exp.Pd.
3138/1	Norman Neches	4	01-Jan-97	07-Jan-98	0.00	23,981.24
3185/1	Marciana Wilkerson	4	18-Jul-96	21-May-98	0.00	50,915.34
3206/1	Deena Kleinerman	4	08-Jul-95	10-Jul-98	0.00	16,201.92
3217/1	Richard Peters	4	02-Jul-98	18-Aug-98	0.00	32,651.08
2773/4	Constance Bohon	6	21-Sep-95	10-Dec-97	0.00	7,337.12
2773/5	Nancy Ripp	6	18-Sep-95	10-Dec-97	0.00	7,337.14
3075/1	Robert Greenfield	6	11-Jul-94	04-Sep-97	0.00	4,551.54
3078/1	Rufus Rosser, Jr.	6	28-Apr-97	02-Sep-97	0.00	1,068.40
3143/1	Steven Dixon	6	12-Apr-93	27-Jan-98	0.00	5,625.39
3145/1	Richard Falk	6	09-Nov-95	06-Feb-98	0.00	19,100.46
3155/1	Lorraine Gillian	6	02-Oct-96	05-Mar-98	0.00	2,250.89
3156/1	Deena Kleinerman	6	31-Jan-98	12-Mar-98	0.00	0.00
3186/1	Israel Kogan	6	27-Jan-96	28-May-98	500,000.00	98,163.80 +
2[redacted]	Florie Hirsch	6	05-May-97	17-Aug-98	0.00	3,288.60
	Total:				**500,000.00**	**272,472.92**

emnity Reserve Open Files (4) (Pro-Rated)	**$**	**800,000.00**
emnity Reserve Closed Files (10) (Pro-Rated)	**$**	**1,145,000.00**
emnity Reserve Total:	**$**	**1,945,000.00**
ocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**240,000.00**
ocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**312,500.00**
ocated Loss Adjustment Expense Reserve	**$**	**552,500.00**
ocated Loss Adjustment Expense Reserve Applied to Retro Plan	**$**	**240,000.00**
ocated Loss Adjustment Expense Paid Applied to Retro Plan	**$**	**148,723.34**

apped at $500,000

Colu[redacted] sheet 5. (3 of 3)(E)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1998 to September 1, 1999

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
3325-1	Nancy Sanders	2	03-Mar-99	26-Jul-99	0.00	37.50
3325-3	Janet Schaffel	2	03-Mar-99	19-Jul-99	0.00	28.00
3367-1	Joseph Afram	3	11-May-98	07-Jul-99	0.00	0.00
3275-1	David Powers	3	15-Apr-98	07-Jan-99	0.00	75.00
3340-1	Marciana Wilkerson	3	03-Sep-98	02-Jun-99	0.00	119.50
3381-1	Pamela Coleman	3	01-Apr-99	23-Aug-99	0.00	261.50
3277-1	Nabil Asterbadi	4	07-Jun-97	20-Jun-99	0.00	26,834.73
3277-2	Hrant Semerjian	4	07-Jun-97	21-Jan-99	0.00	6,857.49
3288-2	Joseph Afram	4	10-Jan-99	27-Apr-99	0.00	19,142.90
3335-1	Nabil Asterbadi	4	22-May-98	25-Feb-99	0.00	12,374.81
3365-1	Joseph Gutierrez	4	23-Oct-98	26-Jul-99	0.00	16,079.56
3360-1	Kenneth Blank	4	20-Nov-97	09-Jul-99	0.00	3.17
2989-2	Joseph Gutierrez	6	23-Aug-96	21-Jul-99	0.00	9,570.82
3226-1	Robert Greenfield	6	03-Nov-97	03-Sep-98	0.00	44.50
3226-2	Sylvester Booker	6	03-Nov-97	03-Sep-98	0.00	37.50
3236-1	Deena Kleinerman	6	10-Sep-98	14-Oct-98	0.00	0.00
3[illegible]-1	Kenneth Blank	6	24-Oct-95	03-Nov-98	500,000.00	16,608.42 +
3[illegible]-2	Richard Newman	6	24-Oct-95	03-Nov-98	0.00	18,348.75
3247-3	Stephen Horwitz	6	24-Oct-95	03-Nov-98	0.00	18,348.75
3247-4	Julian Safran	6	24-Oct-95	03-Nov-98	0.00	18,348.22
3266-1	George Samman	6	16-Dec-98	23-Dec-98	0.00	0.00
3283-1	Earl Horton	6	10-Nov-98	28-Jan-99	0.00	0.00
3287-1	Rebecca Douglas	6	02-Nov-98	05-Feb-99	0.00	0.00
3322-1	Safa Rifka	6	29-Oct-98	07-Apr-99	0.00	0.00
	Total:				**0.00**	**163,121.12**

ndemnity Reserve Open Files (12) (Pro-Rated)	**$**	**3,125,000.00**
ndemnity Reserve Closed file (12) (Pro-Rated)	**$**	**2,345,000.00**
ndemnity Reserve Total:	**$**	**5,470,000.00**
llocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**440,000.00**
llocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**245,798.00**
llocated Loss Adjustment Expense Reserve Total:	**$**	**685,798.00**
llocated Loss Adjustment Expense Reserve Applied To Retro Plan	**$**	**440,000.00**
llocated Loss Adjustment Expense Paid Applied To Retro Plan	**$**	**81,306.96**

le: Columbia.sheet 6.(3 of 3)(F)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1999 to September 1, 2000

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
3506-1	Kathleen Bis	2	26-Jun-00	23-Jun-00	0.00	0.00
3510-1	Russell Bridges	2	01-Jun-00	27-Jun-00	0.00	0.00
3536-1	Richard Footer	2	19-Aug-00	22-Aug-00	0.00	0.00
3522-1	George Bronsky	3	15-Nov-99	04-Aug-00	0.00	0.00
3417-1	Joseph Afram	4	12-Oct-99	22-Nov-99	0.00	0.00
3417-2	Elena Tilly	4	13-Oct-99	18-Aug-00	0.00	0.00
3425-1	Nabil Asterbadi	4	02-Sep-84	29-Nov-99	0.00	29,640.07
3535-1	Rebecca Busch	4	09-May-93	17-Aug-00	0.00	0.00
3[illegible]-1	Richard Footer	4	01-Aug-97	24-Aug-00	0.00	0.00
3[illegible]-1	Norman Neches	4	18-Jan-98	28-Feb-00	0.00	2,814.78
3498-1	Cynthia Drogula	4	16-Sep-99	21-Jun-00	0.00	0.00
		Total:			**0.00**	**32,454.85**

demnity Reserve Open Files (11) (Pro-Rated)	**$**	**1,775,000.00**
demnity Reserve Closed file (0) (Pro-Rated)	**$**	**0.00**
demnity Reserve Total:	**$**	**1,775,000.00**
located Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**292,500.00**
located Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**0.00**
located Adjustment Expense Reserve Total:	**$**	**292,500.00**
llocated Loss Adjustment Expense Reserve Applied To Retro Plan	**$**	**292,500.00**
llocated Loss Adjustment Expense Paid Applied To Retro Plan	**$**	**0.00**

[illegible]a.sheet 7 (3 of 3)(G)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1993 to September 1, 2000

SUMMARY

Indemnity Paid To Date: (Pro-Rated)	$	4,660,000.00
Allocated Loss Adjustment Expenses Paid To Date: (Pro-Rated)	$	2,767,470.47
Total Allocated Loss Adjustment Expense Paid Applied To Retro Plan	$	2,084,947.85
Total Allocated Loss Adjustment Expense Reserves Applied To Retro Plan	$	1,714,500.00

Indemnity Reserve Totals For Contract Period

Open Files: (37 Files)	$	7,495,000.00
Closed Files: (110 Files)	$	16,147,000.00
Total: (147 Files)	$	23,642,000.00

Allocated Loss Adjustment Expense Reserve Totals For Contract Period

Open Files: (37 Files)	$	1,714,500.00
Closed Files: (110 Files)	$	3,042,395.00
Total: (147 Files)	$	4,756,895.00

NCRIC Status Key and Footnotes:

+Loss Capped at $500,000 and Expenses Pro-Rated

NCRIC Status Key:

1. Incident Reported
2. Possible Claim
3. Formal Claim Submitted
4. Case in Suit–Lawsuit or Arbitration Panel Filing
5. Case on Appeal
6. Case Closed

File: Columbia.sheet8.(1 of 1)(I)

EXHIBIT 4

DEPOSITION EXHIBIT
4
CA 7/30/01

NCRIC

National Capital Reciprocal Insurance Company

2170 Wisconsin Avenue • Washington, D.C. 20007 • (202) 342-6690 • Fax: 338-0437

December 19, 1995

I To get him on thereby you-end
Date of letter
Default upon Retro plan.

Ms. Susan Hansen
President & CEO
Columbia Hospital for Women
2425 L Street, NW
Washington, DC 20037

Re: Columbia Hospital for Women Retro Plan - September 1, 1993 to September 1, 1996

Dear Ms. Hansen:

In accordance with our meeting last week in which you indicated that you would like to increase the premium discount from 15% to 30% for participating physicians in the above captioned plan effective January 1, 1996, I have compiled a summary of the plan changes that would occur as a result.

1. The overall subject premium volume is projected to decline by approximately $325,000.
2. The loading will increase from 18.34% to 21.84%.
3. The minimum premium will decrease from 75% to 65%.
4. The deposit premium will be 62% of the subject premium instead of 81%.

These revisions can be expected to introduce more volatility to the plan and put Columbia Hospital at increased risk of having to pay some additional premium. However, it is also my understanding that you are also implementing a more stringent risk management program which should be expected to reduce claims to the plan. Another mitigating factor is that the revisions will only be in effect for a total of nine months and the balance of the 2 years and 3 months is at the lower original terms of the 15% discount.

A year end actuarial evaluation of the losses reported to the plan will be submitted in early 1996. At that time, further consideration will be necessary to determine that adequate reserves have been established by Columbia for any contingent liability resulting from the plan.

We are delighted that you are planning to further enhance your risk management program and our offer to assist you in this endeavor still stands.

Sincerely,

David K. Little
President
National Capital Underwriters, Inc.

cc: R. Ray Pate, Jr.
Steve Fargis

EXHIBIT 5

DEPOSITION EXHIBIT
#8
7/20/01

January 17, 1996

Stephen Fargis
Vice President
NCRIC
2170 Wisconsin Ave.
Washington, DC 20007

Dear Steve,

This letter will confirm that Columbia Hospital for Women Medical Center is obligating itself to an increase from 15 to 30 percent for participating members of the Faculty of Columbia Hospital for Women.

As we discussed, this enhanced plan will require carefully monitoring. Dr. Nabil Asterbadi is presenting his plan for monitoring to the Performance Improvement Committee of the Board of Directors on Thursday, January 18. I will forward that plan to you as soon as it is improved. Also, individual members of the faculty will have to sign new agreements reflecting their willingness to adhere to the protocols. As agreements are signed, I will forward names to you. Also as we discussed, the timing of this could present a problem with the due date of the premium notices. Please let me know as soon as possible whether the one-month delay which we discussed is feasible.

This plan will be in effect from January through September 1996, at which time we will review performance with you.

Thanks, Steve. Have a good day.

Sincerely,

Susan M. Hansen
President and CEO

EXHIBIT 6

NCRIC

National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue • Washington, D.C. 20007 • (202) 342-6690 • Fax: 338-0437

January 26, 1998

Mr. Gerald Beaulieu
Acting President and CEO
Columbia Hospital for Women
2425 L Street, NW
Washington, D.C. 20037

Dear Gerry:

Please find enclosed language, approved by the NCUI Board that amends the existing agreement executed in 1993 that extends such agreement to September 1, 1998. Also attached is Exhibit A to the agreement which reflects the change requested by CHW in 1996 regarding the minimum premium (note this was agreed to by amendmend via correspondence in 1996) and development factors for the two additional years.

Should you have any questions, please do not hesitate to contact me at 202-342-6690. Thank you.

Sincerely,

Stephen S. Fargis
Senior Vice President, Business Development

Rifka
EXHIBIT 4
CASE# 1-18-02

received
26 Jan. '98

16d-001708

ADDENDUM TO
RETROSPECTIVE RATING PLAN AGREEMENT

This Addendum amends the Retrospective Rating Plan Agreement ("Agreement") and Exhibit A. attached, made and entered into effective the first day of September 1,1993 by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("Medical Center").

This Addendum extends the Agreement and Exhibit A from September 1, 1996 to September 1, 1998. For purposes of Modifications, only language amended in the Agreement is noted below and for purposes of Plan calculations in the Agreement, a full Exhibit A, with modifications is included.

Modifications to the Agreement are amended as follows:

Page 2, Item 8:

8. Medical Center hereby represents and warrants that it has made, and will continue to make financial security to NCRIC, in accordance with permitted statutory accounting practices as prescribed under the D.C. Insurance Code, or otherwise as acceptable by the D.C. Insurance Administration, for the contingent liabilities it has assumed hereunder.

Page 3, Item 10:

10. NCRIC and a Medical Center representative will meet semi-annually to review the status of the operation of the Retrospective Rating Plan.

Page 4, Item 10.b.:

b. Annually, Medical Center will provide NCRIC with financial security in that is in accordance with permitted statutory accounting practices as prescribed under the D.C. Insurance Code, or otherwise that is acceptable by the D.C. Insurance Administration, for the contingent liabilities Medical Center has assumed under this Agreement. This amount will be adjusted accordingly to the outstanding retrospective premium due.

Page 4, Item 11:

11. This Agreement shall remain in full force and effect as to any renewal, extension, reporting endorsement or new issuance of Insurance Policies with Plan Endorsements issued to Plan Participants by NCRIC during any Experience Period, and Medical Center waives notice of any and all such renewals, extension, reporting endorsements or new issuances. All renewals, extension, reporting endorsements or new issuances represent coverage contracts solely between NCRIC and physicians.

CHW MC 000334

16d-001709

Page 4 and Page 5, Item 16:

16. If notice is required to be given by either party to the other, it may be given by registered or certified mail return receipt requested, postage prepaid, or personal delivery to the other party addressed as follows:

If to NCRIC: Mr. Ray Pate
President and CEO
National Capital Underwriters, Inc.
Attorney-in-fact for National Capital Reciprocal Insurance Company
2170 Wisconsin Avenue
Washington, DC 20007

If to Medical Center: President & Chief Executive Officer
Columbia Hospital for Women Medical Center
2425 L Street, NW
Washington, DC 20037

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

BY: _____

(Corporate Seal)

R. Ray Pate, Jr.
President and CEO

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST:

BY: _____

(Corporate Seal)

President and CEO

Print Name Gerald P. Beaulieu

Print Title Interim President & CEO

MODIFICATIONS TO

EXHIBIT A

FIVE YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the Medical Center's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center first entered into on September 1, 1993 and added to by this plan through September 1, 1998 (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be five years, beginning on September 1, 1993 and ending on September 1, 1998. The Plan shall consist of five separate and distinct Experience Periods of:

Beginning 12:01 a.m. on	and Ending 12:01 a.m. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996
September 1, 1996	September 1, 1997
September 1, 1997	September 1, 1998

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 33% of the otherwise applicable premium for such coverage for the last three periods ending 1996, 1997 and 1998 respectively. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return (if any), shall be solely that of Medical Center.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =
{[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor}+Basic Premium

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedules:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1995
September 1, 1994 to September 1, 1995	September 1, 1996
September 1, 1995 to September 1, 1996	September 1, 1997
September 1, 1996 to September 1, 1997	September 1, 1998
September 1, 1997 to September 1, 1998	September 1, 1999

Reconciliation calculations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall be not deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the end of an Experience Period, reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") Medical Center under the terms of the Plan will be presented to Medical Center. Any amounts due either to or from Medical Center shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Periods.

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"**Basic Premium**" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by multiplying the Subject Premium by the insurance charge factor set forth below:

Five (5) Year Subject Premium	Insurance Charge Factor
$1,539,000 - $2,565,999	20.7%
$2,566,000 - $3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"**Deposit Premium**" means the Subject Premium multiplied by sixty-seven (67%). This percentage shall remain unchanged for the three year term of the Plan, unless both parties agree to a change and amend this Agreement hereunder.

"**Development Factor**" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and all reconciliations applicable thereto, unless NCRIC claims trending, as actuarially noted, indicates otherwise development at which time applicable development factors of NCRIC will apply.

Year 1 Reconciliation	-	55.0%
Year 2 Reconciliation	-	65.0%
Year 3 Reconciliation	-	80.0%
Year 4 Reconciliation	-	105.0%
Year 5 Reconciliation	-	105.0%
All Subsequent Reconciliations	-	100.0%

"**Discount Factor**" means the factor currently used by NCRIC at the time of the reconciliation. At the time of this Agreement 86.33% will apply.

"**Experience Period**" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the prorated period involved shall be deemed to be an Experience Period.

CHW MC 000338

16d-001713

"**Insurance Policy**" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"**Losses**" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"**Loss Limitation**" - for the purpose of application of the retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (I) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"**Loss Reserves**" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"**Maximum Premium**" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and fifteen percent (133%) of the Subject Premium amount.

"**Minimum Premium**" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to seventy-five percent (60%) of the Subject Premium amount.

"**Paid Losses**" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid losses are subject to Loss Limitation, defined above.

"**Plan Participants**" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"**Subject Premium**" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insured were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall not exceed 85%, nor be less than 70% of the undiscounted premium charged for coverage limits of $1 million each claim/ $3 million aggregate.

EXHIBIT 7

D - 12/9
[Mtg. 12/10]
• Review Report.

COLUMBIA HOSPITAL FOR WOMEN ❀ MEDICAL CENTER

SF #76
1/10/02

December 3, 1998

Steve Fargis
Senior Vice President, Business Development
National Capital Reciprocal Insurance Company
1115 30th Street, N.W.
Washington, DC 20007 ***By Hand***

Dear Steve:

Enclosed please find two executed copies of the revised Addendum B to the Plan which amends the Plan and extends it for one year to September 1, 1999 as executed by Gerald Beaulieu, Acting President and CEO. We look forward to receiving a fully executed copy of the Addendum at your earliest convenience.

Thank you for your assistance and that of Jeff Marsh in getting this finalized. We look forward to productive year in claims review and maximizing our combined efforts to decrease potential liabilities for the Plan. I look forward to hearing from Bill Burgess in the near future to set up our quarterly review for the first quarter of the plan. Please feel free to call me at (202) 293-6048 if you have any questions.

Very truly yours,

Ann D. Gaffey
Risk Manager

cc: Gerald Beaulieu, Acting President and CEO
Safa Rifka, M.D.

ADDENDUM B TO
RETROSPECTIVE RATING PLAN AGREEMENT

This Addendum amends the Retrospective Rating Plan Agreement ("Agreement") and Exhibit A, attached, made and entered into effective the first day of September 1, 1993 and Addendum amending Agreement January 1, 1997, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("CHWMC").

This Addendum extends the Agreement, Addendum and Exhibit A from September 1, 1998 to September 1, 1999. For purposes of Modifications, only language amended in the Agreement is noted below and for purposes of Plan calculations in the Agreement, a full Exhibit A, with modifications is included.

Page 3, Item 10:
10. NCRIC, a Medical Center representative and a Physicians Claims Committee representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

A. At such meetings, NCRIC will provide the following:

(I) for purposes of cross-reference and confirmation of participating or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

(II) a loss run detailing the following information:

Date of Loss
Date Claim Made
Claimant's Name
Location of Claim (hospital, office)
Brief Description of Claim
Status (Claim/Suit)
Total Indemnity Reserve (in the aggregate only)
Total Expense Reserve (in the aggregate only)

(III) a review of Medical Center risk management activities and risk management issues presented by the claims.

16d-001717

Page 5, Item 18.:

18. This Agreement shall not be assignable under any circumstances, whether in connection with the bankruptcy cases in which CHWMC are currently debtors or otherwise, by any party hereto without the express written consent of other parties, provided that the obligations of NCRIC hereunder shall be assigned to any admitted insurer which is a successor to NCRIC by reason of conversion, reorganization or merger approved by the District of Columbia Commissioner of Insurance. Notwithstanding the foregoing, CHWMC will assume and assign to the reorganized merged entity under its plan of reorganization, this Agreement. This agreement shall terminate (i) upon the conversion of the CHWMC case to Chapter 7 case, or (ii) if greater than 50% of Plan Participants resign their affiliation with CHWMC.

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

BY: _____
R. Ray Pate, Jr.
President and CEO

(Corporate Seal)

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST: _____

BY: _____
Gerald Beaulieu
Acting President and CEO

(Corporate Seal)

MODIFICATIONS TO

EXHIBIT A

SIX YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the CHWMC's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center first entered into on September 1, 1993 and subsequently amended January 1, 1997, and added to by this plan through September 1, 1999 (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be six years, beginning on September 1, 1993 and ending on September 1, 1999. The Plan shall consist of six separate and distinct Experience Periods of:

Beginning 12:01 a.m. on	and Ending 12:01 a.m. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996
September 1, 1996	September 1, 1997
September 1, 1997	September 1, 1998
September 1, 1998	September 1, 1999

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19%of the otherwise applicable premium for such coverage in the first two years of the Plan and 33% of the otherwise applicable premium for such coverage in the remaining years of the Plan. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return (if any), shall be solely that of CHWMC.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) =
{[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor}+Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedules:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1995
September 1, 1994 to September 1, 1995	September 1, 1996
September 1, 1995 to September 1, 1996	September 1, 1997
September 1, 1996 to September 1, 1997	September 1, 1998
September 1, 1997 to September 1, 1998	September 1, 1999
September 1, 1998 to September 1, 1999	September 1, 2000

Reconciliation calculations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall be not deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the end of an Experience Period, reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") CHWMC under the terms of the Plan will be presented to CHWMC. Any amounts due either to or from CHWMC shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

16d-001721

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"**Basic Premium**" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by multiplying the Subject Premium by the insurance charge factor set forth below:

Six (6) Year "Subject" Premium	Insurance Charge Factor
$1,539,000 - $2,565,999	20.7%
$2,566,000 - $3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"**Deposit Premium**" means the Subject Premium multiplied by sixty-seven (67%). This percentage shall remain unchanged for the one year term of the Plan, unless both parties agree to a change and amend this Agreement hereunder.

"**Development Factor**" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and all reconciliations applicable thereto, unless NCRIC claims trending, as actuarially noted, indicates otherwise development at which time applicable development factors of NCRIC will apply.

Year 1 Reconciliation	-	55.0%
Year 2 Reconciliation	-	65.0%
Year 3 Reconciliation	-	80.0%
Year 4 Reconciliation	-	105.0%
Year 5 Reconciliation	-	105.0%
All Subsequent Reconciliations	-	100.0%

"**Discount Factor**" means the factor currently used by NCRIC at the time of the reconciliation. At the time of this Agreement 86.33% will apply.

16d-001722

"**Experience Period**" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the prorated period involved shall be deemed to be an Experience Period.

"**Insurance Policy**" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"**Losses**" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"**Loss Limitation**" - for the purpose of application of the retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (I) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"**Loss Reserves**" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"**Maximum Premium**" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and thirty three percent (133%) of the Subject Premium amount.

"**Minimum Premium**" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to sixty percent (60%) of the Subject Premium amount.

"**Paid Losses**" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid losses are subject to Loss Limitation, defined above.

"**Plan Participants**" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

16d-001723

"**Subject Premium**" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insured were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall not exceed 85%, nor be less than 70% of the undiscounted premium charged for coverage limits of $1 million each claim/ $3 million aggregate.

16d-001724

EXHIBIT 8

Washington, DC
20037

NCRIC, Inc.

August 3, 1999

Ms. Ann D. Gaffey
Risk Manager
Columbia Hospital for Women
2425 L Street, NW
Washington, DC 20037

RE: Program Renewal for September 1, 1999 - September 1, 2000.

Dear Ann:

Please find enclosed an Addendum B - 1999 that renews the existing retrospective program for an annual term of September 1, 1999 to September 1, 2000. This Addendum extends the original agreement, all subsequent Addendums and Exhibit A for the above period.

To help smooth out the premium (refund)/due over the quarters we review, we have developed interpolated loss development factors to be utilized on a rolling three (3) month basis. The current program as noted in Exhibit A provides for annual loss development factors and, on an annual basis, these remain unchanged. Thus, no change in the agreement is needed regarding these factors; however, Plan Term (para. 2) and Reconciliations (para. 5) are amended to add the new program year.

Also, it is our understanding that Mr. Larry Wilson has assumed the position as President and Chief Executive Officer. We would be pleased to meet with Mr. Wilson to discuss the program and the benefits it brings to CHW and its physicians.

Enclosed are two copies: one is for your records. We look forward to working with you again on the program over the next year. Should you have any questions, please do not hesitate to contact me at 202-969-3110. Thank you.

Sincerely,

Stephen S. Pargis
Senior Vice President and COO

EXHIBIT 6
CASE# 1-18-02CE

CHW MC 000484

16d-001726

ADDENDUM B-1999 TO
RETROSPECTIVE RATING PLAN AGREEMENT

This addendum amends the Retrospective Rating Plan Agreement ("Agreement") and Exhibit A. made and entered into effective the first day of September 1. 1993 and Addendums of January 1, 1997 and September 1. 1998, by and between NCRIC, Inc. (formerly National Capital Reciprocal Insurance Company). 1115 30th Street, NW, Washington, D.C. 20007 and Columbia Hospital for Women Medical Center, 2425 L Street, NW, Washington, D.C. 20037.

This Addendum extends the Agreement, and Exhibit A, made and entered into effective the first day of September 1, 1993, and Addendums of January 1. 1997 and of September 1, 1998 for the period of September 1, 1999 to September 1, 2000. For purposes of modifications a full Exhibit A noting the addition of this new year to paragraphs 2 (Plan Term) and paragraph 5, (Reconciliations) is attached and by signature below such amended changes are accepted.

Modifications to Exhibit A:

Page 4, Paragraph 2:
2. Plan Term, add to:

Beginning 12:01 a.m. on	and Ending 12:01 a.m. on
September 1, 1999	September 1. 2000

Page 5, Paragraph 5:
5. Reconciliations, add to:

Experience Period	First Reconciliation Date
September 1. 1999 to September 1, 2000	September 1. 2001

NCRIC, Inc.

By: _____
Stephen S. Fargis
Senior Vice President and Chief Operating Officer

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER

BY: Larry Wilson 8/27/99
Larry Wilson
President and Chief Executive Officer

Exhibit A.1.

Per "Development Factor", page 6 of Exhibit A of the Agreement. the following factors will be used at the periods indicated for reviews during the annual Program period:

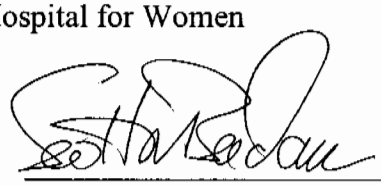
Months	Factor	
12	0.55	(unchanged)
15	0.58	
18	0.60	
21	0.63	
24	0.65	(unchanged)
27	0.69	
30	0.73	
33	0.76	
36	0.80	(unchanged)
39	0.86	
42	0.93	
45	0.99	
48+	1.05	(unchanged)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion, Statement of Points and Authorities in Support and Proposed Order were served this 5th day of June 2003, via hand delivery to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women



Scott M. Badami

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference, June 19, 2003
	)	
Defendant/Counter-Plaintiff.	)	

RECEIVED
Civil Clerk's Office
JUN 05 2003
Superior Court of the
District of Columbia
Washington, D.C.

MOTIONS *IN LIMINE* OF DEFENDANT

Pursuant to D.C. Superior Court Civil Procedure Rule 16(d), Defendant/Counter-Plaintiff Columbia Hospital For Women Medical Center, Inc. ("Columbia") respectfully moves the Court (1) for an Order setting the proof at trial to conform to the evidence, such that Columbia will present evidence and arguments on its ten claims before NCRIC presents evidence and arguments on its one claim; and (2) for an Order setting a pre-trial hearing concerning the admissibility of documentary exhibits at trial.[1]

ARGUMENT

Although NCRIC initiated this lawsuit with a claim for breach of contract, Columbia responded to NCRIC's complaint with eleven counterclaims, including one for breach of the same contract upon which NCRIC sued. Columbia has defeated motions to dismiss and/or for summary judgment with respect to ten of its eleven counterclaims. Accordingly, at trial Columbia will be required to shoulder the burden of proof with respect to the vast majority of issues. By contrast, NCRIC will bear the burden of proof only with respect to its more limited

[1] Separately, Columbia has also moved the Court for an Order excluding the testimony of NCRIC's purported expert witnesses.

contract claim, which is a relatively minor issue in the panoply of points that a jury will be required to consider and which in any event largely overlaps Columbia's contract claim. In order to aid the jury's comprehension of the case and promote judicial efficiency, Columbia now moves this Court for an order setting the sequence for presentation of proof and arguments at trial.

I. THE COURT SHOULD EXERCISE ITS DISCRETION TO SET THE PRESENTATION OF PROOF AT TRIAL TO CONFORM TO THE EVIDENCE SUCH THAT COLUMBIA WILL PRESENT ITS PROOF AND ARGUMENTS FIRST

Courts throughout the country recognize that the order of presentation of proof at trial lies within the sound discretion of the trial court. *See, e.g., Anheuser-Busch, Inc. v. John Labatt Ltd.*, 89 F.3d 1339, 1344 (8th Cir. 1996) ("A district court has wide discretion to set the order of proof at trial."); *Johnson v. Mortham*, 915 F. Supp. 1574, 1581 (N.D. Fla. 1996) ("[A] trial court has broad discretion to exercise control over the order of presentation at trial."); *Control Data Corp. v. The Babcock & Wilcox Co.*, Nos. C6-93-472, C2-93-579, 1993 Minn. App. LEXIS 989, at *16 (Minn. App. Oct. 12, 1993) (affirming decision to permit defendant to present evidence first when defendant "had 'the affirmative of the issue to be tried' on a majority of the issues before the jury").

Because NCRIC brings only a single contract claim against Columbia, its case-in-chief will be relatively narrow and short, as compared to Columbia's case-in-chief, which will touch upon the contract issues as well as other, much broader, issues relating to the relationship between the parties and NCRIC's interference with Columbia's relations vis-à-vis third parties. Thus, Columbia will have the burden of proof on most issues, and "[n]ormally the party with the burden of proof has the right to open and close the argument to the jury." *Martin v. Chesebrough-Pond's, Inc.*, 614 F.2d 498, 501 (5th Cir. 1980). As the *Johnson* court recognized,

16d-001731

"if the evidence will be more clearly presented by requiring a particular party to come forward first, a trial court may alter the order of presentation at trial." *Johnson*, 915 F. Supp. at 1581. "Indeed, trial judges have not hesitated to change the order of presentation at trial where the circumstances warranted such a change." *Id.*

Here, Columbia will bring *ten* claims to trial, NCRIC *one*. Moreover, among Columbia's ten claims is one for breach of contract, and the proof with respect to that claim will substantially overlap the proof concerning NCRIC's lone contract claim. For instance, both parties will offer evidence at trial concerning such matters as the terms of the parties' November 1996 oral agreement, as well as the proper calculation of Deposit Premium, Minimum Premium, and Development Factors under the Plan. Because Columbia's claims are so much broader than the claims advanced by NCRIC, it would greatly aid the jury's comprehension and promote efficiency to allow the entire case to be presented to the jury at the outset, rather than limiting the jury's initial view of the evidence to the sliver of the case upon which NCRIC bears the burden of proof and which in any event will be raised in Columbia's claims. Accordingly, the Court should set the order of presentation at trial such that Columbia, whose claims will form the focus of the case, will proceed first.

II. THE COURT SHOULD SET A PRE-TRIAL HEARING CONCERNING THE ADMISSIBILITY OF DOCUMENTARY EXHIBITS AT TRIAL

Resolution before trial of any issues concerning the admissibility of documentary evidence would promote efficiency and facilitate the most expeditious use of time during trial. Such a procedure would also aid the jury in comprehending the evidence at trial, particularly in a document-intensive case like this one. And it would add clarity to the proceedings, as it will allow the parties to know in advance the documents to which they may refer in opening statements. When Columbia raised this proposal during the parties' meet and confer, NCRIC

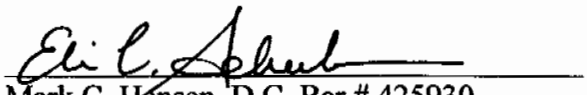
indicated that it was receptive to the suggestion and that it would take Columbia's proposal under advisement.

CONCLUSION

For the foregoing reasons, Columbia's motions *in limine* should be granted, as follows: (1) the Court should enter an Order directing that the presentation of proof at trial conform to the evidence, such that at trial Columbia shall present evidence on its ten claims, and its opening and closing statements, first; and (2) the Court should enter an Order setting a pre-trial hearing to address the admissibility of documentary exhibits at trial.

DATED: June 5, 2003

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-001734

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference, June 19, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of Defendant/Counter-Plaintiff Columbia Hospital For Women Medical Center, Inc.'s *Motions* in Limine *of Defendant*, it is hereby ORDERED, that the motions are GRANTED.

It is FURTHER ORDERED that (1) the presentation of proof at trial shall conform to the evidence, such that at trial Columbia shall present evidence on its ten claims, and its opening and closing statements, first; and (2) a pre-trial hearing to address the admissibility of documentary exhibits at trial is set for _____, 2003.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 5th day of June, 2003, a copy of the foregoing *Motions* in Limine *of Defendant* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on this 5th day of June, 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Eli C. Schulman

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,

Plaintiff/Counter-Defendant,

v.

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant/Counter-Plaintiff.

Civil Action No. 00-0007308
Calendar 8 – Judge Blackburne-Rigsby
Next Event: Pretrial Conference, June 19, 2003

MOTION *IN LIMINE* OF DEFENDANT TO EXCLUDE TESTIMONY OF NCRIC'S PURPORTED EXPERT WITNESSES

Pursuant to D.C. Superior Court Civil Procedure Rule 16(d), Defendant/Counter-Plaintiff Columbia Hospital For Women Medical Center, Inc. ("Columbia") respectfully moves the Court for an order *in limine* excluding the testimony of NCRIC's purported expert witnesses Mary A. Woodford, W. McKay Henderson, Steve Moore, and Martin Cohen, and in support thereof states as follows:[1]

INTRODUCTION

NCRIC has indicated its intent to call Ms. Woodford and Messrs. Henderson, Moore, and Cohen as expert witnesses in this trial. However, none of them should be permitted to testify in this case. As to Messrs. Henderson, Moore, and Cohen (collectively, the "non-supplementing proposed experts"), NCRIC submitted an admittedly incomplete Rule 26(b)(4) statement almost two years ago. Despite the fact that NCRIC supplemented that statement with respect to Ms. Woodford in 2002 in order to give the outlines of the facts and opinions to which she would

[1] Separately, Columbia has also moved the Court (1) for an Order setting the proof at trial to conform to the evidence; and (2) for an Order setting a pre-trial hearing concerning the admissibility of documentary exhibits at trial.

testify, it failed to do so with respect to the non-supplementing proposed experts. This failure seasonably to disclose the facts and opinions to which they intend to testify bars them from testifying at trial. (Point I, *infra*).

Although NCRIC supplemented its Rule 26(b)(4) statement with respect to Ms. Woodford, her testimony must still be excluded for four independent reasons. First, her proposed testimony is not beyond the ken of the ordinary juror, and therefore is not proper expert testimony. Second, Ms. Woodford seeks to offer legal opinions in portions of her testimony. Third, Ms. Woodford's testimony is far more prejudicial to Columbia than it is probative of any issue in the case. And finally, Ms. Woodford has not been shown to possess qualifications warranting her designation as an expert on the subject of her proposed testimony. Accordingly, her testimony should be excluded as well. (Point II, *infra*).

ARGUMENT

I. W. MCKAY HENDERSON, STEVE MOORE, AND MARTIN COHEN MUST BE EXCLUDED AS A RESULT OF NCRIC'S FAILURE TO COMPLY WITH RULE 26(b)(4)

NCRIC filed its initial Rule 26(b)(4) Statement as Opponent of a Claim on August 9, 2001. In that statement, NCRIC acknowledged that its disclosure of the topics upon which its proposed experts would testify was incomplete because they had not yet analyzed Columbia's damages expert report. NCRIC stated that "[u]pon receipt of" that report, each proposed expert could "provide the substance and facts to which they are expected to testify." NCRIC Rule 26(b)(4) Statement (attached hereto as Exh. 1) at 3.

Following Columbia's production of the expert report of Peter Ben Ezra and Mr. Ben Ezra's deposition, NCRIC filed a supplemental Rule 26(b)(4) statement on February 14, 2002. That statement set forth the proposed testimony for NCRIC's "experts." Despite NCRIC's use

of the plural, however, the only proposed expert mentioned in the supplemental statement was Ms. Woodford, and consequently only her proposed testimony was described. *See* NCRIC Supp. Rule 26(b)(4) Statement (attached hereto as Exh. 2). Not a word can be found in the supplemental Rule 26(b)(4) statement regarding additional testimony by the non-supplementing proposed experts. *See id.*

Under these circumstances, the non-supplementing proposed experts must be excluded from testifying for failure to comply with Rule 26(b)(4). NCRIC itself conceded when it filed its initial Rule 26(b)(4) statement that its bare-bones description of the substance of their testimony was incomplete and would be supplemented at a later date. Once NCRIC chose to supplement its expert disclosures only with respect to Ms. Woodford, it abandoned the possibility that it would also seek to present the testimony of the non-supplementing proposed experts. District of Columbia courts stringently apply the disclosure requirements of Rule 26(b)(4), and do not allow testimony by purported experts not encompassed by their Rule 26(b)(4) statements. *See, e.g.*, *Sowell v. Walker*, 755 A.2d 438, 446 (D.C. 2000) (upholding trial judge's decision to strike portion of damages when plaintiff's expert had previously failed to disclose proposed testimony on such damages in Rule 26(b)(4) disclosures); *Dada v. Children's Nat'l Med. Ctr.*, 763 A.2d 1113, 1115 (D.C. 2000) (upholding grant of summary judgment based on inability of appellant to submit sufficient proof after failing to provide disclosures on expert testimony regarding causation and standard of care). Despite NCRIC's indication that it would supplement its initial Rule 26(b)(4) disclosures to give sufficient disclosure as to the proposed testimony of the non-supplementing proposed experts, NCRIC never did so. Columbia therefore would be prejudiced if their testimony were now allowed, and it must be excluded.

II. MS. WOODFORD'S PROPOSED TESTIMONY SHOULD BE EXCLUDED

Though NCRIC made an effort to comply with Rule 26(b)(4) with respect to Ms. Woodford, her testimony should nevertheless be excluded. District of Columbia courts follow a three-part test in determining the admissibility of purported expert testimony. These three prongs are:

> (1) the subject matter must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average [juror], (2) the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth, and (3) expert testimony is inadmissible if the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert.

Nixon v. United States, 728 A.2d 582, 587 (D.C. 1999) (quoting *Dyas v. United States*, 37 A.2d 827 (D.C. 1977)). The testimony that is proposed by Ms. Woodford flunks this test for several independent reasons:

A. The Proffered Testimony is Not Beyond the Ken of Ordinary Jurors.

Ms. Woodford does not purport to measure Columbia's claimed damages. She does not purport to measure NCRIC's claimed damages. She does not suggest a methodology for ascertaining the damages of either party, and she does not even disagree with the lost cash flow models used by Mr. Ben Ezra in his damages calculation. Instead, Ms. Woodford seeks *only* to quibble with the accuracy of the data used by Mr. Ben Ezra as inputs into his damages model. *See* Woodford Declaration ¶ 6. Specifically, she attacks Mr. Ben Ezra's use of a list of doctors that left Columbia without sufficient procedures to "verify its reasonableness or accuracy." *Id.* ¶ 8. She questions Mr. Ben Ezra's use of FY 2000 data as to whether it is the "best/most relevant data." *Id.* ¶ 14. She doubts whether the data "provided to him by CHW w[as] accurate." *Id.* at 5. *See also id.* ¶ 19 (questioning accuracy of work life expectancy inputs); *id.* ¶ 23 (questioning

accuracy of marginal cost estimate). Even while questioning Mr. Ben Ezra's data, Ms. Woodford points to no other available data in the record which she believes is more reasonable or accurate than that upon which he relied.[2]

Ms. Woodford's proffered testimony cannot be said to be "beyond the ken" of a juror. Courts in the District of Columbia, and elsewhere, regularly exclude proposed testimony such as Ms. Woodford's as not being of aid to the trier of fact because it is not beyond the ken of an average juror and would add nothing not known or understood as a matter of common sense or common experience. *See, e.g.*, *Green v. United States*, 718 A.2d 1042, 1053 (D.C. 1998) (affirming the exclusion of proposed expert testimony on the reliability of eyewitnesses because it "did not deal with subject matter beyond the ken of an average juror and would present information unnecessary to this particular jury"), *cert. denied*, 526 U.S. 1011 (1999); *Fennekohl v. United States*, 354 A.2d 238, 240 (D.C. 1976) (upholding the exclusion of purported expert testimony on obscenity because "the subject of obscenity is not 'beyond the ken of the average layman'"); *Darby v. System Transport, Inc.*, No. 99-CV-0075E(Sr), 2001 U.S. Dist. LEXIS 16541, at *17 (W.D.N.Y. Oct. 3, 2001) (refusing to accept a purported expert affidavit on loading procedures for tractor-trailers because such procedures "would not be beyond the ken of

---

[2] It is axiomatic that disputes over the accuracy of data relied on by Mr. Ben Ezra go only to the weight of his testimony, not its admissibility. *See Washington Metropolitan Transportation Authority v. Davis*, 606 A.2d 165, 172 n.19 (D.C. 1992) (criticism of data used by expert because he had not personally visited accident scene went to weight, not admissibility, of opinion); *District of Columbia v. Anderson*, 597 A.2d 1295, 1300-01 (D.C. 1991); *see also State of Ohio ex rel. Montgomery v. Trauth Dairy*, 925 F. Supp. 1247, 1253 (S.D. Ohio 1996) ("Problems in selection of a sample bear on the weight of the testimony, not its admissibility.") (citing *Berry v. City of Detroit*, 25 F.3d 1342, 1352-53 n.11 (6th Cir. 1994), *cert. denied*, 513 U.S. 1111 (1995)); *Allapattah Servs. v. Exxon Corp.*, 61 F. Supp. 2d 1335, 1341 (S.D. Fla. 1999) (the court may not "simply 'pick' one expert over the other, because that expert is more credible or convincing, under the guise of exercising the gate-keeping function. To do so would improperly usurp the jury's function.").

the average juror"); *Roback v. V.I.P. Transport, Inc.*, No. 91 C 5902, 1994 U.S. Dist. LEXIS 14054, at *10 (N.D. Ill. Oct. 4, 1994) (excluding purported expert testimony on the effect of distractions on drivers as "within ordinary human experience" and thus "not beyond the ken of an average person"). None of the criticisms that Ms. Woodford levels at Mr. Ben Ezra's damages model are any more complex than these issues, upon which purported expert testimony has not been allowed.

In fact, the questions raised in Ms. Woodford's proffered testimony are nothing more than cross-examination going to the weight the jury should give to Mr. Ben Ezra's testimony. Each of Ms. Woodford's attacks on the data used by Mr. Ben Ezra can self-evidently be made by an attorney cross-examining Mr. Ben Ezra. Indeed, they have been. Ms. Woodford's entire declaration is built around the deposition cross-examination conducted of Mr. Ben Ezra by NCRIC's counsel, as is ably demonstrated by the extensive snippets of Mr. Ben Ezra's deposition testimony attached to Ms. Woodford's declaration. In fact, Mr. Ben Ezra's deposition is the only evidence to which she adverts in support of her declaration.

NCRIC's objections to the inputs to Mr. Ben Ezra's damages model can be, and have already been, set forth by attorneys. There is no reason to permit testimony on these points, and Ms. Woodford's proposed testimony should be excluded.

B. Ms. Woodford Seeks to Render Legal Opinions.

In at least one portion of Ms. Woodford's declaration, she takes Mr. Ben Ezra to task for (supposedly) not employing "expected work life studies" of the sort that are "typically accepted by courts." Woodford Decl. ¶ 18. But neither Ms. Woodford nor any witness is permitted to render legal opinions, and her testimony on this score must be excluded as a matter of law. *See, e.g., In re Initial Public Offering Securities Litig.*, 174 F. Supp. 2d 61, 64 (S.D.N.Y. 2001)

16d-001743

(discussing the "well established" "rule prohibiting experts from providing their legal opinions or conclusions") (citing cases); *In re Midland Enterprises, Inc.*, No. 00-3750, 2002 U.S. Dist. LEXIS 23851, at *12 (E.D. La. Dec. 11, 2002) ("Expert testimony that offers a legal opinion is inadmissible.") (citing cases).

C. Ms. Woodford's Testimony Holds Little Probative Value.

Even if Ms. Woodford's testimony is considered to be proper expert testimony under the *Dyas* test, it should still be excluded for the independent reason that its prejudicial effect outweighs its probative value. The D.C. Court of Appeals has recognized the additional weight that jurors are likely to place on testimony that has been designated as expert testimony. *See, e.g., Proctor v. United States*, 728 A.2d 1246, 1249 (D.C. 1999) ("Because of the authoritative quality which surrounds expert opinion, courts must reject testimony which might be given undue deference by jurors and which could thereby usurp the truthseeking function of the jury.") (quoting *Smith v. United States*, 389 A.2d 1356, 1359 (D.C. 1978)); *In re Melton*, 597 A.2d 892, 905 (D.C. 1991) (en banc) (noting "the trial court's broad discretion to exclude expert testimony that is more prejudicial than probative"); *Lampkins v. United States*, 401 A.2d 966, 971 (D.C. 1979) (recognizing "the danger that a jury might forego independent analysis of the facts and bow too readily to the opinion of an expert"). In this instance, it would be highly prejudicial to Columbia to have the attorney arguments and legal opinions that NCRIC wishes to present delivered from the stand by a witness who has donned the mantle of an "expert." Although, in reality, the criticisms that Ms. Woodford has put forward are based on attorney argument regarding perceived flaws with Mr. Ben Ezra's testimony and not on any independent interpretation of the evidence in this case, NCRIC will seek to bolster its various objections to Mr. Ben Ezra's methodology through Ms. Woodford. Allowing NCRIC to do so would not be

conducive to the search for the truth in this trial. It would only lend undue weight to NCRIC's attorney arguments regarding the flaws that it believes are present in Mr. Ben Ezra's methodology. Ms. Woodford's proposed testimony should be excluded on this ground as well.

D. Ms. Woodford Lacks Relevant Skills or Knowledge.

Finally, courts will not allow expert testimony to be given by those who are not qualified in the relevant field. *See, e.g., Johnson v. District of Columbia*, 728 A.2d 70, 75 (D.C. 1999) (upholding decision of trial court to exclude purported expert testimony of master plumber on warnings associated with commercial water heaters where relevant work experience was not shown).

It is difficult to say what the relevant skills or knowledge involved in the presentation of Ms. Woodford's proposed testimony would be, given that the proposed testimony appears to involve no more than lawyer-driven cross-examination and the rendering of legal opinions. However, to the extent her criticisms can be construed as critiquing his model as a result of his accounting principles and applications, nothing in Ms. Woodford's resume suggests that she has any experience as an accountant. Instead, she holds a graduate degree in management and has worked as a consultant for accounting firms. Thus, there is no showing that she has any relevant knowledge of accounting to contradict Mr. Ben Ezra's model.

CONCLUSION

For the foregoing reasons, this Court should enter an Order *in limine* excluding Mary A. Woodford, W. McKay Henderson, Steve Moore, and Martin Cohen from testifying as expert witnesses in the trial of this case.

DATED: June 5, 2003

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-001746

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference, June 19, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of Defendant/Counter-Plaintiff Columbia Hospital For Women Medical Center, Inc.'s *Motion* in Limine *of Defendant To Exclude Testimony of NCRIC's Purported Expert Witnesses*, it is hereby ORDERED, that the motion is GRANTED.

It is FURTHER ORDERED that Mary A. Woodford, W. McKay Henderson, Steve Moore, and Martin Cohen are hereby excluded from testifying as expert witnesses in the trial of this case.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 5th day of June, 2003, a copy of the foregoing *Motion* in Limine *of Defendant To Exclude Testimony of NCRIC's Purported Expert Witnesses* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on this 5th day of June, 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Eli C. Schulman

EXHIBIT 1

8/9/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 0007308-00
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda K. Davis
	) Next Event: Discovery close 8/12/01
	)
Defendant.	)

RULE 26(b)(4) STATEMENT AS OPPONENT OF A CLAIM

Plaintiff, by and through its attorney Roy Niedermayer, hereby states in accordance with SCR 26(b)(4) that it expects to call the following expert witnesses at the trial of this matter:

1. **W. McKay Henderson and Mary Woodford**
   1900 K Street, NW Suite 900
   Washington DC, 20006

Mr. Henderson and Ms. Woodford, whose *curriculum vitae* are attached hereto as Exhibits A and B, are expected to testify with regard to analysis and rebuttal to the calculation of damages as alleged by the experts for Columbia Hospital for Women. While defendant has not provided a report or the detailed substance of calculations for the damages it alleges or the bases for any opinions which he will render, and the deposition of defendant's expert noticed for August 22, 2001 has not yet taken place, and defendant has informed plaintiff that its expert Mr. Peter Ben Ezra has not yet prepared his calculations or analysis, it is anticipated that Mr. Henderson and Ms. Woodford will be assessing the various damage elements that defendants have stated, including loss of revenue, damaged reputation in the community, and the loss of good will. Mr. Henderson and Ms. Woodford are expected to testify that the damages allegedly suffered by defendant are substantially if not wholly the result of factors other than those alleged by defendant. To the extent the damages are found to be related to any tortious activity by plaintiff, Mr. Henderson and Ms. Woodford are further expected to testify that the amount of damages caused by plaintiff's activities is less than as calculated by defendant's experts.

Upon receipt of damage information from defendant, Mr. Henderson and Ms. Woodford can provide the substance and facts to which they are expected to testify. It would be expected that the factual data Mr. Henderson and Ms. Woodford will consider in evaluating alleged damages may include analysis of Columbia's historical records and reports, operating statistics and financial results for the Hospital and specific doctors that were impacted and other relevant market data.

For his expected opinion testimony, Mr. Henderson, a Partner with PricewaterhouseCoopers LLP, and a Certified Public Accountant, will draw upon his professional training, knowledge and experience in the fields of accounting and financial analysis, knowledge of the healthcare field and knowledge of methodologies for the calculation of economic damages. He has been qualified as an expert to testify on economic damages in other courts.

Ms. Woodford, a Director with PricewaterhouseCoopers LLP, with a Masters in Business Administration, will draw upon her professional training, knowledge and experience in the fields of accounting and financial analysis, and knowledge of methodologies for the calculation of economic damages. She has been qualified as an expert to testify on economic damages in other courts.

2. **Steve Moore**
1900 K Street, NW Suite 900
Washington DC, 20006.

Mr. Moore, whose *curriculum vitae* is attached hereto as Exhibit C, is expected to testify with regard to analysis and rebuttal of damages as alleged by Columbia Hospital for Women. While defendant has not provided a report or the detail substance or calculations for the tens of millions of dollars in damages it alleges, it is anticipated that Mr. Moore will provide testimony involving a market analysis of the hospital and healthcare market in the District of Columbia Metro area, impact of certain financial and market factors such as admissions, reimbursement levels, demographics, staffing, revenue cycles, etc. on the financial stability of a hospital and the defendant. Mr. Moore is expected to testify that the damages allegedly suffered by defendant are the result of factors other than those alleged by defendant. To the extent the damages are found to be related to any tortious activity by plaintiff, Mr. Moore is further expected to testify that the amount of damages caused by plaintiff's activities is less than as calculated by defendant's experts.

Upon receipt of damage information from the plaintiffs Mr. Moore can provide the substance and facts to which he is expected to testify. It is expected that the factual data Mr. Moore will consider in evaluating alleged damages may include analysis of Columbia's historical records and reports, financial statements, operating statistics and financial results for the Hospital.

For his expected opinion testimony, Mr. Moore, a Partner with PricewaterhouseCoopers LLP, and a Certified Public Accountant, will draw upon his professional training, knowledge and experience in the fields of accounting and financial analysis, knowledge of the healthcare operations, and knowledge of financial and market factors effecting hospitals in the District of Columbia Metro area.

3. **Martin Cohen**
1900 K Street, NW Suite 900
Washington DC, 20006.

Mr. Cohen, whose *curriculum vitae* is attached hereto as Exhibit D, is expected to testify with regard to analysis and rebuttal of damages as alleged by Columbia Hospital for Women. While defendant has not provided a report or the detail substance or calculations for the tens of millions of damages it alleges, it is anticipated that Mr. Cohen will provide testimony on the impact from a financial, competitive market, and staffing position that bankruptcy filings have on a hospital and various related issues that arise in negotiations and relationships with physicians. Mr. Cohen is expected to testify that the damages allegedly suffered by defendant are the result of factors other than those alleged by defendant. To the extent the damages are found to be related to any tortious activity by plaintiff, Mr. Cohen is further expected to testify that the amount of damages caused by plaintiff's activities is less than as calculated by defendant's experts.

Upon receipt of damage information from the plaintiffs, Mr. Cohen can provide the substance and facts to which he is expected to testify. It is expected that the factual data Mr. Moore will consider in evaluating alleged damages might include analysis of Columbia's historical financial records and reports, bankruptcy filings, financial statements, and operating statistics.

For his expected opinion testimony, Mr. Cohen, a Partner with PricewaterhouseCoopers LLP, will draw upon his professional training, knowledge and experience in the fields of finance and financial analysis, knowledge of the healthcare operations, and knowledge of the bankruptcy process as related to healthcare entities.

Respectfully submitted,

Roy I. Niedermayer, DJK

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on August 9, 2001, a copy of plaintiff's Rule 26(b)(4) Statement as Opponent of a Claim was mailed first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer /DJK

Roy I. Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

W. Mckay Henderson
w.mckay.henderson@us.pwcglobal.com

POSITION

Partner, Financial Advisory Services, PricewaterhouseCoopers LLP

EDUCATION

Bachelor of Science in Business Administration, emphasis-Accounting - University of North Carolina - Chapel Hill - (1976 to 1981)

Appalachian State University, Boone, NC (1974 to 1976, Transferred to UNC-CH)

RANGE OF EXPERIENCE

Mr. Henderson is a Partner in PricewaterhouseCoopers' Financial Advisory Services practice, specializing in dispute analysis and investigations. He has assisted law firms and corporate clients in financial and operational analysis and damages calculations in a variety of litigation matters, including breach of contract, franchising matters, minority shareholder disputes, insurance fraud, business interruption claims, wrongful termination/lost wages, lender liability, and securities litigation. He has been named and testified as an expert witness in many of these matters. He also has extensive experience with investigative/forensic accounting matters including assisting clients with the allegations of vendor kickbacks, embezzlements by employees, insurance fraud, and healthcare fraud both investigating third parties and defending against Government actions. Mr. Henderson has been involved with dispute analysis and investigations since 1984.

PROFESSIONAL EXPERIENCE

PRICEWATERHOUSECOOPERS LLP., Washington, DC (1998-present), Financial Advisory Services,

COOPERS & LYBRAND L.L.P., Philadelphia, PA (1990-1998), Financial Advisory Services,

LAVENTHOL & HORWATH., Philadelphia, PA (1987 – 1990), Litigation and Insurance Claims,

GRANT THORNTON., Philadelphia, PA (1985 – 1987), Litigation Consulting Services,

ARTHUR YOUNG & COMPANY., Charlotte, NC (1983-1985), Management Consulting,

DUKE POWER., Philadelphia, PA (1981-1983)

PUBLICATIONS & SPEECHES

Co-authored article entitled "Proceed with Caution" published in the Summer 1993 in Chester County Business & Industry.

"Taming the Liability Monster" – L&H Perspective, Vol. 15, Number 1, 1989

"What Every Non-Profit Director Needs to Know" – Philadelphia Business Journal, January 1994

"Making the Best of Corporate Integrity Agreements" – Healthcare Financial Management – July 2001.

TESTIMONY EXPERIENCE

* Testified at trial on the value of chemical distributor related to a divorce action. (Montgomery County Court of Common Pleas)

* Testified at disposition and trial concerning lost profits and value of a custom van dealership. (United States District Court for the Eastern District of Pennsylvania)

* Testified at trial on the value of partnership interest related to the dissolution of a physician practice. (Bucks County Court of Common Pleas)

* Testified at trial in a defamation matter as to analysis of lost earnings of an OB-GYN practice. (Court of Common Pleas-Philadelphia, PA)

* Testified at trial and deposition in an insurance fraud matter related to the trucking industry as to the calculation of insurance premiums owed by plaintiff. (Superior Court of Delaware)

* Testified at deposition on behalf of insurance carrier as to income reported per filed tax returns.

*Testified at deposition on behalf of quick lube franchiser as to value of potential franchises. (Federal Court – Camden, NJ)

* Testified as a fact witness at deposition on behalf of client related to internal investigation of travel and entertainment expenses. (District Court Western District of Washington at Seattle)

* Testified at trial on behalf of charter service as to lost profits in a breach of contract matter. (Superior Court of New Jersey – Atlantic County)

* Testified at deposition on behalf of investment banking firm as to investigation of the misappropriation of investments by management of an investment fund. (Superior Court of New York)

OTHER EXPERIENCE

Economic Damages

* Engaged to assist counsel with the analysis of alleged lost profits related to termination of a contract involving water purification equipment.

* Involved in dispute between a contractor and municipality on cost overruns and lost profits on the reconstruction of a housing development.

* Engaged to assist franchisor of fast food restaurants with the calculation of damages related to alleged breach of contract by franchisee.

* Engaged by franchisor of national quick lube chain to analyze franchisee's damage calculation and developed alternative damage theories.

* Engaged to investigate alleged lost profits and potential fraud related to claims made by owner of restaurant to their insurance carrier.

OTHER EXPERIENCE

* Engaged to analyze plaintiff's damage calculations involving losses allegedly substantiated due to contaminated product injuring livestock.

* Engaged to analyze lost profits alleged by various roofing contractors related to allegations of price fixing and anti-trust violations.

* Engaged by a hospital to assist with breach of contract claims against a third party-billing agency related to collections and fees charged.

* Engaged by a large physician practice at assist with breach of contract claims against a third party billing company.

Accounting Investigations

* Engaged on behalf of the majority shareholders of a family owned business to assist with the defense of allegations by minority shareholders of the misuse of corporate assets. Assistance included analysis of the corporation's accounting records, analysis of capital expenditures, dividend payments, officer' s compensation and retirement benefits.

* Assisted with the identification and tracing of assets misappropriated by the president and other officers of a corporation. Our team traced over $70 million of funds that were originally invested by individual investors through private placement offerings. The president used over 20 corporations for the movement of investor funds and acquisition of assets.

* Engaged by majority owners of a start-up corporation. The owners were concerned that the president was misappropriating corporate assets. Analyzed the corporation accounting records, interviewed the president and other employees, confirmed certain assets through physical observation and performed searches of public records.

* Engaged by a church organization to investigate allegations that checks were

PROFESSIONAL CREDENTIALS	Certified Public Accountant – P.A., N.C., D.C. Certified Fraud Examiner
PROFFESIONAL MEMBERSHIP	American Institute of Certified Public Accountants Pennsylvania and North Carolina Institute of Certified Public Accountants National Association of Fraud Examiners

Mary A. Woodford
mary.a.woodford@us.pwcglobal.com

POSITION

Director, Financial Advisory Services, PricewaterhouseCoopers LLP

EDUCATION

MBA/General Management, Colgate Darden Graduate School of Business Administration, University of Virginia, Charlottesville, VA (1976-78). Recipient of the William Michael Shermet Award (1977).

AB/Economics, Summa Cum Laude, Sweet Briar College, Virginia (1972-76). Ranked first in graduating class. Phi Beta Kappa. Junior year at University of Southhampton, England.

RANGE OF EXPERIENCE

Ms. Woodford is a Director in PricewaterhouseCoopers' Financial Advisory Services practice, specializing in dispute consulting and financial analysis. She has assisted law firms and corporate clients in financial and operational analysis and damages calculations in a variety of litigation matters, including patent and trademark infringement, theft of trade secrets, antitrust, breach of contract, consumer fraud, unfair competition, lender liability, solvency and bank fraud. In addition to specializing in litigation consulting since 1989, Ms. Woodford has 10 years of financial management experience with a Fortune 200 company, including assignments in the United States and in Barcelona, Spain.

PROFESSIONAL EXPERIENCE

PRICEWATERHOUSECOOPERS LLP., Washington, DC (1998-present), Financial Advisory Services, **Director** (1998-present)

COOPERS & LYBRAND L.L.P., Philadelphia, PA (1993-1998), Financial Advisory Services, **Director** (1997-1998); **Manager** (1993-97)

PRICE WATERHOUSE, Philadelphia, PA (1989-93), Litigation Services, **Senior Manager** (promotion announced April 1993); **Manager**, (1990-93); **Senior Consultant**, (1989-90)

FMC CORPORATION, Chicago, IL (1979-89)

- Foret SA, Barcelona, Spain (Subsidiary of FMC Corporation) (1987-89), **Financial Manager**
- Peroxygen Chemicals Division, Philadelphia, PA (1984-87), **Financial Analyst**
- Special Products Group, Philadelphia, PA (1982-84), **Planning Manager**
- Corporate Development, Chicago, IL (1979-82)
- **Senior Acquisitions Analyst**

CONTINENTAL ILLINOIS BANK, Chicago, IL (1978-79), **Multinational Banking Associate**

PUBLICATIONS & SPEECHES

"Financial Aspects of LICENSE NEGOTIATION, LESSONS FROM GEORGIA PACIFIC", Les Nouvelles, September 1995.

"The Prejudgment Interest Award in Alpex Computer Corp. v. Nintendo Co. Ltd": The Pittsburgh Legal Journal, April 1996; Les Nouvelles, December 1996.

Panelist at Stakeholder Session held by USPTO, October 1998, to discuss the role of intellectual property and of the USPTO in the US economy.

Presentation on the Use of Financial Statements for Lawyers, American Corporate Counsel Association, November 1998.

Instructor, PricewaterhouseCoopers Internal Training. Advanced Intellectual Property Course, 1998 and 2000; Introductory Intellectual Property Course, April 1999.

Calculating Monetary Relief: Damages and Profits, ALI-ABA Litigating Trademark, Trade Dress, and Unfair Competition Cases, December 2000.

Patent Damages, LEI Intellectual Property Law Conference, January 2001.

Did Grain Processing Murder Panduit in the Conservatory with a Candlestick? Or, Are Rumors of Panduit's Demise Exaggerated?, ABA IP Section Newsletter, Winter 2001.

Review of Chapter on "Damages Issues of Trademark, Trade Secret, False Advertising and Copyright Cases," Litigation Services Handbook, 3rd Edition, Wiley 2001.

TESTIMONY EXPERIENCE

* Testified at deposition on behalf of plaintiff in misappropriation of trade secrets involving health care practice management computer systems. (U. S. District Court Western District of Wisconsin)

* Testified at deposition on behalf of defendant in a Lanham Act matter involving retail of women's apparel. (U.S. District Court Southern District of New York)

* Testified at arbitration on behalf of defendant in a breach of contract, and misappropriation of trade secrets matter involving interactive electronic program guides used on cable television set-top boxes. (AAA, San Francisco)

* Testified at deposition on behalf of defendant in class action matter involving potential excess interest on consumer credit cards. Submitted expert affidavit in connection with approval of settlement. (U.S. District Court of Delaware)

* Testified at deposition on behalf of defendant in breach of warranty matter involving defective shoes. (U. S. District Court of Maine)

* Testified at trial on behalf of defendant in patent infringement matter, as to lost profits, price erosion, and reasonable royalty in office products industry. (U. S. District Court Western District of Wisconsin)

* Testified at deposition and in a Daubert hearing on behalf of defendant in breach of contract matter involving the distribution of a consumer product in the Baltics. (U.S. District Court, New Jersey)

* Testified at deposition on behalf of Chapter 11 debtor-plaintiff in breach of contract matter involving a critical raw material in a start-up venture. Matter settled prior to trial. (U.S. Bankruptcy Court, New Jersey)

* Testified at deposition and at trial on behalf of plaintiff in breach of contract matter involving the distribution of specialty paper. (U.S. District Court, New York – Southern District)

* Testified at trial on behalf of hospital in breach of contract matter involving a cardiac surgery practice. (Pennsylvania State Court)

* Testified as to the adequacy of a university environmental laboratory's cost accounting system relative to compliance with state regulations. (Iowa State Court)

* Testified to the appropriate methodology of determining the damages to a bank resulting from the fraudulent use of a working capital line of credit. (U.S. District Court; Eastern District of Pennsylvania)

OTHER INTELLECTUAL PROPERTY EXPERIENCE

* Issued expert report on reasonable royalty rate and damages involving toy software.

* Directed engagement on lost profits, unjust enrichment, and reasonable royalty damages involving genetically modified seed in a breach of contract matter.

* Directed engagement on reasonable royalty rate and damages involving a pharmaceutical product. Matter settled before trial.

* Directed engagement on reasonable royalty rate and damages involving a sensor used in carbon monoxide detectors. Matter settled before trial.

* Directed engagement on royalty revenue recovery for multinational telecommunications client in Europe and Far East.

* Issued expert opinion as to lost profits and reasonable royalty in design patent matter involving novelty items. Matter settled before trial.

* Selected as the expert to lead engagement team on patent infringement damages, including lost profits and reasonable royalty on behalf of alleged infringer in sports equipment industry. Issues also involved evaluating impact of infomercials. Matter settled before expert discovery was completed.

* Lead engagement team on patent infringement damages, including lost profits, reasonable royalty, and price erosion, on behalf of alleged infringer in television transmitter industry.

* Lead engagement team on patent infringement damages, including lost profits and reasonable royalty, of both claimant and counterclaimant in multi-billion dollar consumer product industry.

* Directed engagement team in two engagements on determination of the infringing revenue base for reasonable royalty determination involving process patent in semiconductor industry. Assisted counsel in analysis and rebuttal of reasonable royalty opinions issued by opposing experts.

* On behalf of defendant, analyzed and prepared critique of damage claims for tens of millions of dollars related to alleged theft of trade secrets by major publicly owned entertainment company.

* Issued expert opinion as to reasonable royalty in patent infringement matter involving automotive product.

* Issued report and expert opinion involving reasonable royalty involving textiles and bedding products. Matter settled before trial.

* Lead engagement team in determining trademark infringement damages in consumer mail order business. Matter settled before trial.

OTHER INTELLECTUAL PROPERTY EXPERIENCE

* Lead engagement team in matter involving breach of contract on software/networking product development.

* Lead engagement team in insurance coverage dispute involving an approximately $26 million settlement of litigation involving past and future rights to certain trademarks and logos involving personal computers and musical products.

* Issued expert rebuttal report addressing damages in a dispute involving the installation of a computer system at a food processing company.

OTHER EXPERIENCE

* Directed engagement concerning performance of software of an Internet product in a network environment. Coordinated with counsel and technical computer experts.

* Directed multidisciplinary engagement team in analysis of and reconstruction of multi-billion dollar mortgage-backed securities portfolio, analysis of institutional performance and other issues associated with a savings and loan.

* Assisted testifying witness and counsel in analysis and discovery of breach of contract claim involving the distribution of novelty gift items. Client was awarded approximately $46 million in damages.

* Assisted counsel in discovery and rebuttal of plaintiff's damages claim in antitrust matter involving electronic funds transfer.

* Directed engagement team to assist expert witness and counsel for defendant in analysis of liability and damages issues in a lender liability matter involving a real estate construction loan.

* Directed engagement to assist expert witness and counsel in defense of lender liability claim involving government contracts for a regional fuel oil distributor.

* Directed engagement team to assist expert witness in analysis of liability and damages issues in lender liability claim involving a retail clothing company.

* Issued expert report on the value to a debtor's estate of an exclusive distribution contract for beverages.

* Assisted expert witness in development of solvency opinion in connection with a fraudulent conveyance claim for a bankrupt airline. Analyzed company projections, aircraft purchase contracts and lease agreements, and coordinated analysis with technical airline industry experts.

STEPHEN M. MOORE

Partner

Steve serves as partner-in-charge of our Healthcare Consulting Practice in the Mid-Atlantic Region. He is an integral part of our Firm's healthcare practice from our Washington office with eighteen years of experience serving a variety of healthcare clients. He also serves as the National partner-in-charge of PwC's finance team within the Healthcare Consulting Practice, dealing with consulting engagements in the areas of financial analysis and feasibility studies, mergers and acquisitions, merger efficiency studies, operations improvement, managed care, reimbursement issues, decision support, internal controls reviews, and revenue cycle re-engineering. He has most recently spent the past twenty-four months dealing with many of these issues at a major Academic Medical Center in assisting management in developing and implementing a performance improvement plan.

Steve is an active member of the Healthcare Financial Management Association ("HFMA") where he served on a statewide Board of Directors as President. He currently serves on the National Advisory Board of the Healthcare Financial Management Association.

Professional Experience:

- Responsible for planning and execution of financial audits in the healthcare field, including academic medical centers, healthcare systems, long-term care providers, senior housing and assisted living providers, and home health entities.
- Consulting with healthcare providers on various matters ranging from reimbursement issues to strategic planning and compliance issues.
- Mergers and acquisitions consulting for healthcare and other clients, including merger efficiency studies.
- Internal controls reviews.
- Compliance program development and implementation.
- Numerous agreed-upon procedures engagements.
- Management of engagements for providers issuing bonds or other forms of debt for capital expansion.

Education:

B.S.B.A., Phi Beta Kappa honors graduate, University of North Carolina at Chapel Hill, Concentration - Accounting 1983

Professional Affiliations:

North Carolina Chapter of the Healthcare Financial Management Association (HFMA)
North Carolina Association of Certified Public Accountants
American Association of Certified Public Accountants

POSITION

Principal, Business Recovery Services
PricewaterhouseCoopers LLP, Washington DC

EDUCATION

Virginia Polytechnic Institute and State University
B.A., Political Science, 1973

Virginia Polytechnic Institute and State University
MBA (concentration in Finance), 1974

RANGE OF EXPERIENCE

Mr. Cohen has over 25 years experience in the Healthcare Industry. During this time, he has served as Chief Financial Officer, Chief Marketing, Strategic Planning and Business Development Officer, Chief Operating Officer, President, Director and advisor to numerous healthcare companies.

Mr. Cohen has represented both creditors and debtors in formal bankruptcy and out-of-court settlements. Activities performed in this area include: analysis of cash flow projections and development of cash management programs; operational reviews and development of business/strategic plans; bankruptcy planning; assessment and development of asset sale/liquidation plans; facilitation and negotiation of asset sales in and out of bankruptcy and negotiations with parties in interest.

Mr. Cohen has extensive experience representing various parties in interest in the health care arena including the hospital, post acute, physician practice management, ambulatory and medical supply segments. Representative engagements in the hospital and post acute segments include Integrated Health Services (post acute care); New American Healthcare (rural hospitals); Charter Behavioral (freestanding psychiatric hospitals); and Mariner Post Acute Network (post acute care). Representative engagements in the physician practice management segment include PhyCor, ProMedCo Management Company, a leading single-specialty ENT PPM, and Response Oncology.

In addition, Mr. Cohen has represented parties in interest in the manufacturing and distribution sectors including Crown Simplimatic, a manufacturer of bottling and packaging systems and USA Floral, a floral importer and distributor.

Prior to joining PricewaterhouseCoopers Mr. Cohen was Senior Vice President with Inova Health System, one of the nations leading integrated health care systems with net revenues in excess of $1.0 billion annually. During his 12-year tenure at Inova, he led the division responsible for the development and operation of Inova's post acute, ambulatory, and behavioral services. Mr. Cohen was also responsible for all of Inova's strategic planning, marketing, and business development.

RANGE OF EXPERIENCE, Continued

Mr. Cohen has extensive experience in the development and operation of Hospital services. Prior to his tenure at Inova, Mr. Cohen served as a financial officer for the Greater Southeast Community Hospital, a 450 bed hospital located in Washington, D.C. Mr. Cohen has also advised numerous hospitals on utilization management, cost management, new program development, and mergers and acquisition as a principal with a regional management consulting firm that specialized in health care. During his tenure at Inova Mr. Cohen had primary responsibility for growing the system. In this capacity, he was responsible for strategic planning, marketing, new business development, mergers, and acquisitions, joint ventures, and relationships with affiliated health care systems. Mr. Cohen was also responsible for the development of Inova's strategies for integrating with it's affiliated physicians. As a senior executive with Inova Mr. Cohen was extensively involved in the development and implementation of system-wide operating plans.

Mr. Cohen has extensive experience in the development and operation of behavioral services. While at Inova he was responsible for all inpatient and outpatient mental health services which included hospital based psychiatric units at each Inova hospital, freestanding outpatient child and adolescent services, substance abuse services, a large multi-disciplinary group practice, and managed mental health products covering over 275,000 lives.

Mr. Cohen has extensive experience in the development and operation of freestanding ambulatory services. While at Inova he was responsible for various ambulatory services including occupational health, employee assistance, urgent care centers emergency care centers, rehabilitation centers, and radiation therapy. Mr. Cohen was also responsible for Inova's development of freestanding ambulatory centers.

Mr. Cohen has extensive experience in post acute care having led the development and operation of these services for most of his tenure at Inova. Inova's post acute services included nursing homes, subacute units, assisted living facilities, a wide range of home health services, and case management services. The home health services operated by Mr. Cohen included home intermittent services (over 300,000 visits per annum), private duty services, infusion services, durable medical equipment, and respiratory services.

As a consultant, Mr. Cohen has also provided services in the areas of bond financing and feasibility studies. Mr. Cohen has served as Director to various health care organizations including the Genetics & IVF Institute and several HMO's.

EXHIBIT 2

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN	**Next Event: Opposition to**
	Summary Judgment Motions --
MEDICAL CENTER, INC.,	**February 28, 2002**
Defendant.	

PLAINTIFF NCRIC'S SUPPLEMENTAL RULE 26(B)(4) STATEMENT AS OPPONENT OF A CLAIM

Pursuant to District of Columbia Superior Court Rule 26(b)(4) plaintiff NCRIC, Inc. ("NCRIC"), hereby supplements its prior statement filed August 9, 2001 regarding the following expert witnesses NCRIC expects to call at trial:

1. **Mary Woodford**
   PricewaterhouseCoopers LLP
   1900 K Street, NW Suite 900
   Washington DC 20006

As stated in NCRIC's prior Rule 26(b)(4) statement, Ms. Woodford will testify with regard to analysis and rebuttal of the calculation of damages presented by defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") through defendant's designated damages witness, Peter Ben Ezra. On January 23, 2001, NCRIC received the damages calculations report by Mr. Ben Ezra, and NCRIC deposed Mr. Ben Ezra regarding his damages calculations on January 24, 2001. Mr. Ben Ezra's opinion relates to Columbia's claim

for lost income as a result of alleged conduct by NCRIC as detailed in Columbia's Amended Counterclaim.

Upon review of the materials submitted by Columbia's expert, Ms. Woodford will testify regarding the reasonableness of Mr. Ben Ezra's damages calculations. Specifically, Ms. Woodford will testify that Mr. Ben Ezra's calculations have not been made to a reasonable degree of economic certainty due to his lack of independent inquiry and lack of reasonable and supportable bases for the assumptions underlying his conclusions. Ms. Woodford will testify that due to the significant defects in Mr. Ben Ezra's conclusions, Columbia's damages calculations are baseless and speculative.

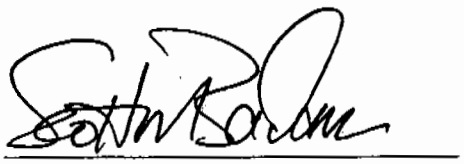
Ms. Woodford will base her testimony on a review of the documents Columbia designated and produced as the data relied upon by Mr. Ben Ezra in his calculations and preparation of his report. Ms. Woodford will also analyze available documents produced by Columbia regarding Columbia's historical operating and financial statistics and relevant market data.

Ms. Woodford is a Director with PricewaterhouseCoopers LLP, and has a Masters in Business Administration, as indicated on her curriculum vitae submitted with NCRIC's 26(b)(4) Statement filed August 9, 2001. Ms. Woodford has extensive professional training, knowledge and experience in the fields of accounting and financial analysis, and specific expertise in calculation of economic damages. Ms. Woodford has been qualified to testify as an expert on economic damages in other courts.

NCRIC respectfully reserves the right to supplement this disclosure should a more detailed review of Mr. Ben Ezra's report reveal that additional testimony is required. Finally, the other disclosures contained in NCRIC's initial Rule 26(b)(4) report remain valid.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: February 14, 2002.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Supplemental Rule 26(b)(4) Statement as Opponent of Claim was served this 14th day of February 2002, via first class mail, postage prepaid, to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Margaret Perl

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

NCRIC'S MOTION TO EXCLUDE CERTAIN DOCUMENTS AND CALCULATIONS

Plaintiff NCRIC, Inc. ("NCRIC"), moves this Court for an order excluding certain documents listed as evidence to be offered at trial by Defendant Columbia Hospital for Women Medical Center Inc. ("Columbia"). The documents are inadmissible hearsay which were specifically created by Columbia's counsel during the course of this litigation and cannot be introduced as substantive evidence of Columbia's claims at trial. Pursuant to D. C. Superior Court Rule 12-I(e), a Proposed Order and Statement of Points and Authorities in Support of this Motion are also attached.

Oral Hearing Requested.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

CERTIFICATION REQUIRED BY D.C. SUPERIOR COURT RULE 12-I

Counsel for Plaintiff NCRIC, Inc. certifies pursuant to SCR 12-I that counsel for the parties met by telephone conference on June 3, 2003 but could not resolve this matter. Accordingly, this motion is necessary for Plaintiff NCRIC, Inc. to obtain the relief it seeks.

16d-001773

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF NCRIC'S MOTION TO EXCLUDE DOCUMENTS AND CALCULATIONS

Plaintiff NCRIC, Inc. ("NCRIC") submits the following Memorandum in Support of its Motion seeking an order excluding certain documents listed as evidence to be offered at trial by Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"). These documents are inadmissible hearsay created by Columbia's counsel during the course of this litigation and cannot be introduced as substantive evidence of Columbia's claims at trial.

I. BACKGROUND

Throughout this litigation, Columbia has struggled to present any documentary or testimonial evidence to support its claims that NCRIC miscalculated the Retro Premium under the terms of the Retrospective Rating Plan (the "Retro Plan") and that a proper calculation would result in premium returned to Columbia. Without such evidence, Columbia cannot prove that NCRIC breached the Retro Plan or that Columbia is entitled to a specific amount of damages as a result of that alleged breach. The parties have explained the complicated formula set forth in the Retro Plan for calculation of

additional or return premium in prior memoranda filed with this Court.[1/] In short, an inquiry into the proper calculations under the Retro Plan involves the presentation of factual evidence regarding what calculations were required by the Retro Plan and its various amendments, the parties' intent regarding the application of amendments, the calculations made by NCRIC, and any counter-calculations by Columbia.

Each time NCRIC has requested factual evidence to support Columbia's allegations of "miscalculations" by NCRIC and the "correct" calculations under the Retro Plan, Columbia has changed its tune. First, Columbia refused to allow its designated witnesses, such as Columbia's then-CEO, Larry Wilson, to testify regarding the alleged miscalculations and proper calculations because Columbia reserved such testimony to its designated expert witnesses. *See* Wilson Dep. at 139-141; 162-162, Exhibit A. Columbia then withdrew its expert witness designation before any such expert analysis was presented to NCRIC. At this point, Columbia was left without any evidence in the record supporting its allegations against NCRIC and claims of damages.

Columbia finally provided some "evidence" of its alleged miscalculations and counter-calculations under the Retro Plan by submitting a series of spreadsheets accompanied by a declaration from Columbia's lawyer, Joseph Leahy, in support of its motion for summary judgment on the contract claims. As explained in his declaration, Columbia's lawyer created these spreadsheets for the purposes of the summary judgment motion. In addition, Columbia attached another new piece of "evidence" – a lengthy primer entitled "Performing a Proper Reconciliation of the Retrospective Rating Plan Agreement" – to its reply brief, without any declaration as to its authorship. NCRIC can

[1/] Indeed, the complicated nature of the Retro Plan calculations forms the basis of NCRIC's separately filed Motion for Reference to a Special Master, which further details the appropriate calculations under the Retro Plan.

only assume that this document was also prepared by Columbia's lawyer during the litigation. Columbia has now designated these same spreadsheets and summary as exhibits to be used at trial. A copy of Columbia's exhibit list is attached as Exhibit B, and copies of the spreadsheets and summary listed as Columbia Trial Exhibits 82 – 85 and 93 are attached as Exhibit C (the "Proposed Exhibits"), and a copy of the Leahy Declaration is attached as Exhibit D. These documents are inadmissible and must be excluded from use at trial as evidence in support of Columbia's contract claims.

II. ARGUMENT

A. The Proposed Exhibits are Statements of Counsel, not Admissible Substantive Evidence

Columbia cannot deny that spreadsheets and summary which are listed by Columbia as substantive evidence were created by counsel during the course of this litigation. The spreadsheets purporting to illustrate the "proper" calculations under the Retro Plan first surfaced as exhibits to Columbia's motion seeking summary judgment on the contract claims. The Declaration of Joseph Leahy submitted with those documents clearly reveals their origin:

> In addition, attached as exhibits to Defendant's Motion for Summary Judgment are several spreadsheets created by persons in my office, on behalf of Defendant, for the purpose of this motion.

See Exhibit D ¶ 5.

These documents are not factual evidence created at or near the time of the events in question, nor an expert's analysis to accompany expert testimony at trial. The spreadsheets are merely a lawyer's own creations based on counsel's own analysis, in

Mr. Leahy's own words, "for the purpose of [the summary judgment] motion." As such, the spreadsheets are not admissible evidence for use at trial.

Interestingly – and perhaps tellingly – Columbia's trial exhibit list does *not* include the declaration of authorship of these materials by Mr. Leahy. *See* Exhibit B. It is unclear how Columbia will attempt to authenticate these documents and what witness it will put on the stand to explain and attempt to admit these documents. Mr. Leahy has since left the Kellogg, Huber, Hansen, Todd & Evans law firm and he is not listed as a potential witness on Columbia's trial witness list. Columbia cannot now state that these spreadsheets were created by another witness, as Mr. Leahy's declaration clearly establishes that counsel's office was the author and creator. There is simply no way for Columbia to authenticate and lay a foundation for admissibility of these documents. In the interest of avoiding such a futile exercise at trial, the spreadsheets listed as Trial Exhibits 82-85 should be excluded at this time.

The authorship of the summary listed as Trial Exhibit 93 is a bit unclear. Columbia cannot dispute that this document was first produced to NCRIC as an exhibit to Columbia's Reply Brief in Support of its Motion for Summary Judgment. This summary purports to walk through, step-by-step, the Retro Plan calculations using the "proper" factors as alleged by Columbia. However, Columbia did not include any declaration attesting to the authorship of this document. Because Columbia has withdrawn its experts previously designated to testify about the Retro Plan calculations, and no other witness has testified to creating such an explanatory document, it can only be assumed that this summary was also the work of Mr. Leahy's office for the purposes of the summary judgment briefing.

As must be clear even to Columbia, Mr. Leahy did not have personal knowledge of the contracting history of the Retro Plan as he was not a participant in the original drafting, negotiations, subsequent amendment process, or any of the discussions regarding the operation of the Retro Plan between Columbia and NCRIC from 1993 to 2000. Mr. Leahy was simply performing an *ad hoc* analysis in his position as a former counsel for Columbia in this litigation. Any document created by Mr. Leahy is not authentic or admissible as factual substantive evidence. *See Northwestern Nat'l Ins., Co. v. Baltes*, 15 F.3d 660, 662 (7th Cir. 1994) (rejecting the use of an affidavit from defense counsel as substantive evidence for summary judgment because lawyer did not have personal knowledge and was not competent to testify to the underlying factual matters).

To the extent Columbia resurrects its argument from the summary judgment briefing that these documents created by Mr. Leahy represent an appropriate and logical analysis which are properly admissible because the Retro Plan calculations are purely a question of law, the April 2, 2003 Order denying Columbia's Motion for Summary Judgment held that the proper calculations and methodology under the Retro Plan was an issue of fact. *See* April 2, 2003 Order at 10. Therefore, Columbia must provide authentic and admissible factual evidence to the jury in order to support its allegations that NCRIC miscalculated the Retro Premium and that a "proper" calculation results in damages due to Columbia. Once again, there is no way that Columbia can authenticate this summary document, or lay the foundation for its admission as substantive evidence.

Because the spreadsheet calculations and summary document are creations of Columbia's counsel during the litigation they are not authentic or admissible

substantive evidence in support of Columbia's claims. These documents must be excluded from trial.

B. The Proposed Exhibits are Inadmissible Hearsay

Even if Columbia could somehow produce a witness to authenticate these proposed exhibits at trial, these documents are inadmissible hearsay and must be excluded. Although D.C. has not specifically adopted the Federal Rules of Evidence, it is well settled law that the definition of hearsay in the Federal Rules is consistent with D.C. law. *Puma v. Sullivan*, 746 A.2d 871, 875 (D.C. 2000). Federal Rule 801(c) defines hearsay as follows:

> "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Fed. R. Evid. 801 (c).

The proposed exhibits are all documents created outside of court and are statements other then those made by a witness testifying at trial. There is no witness whom NCRIC could even cross-examine at trial about the reliability of the assertions in these documents. Moreover, these spreadsheets and summary serve no other purpose than as evidence to prove the truth of the matter asserted therein. Columbia seeks to introduce these spreadsheets as evidence of the "proper" calculations under the Retro Plan and/or to prove the truth of Columbia's position that NCRIC miscalculated the Retro Plan and that these spreadsheets show the amount of damages allegedly due to Columbia. Columbia will introduce the summary as evidence of the truth of the explained methodology and calculations under the Retro Plan contained within the document. Therefore, the proposed exhibits are all inadmissible hearsay.

As this Court is aware, D.C. Superior Court Rule of Civil Procedure 43-I(a) does provide an exception to the hearsay rule which allows the admission of certain "business records." *See also Allstate Ins. Co. v. Curtis*, 781 A.2d 725, 727 (D.C. 2001); *Clyburn v. District of Columbia*, 741 A.2d 395, 397 (D.C. 1999). However, the proposed exhibits cannot possibly meet this exception. The foundation for business records requires the following:

1. the [documents] were made in the regular course . . . of business;
2. that it was the regular course of [the] business to make such [documents];
3. that the [documents] were made at, or within a reasonable time after, the acts which they reported; . . . and
4. that the author(s) of the [documents] either had personal knowledge of the facts they recited, or else acquired those facts from someone who had . . . such personal knowledge.

Allstate, 781 A.2d at 727.

The proposed Columbia exhibits do not meet any of these requirements. Most importantly, these spreadsheets and summary were created by *counsel during litigation*, not by Columbia in the regular course of its business. Moreover, these spreadsheets and summary were not created at the time of the Retro Plan, its amendments, or the exchange of reconciliations throughout 1993 to 2000, but later, in 2002 during the litigation of this case. Finally, as discussed above, Mr. Leahy and his colleagues had no personal knowledge of the factual calculations and assertions contained within the proposed exhibits.

As such, the spreadsheets and summary are rank hearsay, they do not meet the business records exception, and they must be excluded from presentation at trial.

C. The Proposed Exhibits are not Relevant and are Unfairly Prejudicial

Finally, the proposed exhibits should be excluded because they are irrelevant and will be unfairly prejudicial to NCRIC if presented to the jury. *See* Fed. R. Evid. 401 & 403. Because these spreadsheets and summaries were prepared by counsel and reflect nothing more than his litigation position regarding the Retro Plan calculations, they are irrelevant to the actual fact questions to be determined at trial: what was the agreement of the parties with regard to the Retro Plan calculations, how did the parties intend the amendments to the Retro Plan to be applied to future calculations, and what was the scope of the parties' oral agreement regarding payment of Retro Premium. In effect, these documents are merely defense counsel's opinion regarding these questions of fact – not relevant evidence from the time of the events in question or from witnesses who have personal knowledge of the contractual relationship between Columbia and NCRIC from 1993 to 2000.

The submission of such irrelevant evidence to the jury will be unfairly prejudicial to NCRIC. The spreadsheets and summary appear to provide expert-like analysis of the Retro Plan and offer expert-like opinions on the subject. These documents are therefore likely to have great persuasive effect with the members of the jury struggling to understand the complex Retro Plan calculations. However, Columbia chose to withdraw its expert regarding the Retro Plan calculations, and cannot now attempt to benefit from expert-like analysis to prove its case. There is a real danger that the jury will give undue weight to these spreadsheets and summaries as expert analysis in favor of Columbia's position. This risk of prejudice to NCRIC, combined with the little

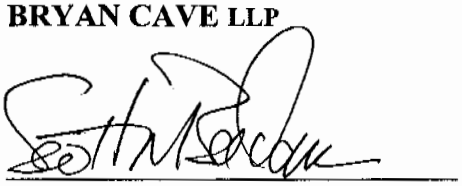
probative value offered by these irrelevant documents, weighs in favor of exclusion of the proposed exhibits.

III. CONCLUSION

For the reasons stated above, the documents numbered as Trial Exhibits 82 – 85 and 93 on Columbia's pretrial exhibit list should be excluded from introduction at trial.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

DC244648

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

ORDER GRANTING MOTION EXCLUDING CERTAIN DOCUMENTS AND CALCULATIONS

The Court having reviewed NCRIC's Motion and any opposition thereto, it is this _____ day of _____, 2003,

ORDERED that NCRIC's Motion is hereby GRANTED; and it is further

ORDERED that the following documents listed on Columbia's trial exhibit list are excluded and cannot be introduced at trial:

Columbia Trial Exhibit No.	Description
82	Chart, September 1, 2000 Reconciliation- NCRIC's Calculations with 60% minimum premium factor.
83	Chart, September 1, 2000 Reconciliation- NCRIC's Calculations with 67% Deposit factor.
84	Chart, September 1, 2000 Reconciliation- NCRIC's Calculations with Proper Development factors.
85	Chart, September 1, 2000 Reconciliation- NCRIC's Calculations with all three changes.
93	Performing a Proper Reconciliation of the Retrospective Rating Plan Agreement.

_____
Honorable Anna Blackburne-Rigsby

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

EXHIBIT A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,
Defendant.

****

Washington, D.C.
June 27, 2001

Deposition of
LARRY WILSON, JR.
a witness, called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 11:34 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

Page 139

the hospital that it didn't have to do something under the plan that it was obligated to do?

MR. LEAHY: Object to the extent it calls for a legal conclusion.

MR. NIEDERMAYER: It does not because it is a report of another person to him saying "you don't have to do something you're obligated under the plan to do."

MR. LEAHY: It calls for him to make a judgment with regard to whether or not the plan calls for something and whether he was told not to. I'm going to object. It's just an objection. You can answer.

THE WITNESS: No.

BY MR. NIEDERMAYER:

Q. Are you able to describe for me what damages that the hospital suffered that are being claimed under Count One of the counterclaims?

MR. LEAHY: I'm going to object and instruct you not to answer to the extent

Page 140

any of your knowledge might come from your attorney and be otherwise solely your attorney's knowledge and not be knowledge of the hospital. I'm also going to object to the extent that any knowledge might come from the expert, because you're not designated as an expert. You may speak to the hospital's knowledge only.

MR. NIEDERMAYER: Let's go off the record a second.

(Discussion off the record.)

BY MR. NIEDERMAYER:

Q. Mr. Wilson, may I have your answer, please?

A. State the question again.

Q. Are you able to describe for me the damages that the hospital is claiming under Count One, breach of contract, in its counterclaims?

MR. LEAHY: I'm going to instruct you not to answer to the extent that there's knowledge that is from your attorney or that's

Page 141

expert knowledge. You may answer to the extent that Columbia knows what its damages are.

THE WITNESS: I can give you an example of damages.

BY MR. NIEDERMAYER:

Q. Why don't you do that to start with.

A. Okay. Well, in my opinion we've suffered damages in the tens of millions of dollars to the extent that our reputation has been damaged, we've lost volume, we've lost face in the community, and I could go on just as an example of a few.

Q. Some of those have to do with reputation, they are in later counts. This says breach of contract. I just want to know what damages you claim the hospital claims have been suffered as a result of NCRIC's breach of contract. Can you tell me that?

A. Yes. The part of the reputation that goes back to that dim day in August when

Page 142

our physicians came in one morning to go to work in the clinic and they didn't go as a result of information that some physicians claim they got from NCRIC. It was that morning that I talked with at least Mike Feldman and spoke with Dave Osborne to pass the word on to our physicians that it was in fact okay for them to go to work. That did a heck of a lot of damage to the reputation of Columbia Hospital for Women. It probably did a lot of damage to patient care, a possibility of damages in patient care.

Q. When did that happen?

A. It was on the 31st of August if that was a Friday. Or September 1st, to be more specific. Friday, September 1st.

Q. Which physicians said these things to you?

A. I could tell you physicians that was reported to me that was said, not heard by myself.

Q. Tell me their names.

Page 159

individual doctor's policy. We only assume part of the risk in exchange for a discount. So to the extent that there are special provisions in a doctor's policy, I don't know.

Q. Do you contend that NCRIC offers insurance programs at other hospitals that it doesn't offer at Columbia Hospital for Women?

A. That's what it appears to me.

Q. Why does it appear that way to you?

A. Because I have not heard of any other hospital with a clinic that excluded, where the physicians were excluded.

Q. Do you contend that NCRIC offers a Retro program at other hospitals but won't offer one to Columbia?

A. Not on the terms and conditions that I wanted or the hospital wanted. I mean you can get anything for a price. In my opinion, the Retro plan as constituted with NCRIC was a bad business deal for the hospital. I think NCRIC agreed to that.

Page 160

Q. My question was, let me make it more pointed, do you think that NCRIC offers an insurance program at Sibley Hospital that's not available to be implemented at Columbia Hospital?

A. I don't know what the plan is at Sibley.

Q. Do you contend that NCRIC offers an insurance plan at George Washington Hospital that's not available to be implemented to Columbia Hospital for Women?

A. I don't know the specifics of that plan. I have heard that the plans at Sibley and George Washington are subsidized plans.

Q. Isn't it true that the plan that is currently in effect at Columbia Hospital is less expensive than the plan offered by NCRIC?

MR. LEAHY: Object to the form. It assumes a fact not in the record.

MR. NIEDERMAYER: What fact?

MR. LEAHY: That there is a plan in effect.

Page 161

BY MR. NIEDERMAYER:

Q. Mr. Wilson, is there a plan in effect at Columbia Hospital for Women for physicians?

A. No. We don't have an attending faculty plan.

Q. Do you have insurance coverage for physicians at Columbia Hospital?

A. The hospital does not have coverage for attending faculty.

Q. Does it have a plan whereby it offers a discount to physicians at Columbia Hospital through some plan with an insurance company?

A. It does not offer a discount, not for the plan. We offer a discount for risk management incentives.

Q. Do you know whether the premiums being paid by doctors who practice at Columbia Hospital are the same or less than doctors practicing at Sibley or George Washington Hospital?

Page 162

A. I think the premiums at Columbia are less.

Q. Let's see if we can go back --

A. That's how we made our comparisons and the rates that were quoted by NCRIC were certainly higher than the ones we had at the time.

Q. Let's go back to Count One. Can you describe for me each type of damage that you claim under Count One has been incurred by the hospital?

MR. LEAHY: I'm going to object and instruct you not to answer to the extent that you got knowledge from work product of your attorney, that it's not Columbia's knowledge. If you have information that's Columbia Hospital's, give it.

THE WITNESS: As you know, this has been discussed with attorneys. So maybe I should not answer that.

MR. NIEDERMAYER: This witness has been proffered as being able to answer these

Page 163

questions. Are you telling me he can't answer any of these questions?
MR. LEAHY: He's not our expert. To the extent the party has knowledge, the party can answer. To the extent the knowledge is the party's lawyer's knowledge or the expert witness' knowledge, you'll have to depose those people. To the extent the party has information, go ahead and answer. I'm sure the party has some information. But don't answer about what your lawyer knows.
THE WITNESS: Yeah. We contend there were damages as a result. Damage to reputation, damage to lost opportunities, damage to loss of volume.
BY MR. NIEDERMAYER:
Q. Those aren't breach of contract, but tell me how much is the damages for loss of reputation.
A. We haven't been able to quantify that. Considerable.
Q. Who is going to quantify it?

Page 164

A. Our damage expert.
Q. When will that be done?
MR. LEAHY: You can answer to the extent you know.
THE WITNESS: We're working on it now.
BY MR. NIEDERMAYER:
Q. What's the basis on which he's quantifying it?
A. The best information we have available, whatever that is.
Q. Did you provide any information to that expert?
A. We've provided some information.
Q. What information have you provided?
A. We had discussions about inflammatory remarks that were made that caused damage to the hospital. We are trying to quantify or will quantify the loss of opportunities as a result of physicians not coming to, physicians leaving the clinic that

Page 165

day; damages to the extent that we may have exposure through future lawsuits because of inadequate coverage in the clinic that day, as an example.
Q. What are the inflammatory comments that you referred to in your testimony?
A. Inflammatory remarks like the clinic is an unsafe place to work.
Q. You contend that someone at NCRIC said that?
A. It was reported to me that someone at -- let me see. It was third-hand, but I heard something to that effect. I don't recall exactly.
Q. Who at NCRIC said that?
A. The comment was not made to me directly, I can say that.
Q. Who was it made to?
A. That was anecdotal comments I heard all along.
Q. Are they from the people other than Dr. Cook and Dr. Glassman?

Page 166

A. Not from NCRIC. I can't tell you I heard anyone from NCRIC make that statement.
Q. So if I understand your testimony, you cannot identify any person at NCRIC that made the statement that had been attributed to NCRIC.
A. Not firsthand, no, I cannot.
Q. Do you know of anyone other than Drs. Cook and Glassman who have firsthand knowledge that NCRIC made any inflammatory statements about the hospital?
A. No.
MR. LEAHY: What was that answer?
(Record read by the reporter.)
BY MR. NIEDERMAYER:
Q. Can you tell me what facts you have provided to your experts for their calculation of damages to the reputation of the hospital?
A. We provided facts to substantiate that our foundation board did in fact cancel a gala that we had planned; provided the fact to

CERTIFICATE FOR READING AND SIGNING

I hereby certify that I have read and examined the within transcript and the same is a true and accurate record of the testimony given by me.

Any corrections I have listed on the separate errata sheet enclosed, indicating the page and line number of each correction.

Larry Wilson, Jr.

08-06-01

Date

District of Columbia) ss.

Subscribed and sworn to before me this 6th day of August, 2001.

Sylena L. Slaughter

Sylena L. Slaughter, Notary Public

My Commission Expires: January 31, 2002

EXHIBIT B

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

TRIAL EXHIBITS

TRIAL EXHIBIT NO.	DESCRIPTION
1	List Entitled "Physicians" (2001) **(Filed Under Seal)**
2	Letter from David K. Little to Susan Hansen (Dec. 19, 1995)
3	Letter from Stephen S. Fargis to Susan Hansen (Jan. 22, 1996)
4	Letter from Windrie Wong to Jeff Marsh (Jan. 26, 1996)
5	Columbia Hospital for Women Foundation, Finance Committee Meeting Minutes (Nov. 7, 1996)
6	Columbia Hospital for Women Medical Center, Finance Committee Meeting Minutes (Nov. 20, 1996)
7	Columbia Hospital for Women Medical Center, Finance Committee Meeting Minutes (Dec. 18, 1996)
8	Spreadsheet Entitled "Deposit Premium for September 1, 1997 Reconciliation"
9	National Capital Underwriters, Inc., Board of Directors Meeting Minutes (Oct. 16, 1997)
10	Letter from Stephen S. Fargis to Gerald Beaulieu (Oct. 21, 1997)
11	National Capital Underwriters, Inc., Board of Directors Meeting Minutes (Nov. 20, 1997)
12	Letter from Deloitte & Touche LLP to National Capital Reciprocal Insurance Co., Inc. (Dec. 18, 1997)
13	Memorandum from Thomas E. Hampton to Jeffrey Marsh (Jan. 27, 1998)
14	National Capital Underwriters, Inc., Board of Directors Meeting Minutes (Feb. 19, 1998)
15	List Entitled "Hospitals of Columbia Retro Plan Participants" (Aug. 20, 1998)
16	Columbia Hospital for Women Medical Foundation, Inc., Board of Directors Meeting Minutes (Aug. 26, 1998)
17	Letter from Stephen S. Fargis to Martin W. Dukes (Aug. 27, 1998)
18	Letter from R. Ray Pate Jr. to Gerald P. Beaulieu (Aug. 28, 1998)

19	Information Sheets Regarding Proposed Columbia/MIIX Insurance Program (Aug.-Sept. 1998)
20	NCRIC Timeline (Sept. 1998)
21	Presentation to the Board of Directors for Columbia Hospital for Women Medical Center (Sept. 1998)
22	Presentation to Working Group for Physicians Plan at Columbia Hospital for Women (Oct. 1, 1998)
23	Memorandum from Eric Hempelman to Jeff Marsh (Oct. 2, 1998)
24	Presentation to the Board of Directors for Columbia Hospital for Women Medical Center (Oct. 13, 1998)
25	Letter from Stephen S. Fargis to Attending Faculty (Oct. 28, 1998)
26	Columbia Hospital for Women – CPG Census Information (Nov. 19, 1998)
27	Letter from Ann D. Gaffey to Grant Sohm (Dec. 10, 1999)
28	NCRIC, Inc., Board of Directors Meeting Minutes (Jan. 4, 2000)
29	Spreadsheet Entitled "Columbia Hospital for Women Retro-Program . . .Sept. 1, 1993 – Nov. 30, 1999" (Jan. 18, 2000)
30	Memorandum from David Osborn to File (Mar. 28, 2000)
31	Memorandum from Steve Fargis to Ray Pate Regarding CHW Option Planning (Apr. 10, 2000) **(Filed Under Seal)**
32	Memorandum from Bill Burgess to NCRIC Case File [Number] Regarding [Case] (Apr. 13, 2000) **(Filed Under Seal)**
33	Memorandum from Bill Burgess to NCRIC Case File (Apr. 17, 2000) **(Filed Under Seal)**
34	Memorandum from Michael R. Feldman to Steve Fargis & David Osborn (May 3, 2000)
35	Columbia Hospital for Women Medical Center, Inc., Board of Directors Meeting Minutes (June 27, 2000)
36	Letter from David Osborn to Larry Wilson, Jr. (June 28, 2000)
37	CHW Program Summary, NCRIC Group, Inc., Audit Committee (July 11, 2000)
38	Columbia Hospital for Women Medical Center, Inc., Board of Directors Meeting Minutes (July 24, 2000)
39	Letter from Grant Sohm to Larry Wilson, Jr. (Aug. 1, 2000)
40	Letter from Nelson P. Trujillo to Physician Participants – Columbia Hospital for Women Retro Plan (Aug. 22, 2000)
41	Letter from Janet Schaffel, M.D. to Larry Wilson, Jr. (Sept. 1, 2000)
42	Memorandum from David Osborn to File (Sept. 5, 2000)
43	Memorandum from Larry Wilson, Jr. to George Samman, M.D. (Sept. 13, 2000)
44	Memorandum from Eric Hempelman to David Osborn (Sept. 25, 2000)
45	Letter from Grant Sohm to Janet Schaffel (Oct. 1, 2000)
46	Letter from Edward G. Koch, M.D. to Larry Wilson, Jr. (Oct. 30, 2000)
47	Graphs Entitled "Total Admissions," "Total Adult/Infant Patient Days," "Total Surgeries" and "Births," at Columbia Hospital for Women Medical Center (Feb, 2002)
48	Letter from Herman Hunter to Joseph Leahy (Feb. 1, 2001)
49	Graph Entitled "Distribution of Livebirths at CHW by Admission Nursery" (2001)

50	Columbia Hospital Medical Staff, Executive Committee Meeting Minutes (Oct. 26, 1990) **(Filed Under Seal)**
51	Columbia Hospital Medical Staff, Executive Committee Meeting Minutes (Nov. 28, 1990) **(Filed Under Seal)**
52	Letter from Wayne D. Cooper, M.D to Larry Wilson, Jr. (July 12, 2000)
53	Letter from Nabil Asterbadi, M.D. to Morton Roberts, M.D. (July 18, 2000) ("7/18/00 Asterbadi Letter") **(Filed Under Seal)**
54	Letter from Women's Physicians Association to All Employees at Columbia Hospital for Women (Oct. 6, 2000) **(Filed Under Seal)**
55	Robert L. Sloan, An Executive Communication (Dec. 2000); http://www.sibley.org/new/news2.tmpl?com.../new.db&eqSKUdata=11172000102352&SKU=1117200010235 (visited Dec. 21, 2000); Project Review Committee, District of Columbia Department of Health, State Health Planning and Development Agency, Tr. at 17-18 (Jan. 18. 2001)
56	Correspondence Regarding George Washington University Medical Center Regarding Risk Management Program (July and Aug. 2000); Correspondence Regarding Sibley Quota Share Program (Mar. 2000)
57	Declaration Pages for Various Attending Faculty (1999-2000 & 2000-01)
58	Letter from Larry Wilson, Jr. to Nancy Sanders (April 24, 2001) **(Filed Under Seal)**
59	Avram Goldstein, *Defections Hurt D.C. Hospital*, Wash. Post, Dec. 21, 2000 at B1
60	Excerpts to Application for Reappointment to the Medical Staff for Various Physicians **(Filed Under Seal)**
61	Letter from David Osborn to Larry Wilson, Jr. (Aug. 15, 2000)
62	Letter from Grant Sohm to Larry Wilson (June 30, 2000)
63	Letter from Larry Wilson to Lawrence Mirel (July 13, 2000)
64	Columbia Hospital for Women Medical Center, Inc., Finance Committee Meeting Minutes (Aug. 24, 2000); Letter from Larry Wilson, Jr. & Nabil Asterbadi, M.D. to Attending Faculty (Aug. 25, 2000)
65	Response to Defendant's Requests for Admissions (June 12, 2001)
66	Memorandum from NCRIC to Attending Faculty Regarding New Policy Effective Date (July 1, 1999) **(Filed Under Seal)**
67	Spreadsheet Entitled "Columbia Hospital for Women Retro-Program . . . Sept [1], 1993 – May 30, 2000" (July 17, 2000)
68	Columbia Hospital for Women Medical Center, Inc., Board of Directors Meeting Minutes (Dec. 18, 2000)
69	Spreadsheet Entitled Columbia Hospital Retro (Oct. 1, 1996)
70	Debtors' Amended Joint Plan of Reorganization (Second Revised) Under Chapter 11 Of The Bankruptcy Code, dated January 8, 1999
71	Annual Reports, 1998-2002
72	Retrospective Rating Plan Agreement
73	Letter from Susan M. Hansen to Stephen Fargis, dated January 17, 1996
74	Retrospective Rating Plan Amendment A
75	Addendum to Retrospective Rating Plan
76	Addendum B to Retrospective Rating Plan

77	Addendum B-1999 to Retrospective Rating Plan
78	Columbia Hospital for Women Retro-Program , as of September 1, 1997
79	Columbia Hospital for Women Retro-Program Years Sept 01, 1993 – August 31, 1999
80	Columbia Hospital for Women Retro-Program Years Sept 01, 1993 – August 31, 1998
81	Columbia Hospital for Women Retro-Program Years Sept 01, 1993 – August 31, 2000
82	Chart, September 1, 2000 Reconciliation-NCRIC's Calculations with 60% minimum Premium factor
83	Chart, September 1, 2000 Reconciliation-NCRIC's Calculations with 67% Deposit factor
84	Chart, September 1, 2000 Reconciliation-NCRIC's Calculations with Proper Development factors
85	Chart, September 1, 2000 Reconciliation-NCRIC's Calculations With All Three Changes
86	Columbia Hospital for Women Retrospective Rating Program Years 1993-1996
87	Letter from Stephen S. Fargis to Susan M. Hansen dated January 22, 1996
88	Letter from Jeffrey Marsh to Gerald Beaulieu, dated November 30, 1998
89	Letter from Stephen S. Fargis to Anne D. Gaffey, dated March 29, 2000
90	Answers of Plaintiff to Interrogatories of Defendant
91	Responses to Defendant's Requests for Admissions
92	Columbia Hospital for Women Retro-Program Years: Sept 30, 1993 – Sept 30, 2000
93	Performing a Proper Reconciliation of the Retrospective Rating Plan Agreement
94	Columbia Hospital for Women Retro-Program Years Sept 01, 1993 – August 31, 2000
95	Columbia Hospital for Women Promotional Materials
96	Answers of Plaintiff to Interrogatories of Defendant
97	Revised Response to Defendant's Requests for Admissions
98	Answers of Plaintiff to Interrogatories of Defendant
99	Responses to Defendant's Second Requests for Admissions
100	Answers of Plaintiff to Second Interrogatories of Defendant
101	Responses to Defendant's Third Requests for Admissions
102	Responses to Defendant's Requests for Admissions
103	Report of Peter Ben Ezra
104	Declaration of Peter Ben Ezra
105	Facsimile from Len Glassman to Dave Osborne, Aug. 18, 2000
106	Physician Liability Insurance Committee Meeting Minutes, Jun. 15, 2000

EXHIBIT C

Experience Period	Subject Premium	Loss Reserves	Develop't Factor	Paid Losses	Discount Factor	Basic Prem. Factor	Basic Premium	Retro Premium
1993-94	$ 2,765,029.00	$ -	1.050	*$ 960,368.00*	0.8633	0.1684	$ 465,630.88	$ 1,294,716.58
1994-95	$ 2,844,913.00	$ -	1.050	$ 1,716,454.00	0.8633	0.1684	$ 479,083.35	$ 1,960,898.09
1995-96	*$ 3,288,170.00*	$ 1,185,000.00	1.050	$ 1,052,447.00	0.8633	0.1684	$ 553,727.83	$ 2,536,466.35
1996-97	*$ 3,495,306.00*	$ 1,352,000.00	1.050	$ 1,785,648.00	0.8633	0.1684	$ 588,609.53	$ 3,355,700.13
1997-98	*$ 3,340,590.00*	$ 1,040,000.00	0.80	$ 648,723.00	0.8633	0.1684	$ 562,555.36	$ 1,840,863.52
1998-99	$ 3,609,667.00	$ 3,565,000.00	0.65	$ 581,307.00	0.8633	0.1684	$ 607,867.92	$ 3,110,192.18
Totals								**$ 14,098,836.85**

Setpember 1, 2000 Reconciliation -- NCRIC's Calculations With 60% Minimum Premium Factor

Dep. Prem. Factor	Deposit Premium	Min. Prem. Factor	Minimum Premium	Max. Prem. Factor	Maximum Premium	Retro. Prem.	Retro. Prem Subj. to Min./Max.	Additional (Return) Premium
0.8125	$ 2,246,586.06	0.60	$ 1,659,017.40	1.15	$ 3,179,783.35	$ 1,659,017.40	$ 1,659,017.40	$ (587,568.66)
0.8125	$ 2,311,491.81	0.60	$ 1,706,947.80	1.15	$ 3,271,649.95	$ 1,960,898.09	$ 1,960,898.09	$ (350,593.73)
0.6220	$ 2,045,241.74	0.60	$ 1,972,902.00	1.33	$ 4,373,266.10	$ 2,536,466.35	$ 2,536,466.35	$ 491,224.61
0.6220	$ 2,174,080.33	0.60	$ 2,097,183.60	1.33	$ 4,648,756.98	$ 3,355,700.13	$ 3,355,700.13	$ 1,181,619.80
0.6220	$ 2,077,846.98	0.60	$ 2,004,354.00	1.33	$ 4,442,984.70	$ 2,004,354.00	$ 2,004,354.00	$ (73,492.98)
0.6220	$ 2,245,212.87	0.60	$ 2,165,800.20	1.33	$ 4,800,857.11	$ 3,110,192.18	$ 3,110,192.18	$ 864,979.31
	$ 13,100,459.80					**$ 6,156,381.84**	**$ 14,626,628.15**	$ 1,526,168.34
							Columbia deposit	$ (1,000,000.00)
							Less NCRIC Payment	$ 172,815.00
								$ 698,983.34

16d-001797

DEFENDANT'S EXHIBIT

Experience Period	Subject Premium	Loss Reserves	Develop't Factor	Paid Losses	Discount Factor	Basic Prem. Factor	Basic Premium	Retro Premium
1994-95	$ 2,844,913.00	$ -	1.050	$ 1,716,454.00	0.8633	0.1684	$ 479,083.35	$ 1,960,898.09
1995-96	*$ 3,288,170.00*	$ 1,185,000.00	1.050	$ 1,052,447.00	0.8633	0.1684	$ 553,727.83	$ 2,536,466.35
1996-97	*$ 3,495,306.00*	$ 1,352,000.00	1.050	$ 1,785,648.00	0.8633	0.1684	$ 588,609.53	$ 3,355,700.13
1997-98	*$ 3,340,590.00*	$ 1,040,000.00	0.80	$ 648,723.00	0.8633	0.1684	$ 562,555.36	$ 1,840,863.52
1998-99	$ 3,609,667.00	$ 3,565,000.00	0.65	$ 581,307.00	0.8633	0.1684	$ 607,867.92	$ 3,110,192.18
Totals								**$ 12,804,120.27**

September 1, 2000 Reconciliation -- NCRIC's Calculations With 67% Deposit Factor

Dep. Prem. Factor	Deposit Premium	Min. Prem. Factor	Minimum Premium	Max. Prem. Factor	Maximum Premium	Retro. Prem.	Retro. Prem Subj. to Min./Max.	Additional (Return) Premium
0.8125	$ 2,311,491.81	0.75	$ 2,133,684.75	1.15	$ 3,271,649.95	$ 2,133,684.75	$ 2,133,684.75	$ (177,807.06)
0.6700	$ 2,203,073.90	0.60	$ 1,972,902.00	1.33	$ 4,373,266.10	$ 2,536,466.35	$ 2,536,466.35	$ 333,392.45
0.6700	$ 2,341,855.02	0.60	$ 2,097,183.60	1.33	$ 4,648,756.98	$ 3,355,700.13	$ 3,355,700.13	$ 1,013,845.11
0.6700	$ 2,238,195.30	0.60	$ 2,004,354.00	1.33	$ 4,442,984.70	$ 2,004,354.00	$ 2,004,354.00	$ (233,841.30)
0.6700	$ 2,418,476.89	0.60	$ 2,165,800.20	1.33	$ 4,800,857.11	$ 3,110,192.18	$ 3,110,192.18	$ 691,715.29
	$ 11,513,092.92					**$ 4,670,151.10**	**$ 13,140,397.41**	$ 1,627,304.49
							Columbia deposit	$ (1,000,000.00)
								$ 627,304.49

Not including 1993-94

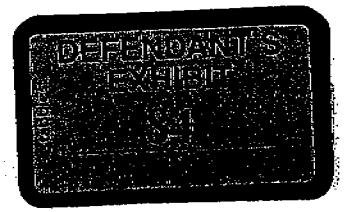
Experience Period	Subject Premium	Loss Reserves	Develop't Factor	Paid Losses	Discount Factor	Basic Prem. Factor	Basic Premium	Retro Premium
1994-95	$ 2,844,913.00	$ -	1.050	$ 1,716,454.00	0.8633	0.1684	$ 479,083.35	$ 1,960,898.09
1995-96	*$ 3,288,170.00*	$ 1,185,000.00	1.050	$ 1,052,447.00	0.8633	0.1684	$ 553,727.83	$ 2,536,466.35
1996-97	*$ 3,495,306.00*	$ 1,352,000.00	0.80	$ 1,785,648.00	0.8633	0.1684	$ 588,609.53	$ 3,063,904.73
1997-98	*$ 3,340,590.00*	$ 1,040,000.00	0.65	$ 648,723.00	0.8633	0.1684	$ 562,555.36	$ 1,706,188.72
1998-99	$ 3,609,667.00	$ 3,565,000.00	0.55	$ 581,307.00	0.8633	0.1684	$ 607,867.92	$ 2,802,425.73
Totals								**$ 12,069,883.62**

Setpember 1, 2000 Reconciliation -- NCRIC's Calculations With Proper Development Factors

Dep. Prem. Factor	Deposit Premium	Min. Prem. Factor	Minimum Premium	Max. Prem. Factor	Maximum Premium	Retro. Prem.	Retro. Prem Subj. to Min./Max.	Additional (Return) Premium
0.8125	$ 2,311,491.81	0.75	$ 2,133,684.75	1.15	$ 3,271,649.95	$ 2,133,684.75	$ 2,133,684.75	$ (177,807.06)
0.6220	$ 2,045,241.74	0.60	$ 1,972,902.00	1.33	$ 4,373,266.10	$ 2,536,466.35	$ 2,536,466.35	$ 491,224.61
0.6220	$ 2,174,080.33	0.60	$ 2,097,183.60	1.33	$ 4,648,756.98	$ 3,063,904.73	$ 3,063,904.73	$ 889,824.40
0.6220	$ 2,077,846.98	0.60	$ 2,004,354.00	1.33	$ 4,442,984.70	$ 2,004,354.00	$ 2,004,354.00	$ (73,492.98)
0.6220	$ 2,245,212.87	0.60	$ 2,165,800.20	1.33	$ 4,800,857.11	$ 2,802,425.73	$ 2,802,425.73	$ 557,212.86
	$ 10,853,873.74					**$ 4,670,151.10**	$ 12,540,835.56	$ 1,686,961.82
							Columbia deposit	$ (1,000,000.00)
								$ 686,961.82

Not including 1993-94

16d-001799

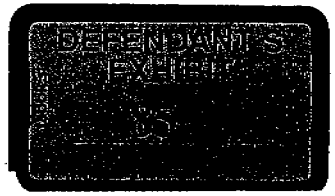


Experience Period	Subject Premium	Loss Reserves	Develop't Factor	Paid Losses	Discount Factor	Basic Prem. Factor	Basic Premium	Retro Premium
1993-94	$ 2,765,029.00	$ -	1.050	$ 960,368.00	0.8633	0.1684	$ 465,630.88	$ 1,294,716.58
1994-95	$ 2,844,913.00	$ -	1.050	$ 1,716,454.00	0.8633	0.1684	$ 479,083.35	$ 1,960,898.09
1995-96	*$ 3,288,170.00*	$ 1,185,000.00	1.050	$ 1,052,447.00	0.8633	0.1684	$ 553,727.83	$ 2,536,466.35
1996-97	*$ 3,495,306.00*	$ 1,352,000.00	0.80	$ 1,785,648.00	0.8633	0.1684	$ 588,609.53	$ 3,063,904.73
1997-98	*$ 3,340,590.00*	$ 1,040,000.00	0.65	$ 648,723.00	0.8633	0.1684	$ 562,555.36	$ 1,706,188.72
1998-99	$ 3,609,667.00	$ 3,565,000.00	0.55	$ 581,307.00	0.8633	0.1684	$ 607,867.92	$ 2,802,425.73
Totals								**$ 13,364,600.20**

Setpember 1, 2000 Reconciliation – NCRIC's Calculations With All Three Changes

Dep. Prem. Factor	Deposit Premium	Min. Prem. Factor	Minimum Premium	Max. Prem. Factor	Maximum Premium	Retro. Prem.	Retro. Prem Subj. to Min./Max.	Additional (Return) Premium
0.8125	$ 2,246,586.06	0.60	$ 1,659,017.40	1.33	$ 3,677,488.57	$ 1,659,017.40	$ 1,659,017.40	$ (587,568.66)
0.8125	$ 2,311,491.81	0.60	$ 1,706,947.80	1.33	$ 3,783,734.29	$ 1,960,898.09	$ 1,960,898.09	$ (350,593.73)
0.6700	$ 2,203,073.90	0.60	$ 1,972,902.00	1.33	$ 4,373,266.10	$ 2,536,466.35	$ 2,536,466.35	$ 333,392.45
0.6700	$ 2,341,855.02	0.60	$ 2,097,183.60	1.33	$ 4,648,756.98	$ 3,063,904.73	$ 3,063,904.73	$ 722,049.71
0.6700	$ 2,238,195.30	0.60	$ 2,004,354.00	1.33	$ 4,442,984.70	$ 2,004,354.00	$ 2,004,354.00	$ (233,841.30)
0.6700	$ 2,418,476.89	0.60	$ 2,165,800.20	1.33	$ 4,800,857.11	$ 2,802,425.73	$ 2,802,425.73	$ 383,948.84
	$ 13,759,678.99					**$ 6,156,381.84**	**$ 14,027,066.30**	$ 267,387.31
							Columbia deposit	$ (1,000,000.00)
							Less NCRIC Payment	$ 172,815.00
								$ (559,797.69)

16d-001800



Performing a Proper Reconciliation of the Retrospective Rating Plan Agreement ["Retro Plan"] (Example: September 1, 2000 Reconciliation)

I. **Calculate the Retrospective Rating Premium ("Retro Premium") for each Experience Period by using the Retrospective Rating Premium Formula ("Retro Formula").** *See* Addendum B to Retrospective Rating Plan Agreement, Exh. A at 5, ¶ 3 ("Addendum B") (Exh. 5 to Statement of Material Facts Not In Dispute ("SMF")).

II. **Limit the Retro Premium for each Experience Period by applying the Minimum Premium or Maximum Premium, if applicable.** *See id.*

III. **Calculate the Additional Premium or Return Premium due for each Experience Period by subtracting the Retro Premium (as limited by any applicable minimum or maximum) from the Deposit Premium for each Experience Period.** *See id.* ¶ 6.

IV. **Calculate the total Additional Premium or Return Premium for all Experience Periods that are properly subject to Reconciliation.** *See id.* ¶ 6.

V. **Apply a credit for Columbia's deposit and/or for NCRIC's payment to obtain the current total premium due.** *See* NCRIC's Statement of Material Facts ¶ 68 ("NCRIC SMF").

I. Calculate the Retro Premium for each Experience Period by using the Retro Formula:

Retro Premium **= { [(Loss Reserves x Development Factor) + Paid Losses] x Discount Factor } + Basic Premium.** *See* Addendum B, Exh. A at 5, ¶ 3.

A. Calculate: (Loss Reserves x Development Factor) = "Developed Losses"

1. Obtain NCRIC's Loss Reserves from the applicable reconciliation spreadsheet.

Here, NCRIC's September 1, 2000 Reconciliation is used as an example.[1] *See* Spreadsheet Entitled "Columbia Hospital for Women Retro-Program Years: Sept. 01, 1993 – August 31, 2000" (Sept. 6, 2000) (Exh. 2 to Defendant's Reply in Support of Motion for Summary Judgment ("Reply")) ("Line-numbered September 1, 2000 Reconciliation").

NCRIC's Loss Reserves appear in Row 7 (entitled "Total Reserves") of its reconciliation spreadsheets. *See* Answers of Plaintiff to Interrogatories of Defendant, Interrogatory Response No. 3 (Exh. 21 to SMF) ("Interrogatory Response No.") (explaining that Row 7 is the sum of indemnity and expense reserves – *i.e.*, Loss Reserves as defined in the Plan).

As of September 1, 2000, NCRIC listed its Loss Reserves as:

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
$0	$0	$1,185,000
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$1,352,000	$1,040,000	$3,565,000

See Line-numbered September 1, 2000 Reconciliation (listing Loss Reserves for 1994-95 through 1998-99 Experience Periods); Spreadsheet Entitled "Columbia Hospital for Women Retro-Program Years 9/1/1993 – 8/31/1999" (Oct. 11, 1999) (Exh. 8 to SMF) ("September 1, 1999 Reconciliation") (listing Loss Reserves for 1993-94 Experience Period).[2]

---

[1] This step-by-step Reconciliation also is summarized in spreadsheet form. *See* Spreadsheet Entitled "Se[pt]ember 1, 2000 Reconciliation – NCRIC's Calculations With All Three Changes" (Exh. 14 to SMF) ("Revised September 1, 2000 Reconciliation") (summary exhibit performing Reconciliation using dollar values used by NCRIC, except applying proper Deposit Premium factor, Minimum Premium factor and Development factors).

[2] NCRIC does not list its calculations for the 1993-94 Experience Period on the September 1, 2000 Reconciliation spreadsheet. Instead, those calculations appear on the September 1, 1999 Reconciliation spreadsheet. Because all claims for the 1993-94 period are closed, that year is "closed," and the totals for that period do not change from year to year. *See* Deposition of Stephen S. Fargis, Tr. at 305 ("Fargis Dep.") (Exh. 4 hereto) (explaining that dollar amounts do not change after a year is "closed"). As such, all dollar values for the 1993-94 Experience Period were the same on September 1, 2000, as they were on September 1, 1999.

19d-004802

2. Obtain the proper Development Factors from the Retro Plan, as amended.

The Development Factors used by NCRIC appear in Row 12 (entitled "Development Factor") of its reconciliation spreadsheets.[3] *See* Responses to Defendant's Requests for Admissions, Response Nos. 52-61 ("RFA Response No.") (Exh. 22 to SMF). **However, NCRIC applied those Development Factors incorrectly.** *See* Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment at 8, 15-17 ("Columbia SJ Mem.").

For the September 1, 2000 Reconciliation, the *proper* Development Factors, set by the Retro Plan were:

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
105%	105%	105%
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
80%	65%	55%

See id. (explaining proper application of Development Factors); *see also id.* at 6-8 (explaining Development Factors); Retrospective Rating Plan Agreement, Exh. E at 1-2 (Exh. 1 to SMF) ("Retro Plan") (example of proper application of Development Factors); SMF ¶¶ 46-47 (discussing Exh. E to Retro Plan); Addendum B-1999 to Retrospective Rating Plan Agreement, Exh. A.1., at 1 (Exh. 6 to SMF) ("Addendum B-1999") (definition of Development Factors); Addendum B, Exh. A at 5, ¶ 7 (same); *compare* Revised September 1, 2000 Reconciliation (listing proper Development Factors).

3. For each Experience Period, multiply the applicable Loss Reserve, *see supra*, I.A.1, by the proper Development Factor, *see supra*, I.A.2, to obtain the Developed Losses.[4]

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
$0 x 105% = **$0**	$0 x 105% = **$0**	$1,185,000 x 105% = **$1,244,250**
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$1,352,000 x 80% = **$1,081,600**	$1,040,000 x 65% = **$676,000**	$3,565,000 x 55% = **$1,960,750**

[3] For the September 1, 2000 Reconciliation, NCRIC used the following Development Factors: 105% for the 1993-94 through the 1996-97 Experience Periods, 80% for the 1997-98 Experience Period, and 65% for the 1998-99 Experience Period.

[4] All amounts used throughout this example are rounded to the nearest whole dollar amount.

16d-001803

B. Calculate: [Developed Losses + Paid Losses] = "Total Losses"

1. Obtain NCRIC's Paid Losses from the applicable reconciliation spreadsheet.

NCRIC's Paid Losses appear in Row 10 (entitled "Total Paid") of its reconciliation spreadsheets. *See* Interrogatory Response No. 4 (explaining that Row 10 is total of indemnity and expense payments – *i.e.*, Paid Losses as defined by the Plan). **As of September 1, 2000, NCRIC listed its Paid Losses as:**

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
$960,368	**$1,716,454**	**$1,052,447**
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$1,785,648	**$648,723**	**$581,307**

See Line-numbered September 1, 2000 Reconciliation (1994-95 through 1998-99 Experience Periods); September 1, 1999 Reconciliation (1993-94 Experience Period).

2. Add the Developed Losses, *see supra*, I.A.3, **to the Paid Losses,** *see supra*, I.B.1, **to obtain the Total Losses.**

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
$0 + $960,368 = **$960,368**	$0 + $1,716,454 = **$1,716,454**	$1,244,250+ $1,052,447 = **$2,296,697**
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$1,081,600 + $1,785,648 = **$2,867,248**	$676,000+ $648,723 = **$1,324,723**	$1,960,750 + $581,307 = **$2,542,057**

16d-001804

C. Calculate: { [Total Losses] x Discount Factor } = "Discounted Total Losses"

1. Obtain the Discount Factor from the Retro Plan.

The Discount Factor is the same for every Experience Period – 86.33%. *See* Addendum B, Exh. A at 6, ¶ 7 (definition of Discount Factor). The Discount Factor does not appear on NCRIC's reconciliation spreadsheets.

2. Multiply the Discount Factor, *see* I.C.1, *supra*, by the Total Losses, *see* I.B.2, *supra*, to obtain the Discounted Total Losses.

As of September 1, 2000, the Discounted Total Losses were:

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
$960,368 x 86.33% = **$829,086**	$1,716,454 x 86.33% = **$1,481,815**	$2,296,697 x 86.33% = **$1,982,739**
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$2,867,248 x 86.33% = **$2,475,295**	$1,324,723 x 86.33% = **$1,143,633**	$2,542,057 x 86.33% = **$2,194,558**

16d-001805

D. Calculate: Discounted Total Losses + Basic Premium = *Retro Premium*

1. Obtain the Basic Premium for each Experience Period from the applicable reconciliation spreadsheet.

The Basic Premium is calculated by multiplying the Subject Premium for each Experience Period by the Basic Premium factor. *See* Addendum B, Exh. A at 6, ¶ 7 (definition of Basic Premium listing multiplier known as the "Basic Premium Factor").[5] **However, because Columbia does not dispute NCRIC's Basic Premium calculations,[6] the Basic Premium may be taken directly from the applicable reconciliation spreadsheet.**

The Basic Premium for each Experience Period appears in Row 4 (entitled "Basic") of NCRIC's reconciliation spreadsheets. *See* Interrogatory Response No. 2; RFA Response Nos. 38-51.

As of September 1, 2000, the Basic Premium for each Experience Period was:

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
$465,631	$479,083	$553,728
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$588,609	$562,555	$607,868

See Line-numbered September 1, 2000 Reconciliation (1994-95 through 1998-99 Experience Periods); September 1, 1999 Reconciliation (1993-94 Experience Period).

---

[5] To calculate the Basic Premium: *First*, the Basic Premium factor is 16.84% for every Experience Period. *See* RFA Response Nos. 37, 40, 43, 46, 49 (Basic Premium factor is calculated by adding the administrative expense charge of $14.04% to the insurance charge factor of 2.8%); *see also* Addendum B, Exh. A at 6, ¶ 7. The Basic Premium factor appears in Row 3 (entitled "Basic Premium Ch.") of NCRIC's reconciliation spreadsheets. *See* RFA Response Nos. 37-51. *Second*, the Subject Premium calculated by NCRIC for each Experience Period appears in Row 1 (entitled "Subject (1st 500 Layer)") of its reconciliation spreadsheets, *see* RFA Response Nos. 4-13; Interrogatory Response No. 2 (explaining purported Subject Premium calculations). *Third*, the Basic Premium factor and the Subject Premium are multiplied together to obtain the Basic Premium. *See* RFA Response Nos. 37-51; *see also* Addendum B, Exh. A at 6, ¶ 7 (definition of Basic Premium); Interrogatory Response No. 2. (explaining Basic Premium calculations).

[6] Columbia assumes (but does not admit), for the purposes of its motion, that NCRIC's Subject Premium calculations are correct. *See* SMF ¶ 21.

16d-001806

2. **Add the Discounted Total Losses**, *see* I.C.2, *supra*, **to the Basic Premium**, *see* I.D.1, *supra*, **to obtain the *Retro Premium*.**

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
$829,086 + $465,631 = **$1,294,717**	$1,481,815 + $479,083 = **$1,960,898**	$1,982,739 + $553,728 = **$2,536,467**
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$ 2,475,295 + $588,609 = **$3,063,904**	$1,143,633 + $562,555 = **$1,706,188**	$2,194,558 + $607,868 = **$2,802,426**

* * *

Therefore, as of September 1, 2000, the proper Retro Premium for each Experience Period was:

1993-94 Experience Period	*1994-95 Experience Period*	*1995-96 Experience Period*
$1,294,717	*$1,960,898*	*$2,536,467*
1996-97 Experience Period	*1997-98 Experience Period*	*1998-99 Experience Period*
$3,063,904	*$1,706,188*	*$2,802,426*

Compare Revised September 1, 2000 Reconciliation (same Retro Premiums, with minor differences due to rounding).[7]

16d-001807

[7] The Revised September 1, 2000 Reconciliation lists the Retro Premium for each Experience Period twice. For the 1993-94 Experience Period, the upper Retro Premium listed is correct; the lower listing is a typographical error. (It is actually the Minimum Premium.) This error has no effect on the overall calculations.

II. Limit the Retro Premium for each Experience Period by applying the Minimum Premium or Maximum Premium, if applicable.

A. Calculate Minimum Premium for each Experience Period.

1. Obtain the Minimum Premium for some Experience Periods from the applicable reconciliation spreadsheet.

The Minimum Premium for each Experience Period is calculated by multiplying the Subject Premium for each Experience Period by the Minimum Premium factor for that Experience Period. *See* Addendum B, Exh. A at 7, ¶ 7 (definition of Minimum Premium listing multiplier known as the "Minimum Premium factor"). **Because Columbia does not dispute NCRIC's Minimum Premium calculations for the 1995-96 Experience Period through the 1998-99 Experience Period,[8] the Minimum Premium for those periods may be taken from the applicable reconciliation spreadsheet.**

The Minimum Premium for each Experience Period appears in Row 18 (entitled "Min. Premium") of NCRIC's reconciliation spreadsheets. *See* RFA Response Nos. 102-03, 106-07, 110-11, 114-15, 118-19.

As of September 1, 2000, the Minimum Premiums for Experience Periods 1995-96 through 1998-99 were:

1995-96 Experience Period		
$1,972,902		
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$2,097,183	$2,004,354	$2,165,800

See Line-numbered September 1, 2000 Reconciliation.

16d-001808

[8] *But see supra*, n.6.

2. Calculate the proper Minimum Premium for other Experience Periods.

a. Obtain the *proper* Minimum Premium factor for the 1993-94 and 1994-95 Experience Periods from the Retro Plan, as amended.

The proper Minimum Premium factor for the 1993-94 Experience Period and the 1994-95 Experience Period is the same as for every other Experience Period – 60%. *See* Columbia SJ Mem. at 8, 13-14 (explaining proper application of Minimum Premium factor); *see also* Addendum B, Exh. A at 7, ¶ 7 (definition of Minimum Premium); Addendum to Retrospective Rating Plan Agreement, Exh. A at 6, ¶ 7 (Exh. 4 to SMF) ("Addendum") (same).[9]

b. Obtain the Subject Premium for the 1993-94 Experience Period and the 1994-95 Experience Period from NCRIC's reconciliation spreadsheet.

The Subject Premium NCRIC calculates for each Experience Period appears in Row 1 (entitled "Subject (1st 500 Layer)") of its reconciliation spreadsheets. *See* RFA Response Nos. 4-13; Interrogatory Response No. 2.

As of September 1, 2000, NCRIC calculated the Subject Premiums for the 1993-94 and 1994-95 Experience Periods as:

1993-94 Experience Period	1994-95 Experience Period
$2,765,029	**$2,844,913**

See Line-numbered September 1, 2000 Reconciliation (1994-95 Experience Period); September 1, 1999 Reconciliation (1993-94 Experience Period).

c. Multiply the Subject Premium, *see* II.A.2.b, *supra*, **by the Minimum Premium factor,** *see* II.A.2.a, *supra*, **to obtain the Minimum Premium.**

1993-94 Experience Period	1994-95 Experience Period
$2,765,029 x 60% = **$1,659,017**	$2,844,913 x 60% = **$1,706,948**

16d-001809

[9] The text in the Addendum is a typographical error, which NCRIC fixed in Addendum B. *See* Fargis Dep. at 453.

3. **Substitute the Minimum Premium for the Retro Premium for any year where the latter falls below the former.** *See* Addendum B, Exh. A at 7, ¶ 7 (Minimum Premium is the minimum Retro Premium).

As of September 1, 2000, the Retro Premium fell below the Minimum Premium for the 1993-94 and 1997-98 Experience Periods. *Compare supra*, I.D.2 *with supra*, II.A.1 & II.A.2.c.

* * *

Therefore, as of September 1, 2000, the proper Retro Premium (as limited by the proper Minimum Premium) for each Experience Period was:

1993-94 Experience Period	***1994-95 Experience Period***	***1995-96 Experience Period***
$1,659,017	***$1,960,898***	***$2,536,467***
1996-97 Experience Period	***1997-98 Experience Period***	***1998-99 Experience Period***
$3,063,904	***$2,004,354***	***$2,802,426***

B. Calculate the Maximum Premium for each Experience Period (not necessary for this Reconciliation).

The Maximum Premium for each Experience Period is calculated by multiplying the Subject Premium for each Experience Period by the Maximum Premium factor for that Experience Period.[10] *See* Addendum B, Exh. A at 7, ¶ 7 (definition of Maximum Premium listing multiplier known as the "Maximum Premium factor"). **However, neither party disputes that, as of September 1, 2000, no Retro Premium for any Experience Period exceeded the Maximum Premium.**[11] *See* Line-numbered September 1, 2000 Reconciliation. **Therefore, as of September 1, 2000, the Maximum Premiums did not impact the calculation of any amount of Additional Premium or Return Premium.**

---

[10] To calculate the Maximum Premiums: *First*, the proper Maximum Premium factor for every Experience Period is 133%, *see* Addendum B, Exh. A at 7, ¶ 7 (definition); SMF ¶ 33. *Second*, NCRIC's Subject Premium for each Experience Period appears in Row 1 of NCRIC's reconciliation spreadsheet. *See supra*, p. 9; Line-numbered September 1, 2000 Reconciliation. *Third*, these two values for each Experience Period must be multiplied together to obtain the Maximum Premium for each Experience Period.

[11] The Maximum Premium employed by NCRIC for each Experience Period appears in Row 17 (entitled "Max. Premium") of NCRIC's reconciliation spreadsheets, *see* RFA Response Nos. 104-05, 108-09, 112-13, 116-17, 120-21, and the Maximum Premium factor employed by NCRIC appears in Row 19 (entitled "Max Factor") of NCRIC's reconciliation spreadsheet, *see* RFA Response Nos. 84-85, 88-89, 92-93, 96-97, 100-01.

16d-001810

III. Calculate the Additional Premium or Return Premium due for each Experience Period by subtracting the Retro Premium (as limited by any applicable minimum or maximum) from the Deposit Premium for each Experience Period.

A. Calculate the proper Deposit Premium.

1. Obtain the proper Deposit Premium for some Experience Periods from the applicable reconciliation spreadsheet.

The Deposit Premium for each Experience Period is calculated by multiplying the Subject Premium for each Experience Period by the Deposit Premium factor for that Experience Period. *See* RFA Response Nos. 14-17, 24-27 (NCRIC's Deposit Premium calculations for the 1993-94 and 1994-95 Experience Periods). **However, because Columbia does not dispute NCRIC's Deposit Premium calculations for the 1993-94 and 1994-95 Experience Periods,[12] the Deposit Premium for those periods may be taken from the applicable reconciliation spreadsheet.**

The Deposit Premium appears in Row 2 (entitled "Deposit") of NCRIC's reconciliation spreadsheets. *See* RFA Response Nos. 14-26.

As of September 1, 2000, the correct Deposit Premiums for the 1993-94 and 1994-95 Experience Periods are:

1993-94 Experience Period	1994-95 Experience Period
$2,246,587	**$2,311,491**

See Line-numbered September 1, 2000 Reconciliation (1994-95 Experience Period); September 1, 1999 Reconciliation (1993-94 Experience Period).

16d-001811

[12] *But see supra*, n.6.

2. **Multiply the Subject Premium by the Deposit Premium factor for other Experience Periods to Determine Deposit Premium.**

a. **Obtain the Subject Premium for the 1995-96 Experience Period through the 1998-99 Experience Period from NCRIC's reconciliation spreadsheet.**

As of September 1, 2000, NCRIC lists the Subject Premium, *see supra*, p. II.A.2.b., **as:**

1995-96 Experience Period
$3,288,170

1996-97 Experience Period
$3,495,306

1997-98 Experience Period
$3,340,590

1998-99 Experience Period
$3,609,667

See Line-numbered September 1, 2000 Reconciliation.

b. **Obtain the Deposit Premium factor for the 1995-96 Experience Period through the 1998-99 Experience Period.**

NCRIC uses a Deposit Premium factor of about 62% for the 1995-96 through 1998-99 Experience Periods. *See* RFA Response Nos. 18-23, 28-36. **However, the proper Deposit Premium factor for those Experience Periods is 67%.** *See* Columbia SJ Mem. at 8, 14-15 (explaining proper Deposit premium factor); *see also* Addendum B, Exh. A at 6, ¶ 7 (definition of Deposit Premium listing multiplier known as the "Deposit Premium factor").

c. **Multiply the Subject Premium,** *see supra*, III.A.2.a, **by the Deposit Premium factor,** *see supra*, III.A.2.b, **to determine the Deposit Premium.**

1995-96 Experience Period
$3,288,170 x 67% = **$2,203,074**

1996-97 Experience Period
$3,495,306 x 67% = **$2,341,855**

1997-98 Experience Period
3,340,590 x 67% x = **$2,238,195**

1998-99 Experience Period
$3,609,667 x 67% = **$2,418,476**

16d-001812

B. Calculate the proper Additional Premium or Return Premium for each Experience Period.

1. Subtract the Retro Premium (as limited by the minimum) for each Experience Period from the Deposit Premium for that period.[13]

1993-94 Experience Period	1994-95 Experience Period	1995-96 Experience Period
$2,246,587 - $1,659,017 = **$587,570**	$2,311,491 - $1,960,898 = **$350,593**	$2,203,074 - $2,536,467= **($333,393)**
1996-97 Experience Period	**1997-98 Experience Period**	**1998-99 Experience Period**
$2,341,855 - $3,063,904 = **($722,049)**	$2,238,195 - $2,004,354 = **$233,841**	$2,418,476 - $2,802,426 = **($383,950)**

2. A positive balance for an Experience Period means that Return Premium is due for that period, whereas a negative balance means that Additional Premium is due for that period.[14]

* * *

Therefore, for the September 1, 2000 Reconciliation, the proper Additional Premium or Return Premium for each Experience Period was:

1993-94 Experience Period	*1994-95 Experience Period*	*1995-96 Experience Period*
Return Premium $587,570	***Return Premium $350,593***	***Additional Premium $333,393***
1996-97 Experience Period	*1997-98 Experience Period*	*1998-99 Experience Period*
Additional Premium $722,049	***Return Premium $233,841***	***Additional Premium $383,950***

[13] NCRIC subtracts the Deposit Premium from the Retro Premium. The difference in sign has no effect on the overall premium calculations.

[14] Because NCRIC subtracts backwards, *see supra*, n.13, on its reconciliation spreadsheets, the opposite is true: a negative balance means that Return Premium is due and a positive balance means that Additional Premium is due, *see* SMF ¶¶ 36, 37.

16d-001813

IV. Calculate the total Additional Premium or Return Premium for all Experience Periods that are properly subject to Reconciliation.

A. Under the Plan as modified by the parties' oral agreement, calculate the Additional Premium and/or Return Premium is due *only* for "closed" Experience Periods. *See* NCRIC SMF ¶ 10; Columbia SJ Mem. at 9, 10-11.

1. Determine which Experience Periods are "closed."

Closed Experience Periods are those for which there are no outstanding claims – and therefore, no Loss Reserves. *See* Fargis Dep. at 648-49.

As of September 1, 2000, only the 1993-94 and 1994-95 Experience Periods had no Loss Reserves, and therefore, were closed. *See* Line-numbered September 1, 2000 Reconciliation (showing no Loss Reserves for 1994-95 Experience Period); September 1, 1999 Reconciliation (showing no Loss Reserves for 1993-94 Experience Period).

2. Obtain the total Additional Premium or Return Premium, *see supra*, III.B.2., **for each closed Experience Period,** *see supra*, IV.A.1. **Add these amounts to obtain the total Additional or Return Premium.**

1993-94 Experience Period		1994-95 Experience Period		**Total Return Premium**
$587,570	+	$350,593	=	**$938,163**

* * *

Therefore, as of September 1, 2000, the proper total Return Premium due under the parties' oral agreement was $ 938,163.

16d-001814

B. Absent the oral agreement, calculate the cumulative Additional Premium or Return Premium for all Experience Periods that are properly subject to Reconciliation.

1. Determine what Experience Periods are subject to Reconciliation.

As of September 1, 2000, all Experience Periods prior to the 1999-2000 Experience Period were properly subject to reconciliation. *See* Addendum B, Exh. A at 5, ¶ 5 (Reconciliation date for experience periods; 1998-99 Experience Period is first subject to reconciliation on September 1, 2000); Addendum B-1999, Exh. A.1., at 1 (1999-2000 Experience Period is first subject to reconciliation on September 1, 2001).

2. Obtain the sum of the Additional Premium and/or Return Premium, *see supra*, III.B.2, **for each Experience Period that is properly subject to Reconciliation,** *see supra*, IV.B.1, **to obtain the cumulative Additional Premium.**

1993-94 Experience Period		1994-95 Experience Period		1995-96 Experience Period
$587,570	+	$350,593	+	($333,393)
1996-97 Experience Period		1997-98 Experience Period		1998-99 Experience Period
($722,049)	+	$233,841	+	($383,950)
	=	**Cumulative Additional Premium**		
		($ 267,388)		

* * *

Therefore, as of September 1, 2000, the proper cumulative Additional Premium, absent the oral agreement, was $ 267,388.

16d-001815

V. Apply a credit for Columbia's deposit and/or for NCRIC's payment, to obtain the current total premium due.

A. Under the oral agreement, credit NCRIC for the amount it already paid to Columbia.

NCRIC paid Columbia $172,815 for 1993-94 Experience Period. *See* NCRIC SMF ¶ 46; SMF ¶ 71. **This credit must be subtracted from the total Return Premium,** *see supra*, IV.A.2, **to determine the current total due.**

Return Premium		NCRIC Credit		Current Total Premium Due
$938,163	-	($172,815)	=	**$765,348**

* * *

Therefore, for the September 1, 2000 Reconciliation, under the parties oral agreement, the proper current total Return Premium is $765,348.[15] *Compare* Columbia SJ Mem. at 12.

B. Absent the oral agreement, both NCRIC's payment and Columbia's deposit must be credited.

NCRIC admits that Columbia's deposit must be credited towards any cumulative total due under the Retro Plan. *See* NCRIC SMF ¶ 68; *accord* Line-numbered September 1, 2000 Reconciliation (applying $1,000,000 credit to Columbia).

Additional Premium		Columbia Deposit		NCRIC Credit		Current Total Premium Due
($267,388)	+	**$1,000,000**	-	**($172,815)**	=	**$559,797**

* * *

Therefore, for the September 1, 2000 Reconciliation, absent the oral agreement, the proper current total Return Premium due is approximately $ 559,797.[16] *Compare* Revised September 1, 2000 Reconciliation; (showing amount due of $559,798, due to different rounding); Columbia SJ Mem. at 17.

---

[15] The amount does not include any interest that Columbia is owed for the $1 million deposit, about which there is a dispute of material fact. *See* Statement of Material Facts in Dispute ¶¶ 36, 68.

[16] *See supra*, n.15.

16d-001816

EXHIBIT D

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburn-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Oppositions to Dispositive Motions Filed, February 28, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DECLARATION OF JOSEPH K. LEAHY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

JOSEPH K. LEAHY, an attorney admitted to practice before this Court, affirms the following under penalty of perjury:

1. I am an associate with the firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., which is counsel for Defendant in the above-captioned case. I submit this declaration in support of Defendant's Motion for Summary Judgment.

September 1, 2001 Reconciliation

2. In January, at the deposition of Stephen Fargis, I learned that NCRIC, Inc. had not provided Columbia Hospital for Women Medical Center ("Columbia") with a September 1, 2001 Reconciliation of the Retrospective Rating Plan Agreement ("Retro Plan"). Mr. Fargis testified that a September 5, 2001 spreadsheet it had provided to Columbia was, in all likelihood, not the Reconciliation.

3. I followed up with Columbia after that, in an attempt to locate the Reconciliation. The client was unable to locate any Reconciliation it received during the relevant time, except

the September 5, 2001 document, which Mr. Fargis testified probably was not the Reconciliation.

4. In addition, I repeatedly contacted opposing counsel to determine whether we had received the Reconciliation, but to no avail. For example, I called counsel on January 31, 2002, and sent at least one follow-up email during this week, in an attempt to find out the status of the Reconciliation. I never heard back from opposing counsel about the matter, even though I had asked counsel to get back to me on an expedited basis – even if the answer was that the spreadsheet did not exist or had been produced. Due to my inability to obtain the Reconciliation from opposing counsel, I must assume that it does not exist.

Reconciliation Spreadsheets

5. In addition, attached as exhibits to Defendant's Motion for Summary are several spreadsheets that were created by my office, on behalf of Defendant, for the purpose of this motion. To the best of my knowledge, these spreadsheets are exactly what they purport to be: reproductions of NCRIC's Reconciliations, but with one or more multipliers changed.

6. I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, DC
February 11, 2002

Joseph K. Leahy

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 12th day of February, 2002, a copy of Defendant's Praecipe was served upon the following by facsimile and first class United States mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on the same date, a courtesy copy of the aforementioned Praecipe was served upon the Chambers for Judge Anna Blackburne-Rigsby by hand delivery.

Joseph K. Leahy/SLS
Joseph K. Leahy

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion, Statement of Points and Authorities in Support and Proposed Order were served this 5th day of June 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

NCRIC'S MOTION TO EXCLUDE EVIDENCE OF CERTAIN COUNTERCLAIM DAMAGES

Plaintiff NCRIC, Inc. ("NCRIC") moves to exclude from trial in this matter any evidence defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") may seek to introduce regarding the following categories of its counterclaim damages: (1) alleged reputational harm to Columbia; (2) alleged loss of financing and partnership opportunities; (3) alleged loss of revenue associated with fundraising activities; and (4) the expenses associated with the bankruptcy. As described in the accompanying Memorandum of Points and Authorities, Columbia's expert set forth no opinion regarding the categories of alleged damages; Columbia has not provided other evidence concerning these amounts; and lay testimony on these damages is not appropriate and should be precluded.

Pursuant to D.C. Superior Court Rule 12-I(e), a Proposed Order and Statement of Points and Authorities in Support of this Motion are also attached.

16d-001822

Oral Hearing Requested.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

CERTIFICATION REQUIRED BY D.C. SUPERIOR COURT RULE 12-I(a)

Counsel for Plaintiff NCRIC, Inc. certifies pursuant to Rule 12-I (a) that, despite diligent efforts to obtain consent to this motion, consent from counsel for Defendant Columbia Hospital for Women could not be and was not obtained. Accordingly, this motion is necessary for Plaintiff NCRIC, Inc. to obtain the necessary relief.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF NCRIC'S MOTION TO EXCLUDE EVIDENCE OF CERTAIN COUNTERCLAIM DAMAGES

I. Introduction

In Defendant Columbia Hospital for Women Medical Center Inc.'s ("Columbia") Rule 26(b)(4) statement, Columbia affirmed that Peter Ben Ezra would testify with regard to the calculation of damages proximately caused by Plaintiff NCRIC's torts, including:

> (1) the economic effects, such as lost revenue from decreased patient volume, of certain practice groups from Columbia to competing hospitals, and any reputational harms stemming from related events; (2) the lost revenue resulting from the non-occurrence of specific fundraising activities and events; and (3) the loss of specific sources of financing and partnership opportunities that otherwise would have been available to Columbia.

See Defendant's Rule 26(b)(4) Statement as a Proponent of a Claim at Ex. A. On January 22, 2002, one day before his deposition and less than one week before discovery closed, Mr. Ben Ezra submitted a single report in this case which focuses solely on a

purported lost revenue stream resulting from a decrease in patient admissions alleged to have resulted because of NCRIC's conduct.[1/] Mr. Ben Ezra provided no opinions with respect to the other bases for damages as stated in Columbia's Rule 26(b)(4) statement (hereinafter, "Other Damages"). Columbia objected to providing other witnesses to testify as to these factual matters and failed to produce or identify documentary evidence in support of these claims. As such, in the event this Court permits Mr. Ben Ezra to testify at all,[2/] Columbia should be precluded from offering any evidence beyond the scope of the opinions expressed in his report.

Additionally, if it is Columbia's intent to introduce evidence of Other Damages based on the testimony of lay witnesses associated with Columbia, this effort should be rejected. Opinions regarding the complex economic and financial aspects underlying these categories of damages issues require, as a matter of law, a qualified expert and simply cannot be provided by lay testimony. Significantly, Columbia has failed to establish the factual predicate regarding the Other Damages, and the record to date strongly suggests that any lay testimony would be wholly speculative and would violate the principles of Fed. R. Evid. 403 adopted by this Court. *See Johnson v. United States,* 683 A.2d 1087, 1099 (D.C. 1996) ("regarding the admission of evidence generally, this jurisdiction will follow the policy set forth in Federal Rule of Evidence 403 –'evidence [otherwise relevant] may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . .'").

[1/] Columbia also later submitted a revised declaration from Mr. Ben Ezra in its Opposition to NCRIC's Motion for Summary Judgment. That declaration also focuses solely on alleged decreased patient admissions.

[2/] NCRIC has separately moved to exclude the opinions of Mr. Ben Ezra in their entirety because they are not based on principles and methodology reasonably relied upon by experts in the field. *See* Motion to Exclude the Testimony and Opinions of Peter Ben Ezra dated June 5, 2003.

Finally, less than one month ago and long after the close of discovery, in its Supplemental Responses to NCRIC Interrogatories compelled by this Court, Columbia appears to have set forth yet another potential claim for damages of $1.5 million in expenses incurred in connection with its bankruptcy in 1998. Because Columbia has never before identified these damages in connection with the underlying suit and because there is not a shred of evidence connecting NCRIC's alleged unlawful conduct to these expenses, Columbia should not be permitted to introduce any evidence regarding the $1.5 million in expenses it allegedly incurred as a result of NCRIC's conduct.

For the reasons discussed below, the Court should preclude Columbia from introducing evidence or seeking damages regarding alleged reputational harm, loss of financing and partnership opportunities, the loss of revenue associated with fundraising activities, and the expenses associated with the bankruptcy.

II. Argument

A. Mr. Ben Ezra Cannot Testify Beyond the Scope of his Report

Columbia must concede that Mr. Ben Ezra did not inquire into or express any opinion beyond the "estimated total lost cashflow to the Columbia Hospital for Women as a result of the NCRIC group of doctors leaving or cutting back on patients referred to the Columbia Hospital for Women." *See generally* Ben Ezra Report dated January 22, 2002 attached as Ex. B. Mr. Ben Ezra confirmed this during his deposition.

> Q: I would like to ask you just a couple questions about what you were designated to do in this case. Does your expert report contain any information with respect to any loss of goodwill suffered by Columbia Hospital?
>
> A. Negative. It does not.

Q. Does your report contain any calculations for damages related to the reputation of Columbia in the community?

A. No, it does not.

Q. Does your report contain any information or calculations concerning the loss of specific sources of financing and partnership opportunities that otherwise would have been made available to Columbia?

A. No, it does not.

Q. Does your report contain any information concerning the lost revenue resulting from the non-occurrence of specific fund raising activities?

A. No, it does not.

See Ben Ezra Dep. at 10-11, Ex. C. Mr. Ben Ezra testified that he was not requested to express an expert opinion on these issues, but, if so requested, he would do so. *Id.* at 12. However, he has never amended or supplemented his report to express any opinion on Other Damages.

Mr. Ben Ezra cannot be permitted to testify at trial regarding the Other Damages identified in Columbia's Rule 26(b)(4) statement but not included in his report. "An obvious purpose of Rule 26(b)(4) is to allow meaningful deposition of expert witnesses concerning their opinions." *District of Columbia v. Kora & Williams Corp.*, 743 A.2d 682, 689 (D.C. 1999); *see Mizrahi v. Schwarzmann,* 741 A.2d 399, 404 (D.C. 1999). While Columbia disclosed that Mr. Ben Ezra would testify as to multiple subject matters, Mr. Ben Ezra in fact expressed no such opinion regarding the Other Damages. Accordingly, NCRIC was not able to inquire into any such opinions during Mr. Ben Ezra's deposition. It would be fundamentally unfair and prejudicial in these circumstances, to the extent Mr. Ben Ezra is permitted to testify at trial, to allow him to

express any opinion regarding alleged reputational harms to Columbia, lost revenue resulting from the non-occurrence of specific fundraising activities and events, and the loss of specific sources of financing and partnership opportunities that otherwise would have been available to Columbia.

B. An Expert is Required to Testify Regarding the Other Damages

NCRIC anticipates that Columbia will assert that it can present evidence of Other Damages through the testimony of certain lay witnesses. This Court must not permit Columbia to do so. "The jury may evaluate the facts without expert assistance only if the ultimate issue is 'within the realm of common knowledge and everyday experience.'" *District of Columbia v. Freeman,* 447 A.2d 713, 718 (D.C. 1984) (quoting *Matthews v. District of Columbia,* 387 A.2d 731, 734-35 (D.C.1978)). "Expert testimony must be presented at trial when the matter to be determined is 'so distinctly related to some science, profession, business or occupation as to be beyond the ken of the average layman.'" *District of Columbia v. Freeman*, 477 A.2d 713, 719 (D.C. 1984) (citations omitted).

The categories of Other Damages cannot be characterized as those within the "common knowledge and everyday experience" of the jury.[3/] As one of Columbia's 30(b)(6) designated witness aptly stated with respect to reputational harm: "it would be difficult for me to calculate [the damage to the reputation of the hospital] without having the methodology, an econometric model to follow." *See* Deposition of Larry Wilson at 334, Ex. D; *see also Designers of Georgetown, Inc. v. E.C. Keys & Son*, 436 A.2d 1280

[3/] Columbia itself implicitly recognized that an expert is required to testify regarding Other Damages when it designated Mr. Ben Ezra to testify regarding these categories of damages.

(D.C. 1981) (affirming trial court's exclusion of testimony regarding harm to reputation because witness was not an expert).

With respect to Columbia's claim for a "loss of specific sources of financing and partnership opportunities," Columbia has not identified any specific lost "partnership opportunity" or any associated (and for that matter, quantifiable) loss. Indeed, in its most recent responses to NCRIC's Supplemental Interrogatories, nowhere does Columbia mention that it seeks damages related to lost partnership opportunities. *See* Defendant's Objections and Responses to Plaintiff's Supplemental Interrogatories, Nos. 5-14, Ex. E. Accordingly, NCRIC understands that Columbia has abandoned any such claim for damages.

The only identified loss of "financing" Columbia has asserted relates to Columbia's alleged inability to obtain a HUD loan. *See* Defendant's Objections and Responses to Supplemental Interrogatories, Nos. 8 & 9, Ex. E. In response to NCRIC's interrogatory requesting Columbia to identify the amount of damages it allegedly suffered, Columbia states:

> Columbia was eligible for a $35 million, low-interest HUD loan . . . . But after the Attending Faculty left in Summer/Fall 2000, Columbia's volume and revenues dropped sharply. As a result, HUD advised Columbia that it no longer qualified for the loan. Denial of this loan meant losing the opportunity to reduce the hospital's cost of capital from 10.5% to 4.5% per month.

Id. Apart from the fact that Columbia has not introduced any credible evidence that the inability to obtain the HUD loan was, in any way, related to NCRIC's alleged conduct,[4/] it is self-evident that any related damage calculations would require an expert, with

---

[4/] It is axiomatic that Columbia cannot recover for damages not reasonably foreseeable. *See, e.g., District of Columbia v. Doe*, 524 A.2d 30, 35 n.6 (D.C. 1987) (approving jury instruction noting, in pertinent part, '[m]oreover, it must be shown that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.'") (citation omitted).

16d-001829

financial expertise, to perform some type of damages model and calculation regarding the alleged "[loss] of capital from 10.5% to 4.5% per month." In the absence of any expert testimony, the jury would simply be left to impermissibly speculate the alleged damages related to the HUD loan. *See Jiminez v. Hawk*, 683 A.2d 457, 461-62 (D.C. 1996) ("[A] jury should never be permitted to guess as to a material element of the case such as damages, negligence, or causation.").

Finally, an expert would also be required to testify regarding Columbia's allegation that, because of NCRIC, it has suffered the loss of "more than $1.5 million in contributions" because of "the lost opportunity to hold a gala." See Columbia's Response to Supplemental Interrogatory Nos. 8 & 9, attached as Ex. E. An expert would be required to evaluate the history of fundraising at Columbia, the success and failure of fundraising at comparable institutions in a relevant geographic area, and the state of the economy leading up to and at the time of the event. As discussed below, the only evidence Columbia has set forth regarding this category of alleged damages is a single statement by Columbia's witness, Dr. Safa Rifka, that the prior year's event raised $1.5 million. *See* Deposition of Dr. Rifka dated June 21, 2001 at 79, Ex. F. And, in any event, Columbia failed to provide documentary evidence of other counterclaim damages.

C. Evidence Regarding Other Damages Should be Excluded as Speculative

Even if the Court deems lay testimony proper regarding the Other Damages, Columbia will not be able to put forth anything but raw speculation and conjecture regarding the amount of those alleged damages. Columbia designated Larry Wilson, in part, to testify concerning damages and his testimony, as described below, revealed no substantive evidence on these points.

For example, with respect to any alleged loss of a partnership opportunity, Mr. Wilson specifically testified that he was unaware of any specific partnership opportunities that Columbia lost as a result of any acts by NCRIC.

> Q. Were there any partnership opportunities the hospital lost as a result of the actions of NCRIC?
>
> A. Possibly.
>
> * * *
>
> Q. Did you have any discussions with any other business, hospital, entity about forming a partnership?
>
> A. In 1998, you say?
>
> Q. From 1998 through the present.
>
> A. We've had several discussions with the possibility of affiliation and partnerships, yes.
>
> * * *
>
> Q. I want to know the partnership opportunities that you sought out that you lost because of something that NCRIC did or something you claim NCRIC did.
>
> A. Oh, I'm saying something NCRIC could have done. I mean this whole lawsuit, the whole insurance suit could have something to do with it. I'm not saying, I didn't make the allegation that it definitely did. You asked me the question is it possible. And I answered that yes, it is possible it could have negatively impacted Columbia Hospital for Women.
>
> Q. Is there a specific opportunity that Columbia was pursuing that it lost from 1998 to the present?
>
> A. I'm saying, again, it could have lost.
>
> Q. So there is nothing specific that there was.
>
> A. Right.

See Larry Wilson Dep. dated July 16, 2001 at 336-40, Ex. D. Similarly, both Mr. Wilson and Dr. Rifka could only generally testify that it was their belief that rumors (speculated to have begun by NCRIC) was a "major concern" for the cancellation of an annual gala to

16d-001831

be held in April 2001. Apart from the wholly speculative testimony regarding the cause of the cancellation, neither Dr. Rifka nor Mr. Wilson (or any other Columbia witness) have any basis to testify regarding the amount of damages that allegedly resulted from the cancellation. While Dr. Rifka testified that the 2000 gala raised $1.5 million, *see* Rifka Dep. at 79, there is no basis to infer that Columbia would have raised the same, more or less, in the following year. *See* Responses to Plaintiff's Supplemental Responses to Interrogatories Nos. 8, 9, 12 (unsigned by client representative) (asserting that 2001 gala fundraiser "reasonably expected to garner more than $1.5 million in contributions"). Mr. Wilson similarly testified that he ["did not] have the exact numbers [that the hospital suffered from its inability to do the fundraising] . . ."). *See* Wilson Dep. at 343-44.. Similarly, Dr. Rifka again only responds in generalities and platitudes about NCRIC's conduct without providing any specifics. *See* Rifka Dep. II, at 129, Ex. F.

D. Columbia Should Be Precluded from Introducing Evidence Regarding the Expenses it Incurred in Bankruptcy

As mentioned above, Columbia has, for the first time, seemingly asserted that its damages claims have expanded by $1.5 million related to expenses it incurred in connection with its bankruptcy in 1998. *See* Defendant's Response to Supplemental Interrogatory Nos. 5, 6, 7 & 10, Ex. E. Columbia has not produced a single document relating to these expenses and has not provided any calculation regarding how it arrives at the $1.5 million figure.[5/] NCRIC and this Court are left to guess at what amounts even comprise the claim and whether any of those amounts, perhaps, overlap with any other

[5/] NCRIC sought discovery from Columbia regarding the "method of calculation and factual bases for any monetary damages [Columbia] claimed against [NCRIC] by way of counterclaim . . ." and identification of all supporting documents. *See* Defendant's Objections and Responses to Plaintiff's First Set of Interrogatories, Nos. 6, 7, 12 (attached as Ex. G). Columbia failed to respond with any information regarding the now asserted $1.5 million expenses incurred in bankruptcy. Columbia was specifically requested to supplement these discovery responses on July 15, 2001. See Ex. H. Again, Columbia failed to produce any response regarding this category of alleged damages.

16d-001832

damage claim Columbia has already asserted. Columbia cannot be permitted to expand the claims in its Answer and Amended Counterclaims by interjecting offhanded assertions in belated discovery responses more than a year after discovery closed, and doing so in such a manner as to preclude NCRIC from obtaining anything of substance with respect to the specific facts behind the claim.

III. Conclusion

For the reasons discussed above, NCRIC, Inc. respectfully requests that the Court preclude Columbia from introducing any evidence or seeking damages regarding alleged reputational harm, loss of financing and partnership opportunities, the loss of revenue associated with fundraising activities, and the expenses associated with the bankruptcy. A proposed order is attached.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

DC244469

16d-001833

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

ORDER

UPON CONSIDERATION of NCRIC's Motion to Exclude Evidence of Certain Counterclaim Damages and the grounds stated in the Statement of Points and Authorities in Support thereof, it is this _____ day of ____ 2003 hereby

ORDERED, that NCRIC's Motion to Exclude Evidence of Certain Counterclaim Damages is **GRANTED**.

_____
The Honorable Anna Blackburne-Rigsby
Superior Court for the District of Columbia

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

16d-001835

EXHIBIT A

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Proponent's Rule 26(b)(4) Statement Due: June 26, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DEFENDANT'S RULE 26(B)(4) STATEMENT
AS A PROPONENT OF A CLAIM

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby states, pursuant to District of Columbia Superior Court Rules of Civil Procedure 16(b)(3) and 26(b)(4), that it expects to call at trial, as an expert witness on its behalf:

1. **Peter Ben Ezra, 4930 Fort Sumner Drive, Bethesda, MD 20816-1945.**

Mr. Ben Ezra (whose curriculum vitae is attached hereto as Exhibit A) is expected to testify with regard to the calculation of damages proximately caused by NCRIC's torts, including (1) the economic effects, such as lost revenue from decreased patient volume, of certain practice groups moving their practices from Columbia to competing hospitals, and any reputational harms stemming from related events; (2) the lost revenue resulting from the non-occurrence of specific fundraising activities and events; and (3) the loss of specific sources of financing and partnership opportunities that otherwise would have been available to Columbia.

The substance of the facts and opinions to which Mr. Ben Ezra is expected to testify is: that, as a proximate result of NCRIC's torts, Columbia has suffered and will suffer economic harm including loss of revenue, damaged reputation in the community, and loss of good will; and

further, that the total sum of economic harm that Columbia has suffered and will suffer as a result of NCRIC's torts runs in the tens of millions of dollars.

For his expected opinion testimony, Mr. Ben Ezra, a Certified Public Accountant and Professorial Lecturer in the Department of Accountancy at the George Washington University, draws upon his professional training, knowledge and experience in the fields of financial accounting, managerial accounting, and financial statement analysis. The factual data upon which Mr. Ben Ezra's expected testimony depends includes his analysis of Columbia's historical records and reports, operating statistics and financial results, and other relevant market and financial data. Mr. Ben Ezra's expected testimony also will draw upon the intimate knowledge of Columbia's financial affairs the he developed as a financial advisor and consultant to the hospital for several years, from the period of receivership through the period of bankruptcy.

2. Ms. Julia M. Brill, Esq. 2105 Bay Front Terrace, Annapolis, MD 21401

Ms. Brill (whose curriculum vitae is attached hereto as Exhibit B), or any similarly-qualified expert who may assist her, is expected to testify with regard to (1) methods, formulas and criteria for setting loss reserves by hospitals and/or insurers for medical malpractice liability claims in the District of Columbia and/or surrounding metropolitan area; and (2) the reasonableness and propriety, in light of the industry standards for setting loss reserves for medical malpractice liability claims in the District of Columbia and/or surrounding metropolitan area, and in light of other loss reserves of the same nature set by NCRIC in the same region, of the loss reserves set by NCRIC under the Retrospective Rating Plan Agreement.

Due to NCRIC, Inc.'s untimely production of documents, Ms. Brill has not had an adequate opportunity to review and analyze all of the documents necessary for her to evaluate the reasonableness and propriety of NCRIC's loss reserves. As such, Ms. Brill has not yet fully

developed her factual and opinion testimony. However, Columbia expects that, once Ms. Brill complete her review of the relevant NCRIC claim files, she may testify that NCRIC's loss reserves are unreasonable and improper, in light of the aforementioned industry standards.

The factual basis for Ms. Brill's opinions, should she complete her review of NCRIC's claim files and fully develop her testimony, will be a detailed understanding of each claim for which NCRIC set a loss reserve, developed through a careful review of the files. Ms. Brill's opinion will be based, it is expected, on her experience as an attorney and risk management consultant in this area.

* * *

Columbia makes the forgoing statements regarding the experts it expects to call at trial subject to the following qualifications: (1) Columbia reserves the right to call any witness listed in Defendant's Initial Rule 26(B)(4) Statement as a Proponent of a Claim (March 12, 2001), or any other suitable person later discovered by Columbia, if it is unable to retain Ms. Brill as an expert; (2) Columbia reserves its right to supplement or change this statement, including its expert witness designations, at any time during the course of discovery, or if its currently-pending motion to extend the time for filing this statement is granted; and (3) Columbia reserves its right to designate any of the foregoing, or others, as rebuttal expert witnesses at a later time.

DATED: June 26, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

EXHIBIT B

Report of:
Peter Ben Ezra
Expert Witness

Estimated Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women (in total dollars lost and the present value of the dollars lost discounted at the cost of capital)

DEPOSITION EXHIBIT
Ben Ezra 1
11/27/07 CWW

01/22/02

Opinion of Peter Ben Ezra, Expert Witness:

It is my expert opinion that the Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women in total dollars lost is about $50 million and the present value of the dollars lost discounted at the hospital's highest (marginal) cost of capital is about $21.5 million.

FINDINGS: 1/22/02 13:51

Estimated Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women (in total dollars lost and the present value of the dollars lost discounted at the cost of capital) projected over the next 20 years.

1 The estimated net realizable value is calculated by taking total charges less adjustments which is the total amount available for collections times the percentage of charges collected to date for the previous one year period. The percentage of charges collected based on the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women for the previous year ended 9/30/2000 was **94.22%**

2 As a result of the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women, the total available for collections from the patient referrals to the the Columbia Hospital for Women by this group, decreased by **$ 3,932,163.09**

(from $ 5,239,792.64 to $ 1,307,629.55 = $ 3,932,163.09)
from the one year period "October 1, 1999 to September 30, 2000" to the one year periiod "October 1, 2000 to September 30, 2001".

3 As a result of the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women, the total available for collections from the patient referrals to the the Columbia Hospital for Women by this group, percentage decreased by **75.04%**

($ 3,932,163.09 divided by $ 5,239,792.64 = 75.04%)
from the one year period "October 1, 1999 to September 30, 2000" to the one year periiod "October 1, 2000 to September 30, 2001".

16d-001844

4 The net realizable value of the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women was **$ 3,704,918.38** calculated as follows

(94.22% times $ 3,932,163.09 = $ 3,704,918.38)

5 Assuming that the marginal cost of providing services is equal to 30% of the net realizable value, then the cost savings as of a result of the the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women by this group, decreased by **$ 1,111,475.51**

($ 3,704,918.38 times 30% = $ 1,111,475.51)

from the one year period "October 1, 1999 to September 30, 2000" to the one year periiod "October 1, 2000 to September 30, 2001".

6 Assuming that the marginal cost of providing services is equal to 30% of the net realizable value, then the conbtribution margin as of a result of the the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women by this group, decreased by **$ 2,593,442.86**

($ 3,704,918.38 less $ 1,111,475.51 = $ 2,593,442.86)

from the one year period "October 1, 1999 to September 30, 2000" to the one year periiod "October 1, 2000 to September 30, 2001".

7 Assuming that the cost of capital for the Columbia Hospital for Women is **10.50%**

and the annual loss in contribution margin (lost net income) as a result of the the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women by this group, decreased by a total of: **$ 2,593,442.86** per year,

8 Then the net present value of the total loss to the Columbia Hospital for Women was **$ 22,013,195.55**

over the next 20 years assuming an interest rate (or discount rate) of 10.50%

as of September 1, 2001.

16d-001845

Estimated Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women (in total dollars lost and the present value of the dollars lost discounted at the cost of capital) projected over the next 20 years.

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 2,593,442.86	$ 2,593,442.86	100.0000%	$ 2,593,442.86	$ 2,593,442.86
2	10/1/01-9/30/02	$ 2,593,442.86	$ 5,186,885.73	89.5000%	$ 2,321,131.36	$ 4,914,574.23
3	10/1/02-9/30/03	$ 2,593,442.86	$ 7,780,328.59	80.1025%	$ 2,077,412.57	$ 6,991,986.80
4	10/1/03-9/30/04	$ 2,593,442.86	$ 10,373,771.45	71.6917%	$ 1,859,284.25	$ 8,851,271.05
5	10/1/04-9/30/05	$ 2,593,442.86	$ 12,967,214.32	64.1641%	$ 1,664,059.40	$ 10,515,330.45
6	10/1/05-9/30/06	$ 2,593,442.86	$ 15,560,657.18	57.4269%	$ 1,489,333.17	$ 12,004,663.61
7	10/1/06-9/30/07	$ 2,593,442.86	$ 18,154,100.04	51.3971%	$ 1,332,953.18	$ 13,337,616.80
8	10/1/07-9/30/08	$ 2,593,442.86	$ 20,747,542.91	46.0004%	$ 1,192,993.10	$ 14,530,609.90
9	10/1/08-9/30/09	$ 2,593,442.86	$ 23,340,985.77	41.1703%	$ 1,067,728.82	$ 15,598,338.72
10	10/1/09-9/30/10	$ 2,593,442.86	$ 25,934,428.63	36.8474%	$ 955,617.30	$ 16,553,956.02
11	10/1/10-9/30/11	$ 2,593,442.86	$ 28,527,871.50	32.9785%	$ 855,277.48	$ 17,409,233.50
12	10/1/11-9/30/12	$ 2,593,442.86	$ 31,121,314.36	29.5157%	$ 765,473.35	$ 18,174,706.85
13	10/1/12-9/30/13	$ 2,593,442.86	$ 33,714,757.22	26.4166%	$ 685,098.64	$ 18,859,805.49
14	10/1/13-9/30/14	$ 2,593,442.86	$ 36,308,200.09	23.6428%	$ 613,163.29	$ 19,472,968.78
15	10/1/14-9/30/15	$ 2,593,442.86	$ 38,901,642.95	21.1603%	$ 548,781.14	$ 20,021,749.92
16	10/1/15-9/30/16	$ 2,593,442.86	$ 41,495,085.81	18.9385%	$ 491,159.12	$ 20,512,909.04
17	10/1/16-9/30/17	$ 2,593,442.86	$ 44,088,528.68	16.9500%	$ 439,587.41	$ 20,952,496.46
18	10/1/17-9/30/18	$ 2,593,442.86	$ 46,681,971.54	15.1702%	$ 393,430.74	$ 21,345,927.19
19	10/1/18-9/30/19	$ 2,593,442.86	$ 49,275,414.40	13.5773%	$ 352,120.51	$ 21,698,047.70
20	10/1/19-9/30/20	$ 2,593,442.86	$ 51,868,857.27	12.1517%	$ 315,147.85	$ 22,013,195.55
TOTAL		$ 51,868,857.27			$ 22,013,195.55	

16d-001846

Estimated Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women (in total dollars lost and the present value of the dollars lost discounted at the cost of capital) assuming each doctor retires on their 65th birthday.

NCRIC Group of Doctors by Physician Name	Number	Assumed Retirement Date (age 65)	Total Lost Cashflow	Present Value of Lost Cashflow
BIS, KATHLEEN, MD	202	11/1/11	$ 377,536.65	$ 240,019.18
BIS/ROBERTS	44141	11/1/11	$ 7,857.22	$ 4,995.23
BLANK, KENNETH A., MD	176	4/1/21	$ 5,842,851.55	$ 2,434,730.26
BOHON, CONSTANCE H., MD	18	10/1/17	$ 1,057,812.74	$ 522,924.97
BOLAN, JEAN C., MD	244	10/1/16	$ 716,388.59	$ 354,143.48
BRONSKY, GEORGE F., MD	131	10/1/12	$ 1,434,331.16	$ 837,642.91
BUSCH, REBECCA J., MD	166	9/1/24	$ 2,858,701.68	$ 1,058,142.80
DROGULA, CYNTHIA L., MD	7726	8/1/27	$ 232,336.49	$ 78,255.77
DUKES, MARTIN W. JR., MD	45	10/1/10	$ 1,610,611.37	$ 1,028,053.87
FLAX, RICHARD, MD	750	6/1/05	$ 286,292.04	$ 235,620.58
HIRSCH, FLORIE, MD	75	2/1/14	$ 413,342.48	$ 227,883.59
HORWITZ, STEPHEN I, MD	80	5/1/15	$ 3,128,108.74	$ 1,637,050.13
JOHNSON, HEATHER I, MD	333	10/1/18	$ 3,140,934.91	$ 1,436,232.57
KOCH, EDWARD G. , MD	195	7/1/07	$ 58,444.89	$ 43,416.59
KESSELMAN, AMY J. MD	349	4/1/24	$ 2,430,505.11	$ 912,237.80
LARSON, CHARLOTTE G., MD	1104	1/1/29	$ 2,657,566.91	$ 856,871.61
NEWMAN, RICHARD S., MD	125	4/1/17	$ 4,371,201.16	$ 2,117,854.33
NGUYEN, H. LISA, MD	1124	8/1/32	$ 6,766,040.29	$ 1,964,951.50
POWERS, DAVID N., MD	136	10/1/17	$ 1,323,252.86	$ 628,858.61
ROBERTS, MORTON J., MD	141	8/1/07	$ 170,593.67	$ 126,251.66
RUBIN, APRIL, MD	138	9/1/16	$ 290,758.38	$ 144,199.34
S,H,B,N,B,B,K,P	44146	8/1/32	$ 637,119.67	$ 185,028.35
SAFRAN, JULIAN E., MD	146	11/1/15	$ 923,951.63	$ 473,875.40
SANDERS, NANCY L., MD	102	4/1/22	$ 4,199,226.55	$ 1,688,567.06
SCHAFFEL, JANET, MD	147	7/1/19	$ 3,379,546.91	$ 1,558,679.58
TALEON, VITTORIO S., MD	276	7/1/19	$ 1,393,919.97	$ 619,462.47
W.P.A., BSJSN	44170	8/1/27	$ 316,196.57	$ 106,501.60
TOTAL			$ 50,025,430.18	$ 21,522,451.23

1/22/02 13:51

Estimated Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women (in total dollars lost and the present value of the dollars lost discounted at the cost of capital) projected over the next 20 years.

Assumptions

Lost Total Amount Available for Collections:	$ 3,932,163.09
Precentage of Available Charges collected for the previous year to date:	94.22%
Lost Marginal Revenue [Calculated]	$ 3,704,916.38
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 2,593,442.86
Cost of Capital to the Columbia Hospital for Women:	10.50%

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 2,593,442.86	$ 2,593,442.86	100.0000%	$ 2,593,442.86	$ 2,593,442.86
2	10/1/01-9/30/02	$ 2,593,442.86	$ 5,186,885.73	89.5000%	$ 2,321,131.36	$ 4,914,574.23
3	10/1/02-9/30/03	$ 2,593,442.86	$ 7,780,328.59	80.1025%	$ 2,077,412.57	$ 6,991,986.80
4	10/1/03-9/30/04	$ 2,593,442.86	$ 10,373,771.45	71.6917%	$ 1,859,284.25	$ 8,851,271.05
5	10/1/04-9/30/05	$ 2,593,442.86	$ 12,967,214.32	64.1641%	$ 1,664,059.40	$ 10,515,330.45
6	10/1/05-9/30/06	$ 2,593,442.86	$ 15,560,657.18	57.4269%	$ 1,489,333.17	$ 12,004,663.61
7	10/1/06-9/30/07	$ 2,593,442.86	$ 18,154,100.04	51.3971%	$ 1,332,953.18	$ 13,337,616.80
8	10/1/07-9/30/08	$ 2,593,442.86	$ 20,747,542.91	46.0004%	$ 1,192,993.10	$ 14,530,609.90
9	10/1/08-9/30/09	$ 2,593,442.86	$ 23,340,985.77	41.1703%	$ 1,067,728.82	$ 15,598,338.72
10	10/1/09-9/30/10	$ 2,593,442.86	$ 25,934,428.63	36.8474%	$ 955,617.30	$ 16,553,956.02
11	10/1/10-9/30/11	$ 2,593,442.86	$ 28,527,871.50	32.9785%	$ 855,277.48	$ 17,409,233.50
12	10/1/11-9/30/12	$ 2,593,442.86	$ 31,121,314.36	29.5157%	$ 765,473.35	$ 18,174,706.85
13	10/1/12-9/30/13	$ 2,593,442.86	$ 33,714,757.22	26.4166%	$ 685,098.64	$ 18,859,805.49
14	10/1/13-9/30/14	$ 2,593,442.86	$ 36,308,200.09	23.6428%	$ 613,183.29	$ 19,472,988.78
15	10/1/14-9/30/15	$ 2,593,442.86	$ 38,901,642.95	21.1603%	$ 548,781.14	$ 20,021,749.92
16	10/1/15-9/30/16	$ 2,593,442.86	$ 41,495,085.81	18.9385%	$ 491,159.12	$ 20,512,909.04
17	10/1/16-9/30/17	$ 2,593,442.86	$ 44,088,528.68	16.9500%	$ 439,587.41	$ 20,952,496.46
18	10/1/17-9/30/18	$ 2,593,442.86	$ 46,681,971.54	15.1702%	$ 393,430.74	$ 21,345,927.19
19	10/1/18-9/30/19	$ 2,593,442.86	$ 49,275,414.40	13.5773%	$ 352,120.51	$ 21,698,047.70
20	10/1/19-9/30/20	$ 2,593,442.86	$ 51,868,857.27	12.1517%	$ 315,147.85	$ 22,013,195.55
TOTAL		$ 51,868,857.27			$ 22,013,195.55	

FINDINGS

TOTAL

TOTAL - NCRIC DOCTORS GROUP	10/01/2000 - 09/30/2001	%	10/01/1999 - 09/30/2000	%
NUMBER OF PATIENTS	1,514.00		3,434.00	
TOTAL CHARGES	$ 3,058,943.41	100.00%	$ 11,695,055.78	100.00%
TOTAL ADJUSTMENTS	$ 1,751,313.86	57.25%	$ 6,455,263.14	55.20%
TOTAL CHARGES LESS ADJUSTMENTS	$ 1,307,629.55	42.75%	$ 5,239,792.64	44.80%
TOTAL PAYMENTS	$ 1,132,720.93	37.03%	$ 4,936,978.35	42.21%
Percentage of Net Charges Collected To Date	86.62%	86.62%	94.22%	94.22%
Estimated Net Realizable Value	$ 1,232,059.87	94.22%		

TOTAL - ALL DOCTORS	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS	33,688.00		28,529.00	
TOTAL CHARGES	$ 66,552,627.05	100.00%	$ 55,696,477.27	100.00%
TOTAL ADJUSTMENTS	$ 34,893,907.05	52.43%	$ 30,626,015.64	54.99%
TOTAL CHARGES LESS ADJUSTMENTS	$ 31,658,720.00	47.57%	$ 25,070,461.63	45.01%
TOTAL PAYMENTS	$ 21,031,313.61	31.60%	$ 21,916,011.12	39.35%
Percentage of Net Charges Collected To Date	66.43%	66.43%	87.42%	87.42%
Estimated Net Realizable Value	$ 27,675,312.48	87.42%		

TOTAL - NON-NCRIC DOCTORS GROUP	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS	32,174.00		25,095.00	
TOTAL CHARGES	$ 63,493,683.64	100.00%	$ 44,001,421.49	100.00%
TOTAL ADJUSTMENTS	$ 33,142,593.19	52.20%	$ 24,170,752.50	54.93%
TOTAL CHARGES LESS ADJUSTMENTS	$ 30,351,090.45	47.80%	$ 19,830,668.99	45.07%
TOTAL PAYMENTS	$ 19,898,592.68	31.34%	$ 16,979,032.77	38.59%
Percentage of Net Charges Collected To Date	65.56%	65.56%	85.62%	85.62%
Estimated Net Realizable Value	$ 25,986,625.04	85.62%		

FINDINGS

Per Patient

TOTAL - NCRIC DOCTORS GROUP	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS	1,514.00		3,434.00	
TOTAL CHARGES	$ 2,020.44	100.00%	$ 3,405.67	100.00%
TOTAL ADJUSTMENTS	$ 1,156.75	57.25%	$ 1,879.81	55.20%
TOTAL CHARGES LESS ADJUSTMENTS	$ 863.69	42.75%	$ 1,525.86	44.80%
TOTAL PAYMENTS	$ 748.16	37.03%	$ 1,437.68	42.21%
Percentage of Net Charges Collected To Date	86.62%	86.62%	94.22%	94.22%
Estimated Net Realizable Value	$ 813.78	94.22%		

TOTAL - ALL DOCTORS	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS	33,688.00		28,529.00	
TOTAL CHARGES	$ 1,975.56	100.00%	$ 1,952.28	100.00%
TOTAL ADJUSTMENTS	$ 1,035.80	52.43%	$ 1,073.50	54.99%
TOTAL CHARGES LESS ADJUSTMENTS	$ 939.76	47.57%	$ 878.77	45.01%
TOTAL PAYMENTS	$ 824.30	31.80%	$ 768.20	39.35%
Percentage of Net Charges Collected To Date	66.43%	66.43%	87.42%	87.42%
Estimated Net Realizable Value	$ 821.52	87.42%		

TOTAL - NON-NCRIC DOCTORS GROUP	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS	32,174.00		25,095.00	
TOTAL CHARGES	$ 1,973.45	100.00%	$ 1,753.39	100.00%
TOTAL ADJUSTMENTS	$ 1,030.10	52.20%	$ 963.17	54.93%
TOTAL CHARGES LESS ADJUSTMENTS	$ 943.34	47.80%	$ 790.22	45.07%
TOTAL PAYMENTS	$ 818.47	31.34%	$ 676.59	38.59%
Percentage of Net Charges Collected To Date	65.56%	65.56%	85.62%	85.62%
Estimated Net Realizable Value	$ 807.69	85.62%		

BIS, KATHLEEN, MD

Number 202 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	54	62
TOTAL CHARGES	$ 9,941.86	$ 123,351.40
TOTAL ADJUSTMENTS	$ 4,154.06	$ 57,603.80
TOTAL CHARGES LESS ADJUSTMENTS	$ 5,787.80	$ 65,747.60
TOTAL PAYMENTS	$ 4,968.65	$ 58,651.17
Percentage of Net Charges Collected To Date	85.85%	89.21%
Estimated Net Realizable Value	$ 5,163.10	

6

Assumptions

Lost Total Amount Available for Collections:	$ 59,959.80
Precentage of Available Charges collected for the previous year to date:	89.21%
Lost Marginal Revenue [Calculated]	$ 53,488.07
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 37,441.65
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 11/1/11

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 37,441.65	$ 37,441.65	100.0000%	$ 37,441.65	$ 37,441.65
2	10/1/01-9/30/02	$ 37,441.65	$ 74,883.30	89.5000%	$ 33,510.28	$ 70,951.93
3	10/1/02-9/30/03	$ 37,441.65	$ 112,324.95	80.1025%	$ 29,991.70	$ 100,943.63
4	10/1/03-9/30/04	$ 37,441.65	$ 149,766.60	71.6917%	$ 26,842.57	$ 127,786.20
5	10/1/04-9/30/05	$ 37,441.65	$ 187,208.26	64.1641%	$ 24,024.10	$ 151,810.30
6	10/1/05-9/30/06	$ 37,441.65	$ 224,649.91	57.4269%	$ 21,501.57	$ 173,311.87
7	10/1/06-9/30/07	$ 37,441.65	$ 262,091.56	51.3971%	$ 19,243.90	$ 192,555.77
8	10/1/07-9/30/08	$ 37,441.65	$ 299,533.21	46.0004%	$ 17,223.29	$ 209,779.07
9	10/1/08-9/30/09	$ 37,441.65	$ 336,974.86	41.1703%	$ 15,414.85	$ 225,193.92
10	10/1/10-9/30/11	$ 37,441.65	$ 374,416.51	36.8474%	$ 13,796.29	$ 238,990.21
11	10/1/11-11/01/11	$ 3,120.14	$ 377,536.65	32.9785%	$ 1,028.97	$ 240,019.18
TOTAL		$ 377,536.65			$ 240,019.18	

16d-001851

BIS/ROBERTS

Number 44141 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	2	14
TOTAL CHARGES	$ 37.00	$ 1,971.00
TOTAL ADJUSTMENTS	$ 32.66	$ 544.42
TOTAL CHARGES LESS ADJUSTMENTS	$ 4.34	$ 1,426.58
TOTAL PAYMENTS	$ 4.34	$ 1,116.58
Percentage of Net Charges Collected To Date	100.00%	78.27%
Estimated Net Realizable Value	$ 3.40	

Assumptions

Lost Total Amount Available for Collections:	$ 1,422.24
Precentage of Available Charges collected for the previous year to date:	78.27%
Lost Marginal Revenue [Calculated]	$ 1,113.18
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 779.23
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 11/1/11 Used Kathleen Bis

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 779.23	$ 779.23	100.0000%	$ 779.23	$ 779.23
2	10/1/01-9/30/02	$ 779.23	$ 1,558.46	89.5000%	$ 697.41	$ 1,476.64
3	10/1/02-9/30/03	$ 779.23	$ 2,337.68	80.1025%	$ 624.18	$ 2,100.82
4	10/1/03-9/30/04	$ 779.23	$ 3,116.91	71.6917%	$ 558.64	$ 2,659.46
5	10/1/04-9/30/05	$ 779.23	$ 3,896.14	64.1641%	$ 499.98	$ 3,159.45
6	10/1/05-9/30/06	$ 779.23	$ 4,675.37	57.4269%	$ 447.49	$ 3,606.93
7	10/1/06-9/30/07	$ 779.23	$ 5,454.60	51.3971%	$ 400.50	$ 4,007.43
8	10/1/07-9/30/08	$ 779.23	$ 6,233.83	46.0004%	$ 358.45	$ 4,365.88
9	10/1/08-9/30/09	$ 779.23	$ 7,013.05	41.1703%	$ 320.81	$ 4,686.69
10	10/1/10-9/30/11	$ 779.23	$ 7,792.28	36.8474%	$ 287.13	$ 4,973.82
11	10/1/11-11/01/11	$ 64.94	$ 7,857.22	32.9785%	$ 21.41	$ 4,995.23
TOTAL		$ 7,857.22			$ 4,995.23	

BLANK, KENNETH A., MD

Number 176

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	44	242
TOTAL CHARGES	$ 101,282.97	$ 1,039,230.95
TOTAL ADJUSTMENTS	$ 54,865.08	$ 567,739.37
TOTAL CHARGES LESS ADJUSTMENTS	$ 46,417.89	$ 471,491.58
TOTAL PAYMENTS	$ 39,593.65	$ 451,629.88
Percentage of Net Charges Collected To Date	85.30%	95.79%
Estimated Net Realizable Value	$ 44,462.52	

Assumptions

Lost Total Amount Available for Collections:	$ 425,073.69
Precentage of Available Charges collected for the previous year to date:	95.79%
Lost Marginal Revenue [Calculated]	$ 407,167.36
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] Is the lost cash flow per year	$ 285,017.15
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 4/1/21

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 285,017.15	$ 285,017.15	100.0000%	$ 285,017.15	$ 285,017.15
2	10/1/01-9/30/02	$ 285,017.15	$ 570,034.30	89.5000%	$ 255,090.35	$ 540,107.50
3	10/1/02-9/30/03	$ 285,017.15	$ 855,051.45	80.1025%	$ 228,305.86	$ 768,413.36
4	10/1/03-9/30/04	$ 285,017.15	$ 1,140,068.59	71.6917%	$ 204,333.75	$ 972,747.10
5	10/1/04-9/30/05	$ 285,017.15	$ 1,425,085.74	64.1641%	$ 182,878.70	$ 1,155,625.81
6	10/1/05-9/30/06	$ 285,017.15	$ 1,710,102.89	57.4269%	$ 163,676.44	$ 1,319,302.25
7	10/1/06-9/30/07	$ 285,017.15	$ 1,995,120.04	51.3971%	$ 146,490.41	$ 1,465,792.66
8	10/1/07-9/30/08	$ 285,017.15	$ 2,280,137.19	46.0004%	$ 131,108.92	$ 1,596,901.58
9	10/1/08-9/30/09	$ 285,017.15	$ 2,565,154.34	41.1703%	$ 117,342.48	$ 1,714,244.06
10	10/1/10-9/30/11	$ 285,017.15	$ 2,850,171.49	36.8474%	$ 105,021.52	$ 1,819,265.58
11	10/1/11-9/30/12	$ 285,017.15	$ 3,135,188.63	32.9785%	$ 93,994.26	$ 1,913,259.85
12	10/1/12-9/30/13	$ 285,017.15	$ 3,420,205.78	29.5157%	$ 84,124.86	$ 1,997,384.71
13	10/1/13-9/30/14	$ 285,017.15	$ 3,705,222.93	26.4166%	$ 75,291.75	$ 2,072,676.46
14	10/1/14-9/30/15	$ 285,017.15	$ 3,990,240.08	23.6428%	$ 67,386.12	$ 2,140,062.58
15	10/1/15-9/30/16	$ 285,017.15	$ 4,275,257.23	21.1603%	$ 60,310.58	$ 2,200,373.16
16	10/1/16-9/30/17	$ 285,017.15	$ 4,560,274.38	18.9365%	$ 53,977.97	$ 2,254,351.13
17	10/1/17-9/30/18	$ 285,017.15	$ 4,845,291.53	16.9500%	$ 48,310.28	$ 2,302,661.41
18	10/1/18-9/30/19	$ 285,017.15	$ 5,130,308.67	15.1702%	$ 43,237.70	$ 2,345,899.11
19	10/1/19-9/30/20	$ 285,017.15	$ 5,415,325.82	13.5773%	$ 38,697.74	$ 2,384,596.85
20	10/1/19-9/30/20	$ 285,017.15	$ 5,700,342.97	12.1517%	$ 34,634.48	$ 2,419,231.33
21	10/1/20-4/01/21	$ 142,508.57	$ 5,842,851.55	10.8758%	$ 15,498.93	$ 2,434,730.26
TOTAL		$ 5,842,851.55			$ 2,434,730.26	

16d-001853

CHWMC 008719

BOHON, CONSTANCE H., MD

Number 18 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	18	60
TOTAL CHARGES	$ 4,476.00	$ 207,473.72
TOTAL ADJUSTMENTS	$ 1,599.22	$ 103,309.55
TOTAL CHARGES LESS ADJUSTMENTS	$ 2,876.78	$ 104,164.17
TOTAL PAYMENTS	$ 2,557.58	$ 97,130.08
Percentage of Net Charges Collected To Date	88.90%	93.25%
Estimated Net Realizable Value	$ 2,682.51	

Assumptions

Lost Total Amount Available for Collections:	$ 101,287.39
Precentage of Available Charges collected for the previous year to date:	93.25%
Lost Marginal Revenue [Calculated]	$ 94,447.57
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 66,113.30
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/17

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 66,113.30	$ 66,113.30	100.0000%	$ 66,113.30	$ 66,113.30
2	10/1/01-9/30/02	$ 66,113.30	$ 132,226.59	89.5000%	$ 59,171.40	$ 125,284.70
3	10/1/02-9/30/03	$ 66,113.30	$ 198,339.89	80.1025%	$ 52,958.40	$ 178,243.10
4	10/1/03-9/30/04	$ 66,113.30	$ 264,453.18	71.6917%	$ 47,397.77	$ 225,640.87
5	10/1/04-9/30/05	$ 66,113.30	$ 330,566.48	64.1641%	$ 42,421.00	$ 268,061.87
6	10/1/05-9/30/06	$ 66,113.30	$ 396,679.78	57.4269%	$ 37,966.80	$ 306,028.67
7	10/1/06-9/30/07	$ 66,113.30	$ 462,793.07	51.3971%	$ 33,980.29	$ 340,008.96
8	10/1/07-9/30/08	$ 66,113.30	$ 528,906.37	46.0004%	$ 30,412.36	$ 370,421.31
9	10/1/08-9/30/09	$ 66,113.30	$ 595,019.66	41.1703%	$ 27,219.06	$ 397,640.37
10	10/1/10-9/30/11	$ 66,113.30	$ 661,132.96	36.8474%	$ 24,361.06	$ 422,001.43
11	10/1/11-9/30/12	$ 66,113.30	$ 727,246.26	32.9785%	$ 21,803.15	$ 443,804.58
12	10/1/12-9/30/13	$ 66,113.30	$ 793,359.55	29.5157%	$ 19,513.82	$ 463,318.39
13	10/1/13-9/30/14	$ 66,113.30	$ 859,472.85	26.4166%	$ 17,464.86	$ 480,783.26
14	10/1/14-9/30/15	$ 66,113.30	$ 925,586.14	23.6428%	$ 15,631.05	$ 496,414.31
15	10/1/15-9/30/16	$ 66,113.30	$ 991,699.44	21.1603%	$ 13,989.79	$ 510,404.10
16	10/1/16-9/30/17	$ 66,113.30	$ 1,057,812.74	18.9385%	$ 12,520.87	$ 522,924.97
TOTAL		$ 1,057,812.74			$ 522,924.97	

16d-001854

BOLAN, JEAN C., MD

Number 244

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	68	99
TOTAL CHARGES	$ 485,721.63	$ 581,190.34
TOTAL ADJUSTMENTS	$ 301,189.90	$ 329,947.65
TOTAL CHARGES LESS ADJUSTMENTS	$ 184,531.73	$ 251,242.69
TOTAL PAYMENTS	$ 186,143.44	$ 240,894.50
Percentage of Net Charges Collected To Date	100.87%	95.88%
Estimated Net Realizable Value	$ 176,931.23	

Assumptions

Lost Total Amount Available for Collections:	$ 66,710.96
Precentage of Available Charges collected for the previous year to date:	95.88%
Lost Marginal Revenue [Calculated]	$ 63,963.27
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 44,774.29
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/16

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 44,774.29	$ 44,774.29	100.0000%	$ 44,774.29	$ 44,774.29
2	10/1/01-9/30/02	$ 44,774.29	$ 89,548.57	89.5000%	$ 40,072.99	$ 84,847.27
3	10/1/02-9/30/03	$ 44,774.29	$ 134,322.86	80.1025%	$ 35,865.32	$ 120,712.60
4	10/1/03-9/30/04	$ 44,774.29	$ 179,097.15	71.6917%	$ 32,099.46	$ 152,812.06
5	10/1/04-9/30/05	$ 44,774.29	$ 223,871.44	64.1641%	$ 28,729.02	$ 181,541.08
6	10/1/05-9/30/06	$ 44,774.29	$ 268,645.72	57.4269%	$ 25,712.47	$ 207,253.56
7	10/1/06-9/30/07	$ 44,774.29	$ 313,420.01	51.3971%	$ 23,012.66	$ 230,266.22
8	10/1/07-9/30/08	$ 44,774.29	$ 358,194.30	46.0004%	$ 20,596.33	$ 250,862.55
9	10/1/08-9/30/09	$ 44,774.29	$ 402,968.58	41.1703%	$ 18,433.72	$ 269,296.27
10	10/1/08-9/30/09	$ 44,774.29	$ 447,742.87	36.8474%	$ 16,498.18	$ 285,794.45
11	10/1/10-9/30/11	$ 44,774.29	$ 447,742.87	32.9785%	$ 14,765.87	$ 284,062.14
12	10/1/11-9/30/12	$ 44,774.29	$ 492,517.16	29.5157%	$ 13,215.45	$ 297,277.60
13	10/1/12-9/30/13	$ 44,774.29	$ 537,291.45	26.4166%	$ 11,827.83	$ 309,105.43
14	10/1/13-9/30/14	$ 44,774.29	$ 582,065.73	23.6428%	$ 10,585.91	$ 319,691.34
15	10/1/14-9/30/15	$ 44,774.29	$ 626,840.02	21.1603%	$ 9,474.39	$ 329,165.72
16	10/1/15-9/30/16	$ 44,774.29	$ 671,614.31	18.9385%	$ 8,479.58	$ 337,645.30
TOTAL		$ 716,388.59			$ 354,143.48	

16d-001855

BRONSKY, GEORGE F., MD

Number 131

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	95	89
TOTAL CHARGES	$ 708,577.99	$ 1,002,608.68
TOTAL ADJUSTMENTS	$ 403,055.35	$ 525,345.15
TOTAL CHARGES LESS ADJUSTMENTS	$ 305,522.64	$ 477,263.53
TOTAL PAYMENTS	$ 264,779.19	$ 474,520.18
Percentage of Net Charges Collected To Date	86.66%	99.43%
Estimated Net Realizable Value	$ 303,766.47	

Assumptions

Lost Total Amount Available for Collections:	$ 171,740.89
Precentage of Available Charges collected for the previous year to date:	99.43%
Lost Marginal Revenue [Calculated]	$ 170,753.71
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 119,527.60
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/12

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 119,527.60	$ 119,527.60	100.0000%	$ 119,527.60	$ 119,527.60
2	10/1/01-9/30/02	$ 119,527.60	$ 239,055.19	89.5000%	$ 106,977.20	$ 226,504.80
3	10/1/02-9/30/03	$ 119,527.60	$ 358,582.79	80.1025%	$ 95,744.59	$ 322,249.39
4	10/1/03-9/30/04	$ 119,527.60	$ 478,110.39	71.6917%	$ 85,691.41	$ 407,940.80
5	10/1/04-9/30/05	$ 119,527.60	$ 597,637.98	64.1641%	$ 76,693.81	$ 484,634.61
6	10/1/05-9/30/06	$ 119,527.60	$ 717,165.58	57.4269%	$ 68,640.96	$ 553,275.57
7	10/1/06-9/30/07	$ 119,527.60	$ 836,693.18	51.3971%	$ 61,433.66	$ 614,709.24
8	10/1/07-9/30/08	$ 119,527.60	$ 956,220.77	46.0004%	$ 54,983.13	$ 669,692.36
9	10/1/08-9/30/09	$ 119,527.60	$ 1,075,748.37	41.1703%	$ 49,209.90	$ 718,902.26
10	10/1/09-9/30/10	$ 119,527.60	$ 1,195,275.96	36.8474%	$ 44,042.86	$ 762,945.12
11	10/1/10-9/30/11	$ 119,527.60	$ 1,195,275.96	32.9785%	$ 39,418.36	$ 758,320.62
12	10/1/11-9/30/12	$ 119,527.60	$ 1,314,803.56	29.5157%	$ 35,279.43	$ 793,600.05
TOTAL		$ 1,434,331.16			$ 837,642.91	

16d-001856

BUSCH, REBECCA J., MD

Number 166 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	95	89
TOTAL CHARGES	$ 708,577.99	$ 1,002,608.68
TOTAL ADJUSTMENTS	$ 403,055.35	$ 525,345.15
TOTAL CHARGES LESS ADJUSTMENTS	$ 305,522.64	$ 477,263.53
TOTAL PAYMENTS	$ 264,779.19	$ 474,520.18
Percentage of Net Charges Collected To Date	86.66%	99.43%
Estimated Net Realizable Value	$ 303,766.47	

Assumptions

Lost Total Amount Available for Collections:	$ 171,740.89
Precentage of Available Charges collected for the previous year to date:	99.43%
Lost Marginal Revenue [Calculated]	$ 170,753.71
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 119,527.60
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 9/1/24

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 119,527.60	$ 119,527.60	100.0000%	$ 119,527.60	$ 119,527.60
2	10/1/01-9/30/02	$ 119,527.60	$ 239,055.19	89.5000%	$ 106,977.20	$ 226,504.80
3	10/1/02-9/30/03	$ 119,527.60	$ 358,582.79	80.1025%	$ 95,744.59	$ 322,249.39
4	10/1/03-9/30/04	$ 119,527.60	$ 478,110.39	71.6917%	$ 85,691.41	$ 407,940.80
5	10/1/04-9/30/05	$ 119,527.60	$ 597,637.98	64.1841%	$ 76,693.81	$ 484,634.61
6	10/1/05-9/30/06	$ 119,527.60	$ 717,165.58	57.4269%	$ 68,640.96	$ 553,275.57
7	10/1/06-9/30/07	$ 119,527.60	$ 836,693.18	51.3971%	$ 61,433.68	$ 614,709.24
8	10/1/07-9/30/08	$ 119,527.60	$ 956,220.77	46.0004%	$ 54,983.13	$ 669,692.36
9	10/1/08-9/30/09	$ 119,527.60	$ 1,075,748.37	41.1703%	$ 49,209.90	$ 718,902.26
10	10/1/09-9/30/10	$ 119,527.60	$ 1,195,275.96	36.8474%	$ 44,042.86	$ 762,945.12
11	10/1/10-9/30/11	$ 119,527.60	$ 1,314,803.56	32.9785%	$ 39,418.36	$ 802,363.48
12	10/1/11-9/30/12	$ 119,527.60	$ 1,434,331.16	29.5157%	$ 35,279.43	$ 837,642.91
13	10/1/12-9/30/13	$ 119,527.60	$ 1,553,858.75	26.4168%	$ 31,575.09	$ 869,218.00
14	10/1/13-9/30/14	$ 119,527.60	$ 1,673,386.35	23.6428%	$ 28,259.71	$ 897,477.71
15	10/1/14-9/30/15	$ 119,527.60	$ 1,792,913.95	21.1603%	$ 25,292.44	$ 922,770.14
16	10/1/15-9/30/16	$ 119,527.60	$ 1,912,441.54	18.9385%	$ 22,636.73	$ 945,406.88
17	10/1/16-9/30/17	$ 119,527.60	$ 2,031,969.14	16.9500%	$ 20,259.87	$ 965,666.75
18	10/1/17-9/30/18	$ 119,527.60	$ 2,151,496.74	15.1702%	$ 18,132.59	$ 983,799.34
19	10/1/18-9/30/19	$ 119,527.60	$ 2,271,024.33	13.5773%	$ 16,228.67	$ 1,000,028.00
20	10/1/19-9/30/20	$ 119,527.60	$ 2,390,551.93	12.1517%	$ 14,524.66	$ 1,014,552.66
21	10/1/20-9/30/21	$ 119,527.60	$ 2,510,079.53	10.8758%	$ 12,999.57	$ 1,027,552.23
22	10/1/21-9/30/22	$ 119,527.60	$ 2,629,607.12	9.7338%	$ 11,634.61	$ 1,039,186.84
23	10/1/22-9/30/23	$ 119,527.60	$ 2,749,134.72	8.7118%	$ 10,412.98	$ 1,049,599.82
24	10/1/23-9/01/24	$ 109,566.96	$ 2,858,701.68	7.7970%	$ 8,542.98	$ 1,058,142.80
TOTAL		$ 2,858,701.68			$ 1,058,142.80	

16d-001857

DROGULA, CYNTHIA L., MD

Number 7726 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	154	185
TOTAL CHARGES	$ 272,458.00	$ 359,211.33
TOTAL ADJUSTMENTS	$ 167,095.12	$ 238,514.47
TOTAL CHARGES LESS ADJUSTMENTS	$ 105,362.88	$ 120,696.86
TOTAL PAYMENTS	$ 81,468.72	$ 97,361.18
Percentage of Net Charges Collected To Date	77.32%	80.67%
Estimated Net Realizable Value	$ 84,991.89	

Assumptions

Lost Total Amount Available for Collections:	$ 15,333.98
Precentage of Available Charges collected for the previous year to date:	80.67%
Lost Marginal Revenue (Calculated)	$ 12,369.29
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 8,658.50
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 8/1/27

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 8,658.50	$ 8,658.50	100.0000%	$ 8,658.50	$ 8,658.50
2	10/1/01-9/30/02	$ 8,658.50	$ 17,317.01	89.5000%	$ 7,749.36	$ 16,407.86
3	10/1/02-9/30/03	$ 8,658.50	$ 25,975.51	80.1025%	$ 6,935.68	$ 23,343.54
4	10/1/03-9/30/04	$ 8,658.50	$ 34,634.01	71.6917%	$ 6,207.43	$ 29,550.97
5	10/1/04-9/30/05	$ 8,658.50	$ 43,292.51	64.1641%	$ 5,555.65	$ 35,106.62
6	10/1/05-9/30/06	$ 8,658.50	$ 51,951.02	57.4269%	$ 4,972.31	$ 40,078.93
7	10/1/06-9/30/07	$ 8,658.50	$ 60,609.52	51.3971%	$ 4,450.22	$ 44,529.14
8	10/1/07-9/30/08	$ 8,658.50	$ 69,268.02	46.0004%	$ 3,982.94	$ 48,512.09
9	10/1/08-9/30/09	$ 8,658.50	$ 77,926.52	41.1703%	$ 3,564.73	$ 52,076.82
10	10/1/09-9/30/10	$ 8,658.50	$ 86,585.03	36.8474%	$ 3,190.44	$ 55,267.26
11	10/1/10-9/30/11	$ 8,658.50	$ 95,243.53	32.9785%	$ 2,855.44	$ 58,122.70
12	10/1/11-9/30/12	$ 8,658.50	$ 103,902.03	29.5157%	$ 2,555.62	$ 60,678.32
13	10/1/12-9/30/13	$ 8,658.50	$ 112,560.53	26.4166%	$ 2,287.28	$ 62,965.60
14	10/1/13-9/30/14	$ 8,658.50	$ 121,219.04	23.6428%	$ 2,047.12	$ 65,012.71
15	10/1/14-9/30/15	$ 8,658.50	$ 129,877.54	21.1603%	$ 1,832.17	$ 66,844.88
16	10/1/15-9/30/16	$ 8,658.50	$ 138,536.04	18.9385%	$ 1,639.79	$ 68,484.67
17	10/1/16-9/30/17	$ 8,658.50	$ 147,194.54	16.9500%	$ 1,467.61	$ 69,952.28
18	10/1/17-9/30/18	$ 8,658.50	$ 155,853.05	15.1702%	$ 1,313.51	$ 71,265.79
19	10/1/18-9/30/19	$ 8,658.50	$ 164,511.55	13.5773%	$ 1,175.59	$ 72,441.39
20	10/1/19-9/30/20	$ 8,658.50	$ 173,170.05	12.1517%	$ 1,052.16	$ 73,493.55
21	10/1/20-9/30/21	$ 8,658.50	$ 181,828.55	10.8758%	$ 941.68	$ 74,435.23
22	10/1/21-9/30/22	$ 8,658.50	$ 190,487.06	9.7338%	$ 842.80	$ 75,278.03
23	10/1/22-9/30/23	$ 8,658.50	$ 199,145.56	8.7118%	$ 754.31	$ 76,032.34
24	10/1/23-9/30/24	$ 8,658.50	$ 207,804.06	7.7970%	$ 675.11	$ 76,707.45
25	10/1/24-9/30/25	$ 8,658.50	$ 216,462.56	6.9784%	$ 604.22	$ 77,311.67
26	10/1/25-9/30/26	$ 8,658.50	$ 225,121.07	6.2456%	$ 540.78	$ 77,852.44
27	10/1/26-8/01/27	$ 7,215.42	$ 232,336.49	5.5896%	$ 403.33	$ 78,255.77
TOTAL		$ 232,336.49			$ 78,255.77	

16d-001858

DUKES, MARTIN W. JR., MD

Number 45

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	222	334
TOTAL CHARGES	$ 230,134.97	$ 765,409.71
TOTAL ADJUSTMENTS	$ 135,650.56	$ 417,725.24
TOTAL CHARGES LESS ADJUSTMENTS	$ 94,484.41	$ 347,684.47
TOTAL PAYMENTS	$ 83,709.57	$ 315,946.98
Percentage of Net Charges Collected To Date	88.60%	90.87%
Estimated Net Realizable Value	$ 85,859.64	

Assumptions

Lost Total Amount Available for Collections:	$ 253,200.06
Precentage of Available Charges collected for the previous year to date:	90.87%
Lost Marginal Revenue [Calculated]	$ 230,087.34
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 161,061.14
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/10

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 161,061.14	$ 161,061.14	100.0000%	$ 161,061.14	$ 161,061.14
2	10/1/01-9/30/02	$ 161,061.14	$ 322,122.27	89.5000%	$ 144,149.72	$ 305,210.85
3	10/1/02-9/30/03	$ 161,061.14	$ 483,183.41	80.1025%	$ 129,014.00	$ 434,224.85
4	10/1/03-9/30/04	$ 161,061.14	$ 644,244.55	71.6917%	$ 115,467.53	$ 549,692.38
5	10/1/04-9/30/05	$ 161,061.14	$ 805,305.68	64.1641%	$ 103,343.44	$ 653,035.82
6	10/1/05-9/30/06	$ 161,061.14	$ 966,366.82	57.4269%	$ 92,492.38	$ 745,528.19
7	10/1/06-9/30/07	$ 161,061.14	$ 1,127,427.96	51.3971%	$ 82,780.68	$ 828,308.87
8	10/1/07-9/30/08	$ 161,061.14	$ 1,288,489.09	46.0004%	$ 74,088.71	$ 902,397.57
9	10/1/08-9/30/09	$ 161,061.14	$ 1,449,550.23	41.1703%	$ 66,309.39	$ 968,706.97
10	10/1/09-9/30/10	$ 161,061.14	$ 1,610,611.37	36.8474%	$ 59,346.91	$ 1,028,053.87
TOTAL		$ 1,610,611.37			$ 1,028,053.87	

16d-001859

FLAX, RICHARD, MD

Number 750 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	224	301
TOTAL CHARGES	290435.44	549778.62
TOTAL ADJUSTMENTS	182266.87	341827.52
TOTAL PAYMENTS	$ 108,168.57	$ 207,951.10
TOTAL PAYMENTS	$ 88,160.32	$ 182,646.42
Percentage of Net Charges Collected To Date	81.50%	87.83%
Estimated Net Realizable Value	$ 95,006.00	

Assumptions

Lost Total Amount Available for Collections:	$ 99,782.53
Precentage of Available Charges collected for the previous year to date:	87.83%
Lost Marginal Revenue [Calculated]	$ 87,640.42
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 61,348.29
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 6/1/05

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 61,348.29	$ 61,348.29	100.0000%	$ 61,348.29	$ 61,348.29
2	10/1/01-9/30/02	$ 61,348.29	$ 122,696.59	89.5000%	$ 54,906.72	$ 116,255.02
3	10/1/02-9/30/03	$ 61,348.29	$ 184,044.88	80.1025%	$ 49,141.52	$ 165,396.54
4	10/1/03-9/30/04	$ 61,348.29	$ 245,393.18	71.6917%	$ 43,981.66	$ 209,378.19
5	10/1/04-6/1/05	$ 40,898.86	$ 286,292.04	64.1641%	$ 26,242.39	$ 235,620.58
TOTAL		$ 286,292.04			$ 235,620.58	

HIRSCH, FLORIE, MD

Number 75

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	35	87
TOTAL CHARGES	$ 10,101.23	$ 111,950.77
TOTAL ADJUSTMENTS	$ 1,806.47	$ 58,237.77
TOTAL CHARGES LESS ADJUSTMENTS	$ 8,294.76	$ 53,713.00
TOTAL PAYMENTS	$ 6,904.86	$ 52,374.80
Percentage of Net Charges Collected To Date	83.24%	97.51%
Estimated Net Realizable Value	$ 8,088.11	

Assumptions

Lost Total Amount Available for Collections:	$ 45,418.24
Precentage of Available Charges collected for the previous year to date:	97.51%
Lost Marginal Revenue [Calculated]	$ 44,286.69
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 31,000.69
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 2/1/14

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 31,000.69	$ 31,000.69	100.0000%	$ 31,000.69	$ 31,000.69
2	10/1/01-9/30/02	$ 31,000.69	$ 62,001.37	89.5000%	$ 27,745.61	$ 58,746.30
3	10/1/02-9/30/03	$ 31,000.69	$ 93,002.06	80.1025%	$ 24,832.32	$ 83,578.63
4	10/1/03-9/30/04	$ 31,000.69	$ 124,002.75	71.6917%	$ 22,224.93	$ 105,803.56
5	10/1/04-9/30/05	$ 31,000.69	$ 155,003.43	64.1641%	$ 19,891.31	$ 125,694.87
6	10/1/05-9/30/06	$ 31,000.69	$ 186,004.12	57.4269%	$ 17,802.73	$ 143,497.59
7	10/1/06-9/30/07	$ 31,000.69	$ 217,004.80	51.3971%	$ 15,933.44	$ 159,431.03
8	10/1/07-9/30/08	$ 31,000.69	$ 248,005.49	46.0004%	$ 14,260.43	$ 173,691.46
9	10/1/08-9/30/09	$ 31,000.69	$ 279,006.18	41.1703%	$ 12,763.08	$ 186,454.54
10	10/1/09-9/30/10	$ 31,000.69	$ 310,006.86	36.8474%	$ 11,422.96	$ 197,877.50
11	10/1/10-9/30/11	$ 31,000.69	$ 341,007.55	32.9785%	$ 10,223.55	$ 208,101.05
12	10/1/11-9/30/12	$ 31,000.69	$ 372,008.24	29.5157%	$ 9,150.08	$ 217,251.13
13	10/1/12-9/30/13	$ 31,000.69	$ 403,008.92	26.4166%	$ 8,189.32	$ 225,440.45
14	10/1/13-2/1/14	$ 10,333.56	$ 413,342.48	23.6428%	$ 2,443.15	$ 227,883.59
TOTAL		$ 413,342.48			$ 227,883.59	

16d-001861

HORWITZ, STEPHEN I, MD

Number 80

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	31	129
TOTAL CHARGES	49218.28	896978.65
TOTAL ADJUSTMENTS	25972.68	519009.01
TOTAL CHARGES LESS ADJUSTMENTS	$ 23,245.60	$ 377,969.64
TOTAL PAYMENTS	$ 21,848.54	$ 326,507.60
Percentage of Net Charges Collected To Date	93.99%	86.38%
Estimated Net Realizable Value	$ 20,080.62	

Assumptions

Lost Total Amount Available for Collections:	$ 354,724.04
Precentage of Available Charges collected for the previous year to date:	86.38%
Lost Marginal Revenue [Calculated]	$ 306,426.98
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 214,498.89
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 5/1/15

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 214,498.89	$ 214,498.89	100.0000%	$ 214,498.89	$ 214,498.89
2	10/1/01-9/30/02	$ 214,498.89	$ 428,997.77	89.5000%	$ 191,976.50	$ 406,475.39
3	10/1/02-9/30/03	$ 214,498.89	$ 643,496.66	80.1025%	$ 171,818.97	$ 578,294.36
4	10/1/03-9/30/04	$ 214,498.89	$ 857,995.54	71.6917%	$ 153,777.98	$ 732,072.34
5	10/1/04-9/30/05	$ 214,498.89	$ 1,072,494.43	64.1641%	$ 137,631.29	$ 869,703.63
6	10/1/05-9/30/06	$ 214,498.89	$ 1,286,993.31	57.4269%	$ 123,180.00	$ 992,883.63
7	10/1/06-9/30/07	$ 214,498.89	$ 1,501,492.20	51.3971%	$ 110,246.10	$ 1,103,129.73
8	10/1/07-9/30/08	$ 214,498.89	$ 1,715,991.08	46.0004%	$ 98,670.26	$ 1,201,800.00
9	10/1/08-9/30/09	$ 214,498.89	$ 1,930,489.97	41.1703%	$ 88,309.89	$ 1,290,109.88
10	10/1/09-9/30/10	$ 214,498.89	$ 2,144,988.85	36.8474%	$ 79,037.35	$ 1,369,147.23
11	10/1/10-9/30/11	$ 214,498.89	$ 2,359,487.74	32.9785%	$ 70,738.43	$ 1,439,885.66
12	10/1/11-9/30/12	$ 214,498.89	$ 2,573,986.62	29.5157%	$ 63,310.89	$ 1,503,196.55
13	10/1/12-9/30/13	$ 214,498.89	$ 2,788,485.51	26.4166%	$ 56,663.25	$ 1,559,859.80
14	10/1/13-9/30/14	$ 214,498.89	$ 3,002,984.39	23.6428%	$ 50,713.61	$ 1,610,573.40
15	10/1/14-5/1/15	$ 125,124.35	$ 3,128,108.74	21.1603%	$ 26,476.73	$ 1,637,050.13
TOTAL		$ 3,128,108.74			$ 1,637,050.13	

16d-001862

JOHNSON, HEATHER I, MD

Number 333 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	11	135
TOTAL CHARGES	10003.44	593575.93
TOTAL ADJUSTMENTS	5589.95	331684.2
TOTAL CHARGES LESS ADJUSTMENTS	$ 4,413.49	$ 261,891.73
TOTAL PAYMENTS	$ 4,413.49	$ 253,553.52
Percentage of Net Charges Collected To Date	100.00%	96.82%
Estimated Net Realizable Value	$ 4,272.97	

Assumptions

Lost Total Amount Available for Collections:	$ 257,478.24
Precentage of Available Charges collected for the previous year to date:	96.82%
Lost Marginal Revenue [Calculated]	$ 249,280.55
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 174,496.38
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/18

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 174,496.38	$ 174,496.38	100.0000%	$ 174,496.38	$ 174,496.38
2	10/1/01-9/30/02	$ 174,496.38	$ 348,992.77	89.5000%	$ 156,174.26	$ 330,670.65
3	10/1/02-9/30/03	$ 174,496.38	$ 523,489.15	80.1025%	$ 139,775.97	$ 470,446.61
4	10/1/03-9/30/04	$ 174,496.38	$ 697,985.54	71.6917%	$ 125,099.49	$ 595,546.10
5	10/1/04-9/30/05	$ 174,496.38	$ 872,481.92	64.1641%	$ 111,964.04	$ 707,510.15
6	10/1/05-9/30/06	$ 174,496.38	$ 1,046,978.30	57.4269%	$ 100,207.82	$ 807,717.96
7	10/1/06-9/30/07	$ 174,496.38	$ 1,221,474.69	51.3971%	$ 89,686.00	$ 897,403.96
8	10/1/07-9/30/08	$ 174,496.38	$ 1,395,971.07	46.0004%	$ 80,268.97	$ 977,672.93
9	10/1/08-9/30/09	$ 174,496.38	$ 1,570,467.45	41.1703%	$ 71,840.73	$ 1,049,513.66
10	10/1/09-9/30/10	$ 174,496.38	$ 1,744,963.84	36.8474%	$ 64,297.45	$ 1,113,811.11
11	10/1/10-9/30/11	$ 174,496.38	$ 1,919,460.22	32.9785%	$ 57,546.22	$ 1,171,357.32
12	10/1/11-9/30/12	$ 174,496.38	$ 2,093,956.61	29.5157%	$ 51,503.86	$ 1,222,861.19
13	10/1/12-9/30/13	$ 174,496.38	$ 2,268,452.99	26.4166%	$ 46,095.96	$ 1,268,957.15
14	10/1/13-9/30/14	$ 174,496.38	$ 2,442,949.37	23.6428%	$ 41,255.88	$ 1,310,213.03
15	10/1/14-9/30/15	$ 174,496.38	$ 2,617,445.76	21.1603%	$ 36,924.02	$ 1,347,137.05
16	10/1/15-9/30/16	$ 174,496.38	$ 2,791,942.14	18.9385%	$ 33,046.99	$ 1,380,184.04
17	10/1/16-9/30/17	$ 174,496.38	$ 2,966,438.53	16.9500%	$ 29,577.06	$ 1,409,761.10
18	10/1/17-9/30/18	$ 174,496.38	$ 3,140,934.91	15.1702%	$ 26,471.47	$ 1,436,232.57
TOTAL		$ 3,140,934.91			$ 1,436,232.57	

16d-001863

KESSELMAN, AMY J. MD

Number 349

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	35	62
TOTAL CHARGES	$ 895.20	$ 299,000.96
TOTAL ADJUSTMENTS	$ 328.04	$ 144,610.10
TOTAL CHARGES LESS ADJUSTMENTS	$ 567.16	$ 154,390.86
TOTAL PAYMENTS	$ 406.76	$ 148,285.84
Percentage of Net Charges Collected To Date	71.72%	96.05%
Estimated Net Realizable Value	$ 544.77	

Assumptions

Lost Total Amount Available for Collections:	$ 153,823.70
Precentage of Available Charges collected for the previous year to date:	96.05%
Lost Marginal Revenue [Calculated]	$ 147,751.07
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 103,425.75
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 4/1/24

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 103,425.75	$ 103,425.75	100.0000%	$ 103,425.75	$ 103,425.75
2	10/1/01-9/30/02	$ 103,425.75	$ 206,851.50	89.5000%	$ 92,566.05	$ 195,991.79
3	10/1/02-9/30/03	$ 103,425.75	$ 310,277.25	80.1025%	$ 82,846.61	$ 278,838.41
4	10/1/03-9/30/04	$ 103,425.75	$ 413,703.00	71.6917%	$ 74,147.72	$ 352,986.12
5	10/1/04-9/30/05	$ 103,425.75	$ 517,128.75	64.1641%	$ 66,362.21	$ 419,348.33
6	10/1/05-9/30/06	$ 103,425.75	$ 620,554.50	57.4269%	$ 59,394.17	$ 478,742.50
7	10/1/06-9/30/07	$ 103,425.75	$ 723,980.24	51.3971%	$ 53,157.79	$ 531,900.29
8	10/1/07-9/30/08	$ 103,425.75	$ 827,405.99	46.0004%	$ 47,576.22	$ 579,476.51
9	10/1/08-9/30/09	$ 103,425.75	$ 930,831.74	41.1703%	$ 42,580.72	$ 622,057.22
10	10/1/09-9/30/10	$ 103,425.75	$ 1,034,257.49	36.8474%	$ 38,109.74	$ 660,166.96
11	10/1/10-9/30/11	$ 103,425.75	$ 1,137,683.24	32.9785%	$ 34,108.22	$ 694,275.18
12	10/1/11-9/30/12	$ 103,425.75	$ 1,241,108.99	29.5157%	$ 30,526.86	$ 724,802.04
13	10/1/12-9/30/13	$ 103,425.75	$ 1,344,534.74	26.4166%	$ 27,321.54	$ 752,123.57
14	10/1/13-9/30/14	$ 103,425.75	$ 1,447,960.49	23.6428%	$ 24,452.77	$ 776,576.35
15	10/1/14-9/30/15	$ 103,425.75	$ 1,551,386.24	21.1603%	$ 21,885.23	$ 798,461.58
16	10/1/15-9/30/16	$ 103,425.75	$ 1,654,811.99	18.9385%	$ 19,587.28	$ 818,048.86
17	10/1/16-9/30/17	$ 103,425.75	$ 1,758,237.74	16.9500%	$ 17,530.62	$ 835,579.48
18	10/1/17-9/30/18	$ 103,425.75	$ 1,861,663.49	15.1702%	$ 15,689.90	$ 851,269.39
19	10/1/18-9/30/19	$ 103,425.75	$ 1,965,089.23	13.5773%	$ 14,042.46	$ 865,311.85
20	10/1/19-9/30/20	$ 103,425.75	$ 2,068,514.98	12.1517%	$ 12,568.01	$ 877,879.85
21	10/1/20-9/30/21	$ 103,425.75	$ 2,171,940.73	10.8758%	$ 11,248.36	$ 889,128.22
22	10/1/21-9/30/22	$ 103,425.75	$ 2,275,366.48	9.7338%	$ 10,067.29	$ 899,195.50
23	10/1/22-9/30/23	$ 103,425.75	$ 2,378,792.23	8.7118%	$ 9,010.22	$ 908,205.73
24	10/1/23-4/1/24	$ 51,712.87	$ 2,430,505.11	7.7970%	$ 4,032.07	$ 912,237.80
TOTAL		$ 2,430,505.11			$ 912,237.80	

16d-001864

KOCH, EDWARD G. , MD

Number 195 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	154	185
TOTAL CHARGES	$ 272,458.00	$ 359,211.33
TOTAL ADJUSTMENTS	$ 167,095.12	$ 238,514.47
TOTAL CHARGES LESS ADJUSTMENTS	$ 105,362.88	$ 120,696.86
TOTAL PAYMENTS	$ 81,468.72	$ 97,361.18
Percentage of Net Charges Collected To Date	77.32%	80.67%
Estimated Net Realizable Value	$ 84,991.89	

Assumptions

Lost Total Amount Available for Collections:	$ 15,333.98
Precentage of Available Charges collected for the previous year to date:	80.67%
Lost Marginal Revenue [Calculated]	$ 12,369.29
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 8,658.50
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 7/1/07

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 8,658.50	$ 8,658.50	100.0000%	$ 8,658.50	$ 8,658.50
2	10/1/01-9/30/02	$ 8,658.50	$ 17,317.01	89.5000%	$ 7,749.36	$ 16,407.86
3	10/1/02-9/30/03	$ 8,658.50	$ 25,975.51	80.1025%	$ 6,935.68	$ 23,343.54
4	10/1/03-9/30/04	$ 8,658.50	$ 34,634.01	71.6917%	$ 6,207.43	$ 29,550.97
5	10/1/04-9/30/05	$ 8,658.50	$ 43,292.51	64.1641%	$ 5,555.65	$ 35,106.62
6	10/1/05-9/30/06	$ 8,658.50	$ 51,951.02	57.4269%	$ 4,972.31	$ 40,078.93
7	10/1/06-7/1/07	$ 6,493.88	$ 58,444.89	51.3971%	$ 3,337.66	$ 43,416.59
TOTAL		$ 58,444.89			$ 43,416.59	

16d-001865

LARSON, CHARLOTTE G., MD

Number 1104

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	84	190
TOTAL CHARGES	291942.56	667223.69
TOTAL ADJUSTMENTS	153718.73	386276.014
TOTAL CHARGES LESS ADJUSTMENTS	$ 138,223.83	$ 280,947.68
TOTAL PAYMENTS	$ 106,826.47	$ 264,543.21
Percentage of Net Charges Collected To Date	77.29%	94.16%
Estimated Net Realizable Value	$ 130,152.97	

Assumptions

Lost Total Amount Available for Collections:	$ 142,723.86
Precentage of Available Charges collected for the previous year to date:	94.16%
Lost Marginal Revenue [Calculated]	$ 134,390.24
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 94,073.16
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 1/1/29

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 94,073.16	$ 94,073.16	100.0000%	$ 94,073.16	$ 94,073.16
2	10/1/01-9/30/02	$ 94,073.16	$ 188,146.33	89.5000%	$ 84,195.48	$ 178,268.65
3	10/1/02-9/30/03	$ 94,073.16	$ 282,219.49	80.1025%	$ 75,354.96	$ 253,623.60
4	10/1/03-9/30/04	$ 94,073.16	$ 376,292.66	71.6917%	$ 67,442.89	$ 321,066.29
5	10/1/04-9/30/05	$ 94,073.16	$ 470,365.82	64.1641%	$ 60,361.20	$ 381,427.50
6	10/1/05-9/30/06	$ 94,073.16	$ 564,438.99	57.4269%	$ 54,023.28	$ 435,450.77
7	10/1/06-9/30/07	$ 94,073.16	$ 658,512.15	51.3971%	$ 48,350.83	$ 483,801.61
8	10/1/07-9/30/08	$ 94,073.16	$ 752,585.32	46.0004%	$ 43,274.00	$ 527,075.60
9	10/1/08-9/30/09	$ 94,073.16	$ 846,658.48	41.1703%	$ 38,730.23	$ 565,805.83
10	10/1/09-9/30/10	$ 94,073.16	$ 940,731.65	36.8474%	$ 34,663.55	$ 600,469.38
11	10/1/10-9/30/11	$ 94,073.16	$ 1,034,804.81	32.9785%	$ 31,023.88	$ 631,493.26
12	10/1/11-9/30/12	$ 94,073.16	$ 1,128,877.98	29.5157%	$ 27,766.37	$ 659,259.63
13	10/1/12-9/30/13	$ 94,073.16	$ 1,222,951.14	26.4166%	$ 24,850.90	$ 684,110.54
14	10/1/13-9/30/14	$ 94,073.16	$ 1,317,024.31	23.6428%	$ 22,241.56	$ 706,352.10
15	10/1/14-9/30/15	$ 94,073.16	$ 1,411,097.47	21.1603%	$ 19,906.19	$ 726,258.29
16	10/1/15-9/30/16	$ 94,073.16	$ 1,505,170.64	18.9385%	$ 17,816.04	$ 744,074.34
17	10/1/16-9/30/17	$ 94,073.16	$ 1,599,243.80	16.9500%	$ 15,945.36	$ 760,019.70
18	10/1/17-9/30/18	$ 94,073.16	$ 1,693,316.97	15.1702%	$ 14,271.10	$ 774,290.79
19	10/1/18-9/30/19	$ 94,073.16	$ 1,787,390.13	13.5773%	$ 12,772.63	$ 787,063.42
20	10/1/19-9/30/20	$ 94,073.16	$ 1,881,463.30	12.1517%	$ 11,431.51	$ 798,494.93
21	10/1/20-9/30/21	$ 94,073.16	$ 1,975,536.46	10.8758%	$ 10,231.20	$ 808,726.13
22	10/1/21-9/30/22	$ 94,073.16	$ 2,069,609.63	9.7338%	$ 9,156.92	$ 817,883.05
23	10/1/22-9/30/23	$ 94,073.16	$ 2,163,682.79	8.7118%	$ 8,195.44	$ 826,078.49
24	10/1/23-9/30/24	$ 94,073.16	$ 2,257,755.96	7.7970%	$ 7,334.92	$ 833,413.42
25	10/1/24-9/30/25	$ 94,073.16	$ 2,351,829.12	6.9784%	$ 6,564.76	$ 839,978.17
26	10/1/25-9/30/26	$ 94,073.16	$ 2,445,902.29	6.2456%	$ 5,875.46	$ 845,853.63
27	10/1/26-9/30/27	$ 94,073.16	$ 2,539,975.45	5.5898%	$ 5,258.53	$ 851,112.16
28	10/1/26-9/30/28	$ 94,073.16	$ 2,634,048.62	5.0029%	$ 4,706.39	$ 855,818.55
29	10/1/27-1/1/29	$ 23,518.29	$ 2,657,566.91	4.4776%	$ 1,053.05	$ 856,871.61
TOTAL		$ 2,657,566.91			$ 856,871.61	

16d-001866

NEWMAN, RICHARD S., MD

Number 125

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	43	234
TOTAL CHARGES	$ 125,448.65	$ 1,021,329.32
TOTAL ADJUSTMENTS	$ 72,437.79	$ 571,340.16
TOTAL CHARGES LESS ADJUSTMENTS	$ 53,010.86	$ 449,989.16
TOTAL PAYMENTS	$ 51,422.82	$ 428,996.84
Percentage of Net Charges Collected To Date	97.00%	95.33%
Estimated Net Realizable Value	$ 50,537.87	

Assumptions

Lost Total Amount Available for Collections:	$ 396,978.30
Precentage of Available Charges collected for the previous year to date:	95.33%
Lost Marginal Revenue [Calculated]	$ 378,458.97
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 264,921.28
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 4/1/17

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 264,921.28	$ 264,921.28	100.0000%	$ 264,921.28	$ 264,921.28
2	10/1/01-9/30/02	$ 264,921.28	$ 529,842.56	89.5000%	$ 237,104.55	$ 502,025.83
3	10/1/02-9/30/03	$ 264,921.28	$ 794,763.85	80.1025%	$ 212,208.57	$ 714,234.40
4	10/1/03-9/30/04	$ 264,921.28	$ 1,059,685.13	71.6917%	$ 189,926.67	$ 904,161.07
5	10/1/04-9/30/05	$ 264,921.28	$ 1,324,606.41	64.1641%	$ 169,984.37	$ 1,074,145.44
6	10/1/05-9/30/06	$ 264,921.28	$ 1,589,527.69	57.4269%	$ 152,136.01	$ 1,226,281.45
7	10/1/06-9/30/07	$ 264,921.28	$ 1,854,448.96	51.3971%	$ 136,161.73	$ 1,362,443.18
8	10/1/07-9/30/08	$ 264,921.28	$ 2,119,370.26	46.0004%	$ 121,864.75	$ 1,484,307.93
9	10/1/08-9/30/09	$ 264,921.28	$ 2,384,291.54	41.1703%	$ 109,068.95	$ 1,593,376.88
10	10/1/09-9/30/10	$ 264,921.28	$ 2,649,212.82	36.8474%	$ 97,616.71	$ 1,690,993.59
11	10/1/10-9/30/11	$ 264,921.28	$ 2,914,134.11	32.9785%	$ 87,366.96	$ 1,778,360.55
12	10/1/11-9/30/12	$ 264,921.28	$ 3,179,055.39	29.5157%	$ 78,193.43	$ 1,856,553.97
13	10/1/12-9/30/13	$ 264,921.28	$ 3,443,976.67	26.4166%	$ 69,983.12	$ 1,926,537.09
14	10/1/13-9/30/14	$ 264,921.28	$ 3,708,897.95	23.6428%	$ 62,634.89	$ 1,989,171.98
15	10/1/14-9/30/15	$ 264,921.28	$ 3,973,819.24	21.1603%	$ 56,058.23	$ 2,045,230.20
16	10/1/15-9/30/16	$ 264,921.28	$ 4,238,740.52	18.9385%	$ 50,172.11	$ 2,095,402.31
17	10/1/16-4/1/17	$ 132,460.64	$ 4,371,201.16	16.9500%	$ 22,452.02	$ 2,117,854.33
TOTAL		$ 4,371,201.16			$ 2,117,854.33	

16d-001867

NGUYEN, H. LISA, MD

Number 1124

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	7	154
TOTAL CHARGES	$ 21,542.97	$ 628,450.91
TOTAL ADJUSTMENTS	$ 12,495.15	$ 321,818.34
TOTAL CHARGES LESS ADJUSTMENTS	$ 9,047.82	$ 306,632.57
TOTAL PAYMENTS	$ 9,047.82	$ 312,866.64
Percentage of Net Charges Collected To Date	100.00%	102.03%
Estimated Net Realizable Value	$ 9,231.83	

Assumptions

Lost Total Amount Available for Collections:	$ 297,584.75
Precentage of Available Charges collected for the previous year to date:	102.03%
Lost Marginal Revenue [Calculated]	$ 303,636.61
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction In Net Income) [Calculated] is the lost cash flow per year	$ 212,545.77
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 8/1/32

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 212,545.77	$ 212,545.77	100.0000%	$ 212,545.77	$ 212,545.77
2	10/1/01-9/30/02	$ 212,545.77	$ 425,091.54	89.5000%	$ 190,228.46	$ 402,774.23
3	10/1/02-9/30/03	$ 212,545.77	$ 637,637.31	80.1025%	$ 170,254.47	$ 573,028.71
4	10/1/03-9/30/04	$ 212,545.77	$ 850,183.07	71.6917%	$ 152,377.75	$ 725,406.46
5	10/1/04-9/30/05	$ 212,545.77	$ 1,062,728.84	64.1641%	$ 136,378.09	$ 861,784.55
6	10/1/05-9/30/06	$ 212,545.77	$ 1,275,274.61	57.4269%	$ 122,058.39	$ 983,842.94
7	10/1/06-9/30/07	$ 212,545.77	$ 1,487,820.38	51.3971%	$ 109,242.26	$ 1,093,085.20
8	10/1/07-9/30/08	$ 212,545.77	$ 1,700,366.15	46.0004%	$ 97,771.82	$ 1,190,857.02
9	10/1/08-9/30/09	$ 212,545.77	$ 1,912,911.92	41.1703%	$ 87,505.78	$ 1,278,362.80
10	10/1/09-9/30/10	$ 212,545.77	$ 2,125,457.68	36.8474%	$ 78,317.67	$ 1,356,680.48
11	10/1/10-9/30/11	$ 212,545.77	$ 2,338,003.45	32.9785%	$ 70,094.32	$ 1,426,774.80
12	10/1/11-9/30/12	$ 212,545.77	$ 2,550,549.22	29.5157%	$ 62,734.41	$ 1,489,509.21
13	10/1/12-9/30/13	$ 212,545.77	$ 2,763,094.99	26.4166%	$ 56,147.30	$ 1,545,656.51
14	10/1/13-9/30/14	$ 212,545.77	$ 2,975,640.76	23.6428%	$ 50,251.83	$ 1,595,908.35
15	10/1/14-9/30/15	$ 212,545.77	$ 3,188,186.53	21.1603%	$ 44,975.39	$ 1,640,883.74
16	10/1/15-9/30/16	$ 212,545.77	$ 3,400,732.29	18.9385%	$ 40,252.98	$ 1,681,136.71
17	10/1/16-9/30/17	$ 212,545.77	$ 3,613,278.06	16.9500%	$ 36,026.41	$ 1,717,163.13
18	10/1/17-9/30/18	$ 212,545.77	$ 3,825,823.83	15.1702%	$ 32,243.64	$ 1,749,406.77
19	10/1/18-9/30/19	$ 212,545.77	$ 4,038,369.60	13.5773%	$ 28,858.06	$ 1,778,264.83
20	10/1/19-9/30/20	$ 212,545.77	$ 4,250,915.37	12.1517%	$ 25,827.96	$ 1,804,092.79
21	10/1/20-9/30/21	$ 212,545.77	$ 4,463,461.14	10.8758%	$ 23,116.03	$ 1,827,208.81
22	10/1/21-9/30/22	$ 212,545.77	$ 4,676,006.91	9.7338%	$ 20,688.84	$ 1,847,897.66
23	10/1/22-9/30/23	$ 212,545.77	$ 4,888,552.67	8.7118%	$ 18,516.51	$ 1,866,414.17
24	10/1/23-9/30/24	$ 212,545.77	$ 5,101,098.44	7.7970%	$ 16,572.28	$ 1,882,986.45
25	10/1/24-9/30/25	$ 212,545.77	$ 5,313,644.21	6.9784%	$ 14,832.19	$ 1,897,818.64
26	10/1/25-9/30/26	$ 212,545.77	$ 5,526,189.98	6.2456%	$ 13,274.81	$ 1,911,093.45
27	10/1/26-9/30/27	$ 212,545.77	$ 5,738,735.75	5.5898%	$ 11,880.96	$ 1,922,974.41
28	10/1/27-9/30/28	$ 212,545.77	$ 5,951,281.52	5.0029%	$ 10,633.46	$ 1,933,607.86
29	10/1/28-9/30/29	$ 212,545.77	$ 6,163,827.28	4.4776%	$ 9,516.94	$ 1,943,124.81
30	10/1/29-9/30/30	$ 212,545.77	$ 6,376,373.05	4.0074%	$ 8,517.66	$ 1,951,642.47
31	10/1/30-9/30/31	$ 212,545.77	$ 6,588,918.82	3.5867%	$ 7,623.31	$ 1,959,265.78
32	10/1/31-8/1/32	$ 177,121.47	$ 6,766,040.29	3.2101%	$ 5,685.72	$ 1,964,951.50
TOTAL		$ 6,766,040.29			$ 1,964,951.50	

16d-001868

CHWMC 008734

POWERS, DAVID N., MD

Number 136 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	51	83
TOTAL CHARGES	$ 64,180.19	$ 328,801.76
TOTAL ADJUSTMENTS	$ 33,194.68	$ 180,511.92
TOTAL CHARGES LESS ADJUSTMENTS	$ 30,985.51	$ 148,289.84
TOTAL PAYMENTS	$ 18,322.69	$ 140,570.19
Percentage of Net Charges Collected To Date	59.13%	94.79%
Estimated Net Realizable Value	$ 29,372.47	

Assumptions

Lost Total Amount Available for Collections:	$ 117,304.33
Precentage of Available Charges collected for the previous year to date:	94.79%
Lost Marginal Revenue [Calculated]	$ 111,197.72
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 77,838.40
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/17

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 77,838.40	$ 77,838.40	100.0000%	$ 77,838.40	$ 77,838.40
2	10/1/01-9/30/02	$ 77,838.40	$ 155,676.81	89.5000%	$ 69,665.37	$ 147,503.77
3	10/1/02-9/30/03	$ 77,838.40	$ 233,515.21	80.1025%	$ 62,350.51	$ 209,854.28
4	10/1/03-9/30/04	$ 77,838.40	$ 311,353.61	71.6917%	$ 55,803.70	$ 265,657.98
5	10/1/04-9/30/05	$ 77,838.40	$ 389,192.02	64.1641%	$ 49,944.31	$ 315,602.30
6	10/1/05-9/30/06	$ 77,838.40	$ 467,030.42	57.4269%	$ 44,700.16	$ 360,302.46
7	10/1/06-9/30/07	$ 77,838.40	$ 544,868.82	51.3971%	$ 40,006.64	$ 400,309.11
8	10/1/07-9/30/08	$ 77,838.40	$ 622,707.23	46.0004%	$ 35,805.95	$ 436,115.05
9	10/1/08-9/30/09	$ 77,838.40	$ 700,545.63	41.1703%	$ 32,046.32	$ 468,161.38
10	10/1/09-9/30/10	$ 77,838.40	$ 778,384.03	36.8474%	$ 28,681.46	$ 496,842.84
11	10/1/10-9/30/11	$ 77,838.40	$ 856,222.44	32.9785%	$ 25,669.91	$ 522,512.74
12	10/1/11-9/30/12	$ 77,838.40	$ 934,060.84	29.5157%	$ 22,974.57	$ 545,487.31
13	10/1/12-9/30/13	$ 77,838.40	$ 1,011,899.24	26.4166%	$ 20,562.24	$ 566,049.54
14	10/1/13-9/30/14	$ 77,838.40	$ 1,089,737.65	23.6428%	$ 18,403.20	$ 584,452.74
15	10/1/14-9/30/15	$ 77,838.40	$ 1,167,576.05	21.1603%	$ 16,470.87	$ 600,923.61
16	10/1/15-9/30/16	$ 77,838.40	$ 1,245,414.45	18.9385%	$ 14,741.42	$ 615,665.03
17	10/1/16-9/30/17	$ 77,838.40	$ 1,323,252.86	16.9500%	$ 13,193.57	$ 628,858.61
TOTAL		$ 1,323,252.86			$ 628,858.61	

16d-001869

ROBERTS, MORTON J., MD

Number 141

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	30	44
TOTAL CHARGES	6024	81702.35
TOTAL ADJUSTMENTS	2047.07	40837.88
TOTAL CHARGES LESS ADJUSTMENTS	$ 3,976.93	$ 40,864.47
TOTAL PAYMENTS	$ 3,617.49	$ 39,509.22
Percentage of Net Charges Collected To Date	90.96%	96.68%
Estimated Net Realizable Value	$ 3,845.04	

Assumptions

Lost Total Amount Available for Collections:	$ 36,887.54
Precentage of Available Charges collected for the previous year to date:	96.68%
Lost Marginal Revenue [Calculated]	$ 35,664.18
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 24,964.93
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 8/1/07

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 24,964.93	$ 24,964.93	100.0000%	$ 24,964.93	$ 24,964.93
2	10/1/01-9/30/02	$ 24,964.93	$ 49,929.86	89.5000%	$ 22,343.61	$ 47,308.54
3	10/1/02-9/30/03	$ 24,964.93	$ 74,894.78	80.1025%	$ 19,997.53	$ 67,306.07
4	10/1/03-9/30/04	$ 24,964.93	$ 99,859.71	71.6917%	$ 17,897.79	$ 85,203.86
5	10/1/04-9/30/05	$ 24,964.93	$ 124,824.64	64.1641%	$ 16,018.52	$ 101,222.38
6	10/1/05-9/30/06	$ 24,964.93	$ 149,789.57	57.4269%	$ 14,336.58	$ 115,558.96
7	10/1/06-8/1/07	$ 20,804.11	$ 170,593.67	51.3971%	$ 10,692.70	$ 126,251.66
TOTAL		$ 170,593.67			$ 126,251.66	

RUBIN, APRIL, MD

Number 138 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	26	52
TOTAL CHARGES	45216.29	117369.19
TOTAL ADJUSTMENTS	17905.1	62881.36
TOTAL CHARGES LESS ADJUSTMENTS	$ 27,311.19	$ 54,487.83
TOTAL PAYMENTS	$ 27,387.15	$ 52,322.18
Percentage of Net Charges Collected To Date	100.28%	96.03%
Estimated Net Realizable Value	$ 26,225.69	

Assumptions

Lost Total Amount Available for Collections:	$ 27,176.64
Precentage of Available Charges collected for the previous year to date:	96.03%
Lost Marginal Revenue [Calculated]	$ 26,096.49
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 18,267.54
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 9/1/16

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 18,267.54	$ 18,267.54	100.0000%	$ 18,267.54	$ 18,267.54
2	10/1/01-9/30/02	$ 18,267.54	$ 36,535.08	89.5000%	$ 16,349.45	$ 34,616.99
3	10/1/02-9/30/03	$ 18,267.54	$ 54,802.63	80.1025%	$ 14,632.76	$ 49,249.75
4	10/1/03-9/30/04	$ 18,267.54	$ 73,070.17	71.6917%	$ 13,096.32	$ 62,346.07
5	10/1/04-9/30/05	$ 18,267.54	$ 91,337.71	64.1641%	$ 11,721.20	$ 74,067.27
6	10/1/05-9/30/06	$ 18,267.54	$ 109,605.25	57.4269%	$ 10,490.48	$ 84,557.75
7	10/1/06-9/30/07	$ 18,267.54	$ 127,872.80	51.3971%	$ 9,388.98	$ 93,946.73
8	10/1/07-9/30/08	$ 18,267.54	$ 146,140.34	46.0004%	$ 8,403.14	$ 102,349.87
9	10/1/08-9/30/09	$ 18,267.54	$ 164,407.88	41.1703%	$ 7,520.81	$ 109,870.67
10	10/1/09-9/30/10	$ 18,267.54	$ 182,675.42	36.8474%	$ 6,731.12	$ 116,601.79
11	10/1/10-9/30/11	$ 18,267.54	$ 200,942.96	32.9785%	$ 6,024.35	$ 122,626.15
12	10/1/11-9/30/12	$ 18,267.54	$ 219,210.51	29.5157%	$ 5,391.80	$ 128,017.94
13	10/1/12-9/30/13	$ 18,267.54	$ 237,478.05	26.4166%	$ 4,825.66	$ 132,843.60
14	10/1/13-9/30/14	$ 18,267.54	$ 255,745.59	23.6428%	$ 4,318.96	$ 137,162.57
15	10/1/14-9/30/15	$ 18,267.54	$ 274,013.13	21.1603%	$ 3,865.47	$ 141,028.04
16	10/1/15-9/1/16	$ 16,745.25	$ 290,758.38	18.9385%	$ 3,171.30	$ 144,199.34
TOTAL		$ 290,758.38			$ 144,199.34	

16d-001871

S,H,B,N,B,B,K,P

Number 44148 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	35	176
TOTAL CHARGES	49527.62	118542.58
TOTAL ADJUSTMENTS	25540.3	58718.39
TOTAL CHARGES LESS ADJUSTMENTS	$ 23,987.32	$ 59,824.19
TOTAL PAYMENTS	$ 18,026.93	$ 47,729.58
Percentage of Net Charges Collected To Date	75.15%	79.78%
Estimated Net Realizable Value	$ 19,137.82	

Assumptions

Lost Total Amount Available for Collections:	$ 35,836.87
Percentage of Available Charges collected for the previous year to date:	79.78%
Lost Marginal Revenue [Calculated]	$ 26,591.76
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 20,014.23
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 8/1/32 NGUYEN, H. LISA, MD

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 20,014.23	$ 20,014.23	100.0000%	$ 20,014.23	$ 20,014.23
2	10/1/01-9/30/02	$ 20,014.23	$ 40,028.46	89.5000%	$ 17,912.74	$ 37,926.97
3	10/1/02-9/30/03	$ 20,014.23	$ 60,042.69	80.1025%	$ 16,031.90	$ 53,958.87
4	10/1/03-9/30/04	$ 20,014.23	$ 80,056.92	71.6917%	$ 14,348.55	$ 68,307.42
5	10/1/04-9/30/05	$ 20,014.23	$ 100,071.15	64.1641%	$ 12,841.95	$ 81,149.37
6	10/1/05-9/30/06	$ 20,014.23	$ 120,085.38	57.4269%	$ 11,493.55	$ 92,642.91
7	10/1/06-9/30/07	$ 20,014.23	$ 140,099.61	51.3971%	$ 10,286.72	$ 102,929.64
8	10/1/07-9/30/08	$ 20,014.23	$ 160,113.84	46.0004%	$ 9,206.62	$ 112,136.26
9	10/1/08-9/30/09	$ 20,014.23	$ 180,128.07	41.1703%	$ 8,239.92	$ 120,376.18
10	10/1/09-9/30/10	$ 20,014.23	$ 200,142.30	36.8474%	$ 7,374.73	$ 127,750.91
11	10/1/10-9/30/11	$ 20,014.23	$ 220,156.54	32.9765%	$ 6,600.38	$ 134,351.30
12	10/1/11-9/30/12	$ 20,014.23	$ 240,170.77	29.5157%	$ 5,907.34	$ 140,258.64
13	10/1/12-9/30/13	$ 20,014.23	$ 260,185.00	26.4166%	$ 5,287.07	$ 145,545.71
14	10/1/13-9/30/14	$ 20,014.23	$ 280,199.23	23.6428%	$ 4,731.93	$ 150,277.64
15	10/1/14-9/30/15	$ 20,014.23	$ 300,213.46	21.1603%	$ 4,235.08	$ 154,512.72
16	10/1/15-9/30/16	$ 20,014.23	$ 320,227.69	18.9365%	$ 3,790.39	$ 158,303.12
17	10/1/16-9/30/17	$ 20,014.23	$ 340,241.92	16.9500%	$ 3,392.40	$ 161,695.52
18	10/1/17-9/30/18	$ 20,014.23	$ 360,256.15	15.1702%	$ 3,036.20	$ 164,731.72
19	10/1/18-9/30/19	$ 20,014.23	$ 380,270.38	13.5773%	$ 2,717.40	$ 167,449.12
20	10/1/19-9/30/20	$ 20,014.23	$ 400,284.61	12.1517%	$ 2,432.07	$ 169,881.19
21	10/1/20-9/30/21	$ 20,014.23	$ 420,298.84	10.8758%	$ 2,176.71	$ 172,057.90
22	10/1/21-9/30/22	$ 20,014.23	$ 440,313.07	9.7338%	$ 1,948.15	$ 174,006.05
23	10/1/22-9/30/23	$ 20,014.23	$ 460,327.30	8.7118%	$ 1,743.60	$ 175,749.65
24	10/1/23-9/30/24	$ 20,014.23	$ 480,341.53	7.7970%	$ 1,560.52	$ 177,310.16
25	10/1/24-9/30/25	$ 20,014.23	$ 500,355.76	6.9784%	$ 1,396.66	$ 178,706.83
26	10/1/25-9/30/26	$ 20,014.23	$ 520,369.99	6.2456%	$ 1,250.01	$ 179,956.84
27	10/1/26-9/30/27	$ 20,014.23	$ 540,384.22	5.5898%	$ 1,118.76	$ 181,075.60
28	10/1/27-9/30/28	$ 20,014.23	$ 560,398.45	5.0029%	$ 1,001.29	$ 182,076.89
29	10/1/28-9/30/29	$ 20,014.23	$ 580,412.68	4.4776%	$ 896.16	$ 182,973.05
30	10/1/29-9/30/30	$ 20,014.23	$ 600,426.91	4.0074%	$ 802.06	$ 183,775.11
31	10/1/30-9/30/31	$ 20,014.23	$ 620,441.15	3.5867%	$ 717.84	$ 184,492.96
32	10/1/31-8/1/32	$ 16,676.53	$ 637,119.67	3.2101%	$ 535.39	$ 185,028.35
TOTAL		$ 637,119.67			$ 185,028.35	

16d-001872

CHWMC 008738

SAFRAN, JULIAN E., MD

Number 146 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	12	58
TOTAL CHARGES	$ 22,282.51	$ 185,596.44
TOTAL ADJUSTMENTS	$ 12,276.80	$ 85,385.72
TOTAL CHARGES LESS ADJUSTMENTS	$ 10,005.71	$ 100,210.72
TOTAL PAYMENTS	$ 6,431.49	$ 97,215.92
Percentage of Net Charges Collected To Date	64.28%	97.01%
Estimated Net Realizable Value	$ 9,706.69	

Assumptions

Lost Total Amount Available for Collections:	$ 90,205.01
Precentage of Available Charges collected for the previous year to date:	97.01%
Lost Marginal Revenue [Calculated]	$ 87,509.23
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 61,256.46
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 11/1/15

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 61,256.46	$ 61,256.46	100.0000%	$ 61,256.46	$ 61,256.46
2	10/1/01-9/30/02	$ 61,256.46	$ 122,512.92	89.5000%	$ 54,824.53	$ 116,080.99
3	10/1/02-9/30/03	$ 61,256.46	$ 183,769.38	80.1025%	$ 49,067.96	$ 165,148.95
4	10/1/03-9/30/04	$ 61,256.46	$ 245,025.85	71.6917%	$ 43,915.82	$ 209,064.77
5	10/1/04-9/30/05	$ 61,256.46	$ 306,282.31	64.1641%	$ 39,304.66	$ 248,369.43
6	10/1/05-9/30/06	$ 61,256.46	$ 367,538.77	57.4269%	$ 35,177.67	$ 283,547.11
7	10/1/06-9/30/07	$ 61,256.46	$ 428,795.23	51.3971%	$ 31,484.02	$ 315,031.12
8	10/1/07-9/30/08	$ 61,256.46	$ 490,051.69	46.0004%	$ 28,178.19	$ 343,209.31
9	10/1/08-9/30/09	$ 61,256.46	$ 551,308.15	41.1703%	$ 25,219.48	$ 368,428.80
10	10/1/09-9/30/10	$ 61,256.46	$ 612,564.62	36.8474%	$ 22,571.44	$ 391,000.24
11	10/1/10-9/30/11	$ 61,256.46	$ 673,821.08	32.9785%	$ 20,201.44	$ 411,201.67
12	10/1/11-9/30/12	$ 61,256.46	$ 735,077.54	29.5157%	$ 18,080.29	$ 429,281.96
13	10/1/12-9/30/13	$ 61,256.46	$ 796,334.00	26.4166%	$ 16,181.86	$ 445,463.81
14	10/1/13-9/30/14	$ 61,256.46	$ 857,590.46	23.6428%	$ 14,482.76	$ 459,946.58
15	10/1/14-9/30/15	$ 61,256.46	$ 918,846.92	21.1603%	$ 12,962.07	$ 472,908.65
16	10/1/15-11/1/15	$ 5,104.71	$ 923,951.63	18.9385%	$ 966.75	$ 473,875.40
TOTAL		$ 923,951.63			$ 473,875.40	

16d-001873

SANDERS, NANCY L., MD

Number 102 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	24	148
TOTAL CHARGES	27620.62	677076.21
TOTAL ADJUSTMENTS	13578.04	379618.17
TOTAL CHARGES LESS ADJUSTMENTS	$ 14,042.58	$ 297,458.04
TOTAL PAYMENTS	$ 12,535.70	$ 292,843.09
Percentage of Net Charges Collected To Date	89.27%	98.45%
Estimated Net Realizable Value	$ 13,824.71	

Assumptions

Lost Total Amount Available for Collections:	$ 283,416.46
Precentage of Available Charges collected for the previous year to date:	98.45%
Lost Marginal Revenue [Calculated]	$ 279,018.38
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 195,312.86
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 4/1/22

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 195,312.86	$ 195,312.86	100.0000%	$ 195,312.86	$ 195,312.86
2	10/1/01-9/30/02	$ 195,312.86	$ 390,625.73	89.5000%	$ 174,805.01	$ 370,117.87
3	10/1/02-9/30/03	$ 195,312.86	$ 585,938.59	80.1025%	$ 156,450.49	$ 526,568.36
4	10/1/03-9/30/04	$ 195,312.86	$ 781,251.45	71.6917%	$ 140,023.18	$ 666,591.55
5	10/1/04-9/30/05	$ 195,312.86	$ 976,564.31	64.1641%	$ 125,320.75	$ 791,912.30
6	10/1/05-9/30/06	$ 195,312.86	$ 1,171,877.18	57.4269%	$ 112,162.07	$ 904,074.37
7	10/1/06-9/30/07	$ 195,312.86	$ 1,367,190.04	51.3971%	$ 100,385.05	$ 1,004,459.42
8	10/1/07-9/30/08	$ 195,312.86	$ 1,562,502.90	46.0004%	$ 89,844.62	$ 1,094,304.05
9	10/1/08-9/30/09	$ 195,312.86	$ 1,757,815.76	41.1703%	$ 80,410.94	$ 1,174,714.98
10	10/1/09-9/30/10	$ 195,312.86	$ 1,953,128.63	36.8474%	$ 71,967.79	$ 1,246,682.77
11	10/1/10-9/30/11	$ 195,312.86	$ 2,148,441.49	32.9785%	$ 64,411.17	$ 1,311,093.94
12	10/1/11-9/30/12	$ 195,312.86	$ 2,343,754.35	29.5157%	$ 57,648.00	$ 1,368,741.94
13	10/1/12-9/30/13	$ 195,312.86	$ 2,539,067.22	26.4166%	$ 51,594.96	$ 1,420,336.90
14	10/1/13-9/30/14	$ 195,312.86	$ 2,734,380.08	23.6428%	$ 46,177.49	$ 1,466,514.39
15	10/1/14-9/30/15	$ 195,312.86	$ 2,929,692.94	21.1603%	$ 41,328.85	$ 1,507,843.24
16	10/1/15-9/30/16	$ 195,312.86	$ 3,125,005.80	18.9385%	$ 36,989.32	$ 1,544,832.56
17	10/1/16-9/30/17	$ 195,312.86	$ 3,320,318.67	16.9500%	$ 33,105.44	$ 1,577,938.01
18	10/1/17-9/30/18	$ 195,312.86	$ 3,515,631.53	15.1702%	$ 29,629.37	$ 1,607,567.38
19	10/1/18-9/30/19	$ 195,312.86	$ 3,710,944.39	13.5773%	$ 26,518.29	$ 1,634,085.67
20	10/1/19-9/30/20	$ 195,312.86	$ 3,906,257.26	12.1517%	$ 23,733.87	$ 1,657,819.54
21	10/1/20-9/30/21	$ 195,312.86	$ 4,101,570.12	10.8758%	$ 21,241.81	$ 1,679,061.35
22	10/1/21-4/1/22	$ 97,656.43	$ 4,199,226.55	9.7338%	$ 9,505.71	$ 1,688,567.06
TOTAL		$ 4,199,226.55			$ 1,688,567.06	

16d-001874

SCHAFFEL, JANET, MD

Number 147 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	30	161
TOTAL CHARGES	18770.72	693681.57
TOTAL ADJUSTMENTS	10571.58	392116.37
TOTAL CHARGES LESS ADJUSTMENTS	$ 8,199.14	$ 301,565.20
TOTAL PAYMENTS	$ 7,227.59	$ 279,843.94
Percentage of Net Charges Collected To Date	88.15%	92.80%
Estimated Net Realizable Value	$ 7,608.57	

Assumptions

Lost Total Amount Available for Collections:	$ 293,366.06
Precentage of Available Charges collected for the previous year to date:	92.80%
Lost Marginal Revenue [Calculated]	$ 272,235.37
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 190,564.76
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 7/1/19

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 190,564.76	$ 190,564.76	100.0000%	$ 190,564.76	$ 190,564.76
2	10/1/01-9/30/02	$ 190,564.76	$ 381,129.52	89.5000%	$ 170,555.46	$ 361,120.22
3	10/1/02-9/30/03	$ 190,564.76	$ 571,694.28	80.1025%	$ 152,647.14	$ 513,767.36
4	10/1/03-9/30/04	$ 190,564.76	$ 762,259.04	71.6917%	$ 136,619.19	$ 650,386.54
5	10/1/04-9/30/05	$ 190,564.76	$ 952,823.80	64.1641%	$ 122,274.17	$ 772,660.72
6	10/1/05-9/30/06	$ 190,564.76	$ 1,143,388.56	57.4269%	$ 109,435.38	$ 882,096.10
7	10/1/06-9/30/07	$ 190,564.76	$ 1,333,953.32	51.3971%	$ 97,944.67	$ 980,040.77
8	10/1/07-9/30/08	$ 190,564.76	$ 1,524,518.08	46.0004%	$ 87,660.48	$ 1,067,701.25
9	10/1/08-9/30/09	$ 190,564.76	$ 1,715,082.84	41.1703%	$ 78,456.13	$ 1,146,157.38
10	10/1/09-9/30/10	$ 190,564.76	$ 1,905,647.60	36.8474%	$ 70,218.24	$ 1,216,375.61
11	10/1/10-9/30/11	$ 190,564.76	$ 2,096,212.36	32.9785%	$ 62,845.32	$ 1,279,220.93
12	10/1/11-9/30/12	$ 190,564.76	$ 2,286,777.12	29.5157%	$ 56,246.56	$ 1,335,467.49
13	10/1/12-9/30/13	$ 190,564.76	$ 2,477,341.88	26.4186%	$ 50,340.67	$ 1,385,808.17
14	10/1/13-9/30/14	$ 190,564.76	$ 2,667,906.64	23.6426%	$ 45,054.90	$ 1,430,863.07
15	10/1/14-9/30/15	$ 190,564.76	$ 2,858,471.40	21.1603%	$ 40,324.14	$ 1,471,187.21
16	10/1/15-9/30/16	$ 190,564.76	$ 3,049,036.15	18.9385%	$ 36,090.10	$ 1,507,277.31
17	10/1/16-9/30/17	$ 142,923.57	$ 3,191,959.72	16.9500%	$ 24,225.48	$ 1,531,502.79
18	10/1/17-9/30/18	$ 107,192.68	$ 3,299,152.40	15.1702%	$ 16,261.35	$ 1,547,764.15
19	10/1/18-7/1/19	$ 80,394.51	$ 3,379,546.91	13.5773%	$ 10,915.43	$ 1,558,679.58
TOTAL		$ 3,379,546.91			$ 1,558,679.58	

16d-001875

TALEON, VITTORIO S., MD

Number 276 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000		
NUMBER OF PATIENTS	11	26		
TOTAL CHARGES	$ 16,108.92	$ 359,211.33		
TOTAL ADJUSTMENTS	$ 7,205.14	$ 238,514.47		
TOTAL CHARGES LESS ADJUSTMENTS	$ 8,903.78	$ 120,696.86		
TOTAL PAYMENTS	$ 10,046.22	$ 38,583.50		
Percentage of Net Charges Collected To Date	112.85%	31.97%	USE	95%
Estimated Net Realizable Value	$ 2,846.30			

Assumptions

Lost Total Amount Available for Collections:			$ 111,793.08
Precentage of Available Charges collected for the previous year to date:	ADJUSTED TO	95%	95.00%
Lost Marginal Revenue [Calculated]			$ 106,203.43
Marginal Cost of Services as a Percentage of Marginal Revenue			30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year			$ 74,342.40
Cost of Capital to the Columbia Hospital for Women:			10.50%

Month and Year Physician Turns 65: 7/1/19

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 74,342.40	$ 74,342.40	100.0000%	$ 74,342.40	$ 74,342.40
2	10/1/01-9/30/02	$ 74,342.40	$ 148,684.80	89.5000%	$ 66,536.45	$ 140,878.84
3	10/1/02-9/30/03	$ 74,342.40	$ 223,027.19	80.1025%	$ 59,550.12	$ 200,428.96
4	10/1/03-9/30/04	$ 74,342.40	$ 297,369.59	71.6917%	$ 53,297.36	$ 253,726.32
5	10/1/04-9/30/05	$ 74,342.40	$ 371,711.99	64.1641%	$ 47,701.13	$ 301,427.46
6	10/1/05-9/30/06	$ 74,342.40	$ 446,054.39	57.4269%	$ 42,692.52	$ 344,119.97
7	10/1/06-9/30/07	$ 74,342.40	$ 520,396.79	51.3971%	$ 38,209.80	$ 382,329.77
8	10/1/07-9/30/08	$ 74,342.40	$ 594,739.19	46.0004%	$ 34,197.77	$ 416,527.54
9	10/1/08-9/30/09	$ 74,342.40	$ 669,081.58	41.1703%	$ 30,607.01	$ 447,134.55
10	10/1/09-9/30/10	$ 74,342.40	$ 743,423.98	36.8474%	$ 27,393.27	$ 474,527.82
11	10/1/10-9/30/11	$ 74,342.40	$ 817,766.38	32.9785%	$ 24,516.98	$ 499,044.80
12	10/1/11-9/30/12	$ 74,342.40	$ 892,108.78	29.5157%	$ 21,942.69	$ 520,987.49
13	10/1/12-9/30/13	$ 74,342.40	$ 966,451.18	26.4166%	$ 19,638.71	$ 540,626.20
14	10/1/13-9/30/14	$ 74,342.40	$ 1,040,793.57	23.6426%	$ 17,576.65	$ 558,202.85
15	10/1/14-9/30/15	$ 74,342.40	$ 1,115,135.97	21.1603%	$ 15,731.10	$ 573,933.95
16	10/1/15-9/30/16	$ 74,342.40	$ 1,189,478.37	18.9385%	$ 14,079.33	$ 588,013.28
17	10/1/16-9/30/17	$ 74,342.40	$ 1,263,820.77	16.9500%	$ 12,601.00	$ 600,614.29
18	10/1/17-9/30/18	$ 74,342.40	$ 1,338,163.17	15.1702%	$ 11,277.90	$ 611,892.18
19	10/1/18-7/1/19	$ 55,756.80	$ 1,393,919.97	13.5773%	$ 7,570.29	$ 619,462.47
TOTAL		$ 1,393,919.97			$ 619,462.47	

16d-001876

W.P.A., BSJSN

Number 44170

1/22/02 13:51

Date	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	12	111
TOTAL CHARGES	$ -	$ 40,607.81
TOTAL ADJUSTMENTS	$ -	$ 16,825.40
TOTAL CHARGES LESS ADJUSTMENTS	$ -	$ 23,782.41
TOTAL PAYMENTS	$ -	$ 16,833.89
Percentage of Net Charges Collected To Date	N/A	70.78%
Estimated Net Realizable Value	$ -	

Assumptions

Lost Total Amount Available for Collections:	$ 23,782.41
Precentage of Available Charges collected for the previous year to date:	70.78%
Lost Marginal Revenue [Calculated]	$ 16,833.89
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 11,783.72
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 8/1/27

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 11,783.72	$ 11,783.72	100.0000%	$ 11,783.72	$ 11,783.72
2	10/1/01-9/30/02	$ 11,783.72	$ 23,567.45	89.5000%	$ 10,546.43	$ 22,330.16
3	10/1/02-9/30/03	$ 11,783.72	$ 35,351.17	80.1025%	$ 9,439.06	$ 31,769.21
4	10/1/03-9/30/04	$ 11,783.72	$ 47,134.89	71.6917%	$ 8,447.96	$ 40,217.17
5	10/1/04-9/30/05	$ 11,783.72	$ 58,918.61	64.1641%	$ 7,560.92	$ 47,778.09
6	10/1/05-9/30/06	$ 11,783.72	$ 70,702.34	57.4269%	$ 6,767.02	$ 54,545.11
7	10/1/06-9/30/07	$ 11,783.72	$ 82,486.06	51.3971%	$ 6,056.49	$ 60,601.60
8	10/1/07-9/30/08	$ 11,783.72	$ 94,269.78	46.0004%	$ 5,420.56	$ 66,022.15
9	10/1/08-9/30/09	$ 11,783.72	$ 106,053.51	41.1703%	$ 4,851.40	$ 70,873.55
10	10/1/09-9/30/10	$ 11,783.72	$ 117,837.23	36.8474%	$ 4,342.00	$ 75,215.55
11	10/1/10-9/30/11	$ 11,783.72	$ 129,620.95	32.9785%	$ 3,886.09	$ 79,101.64
12	10/1/11-9/30/12	$ 11,783.72	$ 141,404.68	29.5157%	$ 3,478.05	$ 82,579.69
13	10/1/12-9/30/13	$ 11,783.72	$ 153,188.40	26.4166%	$ 3,112.86	$ 85,692.55
14	10/1/13-9/30/14	$ 11,783.72	$ 164,972.12	23.6428%	$ 2,786.01	$ 88,478.55
15	10/1/14-9/30/15	$ 11,783.72	$ 176,755.85	21.1603%	$ 2,493.48	$ 90,972.03
16	10/1/15-9/30/16	$ 11,783.72	$ 188,539.57	18.9385%	$ 2,231.66	$ 93,203.69
17	10/1/16-9/30/17	$ 11,783.72	$ 200,323.29	16.9500%	$ 1,997.34	$ 95,201.02
18	10/1/17-9/30/18	$ 11,783.72	$ 212,107.01	15.1702%	$ 1,787.62	$ 96,988.64
19	10/1/18-9/30/19	$ 11,783.72	$ 223,890.74	13.5773%	$ 1,599.92	$ 98,588.55
20	10/1/19-9/30/20	$ 11,783.72	$ 235,674.46	12.1517%	$ 1,431.92	$ 100,020.48
21	10/1/20-9/30/21	$ 11,783.72	$ 247,458.18	10.8758%	$ 1,281.57	$ 101,302.05
22	10/1/21-9/30/22	$ 11,783.72	$ 259,241.91	9.7338%	$ 1,147.01	$ 102,449.06
23	10/1/22-9/30/23	$ 11,783.72	$ 271,025.63	8.7118%	$ 1,026.57	$ 103,475.63
24	10/1/23-9/30/24	$ 11,783.72	$ 282,809.35	7.7970%	$ 918.78	$ 104,394.41
25	10/1/24-9/30/25	$ 11,783.72	$ 294,593.08	6.9764%	$ 822.31	$ 105,216.72
26	10/1/25-9/30/26	$ 11,783.72	$ 306,376.80	6.2456%	$ 735.97	$ 105,952.69
27	10/1/26-8/01/27	$ 9,819.77	$ 316,196.57	5.5898%	$ 548.91	$ 106,501.60
TOTAL		$ 316,196.57			$ 106,501.60	

16d-001877

CHWMC 008743

PER PHYSICIAN

Physician	Number	Period		Period	
BIS, KATHLEEN, MD	202	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		54		62	
TOTAL CHARGES		$	9,941.86	$	123,351.40
TOTAL ADJUSTMENTS		$	4,154.06	$	57,603.80
TOTAL PAYMENTS		$	4,968.65	$	58,651.17
BIS/ROBERTS	44141	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		2		14	
TOTAL CHARGES		$	37.00	$	1,971.00
TOTAL ADJUSTMENTS		$	32.66	$	544.42
TOTAL PAYMENTS		$	4.34	$	1,116.58
BLANK, KENNETH A., MD	176	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		44		242	
TOTAL CHARGES		$	101,282.97	$	1,039,230.95
TOTAL ADJUSTMENTS		$	54,865.08	$	567,739.37
TOTAL PAYMENTS		$	39,593.65	$	451,629.88
BOHON, CONSTANCE H., MD	18	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		18		60	
TOTAL CHARGES		$	4,476.00	$	207,473.72
TOTAL ADJUSTMENTS		$	1,599.22	$	103,309.55
TOTAL PAYMENTS		$	2,557.58	$	97,130.08
BOLAN, JEAN C., MD	244	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		68		99	
TOTAL CHARGES		$	485,721.63	$	581,190.34
TOTAL ADJUSTMENTS		$	301,189.90	$	329,947.65
TOTAL PAYMENTS		$	186,143.44	$	240,894.50

16d-001878

BRONSKY, GEORGE F., MD	131	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			95		89
TOTAL CHARGES		$	708,577.99	$	1,002,608.68
TOTAL ADJUSTMENTS		$	403,055.35	$	525,345.15
TOTAL PAYMENTS		$	264,779.19	$	474,520.18
BUSCH, REBECCA J., MD	166	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			75		109
TOTAL CHARGES		$	52,040.49	$	234,355.21
TOTAL ADJUSTMENTS		$	22,861.45	$	136,169.74
TOTAL PAYMENTS		$	29,127.14	$	91,338.13
DROGULA, CYNTHIA L., MD	7726	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			154		185
TOTAL CHARGES		$	272,458.00	$	359,211.33
TOTAL ADJUSTMENTS		$	167,095.12	$	238,514.47
TOTAL PAYMENTS		$	81,468.72	$	97,361.18
DUKES, MARTIN W. JR., MD	45	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			222		334
TOTAL CHARGES		$	230,134.97	$	765,409.71
TOTAL ADJUSTMENTS		$	135,650.56	$	417,725.24
TOTAL PAYMENTS		$	83,709.57	$	315,946.98
FLAX, RICHARD, MD	750	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			224		301
TOTAL CHARGES		$	290,435.44	$	549,778.62
TOTAL ADJUSTMENTS		$	182,266.87	$	341,827.52
TOTAL PAYMENTS		$	88,160.32	$	182,646.42
HIRSCH, FLORIE, MD	75	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			35		87
TOTAL CHARGES		$	10,101.23	$	111,950.77
TOTAL ADJUSTMENTS		$	1,806.47	$	58,237.77
TOTAL PAYMENTS		$	6,904.86	$	52,374.80

HORWITZ, STEPHEN I, MD	80	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			31		129
TOTAL CHARGES		$	49,218.28	$	896,978.65
TOTAL ADJUSTMENTS		$	25,972.68	$	519,009.01
TOTAL PAYMENTS		$	21,848.54	$	326,507.60
JOHNSON, HEATHER I, MD	333	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			11		135
TOTAL CHARGES		$	10,003.44	$	593,575.93
TOTAL ADJUSTMENTS		$	5,589.95	$	331,684.20
TOTAL PAYMENTS		$	4,413.49	$	253,553.52
KOCH, EDWARD G. , MD	195	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			81		89
TOTAL CHARGES		$	144,953.86	$	274,368.61
TOTAL ADJUSTMENTS		$	83,876.07	$	132,227.94
TOTAL PAYMENTS		$	47,740.31	$	133,151.29
KESSELMAN, AMY J. MD	349	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			35		62
TOTAL CHARGES		$	895.20	$	299,000.96
TOTAL ADJUSTMENTS		$	328.04	$	144,610.10
TOTAL PAYMENTS		$	406.76	$	148,295.84
LARSON, CHARLOTTE G., MD	1104	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			84		190
TOTAL CHARGES		$	291,942.56	$	667,223.69
TOTAL ADJUSTMENTS		$	153,718.73	$	386,276.01
TOTAL PAYMENTS		$	106,826.47	$	264,543.21
NEWMAN, RICHARD S., MD	125	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			43		234
TOTAL CHARGES		$	125,448.65	$	1,021,329.32
TOTAL ADJUSTMENTS		$	72,437.79	$	571,340.16
TOTAL PAYMENTS		$	51,422.82	$	428,996.84

16d-001880

NGUYEN, H. LISA, MD	1124	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			7		154
TOTAL CHARGES		$	21,542.97	$	628,450.91
TOTAL ADJUSTMENTS		$	12,495.15	$	321,818.34
TOTAL PAYMENTS		$	9,047.82	$	312,868.64
POWERS, DAVID N., MD	136	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			51		83
TOTAL CHARGES		$	64,180.19	$	328,801.76
TOTAL ADJUSTMENTS		$	33,194.68	$	180,511.92
TOTAL PAYMENTS		$	18,322.69	$	140,570.19
ROBERTS, MORTON J., MD	141	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			30		44
TOTAL CHARGES		$	6,024.00	$	81,702.35
TOTAL ADJUSTMENTS		$	2,047.07	$	40,837.88
TOTAL PAYMENTS		$	3,617.49	$	39,509.22
RUBIN, APRIL, MD	138	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			26		52
TOTAL CHARGES		$	45,216.29	$	117,369.19
TOTAL ADJUSTMENTS		$	17,905.10	$	62,881.36
TOTAL PAYMENTS		$	27,387.15	$	52,322.18
S,H,B,N,B,B,K,P	44146	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			35		176
TOTAL CHARGES		$	49,527.62	$	118,542.58
TOTAL ADJUSTMENTS		$	25,540.30	$	58,718.39
TOTAL PAYMENTS		$	18,026.93	$	47,729.58
SAFRAN, JULIAN E., MD	146	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			12		58
TOTAL CHARGES		$	22,282.51	$	185,596.44
TOTAL ADJUSTMENTS		$	12,276.80	$	85,385.72
TOTAL PAYMENTS		$	6,431.49	$	97,215.92

SANDERS, NANCY L., MD	102	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			24		148
TOTAL CHARGES		$	27,620.62	$	677,076.21
TOTAL ADJUSTMENTS		$	13,578.04	$	379,618.17
TOTAL PAYMENTS		$	12,535.70	$	292,843.09
SCHAFFEL, JANET, MD	147	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			30		161
TOTAL CHARGES		$	18,770.72	$	693,681.57
TOTAL ADJUSTMENTS		$	10,571.58	$	392,116.37
TOTAL PAYMENTS		$	7,227.59	$	279,843.94
TALEON, VITTORIO S., MD	276	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			11		26
TOTAL CHARGES		$	16,108.92	$	94,218.07
TOTAL ADJUSTMENTS		$	7,205.14	$	54,437.49
TOTAL PAYMENTS		$	10,048.22	$	38,583.50
W.P.A., BSJSN	44170	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			12		111
TOTAL CHARGES		$	-	$	40,607.81
TOTAL ADJUSTMENTS		$	-	$	16,825.40
TOTAL PAYMENTS		$	-	$	16,833.89

TOTAL - NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		1,514.00	3,434.00
TOTAL CHARGES		$ 3,058,943.41	$ 11,695,055.78
TOTAL ADJUSTMENTS		$ 1,751,313.86	$ 6,455,263.14
TOTAL PAYMENTS		$ 1,132,720.93	$ 4,936,978.35

TOTAL - ALL DOCTORS	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		33,688.00	28,529.00
TOTAL CHARGES		66,552,627.05	$ 55,696,477.27
TOTAL ADJUSTMENTS		34,893,907.05	$ 30,626,015.64
TOTAL PAYMENTS		21,031,313.61	$ 21,916,011.12

TOTAL - NON-NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		32,174.00	25,095.00
TOTAL CHARGES		$ 63,493,683.64	$ 44,001,421.49
TOTAL ADJUSTMENTS		$ 33,142,593.19	$ 24,170,752.50
TOTAL PAYMENTS		$ 19,898,592.68	$ 16,979,032.77

TOTAL - NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		1,514.00	3,434.00
TOTAL CHARGES		3,058,943.41	11,695,055.78
TOTAL ADJUSTMENTS		57.25%	55.20%
TOTAL PAYMENTS		37.03%	42.21%

TOTAL - ALL DOCTORS	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		33,688.00	28,529.00
TOTAL CHARGES		66,552,627.05	55,696,477.27
TOTAL ADJUSTMENTS		52.43%	54.99%
TOTAL PAYMENTS		31.60%	39.35%

TOTAL - NON-NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		32,174.00	25,095.00
TOTAL CHARGES		63,493,683.64	44,001,421.49
TOTAL ADJUSTMENTS		52.20%	54.93%
TOTAL PAYMENTS		31.34%	38.59%

16d-001883

Per Patient/Per Physician

Physician	Number	Period		Period	
BIS, KATHLEEN, MD	202	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		54		62	
TOTAL CHARGES		$ 184.11		$ 1,989.54	
TOTAL ADJUSTMENTS		$ 76.93		$ 929.09	
TOTAL PAYMENTS		$ 92.01		$ 945.99	
BIS/ROBERTS	44141	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		2		14	
TOTAL CHARGES		$ 18.50		$ 140.79	
TOTAL ADJUSTMENTS		$ 16.33		$ 38.89	
TOTAL PAYMENTS		$ 2.17		$ 79.76	
BLANK, KENNETH A., MD	176	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		44		242	
TOTAL CHARGES		$ 2,301.89		$ 4,294.34	
TOTAL ADJUSTMENTS		$ 1,246.93		$ 2,346.03	
TOTAL PAYMENTS		$ 899.56		$ 1,866.24	
BOHON, CONSTANCE H., MD	18	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		18		60	
TOTAL CHARGES		$ 248.87		$ 3,457.90	
TOTAL ADJUSTMENTS		$ 86.65		$ 1,721.83	
TOTAL PAYMENTS		$ 142.09		$ 1,618.83	
BOLAN, JEAN C., MD	244	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		68		99	
TOTAL CHARGES		$ 7,142.97		$ 5,870.61	
TOTAL ADJUSTMENTS		$ 4,429.28		$ 3,332.80	
TOTAL PAYMENTS		$ 2,737.40		$ 2,433.26	
BRONSKY, GEORGE F., MD	131	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		95		89	
TOTAL CHARGES		$ 7,458.72		$ 11,265.27	
TOTAL ADJUSTMENTS		$ 4,242.69		$ 5,902.75	
TOTAL PAYMENTS		$ 2,787.15		$ 5,331.69	
BUSCH, REBECCA J., MD	166	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		75		109	
TOTAL CHARGES		$ 693.87		$ 2,150.05	
TOTAL ADJUSTMENTS		$ 304.82		$ 1,249.26	
TOTAL PAYMENTS		$ 388.36		$ 837.98	

DROGULA, CYNTHIA L., MD	7728	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		154	185
TOTAL CHARGES		$ 1,769.21	$ 1,941.68
TOTAL ADJUSTMENTS		$ 1,085.03	$ 1,289.27
TOTAL PAYMENTS		$ 529.02	$ 526.28
DUKES, MARTIN W. JR., MD	45	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		222	334
TOTAL CHARGES		$ 1,036.84	$ 2,291.65
TOTAL ADJUSTMENTS		$ 611.04	$ 1,250.67
TOTAL PAYMENTS		$ 377.07	$ 945.95
FLAX, RICHARD, MD	750	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		224	301
TOTAL CHARGES		$ 1,296.59	$ 1,826.51
TOTAL ADJUSTMENTS		$ 813.69	$ 1,135.64
TOTAL PAYMENTS		$ 393.57	$ 606.80
HIRSCH, FLORIE, MD	75	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		35	67
TOTAL CHARGES		$ 288.61	$ 1,286.79
TOTAL ADJUSTMENTS		$ 51.61	$ 669.40
TOTAL PAYMENTS		$ 197.28	$ 602.01
HORWITZ, STEPHEN I, MD	80	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		31	129
TOTAL CHARGES		$ 1,587.69	$ 6,953.32
TOTAL ADJUSTMENTS		$ 837.83	$ 4,023.33
TOTAL PAYMENTS		$ 704.79	$ 2,531.07
JOHNSON, HEATHER I. MD	333	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		11	135
TOTAL CHARGES		$ 909.40	$ 4,396.86
TOTAL ADJUSTMENTS		$ 508.18	$ 2,456.92
TOTAL PAYMENTS		$ 401.23	$ 1,878.17

KOCH, EDWARD G., MD	195	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			81		89
TOTAL CHARGES		$	1,789.55	$	3,082.79
TOTAL ADJUSTMENTS		$	1,035.51	$	1,485.71
TOTAL PAYMENTS		$	589.39	$	1,496.08
KESSELMAN, AMY J. MD	349	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			35		62
TOTAL CHARGES		$	25.58	$	4,822.60
TOTAL ADJUSTMENTS		$	9.37	$	2,332.42
TOTAL PAYMENTS		$	11.62	$	2,391.87
LARSON, CHARLOTTE G., MD	1104	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			84		190
TOTAL CHARGES		$	3,475.51	$	3,511.70
TOTAL ADJUSTMENTS		$	1,829.98	$	2,033.03
TOTAL PAYMENTS		$	1,271.74	$	1,392.33
NEWMAN, RICHARD S., MD	125	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			43		234
TOTAL CHARGES		$	2,917.41	$	4,364.66
TOTAL ADJUSTMENTS		$	1,684.60	$	2,441.62
TOTAL PAYMENTS		$	1,195.86	$	1,833.32
NGUYEN, H. LISA, MD	1124	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			7		154
TOTAL CHARGES		$	3,077.57	$	4,080.85
TOTAL ADJUSTMENTS		$	1,785.02	$	2,089.73
TOTAL PAYMENTS		$	1,292.55	$	2,031.61
POWERS, DAVID N., MD	136	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			51		83
TOTAL CHARGES		$	1,258.44	$	3,961.47
TOTAL ADJUSTMENTS		$	850.88	$	2,174.84
TOTAL PAYMENTS		$	359.27	$	1,893.62

ROBERTS, MORTON J., MD	141	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			30		44
TOTAL CHARGES		$	200.80	$	1,856.87
TOTAL ADJUSTMENTS		$	68.24	$	928.13
TOTAL PAYMENTS		$	120.58	$	897.94
RUBIN, APRIL, MD	138	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			26		52
TOTAL CHARGES		$	1,739.09	$	2,257.10
TOTAL ADJUSTMENTS		$	686.66	$	1,209.26
TOTAL PAYMENTS		$	1,053.35	$	1,006.20
S,H,B,N,B,B,K,P	44146	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			35		176
TOTAL CHARGES		$	1,415.07	$	673.54
TOTAL ADJUSTMENTS		$	729.72	$	333.63
TOTAL PAYMENTS		$	515.06	$	271.19
SAFRAN, JULIAN E., MD	148	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			12		58
TOTAL CHARGES		$	1,858.88	$	3,199.94
TOTAL ADJUSTMENTS		$	1,023.07	$	1,472.17
TOTAL PAYMENTS		$	535.96	$	1,676.14
SANDERS, NANCY L., MD	102	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			24		148
TOTAL CHARGES		$	1,150.86	$	4,574.84
TOTAL ADJUSTMENTS		$	565.75	$	2,564.99
TOTAL PAYMENTS		$	522.32	$	1,978.67
SCHAFFEL, JANET, MD	147	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			30		161
TOTAL CHARGES		$	625.89	$	4,308.58
TOTAL ADJUSTMENTS		$	352.39	$	2,435.51
TOTAL PAYMENTS		$	240.92	$	1,738.16
TALEON, VITTORIO S., MD	276	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			11		28
TOTAL CHARGES		$	1,484.45	$	3,623.77
TOTAL ADJUSTMENTS		$	655.01	$	2,093.75
TOTAL PAYMENTS		$	913.47	$	1,483.98
W.P.A., BSJSN	44170	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			12		111
TOTAL CHARGES		$	-	$	365.84
TOTAL ADJUSTMENTS		$	-	$	151.58
TOTAL PAYMENTS		$	-	$	151.66

TOTAL - NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		1,514.00	3,434.00
TOTAL CHARGES		$ 2,020.44	$ 3,405.67
TOTAL ADJUSTMENTS		$ 1,156.75	$ 1,879.81
TOTAL PAYMENTS		$ 748.16	$ 1,437.88

TOTAL - ALL DOCTORS	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		33,688.00	28,529.00
TOTAL CHARGES		$ 1,975.56	$ 1,952.28
TOTAL ADJUSTMENTS		$ 1,035.80	$ 1,073.50
TOTAL PAYMENTS		$ 624.30	$ 768.20

TOTAL - NON-NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		32,174.00	25,095.00
TOTAL CHARGES		$ 1,973.45	$ 1,753.39
TOTAL ADJUSTMENTS		$ 1,030.10	$ 963.17
TOTAL PAYMENTS		$ 618.47	$ 676.59

TOTAL - NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		1,514.00	3,434.00
TOTAL CHARGES		$ 2,020.44	$ 3,405.67
TOTAL ADJUSTMENTS		52%	55%
TOTAL PAYMENTS		31%	39%

TOTAL - ALL DOCTORS	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		33,688.00	28,529.00
TOTAL CHARGES		$ 1,975.56	$ 1,952.28
TOTAL ADJUSTMENTS		52%	55%
TOTAL PAYMENTS		32%	39%

TOTAL - NON-NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		32,174.00	25,095.00
TOTAL CHARGES		$ 1,973.45	$ 1,753.39
TOTAL ADJUSTMENTS		52%	55%
TOTAL PAYMENTS		31%	39%

EXHIBIT C

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

NCRIC, INC.,

Plaintiff,

vs. : CA No. 00-0007308
: Calendar # 8
COLUMBIA HOSPITAL FOR WOMEN : Judge Davis
MEDICAL CENTER, INC.,

Defendant.

January 24, 2002

Washington, D.C.

Deposition of:

PETER BEN EZRA

called for examination by counsel for the Plaintiff, pursuant to Agreement, taken at the offices of Bryan Cave, LLP, 700 Thirteenth Street, N.W., Suite 700, Washington, D.C. 20005-3960, before John W. Whitman, RMR, Notary Public in and for the District of Columbia, commencing at 10:04 a.m., when were present on behalf of the respective parties:

of which are called major procedures, some of which are called minor procedures. I have the quantities for those procedures; I don't have the prices; and until I get prices that I can depend on I can't do that extension, price times quantity equals total. It would be a good way of checking the results in the model that we have in front of us today.

Q. Have you made a request of Columbia or its lawyers to provide you with this additional data?

A. Yes, I have. But to this point in time there is not acceptable data. In other words, I can't rely on the data they have given me.

MR. LEAHY: I represent on the record Mr. Ben Ezra has been working for about four or five months to try and get this and hasn't yet successfully gotten this data. He can testify to that if you want.

BY MR. BADAMI:

Q. I would like to ask you just a couple questions about what you were designated to do in this case. Does your expert report contain any information with respect to any loss of goodwill suffered by

Columbia Hospital?

A. Negative. It does not.

Q. Does your report contain any calculations for damages related to the reputation of Columbia in the community?

A. No, it does not.

Q. Does your report contain any information or calculations concerning the loss of specific sources of financing and partnership opportunities that otherwise would have been made available to Columbia?

A. No, it does not.

Q. Does your report contain any information concerning the lost revenue resulting from the non-occurrence of specific fund raising activities?

A. No, it does not.

Q. How about any reputational harms stemming from related events?

MR. LEAHY: Objection; asked and answered.

Whenever I object, you can answer the question.

THE WITNESS: No, it does not.

BY MR. BADAMI:

Q. Do you anticipate doing any further calculations or analysis with respect to goodwill?

A. If I'm requested to, I will.

Q. Have you been requested to?

A. At this point I have not been requested.

Q. Would your answer be the same for damages to reputation in the community?

A. Yes, it is. If requested I will be glad to furnish an expert opinion on that.

Q. But you haven't been requested to do so at this point?

A. No, I have not been requested to do that.

Q. Can I get you to confirm, sir, that you are the witness who will be testifying at trial in this case?

A. I assume I am.

Q. Has anybody been working with you, try it that way, on this report?

A. No. I did this report. I'm the only person that worked on this report. This is my

product.

Q. In addition to the other forms of damages, which I have just asked you about, are you aware of other damages that you did not calculate?

A. There was supposed to be a series of galas for fund raising. I know that the hospital was planning to receive net proceeds, in the order of magnitude of about $2 million on an annual basis, I believe, for about two or three years. That has not happened.

Q. Have you done any work related to those?

A. I have been at meetings where that has been discussed.

Q. I'm sorry, for the purposes of this case, have you done any damage calculation with respect to those issues?

A. No, I haven't, other than I am aware that they expected about $2 million a year.

Q. But that's not contained in your report?

A. No, it is not contained in my report.

Q. And you're not going to testify about that

that I used. So I used the highest marginal cost of capital range, which is 10.5 percent. To my knowledge, they are not paying a higher interest rate to anybody else.

Q. In the D.C. market is there an overabundance of hospital beds, or do you know?

MR. LEAHY: Objection to the form.

THE WITNESS: It is my understanding that there is an overabundance of hospital beds. That's why in the hospital area there is a specific need or procedure that the hospital has to go through to obtain additional hospital beds.

BY MR. BADAMI:

Q. Given the factors that we've just discussed the fact that Columbia is a boutique, that was your word, we discussed the financial results, I think yours was not good?

A. I think I said -- well, do you want to read that back?

MR. LEAHY: Object to the form.

BY MR. BADAMI:

Q. The record will reflect what it is. We talked about Columbia being a boutique. Talked about financial results, talked about current liquidity, talked about access to capital, there being an overabundance of hospital beds in this market. Given those factors, what's your opinion, can Columbia survive?

MR. LEAHY: Objection to form.

THE WITNESS: Yes, it has. It had to prove that to the bankruptcy court to emerge from Chapter 11 bankruptcy.

BY MR. BADAMI:

Q. How about today?

A. Can Columbia survive, yes.

Q. Is it well positioned to survive?

A. It's not in a good position. I don't want to represent that it is in a good position, but it has survived, and just the very act of getting out of receivership, getting out of bankruptcy, we want to believe that there is a potential for Columbia to survive.

I think I should say for the record, and maybe I didn't ask the question, we might as well get to it, one of the concerns of the auditors for the last two or three years has been the going concern assumption, and the auditors will not give a clean opinion because they express a concern that Columbia can continue to exist as a going concern. As a fiduciary, I have that same concern.

I could have said that when we started in '96. Remember that the former board imploded and, basically, asked the D.C. Government to take over its operations. So that was almost six years ago. So if you were to ask me six years ago what the probability that we would be here today talking about whether they would continue or not, I would have given you a very low percentage possibility.

So through whatever, and most of it has been asset sales, Columbia has been able to stay in operation during that six-year period.

Q. We seem to be going forward. Are you here testifying this morning that any conduct of my client

has been responsible for Columbia's financial condition?

MR. LEAHY: Object to the form.

THE WITNESS: Yes.

BY MR. BADAMI:

Q. All right, we'll get to that. Columbia's operating margins, are you familiar with those?

A. No. That data does not exist. We're looking for cost accounting data. What I used for my analysis was marginal revenue and marginal cost.

MR. BADAMI: Do you want to take a break?

MR. LEAHY: I would like to take a break. Is this a new topic?

MR. BADAMI: Sure.

MR. LEAHY: Off the record.

(A short recess was taken.)

BY MR. BADAMI:

Q. Mr. Ben Ezra, we're back on the record.

A. Very good, sir.

Q. Are you aware, sir, of a physician retention or recruitment program at Columbia Hospital?

16d-001892

EXHIBIT D

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR
WOMEN MEDICAL CENTER,
INC.,
Defendant.

****

Washington, D.C.
July 16, 2001

Resumed Deposition of:
LARRY WILSON, JR.
called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 10:00 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

Page 332

about the nature or type.
MR. LEAHY: I think he was going to give the substance or generality with regard to the types of damages occurred. It was Dr. Rifka that testified with regard to the nature of the reputation. Perhaps I misunderstood your question. If it's targeted to the nature of the reputation rather than the nature of the damages, he's not designated.
BY MR. NIEDERMAYER:
Q. I'll try and ask it this way: Is the hospital contending that its reputation as a financial institution, or its financial condition was harmed?
A. I don't think so.
Q. Is it claiming that anything NCRIC said harmed its reputation for the quality of care or services it delivered?
A. I think so.
Q. Prior to August or September of 2000 were there rumors about the hospital's

Page 333

financial condition?
A. Yes.
MR. LEAHY: Same objection.
BY MR. NIEDERMAYER:
Q. Would you agree that there was public knowledge about the Chapter 11 filings of the hospital done in February of 1998?
A. There were public accounts, yes. But public knowledge to the extent that the public knew, I don't know. I don't know how many people keep up with that stuff.
Q. Do you know whether there was anything in the newspapers when Columbia Hospital filed its Chapter 11 proceedings?
A. Yes.
Q. There were articles in the newspapers.
A. Yes.
Q. In The Washington Post?
A. Yes.
Q. And that would have been in 1998?
A. 1998.

Page 334

Q. How much of the damage to the reputation of the hospital was caused by things that NCRIC did in contrast to what other persons did, such as The Washington Post?
MR. LEAHY: I'll object that he's not our expert.
THE WITNESS: That would be difficult for me to calculate.
BY MR. NIEDERMAYER:
Q. You can't proportionalize, is that what you are saying?
A. I mean it would be difficult for me to calculate without having the methodology, an econometric model to follow.
Q. Can you tell me what specific damages to reputation were caused by the things that NCRIC did?
A. I can't tell you that.
Q. These rumors about the hospital, I think you had testified before that it had been reported to you who was restating these

Page 335

rumors in the cafeteria of the hospital; isn't that right?
A. That is correct.
Q. Would one of the names you mentioned be Dr. Glassman?
A. Yes.
Q. Was any action taken against Dr. Glassman for stating these rumors?
MR. LEAHY: Object to the form.
THE WITNESS: You mean by the hospital?
BY MR. NIEDERMAYER:
Q. Yes.
A. No.
Q. The hospital didn't sue Dr. Glassman, did they?
A. No.
Q. Are there any other persons who were reported to you were repeating the rumors?
A. There were several, I just don't recall exactly who at the time.

Page 336

Q. Did the hospital take any action against any person other than NCRIC who it learned was repeating the rumors?
A. No.
Q. The hospital didn't sue anybody for repeating any of these rumors. Is that right?
A. No.
Q. As a result of the actions of NCRIC, did the hospital lose any other type of economic or financial opportunities?
A. The same economic opportunities and opportunity costs that I cited before, they have to do with volume, associated with volume to include any contribution of fixed costs.
Q. Were there any partnership opportunities the hospital lost as a result of the actions of NCRIC?
A. Possibly.
Q. Can you tell me what they were?
A. I'm just thinking out loud. There

Page 337

may have been some opportunities that if we had increased volume that could have been brought by some partnerships or affiliations that could have been beneficial to the hospital. Certainly the loss in volume didn't help us with the HUD-242 loan. That could be considered as a real partnership.
Q. Let me hold that separately and define that as a loan.
A. Okay.
Q. Did you have any discussions with any other business, hospital, entity about forming a partnership?
A. In 1998, you say?
Q. From 1998 through the present.
A. We've had several discussions with the possibility of affiliation and partnerships, yes.
Q. Tell me with whom you had those discussions.
A. Well, we raised the issue with almost every health care organization around

Page 338

town in the Washington, D.C. area.
Q. Can you identify them for me or would you identify them for me?
A. All of them.
Q. Every hospital in the Washington region?
A. Every hospital in the Washington region, well, in the Washington, D.C. -- not area. If you exclude D.C. General, we've had discussions, yes. The major hospitals, let's put it that way.
Q. Since 1998 you've had discussions with Sibley Memorial?
A. Even with Sibley, yes.
Q. What was the nature of the affiliation that you were looking for?
A. Just an inquiry.
Q. And what was the response you got?
A. No interest at this time.
Q. How about George Washington University Hospital?
A. There is some interest.

Page 339

Q. Columbia Hospital was seeking some sort of association or affiliation with George Washington?
A. And several other -- yes.
Q. And has it been turned down by all of them?
A. No.
Q. Which ones hasn't it been turned down by?
MR. LEAHY: Object to the form. I'm not clear.
THE WITNESS: Yeah, I'm not clear either.
BY MR. NIEDERMAYER:
Q. Tell me what you're not clear about.
A. Well, we've had discussions. I mean are you saying, I mean I'm asking what more do you want me to add other than we've had a discussion? We don't have an affiliation, no.
Q. I want to know the partnership

Page 340

opportunities that you sought out that you lost because of something that NCRIC did or something you claim NCRIC did.

A. Oh, I'm saying something NCRIC could have done. I mean this whole lawsuit, the whole insurance suit could have something to do with it. I'm not saying, I didn't make the allegation that it definitely did. You asked me the question is it possible. And I answered that yes, it is possible it could have negatively impacted Columbia Hospital for Women.

Q. Is there a specific opportunity that Columbia was pursuing that it lost from 1998 to the present?

A. I'm saying, again, it could have lost.

Q. So there is nothing specific that there was.

A. Right.

Q. Besides the gala in 2001, were there any other fundraising opportunities that

Page 341

Columbia lost because of NCRIC?

A. Yes.

Q. What were they?

A. Some that we did not pursue as a result of -- again, it hampered our planning. For example, we curtailed our fundraising activities as a result of a lot of this.

Q. That was a decision made by the Board of Directors of the hospital?

A. Yes.

Q. Describe for me in particular the fundraising activities that you curtailed as a result of things that NCRIC --

A. I'm saying planning for those activities were not as aggressive as they could have been.

Q. Did those fundraising activities still take place though?

A. Some. All I'm saying to you is let's assume that if you got a board that's very active and they're very aggressive and things are going well, they might plan a

Page 342

hundred events. But if things aren't going as well or if we have this kind of situation on the forefront that you're confronted with with the negative press, et cetera, with losing our physicians to Sibley as a result of the NCRIC lawsuit, for example, which was in The Washington Post, it could hamper the fundraising events. So they obviously would not be as excited about arranging the fundraising events had it not been for those negative NCRIC articles about losing physicians to Sibley, et. cetera.

Q. First, what article was in the newspaper about a lawsuit that NCRIC brought?

A. I said losing physicians to Sibley as a result of, well, losing volume as a result of physicians going to Sibley.

Q. You called it NCRIC articles. Why did you do that?

A. Strongly implied -- well, when you look at the -- I refer you to those articles. You mentioned the article about bankruptcy.

Page 343

I'm sure you have the article about Columbia losing patients. It was implied. And I have to go back and take a look. I'm not exactly sure about that. I think the insurance issue is mentioned in that article.

Q. Is it your contention that NCRIC planted that article in The Washington Post?

A. I didn't say that.

MR. LEAHY: Objection. He is not designated on this topic.

BY MR. NIEDERMAYER:

Q. Is it your contention NCRIC supplied any of the information within the article in The Washington Post?

MR. LEAHY: Same objection.

THE WITNESS: I don't know.

BY MR. NIEDERMAYER:

Q. How much loss did the hospital suffer from its inability to do the fundraising?

A. I don't have the exact numbers because -- again, one is the gala alone, and

Page 344

another cost you'd have to compute is the fundraising that didn't take place as a result of what's going on at this time. So we would have to take a look at it.

Q. Are there specific events other than the gala that Columbia repetitively has for fundraising?

A. Yes.

Q. What events are those?

A. The low income mammography annual awards dinner is one. That's a repetitive one. But, again, we had just brought on a new women's board, and the purpose -- not women's board. Correct that. A new foundation board that focused on fundraising alone. That was their reason for existing. And they had some very ambitious goals and thoughts and ideas.

Q. Was this dinner that you just referred to not held in 2000?

A. That dinner there, awards dinner was held in 2000.

Q. Was it held in 2001?

Page 345

A. It will be held and it was not held in 2001. This is 2001.

Q. It is to be held before the end of the year.

A. That's correct.

Q. So it's not been canceled.

A. No.

Q. Who was in charge of the gala for 2001?

A. I'd have to go back and get the name.

Q. The date for the gala was postponed, as I recall. Is that right?

A. Right.

Q. Has it ever been rescheduled?

A. It has not been rescheduled as of yet.

Q. Why not?

A. Because, again, the whole issue with loss in volume, those kind of negative issues was the primary reason.

Q. Why would donors not want to give

Page 346

to the hospital if it suffered a loss in volume of revenues?

A. Well, my opinion is donors would not want to give if they think the hospital is going to go out of business. They want to support a going concern, something that's going to be around. To the extent that there's doubt in their mind as to whether the hospital will survive or not will definitely impact whether a donor would make that contribution.

Q. Did the hospital lose any recruiting opportunities as a result of anything NCRIC did?

MR. LEAHY: Same objection. I don't think he's designated.

MR. NIEDERMAYER: These are damages.

MR. LEAHY: I'm wrong. He's designated. That's topic 25. My mistake. Go ahead.

THE WITNESS: In my opinion, yes.

Page 347

For example, right now we're having difficulties, we've encountered difficulties hiring a perinatologist. We lost our perinatology group as a result of volume. We lost our radiology group as a result of volume. As a matter of fact, Dr. Glassman, who is a member of WRA, stated specifically that with the physicians that left Columbia Hospital for Women it decreased volume, thereby, decreasing his volume in radiology. He cited that to me as one of the reasons for his --

Q. So it's your testimony that Dr. Glassman's radiology group, the Washington Radiology --

A. Association.

Q. -- Association left because of things that NCRIC did.

A. That was not your question. That was not the way I understood you asked the question.

Q. You're saying they left because

CERTIFICATE FOR READING AND SIGNING

I hereby certify that I have read and examined the within transcript and the same is a true and accurate record of the testimony given by me.

Any corrections I have listed on the separate errata sheet enclosed, indicating the page and line number of each correction.

Larry Wilson, Jr.

Larry Wilson, Jr.

9/5/01

Date

Sworn to and subscribed before me this 5th day of September 2001.

Brenda D. Edwards

BRENDA D. EDWARDS
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires August 14, 2005

16d-001899

Case: NCRIC, Inc. v. Columbia Hospital for Women
Deposition of: Larry Wilson, Jr.
Taken on: July 16, 2001

Page	Line	Error	Correction	Reason
240	6	JAACO surveys, JAACO	JCAHO surveys, JCAHO	wrong spelling
240	11-12	Joint Accreditation Association	Joint Commission on Accreditation of Healthcare Organizations	wrong name

EXHIBIT E

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Hearing, May 6, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DEFENDANT'S OBJECTIONS AND RESPONSES
TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES

COMES NOW Defendant, Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by and through its attorneys, Mark C. Hansen, Esquire, David E. Ross, Esquire, Eli C. Schulman, Esquire, and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., and in response to Plaintiff's Supplemental Interrogatories ("Plaintiff's Interrogatories"), propounded by Plaintiff NCRIC, Inc. ("NCRIC"), states as follows:

GENERAL OBJECTIONS

The following General Objections apply to each and every interrogatory and form an integral part of Columbia's response to each interrogatory:

1. Columbia objects to Plaintiff's Interrogatories insofar as they seek information that Columbia already has provided to NCRIC in this litigation. The discovery at issue was sought by NCRIC at the outset of this case, some two and a half years ago. By the time that the parties completed discovery and undertook extensive briefing of cross-motions for summary judgment, Columbia had provided NCRIC with detailed discovery in the form of documents,

interrogatory responses, and depositions concerning the subject matter of these Supplemental Interrogatories and had necessarily gone on the record in Columbia's papers about the issues that NCRIC now raises in these Interrogatories. For instance, Columbia has explained in great detail the proper calculations under the Retro Plan, but this topic serves as the focus of several of NCRIC's Supplemental Interrogatories.

2. Columbia objects to Plaintiff's Interrogatories to the extent that they disregard the Court's express admonition that its Order authorizing NCRIC to serve these Supplemental Interrogatories "is not an opportunity for NCRIC to inquire more broadly than the subject matter stated in plaintiff's Notice of Deposition pursuant to Rule 30(b)(6)." Order of 4/7/03 at 1-2 n.1.

For instance, the Court authorized NCRIC to serve a supplemental interrogatory on the topic of "Defamatory actions or statements by plaintiff about defendant." But NCRIC has proceeded to lodge three separate interrogatories relating to NCRIC's defamation of Columbia, addressing not only the substance of the defamatory statements but also such matters as who heard the statements – matters plainly exceeding the scope of the Court's Order.

3. Columbia objects to Plaintiff's Interrogatories insofar as NCRIC has refused to provide Columbia with information sufficient to answer the Interrogatories. For instance, calculations under the Plan depend upon the proper calculation of Subject Premium – but NCRIC has refused to provide Columbia with data sufficient to verify NCRIC's calculation of Subject Premium.

4. Columbia objects to Plaintiff's Interrogatories to the extent that they are duplicative.

5. Columbia objects to Plaintiff's Interrogatories insofar as they seek information that is in NCRIC's possession.

16d-001903

6. Columbia objects to Plaintiff's Interrogatories insofar as they seek information not in Columbia's possession.

7. Columbia objects to Plaintiff's Interrogatories insofar as they seek disclosure of information protected by the peer review privilege, the attorney-client privilege, the work-product privilege, the party-communication privilege or the investigative privilege. Columbia further objects to Plaintiff's Interrogatories insofar as they call for information otherwise protected under the District of Columbia Superior Court Rules of Civil Procedure or any other applicable law. Columbia does not intend by these responses or objections, or by the inadvertent production of any privileged documents, to waive any protection to which it is entitled.

8. Columbia objects to Plaintiff's Interrogatories to the extent that they are vague, ambiguous, overly broad, burdensome, harassing, and/or not reasonably calculated to lead to the discovery of admissible evidence in this action.

9. Columbia reserves the right to modify or supplement its objections and responses based on such pertinent information as it may subsequently discover.

SPECIFIC OBJECTIONS AND RESPONSES

SUPPLEMENTAL INTERROGATORY NO. 1: Identify and describe all facts and reasons forming the basis for Columbia's claim that any of the calculations or numbers in Columns A-E, lines 1-20 of Exhibit A attached to Columbia's Answer to Interrogatories and Responses and Requests for Admissions are incorrect or fail to comply with the terms, provisions or formulas of the contract between the NCRIC and Columbia.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 1: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as it is vague and ambiguous and insofar as it is unduly burdensome. In particular, there is no pleading or pleadings denominated in whole or in part Columbia's Answer to Interrogatories and Responses and Requests for Admissions, and none of Columbia's responses to NCRIC's interrogatories or

NCRIC's requests for admissions has attached an Exhibit A. Columbia also objects to this Interrogatory insofar as it requests information not in Columbia's possession, but rather, in NCRIC's possession. For example, upon information and belief, the data necessary to calculate most of the amounts shown on Exhibit 1, *infra*, are in NCRIC's sole possession.

Subject to and without waiving the foregoing objections, Columbia responds as follows: Exhibit 1 to Defendant's Objections and Responses to Plaintiff's First Set of Interrogatories and Exhibit 1 to Defendant's Objections and Responses to Plaintiff's First Request for Admissions ("Exhibit 1") each includes a grid to set off each column and row of the exhibit. The columns are labeled 1 through 20; the rows are labeled A through F. Each of Columns A through E corresponds to a one-year period that the Plan was in operation (*e.g.*, Column A, which is labeled "Y94-95," corresponds to the period between September 1, 1994 to and August 31, 1995). Each row corresponds to a specific term defined in the Plan or concept contemplated by the Plan (*e.g.*, Row 2 corresponds to the term "Deposit Premium," as defined in the Plan; Row 5 corresponds to the concept of indemnity reserves contemplated by the Plan).

Columbia contends that, for Columns B through E of Row 2 ("Deposit"); for Columns C through E of Row 12 ("Development Factor"); for Columns C through E of Row 13 ("Retrospective Premium"); for Columns A through E of Row 14 ("Return Premium" or "Additional Premium" due); and for Column A of Rows 17 ("Maximum Premium"), 18 ("Minimum Premium"), 19 (Maximum Premium multiplier) and 20 (Minimum Premium multiplier), the amount shown on Exhibit 1 is not the correct amount set by the Plan, for the term or concept corresponding to that row and the period corresponding to that column.

Further, upon information and belief, for each column of Rows 1 (corresponding to the term "Subject Premium"), 5, 6 (corresponding to the concept of ALAE reserves), 7

(corresponding to the term "Loss Reserves") and 11 (Paid Losses plus Loss Reserves), Columbia cannot determine whether the numbers are incorrect or fail to comply with the terms, provisions, or formulas of the contract, because the information necessary for making such a determination is solely in the possession of NCRIC.

As to the basis for Columbia's conclusion that the foregoing calculations or numbers are incorrect or fail to comply with the terms, provisions, or formulas of the contract between NCRIC and Columbia, subject to and without waiving the foregoing objections Columbia responds as follows:

(a) The Plan dictates that the amount for the term corresponding to Row 2 must be calculated by applying a multiplier. The proper multiplier is .67 for the periods corresponding to Columns B through E. NCRIC applied an incorrect multiplier, approximately .62, when calculating all the amounts in Columns B through E of Row 2, thereby miscalculating each corresponding amount in Row 2.

(b) The Plan dictates that the amount for the term corresponding to Rows 13 and 14 must be calculated by applying a multiplier corresponding to Row 12. The multiplier shown in Columns C through E of Row 12 is incorrect. The correct amount, set by the Plan, for the term corresponding to Row 12 of Exhibit 1 is: "80%" for the period corresponding to Column C; "65%" for the period corresponding to Column D; and "55%" for the period corresponding to Column E, rather than: "105%" for the period corresponding to Column C; "80%" for the period corresponding to Column D; and "65%" for the period corresponding to Column E. NCRIC applied the incorrect multiplier in calculating each amount in Columns C through E of Rows 13 and 14, thereby miscalculating each such amount.

(c) The Plan dictates that the amounts for the term corresponding to Row 17 must be calculated by applying a multiplier corresponding to Row 19, and that the amounts for the term corresponding to Row 18 must be calculated by applying a multiplier corresponding to Row 20. The multiplier shown in Column A of Rows 19 and 20 is incorrect. Under the Plan, the correct amount for the term corresponding to Row 19, for the period corresponding to Column A, is "1.33," not "1.15"; for that same period, the correct amount for the term corresponding to Row 20 is ".60", not ".75". By applying the incorrect multiplier from Column A of Rows 19 and 20, NCRIC thereby miscalculated each amount in Column A of Rows 17 and 18.

(d) The Plan dictates that the amount for the term corresponding to Row 14 must be determined by a calculation that subtracts from the term corresponding to Row 2 another term corresponding either to Row 13 or Row 18, whichever is greater (subject to a further limitation not relevant here). By applying the incorrect multiplier in Column A of Row 20 and thereby miscalculating the amount in Column A of Row 18, NCRIC thereby miscalculated the amount in Column A of Row 18, *see supra* (c), which also led NCRIC to miscalculate the amount in Column A of Row 13 and, in turn, Column A of Row 14. And by miscalculating the amount in Column B of Row 2, *see supra* (a), NCRIC thereby miscalculated the amount in Column B of Row 14.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment at 13-17, Statement of Material Facts Not in Dispute & Exhs. 10, 14; and Reply in Support of Defendant's Motion for Summary Judgment Exh. 1. To the extent that this or any of these supplemental interrogatories seeks further facts and reasons forming the basis for these conclusions, Columbia hereby incorporates by reference Columbia's Answer and

Counterclaims; Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment ("SJ Mem."); Statement of Material Facts Not in Dispute ("SMF"); Reply in Support of Defendant's Motion for Summary Judgment ("SJ Reply"); Memorandum of Points and Authorities in Opposition to NCRIC's Motion for Summary Judgment ("SJ Opp."); Statement of Material Facts in Dispute ("SMF2"); and the exhibits to the foregoing papers (collectively, "Columbia's Previously Submitted Papers").

SUPPLEMENTAL INTERROGATORY NO. 2: Identify and describe the amounts Columbia believes to be the correct amounts in Columns A-E, lines 1-20 of Exhibit A attached to Columbia's Answer to Interrogatories and Responses and Requests for Admissions to comply with the terms, provisions or formulas of the Contract between the NCRIC and Columbia.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 2: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as it requests information not in Columbia's possession, but rather, in NCRIC's possession. For example, upon information and belief, the data necessary to calculate most of the amounts shown on Exhibit 1 – and particularly the amounts in Rows 1, 2, 4, 5 through 11, 13, and 14 – is in NCRIC's sole possession. Without this data, Columbia cannot determine how and in what manner the amounts referred to in its response to Supplemental Interrogatory No. 1 are incorrect. The amounts in Exhibit 1 (and therefore those in these Responses) necessarily reflect, *inter alia*, the assumption that NCRIC correctly and fairly calculated Subject Premium and Loss Reserves under the Plan – an assumption that Columbia is unable to verify because NCRIC has refused to provide Columbia with data sufficient to verify these amounts. Nonetheless, Columbia has been able to determine that NCRIC's miscalculations of some amounts shown on Exhibit 1 resulted in part from NCRIC's improper application of the retro formula under the Plan, and Columbia therefore responds accordingly.

Subject to and without waiving the foregoing objections, Columbia responds, based on the facts presently known to it, as follows:

(a) The correct amount, set by the Plan, for the term corresponding to Row 2 of Exhibit 1 is: "$2,203,073.90" for the period corresponding to Column B; "$2,341,855.02" for the period corresponding to Column C; "$2,238,195.30" for the period corresponding to Column D; and "$2,418,476.89" for the period corresponding to Column E.

(b) The correct amount, set by the Plan, for the term corresponding to Row 12 of Exhibit 1 is: "80%" for the period corresponding to Column C; "65%" for the period corresponding to Column D; and "55%" for the period corresponding to Column E.

(c) The correct amount, set by the Plan, for the term corresponding to Row 13 of Exhibit 1 is: "$3,063,904.73" for the period corresponding to Column C; "$1,706,188.72" for the period corresponding to Column D; and "$2,802,425.73" for the period corresponding to Column E.

(d) The correct amount, set by the Plan, for the term corresponding to Row 14 of Exhibit 1 is: "($350,593.73)" for the period corresponding to Column A; "$333,392.45" for the period corresponding to Column B; "$722,049.71" for the period corresponding to Column C; "($233,841.30)" for the period corresponding to Column D; and "$383,948.84" for the period corresponding to Column E.

(e) The correct amount, set by the Plan, for the term corresponding to Row 17 of Exhibit 1 is: "$3,783,734.29" for the period corresponding to Column A.

(f) The correct amount, set by the Plan, for the term corresponding to Row 18 of Exhibit 1 is: "$1,706,947.80" for the period corresponding to Column A.

(g) The correct amount, set by the Plan, for the term corresponding to Row 19 of Exhibit 1 is: "1.33" for the period corresponding to Column A.

(h) The correct amount, set by the Plan, for the term corresponding to Row 20 of Exhibit 1 is: ".60" for the period corresponding to Column A.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; and SJ Reply Exh. 1. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 3: Describe and identify the facts and reasons why Columbia believes the amounts contained in your response to Supplemental Interrogatory No. 2 to be the proper amounts and calculations to be used in calculating the amount of premium due Columbia under the Contract.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 3: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds, based on the facts presently known to it, as follows: Columbia incorporates by reference its Responses to Supplemental Interrogatories Nos. 1 & 2.

SUPPLEMENTAL INTERROGATORY NO. 4: Identify and describe the amount of premium that should have been charged to Columbia in each year of the Contract and the method of calculation of any refund premium Columbia claims it is owed.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 4: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as it is vague and ambiguous. In particular, Columbia is unable to determine the meaning of the phrase "the amount of premium that should have been charged to Columbia." For instance, this Interrogatory speaks generically of "premium," but the Plan refers to numerous types of premium, including "Subject Premium," "Deposit Premium," "Retro Premium," "Minimum Premium," and

"Additional Premium." This Interrogatory also speaks of "refund premium," a term not defined in the Plan. The term "charged to Columbia" is vague, as well.

Columbia also objects to the extent that this Interrogatory asks for "the amount of premium that should have been charged to Columbia" insofar as any such amount depends on the fair and correct calculation of Subject Premium under the Plan – but NCRIC has refused to provide Columbia with data sufficient to verify NCRIC's calculation of Subject Premium.

Subject to and without waiving the foregoing objections, Columbia responds as follows: Columbia believes that this Interrogatory is most coherently understood to be asking about any "Additional Premium" or "Return Premium" due after performance of a Reconciliation. Therefore, for each year, or Experience Period, a Reconciliation should be performed (correctly, per Interrogatories Nos. 1-3) to determine whether Columbia owes Additional Premium or is due Return Premium. Additional Premium is any positive balance (*i.e.*, in NCRIC's favor); Additional Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is greater than the Deposit Premium. Return Premium is any negative balance (*i.e.*, in Columbia's favor); Return Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is less than the Deposit Premium.

According to the September 2000 Reconciliation, NCRIC owed Columbia Return Premium of "$587,568.66" for the Experience Period 1993-94; NCRIC owed Columbia Return Premium of "$350,593.73" for the Experience Period 1994-95; Columbia owed NCRIC Additional Premium of "$333,392.45" for the Experience Period 1995-96; Columbia owed NCRIC Additional Premium of "$722,049.71" for the Experience Period 1996-97; NCRIC owed Columbia Return Premium of "$233,841.30" for the Experience Period 1997-98; and Columbia owed NCRIC Additional Premium of "$383,948.84" for the Experience Period 1998-99. This

totals $267,387.31 in Additional Premium that Columbia owed NCRIC. Taking into account the $172,815.00 that NCRIC paid Columbia for the first Experience Period and the $1,000,000.00 that Columbia deposited with NCRIC leaves NCRIC owing Columbia Return Premium of $559,797.69.

The parties, however, agreed orally that they would exchange Additional or Return Premium only for those Experience Periods for which all claims were closed. The amounts calculated under the September 2000 Reconciliation therefore are not the actual amounts owed, for as of September 2000, only the Experience Periods 1993-94 and 1994-95 had closed. According to the September 2000 Reconciliation, NCRIC owed Columbia Return Premium of "$587,568.66" for the Experience Period 1993-94; NCRIC owed Columbia Return Premium of "$350,593.73" for the Experience Period 1994-95. NCRIC paid Columbia $172,815.00 for the 1993-94 Experience Period. Therefore, NCRIC in fact owes Columbia $765,347.39 in Return Premium (in addition to owing Columbia its $1 million deposit back, plus interest).

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; and SJ Reply Exh. 1. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 5: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 1 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 5: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC breached the Plan by failing in performing its Reconciliations to apply the proper Minimum Premium factor, the proper Deposit Premium factor, and/or the proper Development

16d-001912

Factors. NCRIC further breached the parties' agreement by seeking payment for Experience Periods for which not all of the claims had closed, in violation of the parties' oral agreement.

Through NCRIC's failure to perform its obligations under the Plan, NCRIC caused Columbia damages. According to NCRIC's own calculations, NCRIC owes Columbia Return Premium for the two Experience Periods that are closed. NCRIC has paid Columbia $172,815 for the first Experience Period, but it has paid Columbia nothing for the second Experience Period. Accordingly, even under NCRIC's own interpretation of the terms in the Retro Plan, NCRIC owes Columbia $177,806.

But even that amount understates NCRIC's liability to Columbia. As explained, in its Reconciliations, NCRIC employs the wrong Minimum Premium factor for the 1993-94 and 1994-95 Experience Periods. When the correct Minimum Premium factor is applied (assuming all of NCRIC's other calculations are correct), NCRIC owes Columbia $587,568.66 (less $172,815 it already paid) for the 1993-94 Experience Period and $350,593.73 for the 1994-95 Experience Period, for a total of $765,347.49, plus interest.

In addition, NCRIC's miscalculations, including but not limited to those in the 1997 Reconciliation, caused Columbia to overpay Additional Premium and to make an unwarranted $1 million deposit, thereby causing Columbia to become insolvent and to file for bankruptcy. Columbia incurred expenses of over $1.5 million in connection with its bankruptcy.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; SJ Reply Exh. 1; and SMF2 ¶¶ 29, 35-36, 157-59. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 6: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 2 of its counterclaim and describe how that amount has been calculated.

16d-001913

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 6: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC willfully rendered imperfect performance by performing Reconciliations inaccurately. Columbia's damages include the amount due according to the September 1, 2000 Reconciliation – $765,347.39, plus interest, *see* Response to Supplemental Interrogatory No. 5. That is, NCRIC was required to inform Columbia by November 1, 2000 of the correct amount due and pay that amount by December 1, 2000. NCRIC did neither.

In addition, Columbia was damaged by the $1 million that it deposited with NCRIC in installments between January 1998 and March 1998, plus interest. Had NCRIC performed the September 1, 1997 Reconciliation correctly, the spreadsheet would have shown that (absent the oral agreement) Columbia was owed $78,000 in Return Premium, not that Columbia owed approximately $1.77 million in Additional Premium. NCRIC thus had no basis for seeking a $1 million deposit as a condition for renewing the Plan. NCRIC's demand for this payment also violated the parties' oral agreement. NCRIC should have returned the $1 million, plus interest, when Columbia demanded that it be returned.

In addition, NCRIC's miscalculations, including but not limited to those in the 1997 Reconciliation, caused Columbia to overpay Additional Premium and to make an unwarranted $1 million deposit, thereby causing Columbia to become insolvent and to file for bankruptcy. Columbia incurred expenses of over $1.5 million in connection with its bankruptcy.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; SJ Reply Exh. 1; and SMF2 ¶¶ 29, 35-36, 157-59. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 7: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 3 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 7: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC breached its fiduciary duty to Columbia by failing to perform Reconciliations honestly and accurately. NCRIC failed to alert Columbia that under the September 2000 Reconciliation, Columbia was owed $765,347.39 in Return Premium, plus interest.

NCRIC also breached its fiduciary duty to Columbia by demanding the $1 million deposit when it was not due and by refusing to return the $1 million.

NCRIC further damaged Columbia by refusing to allow Columbia to audit NCRIC's calculations – in particular, by refusing to give Columbia access to information concerning the premiums of individual members of the Attending Faculty used to calculate Subject Premium and concerning indemnity and expense reserves for individual malpractice claims that comprise the Loss Reserves.

In addition, NCRIC's miscalculations, including but not limited to those in the 1997 Reconciliation, caused Columbia to overpay Additional Premium and to make an unwarranted $1 million deposit, thereby causing Columbia to become insolvent and to file for bankruptcy. Columbia incurred expenses of over $1.5 million in connection with its bankruptcy.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; SJ Reply Exh. 1; and SMF2 ¶¶ 29, 35-36, 157-59. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 8: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 4 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 8: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

As a direct and proximate result of NCRIC's wrongful conduct, about 30 Attending Faculty members terminated their association with Columbia and moved (the bulk of) their practices to Sibley and/or GW hospitals. These physicians ceased or cut back referring patients to Columbia. The steep drop in patient referrals cost Columbia substantial revenues each year for the foreseeable future.

Mr. Peter Ben Ezra applied a generally accepted "lost cash flow" model to calculate Columbia's lost revenue damages resulting from the departure of the Attending Faculty. *See generally* Report of Peter Ben Ezra, Expert Witness; Deposition of Peter Ben Ezra; Declaration of Peter Ben Ezra in Support of Defendant's Memorandum of Points and Authorities in Opposition to NCRIC's Motion for Summary Judgment. For his analysis, Mr. Ben Ezra obtained a breakdown of Columbia's actual revenue from patient referrals, sorted by physician. He then compared the revenue streams attributable to the physicians who left the hospital for the year before October 1, 2000, and the year after October 1, 2000, and compared the two numbers. Then, Mr. Ben Ezra used a textbook "lost cash flow" model to calculate the lost cash flows over time until an estimated year when each physician would have retired, had they stayed at

16d-001916

Columbia. He excluded from consideration any physician who left the hospital for non-NCRIC-related reasons. This is a well-accepted means of calculating lost cash flow. Mr. Ben Ezra concluded that the present value of Columbia's damages under this analysis total $21.5 million.

Columbia also suffered other damages about which lay witnesses testified. First, due to NCRIC's wrongful conduct Columbia lost the opportunity to hold a gala fundraiser, reasonably expected to garner more than $1.5 million in contributions. This gala, scheduled for May 2001, was canceled abruptly in late 2000 by Columbia's volunteer fundraising board, because the pervasive rumors that the hospital was going to close made it essentially impossible to raise contributions.

Second, Columbia was eligible for a $35 million, low-interest HUD loan, which it was reasonably assured of obtaining in light of HUD's support for its candidacy. But after the Attending Faculty left in Summer/Fall 2000, Columbia's volume and revenues dropped sharply. As a result, HUD advised Columbia that it no longer qualified for the loan. Denial of this loan meant losing the opportunity to reduce the hospital's cost of capital from 10.5% to 4.5% per month.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SMF2 ¶¶ 193-238 and SJ Opp. at 53-60, in addition to Mr. Ben Ezra's Report, Deposition, and Declaration. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 9: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 5 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 9: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC's tortious interference with prospective business advantage caused doctors to terminate their association with Columbia and move their practices to Sibley and/or GW hospitals. These physicians ceased or cut back referring patients to Columbia, causing Columbia $21.5 million in lost cash flow and other damages, including the lost opportunity to hold a gala fundraiser reasonably expected to garner more than $1.5 million in contributions, and the lost opportunity to obtain a $35 million, low-interest HUD loan that would have reduced the hospital's cost of capital form 10.5% to 4.5% per month. Columbia incorporates by reference its Response to Supplemental Interrogatory No. 8.

SUPPLEMENTAL INTERROGATORY NO. 10: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 7 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 10: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC and/or its agents made false representations to Columbia, including NCRIC's improper Retro Plan calculations. NCRIC also concealed from Columbia material facts which amounted to a misrepresentation by refusing to provide information concerning Loss Reserves as provided for by the Plan, among other things. NCRIC refused to provide Columbia access to data necessary to independently verify NCRIC's bookkeeping.

Columbia has been directly and proximately damaged by NCRIC's false representations and concealments. Columbia's damages include the amount due according to the September 1, 2000 Reconciliation – $765,347.39, plus interest, *see* Response to Supplemental Interrogatory No. 5. That is, NCRIC was required to inform Columbia by November 1, 2000 of the correct amount due and pay that amount by December 1, 2000. NCRIC did neither.

16d-001918

In addition, Columbia was damaged by the $1 million that it deposited with NCRIC in installments between January 1998 and March 1998, plus interest. Had NCRIC performed the September 1, 1997 Reconciliation correctly, the spreadsheet would have shown that (absent the oral agreement) Columbia was owed $78,000 in Return Premium, not that Columbia owed approximately $1.77 million in Additional Premium. NCRIC thus had no basis for seeking a $1 million deposit as a condition for renewing the Plan.

In addition, NCRIC's miscalculations, including but not limited to those in the 1997 Reconciliation, caused Columbia to overpay Additional Premium and to make an unwarranted $1 million deposit, thereby causing Columbia to become insolvent and to file for bankruptcy. Columbia incurred expenses of over $1.5 million in connection with its bankruptcy.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; SJ Reply Exh. 1; and SMF2 ¶¶ 29, 35-36, 157-59. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 11: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 8 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 11: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC negligently made false representations because, among other things, it miscalculated in performing Reconciliations. NCRIC also failed to ensure that it maintain Loss Reserves in accord with the industry standards and refused to provide information regarding Loss Reserves as provided for by the Plan, among other things. Columbia has been directly and

proximately damaged by NCRIC's negligent actions. Columbia incorporates by reference its Response to Supplemental Interrogatory No. 10.

SUPPLEMENTAL INTERROGATORY NO. 12: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 9 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 12: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

As a result of its false and defamatory statements, NCRIC directly and proximately caused Columbia damages in the form of harm to its reputation and substantial economic loss. NCRIC's defamatory statements caused doctors to terminate their association with Columbia and move their practices to Sibley and/or GW hospitals. These physicians ceased or cut back referring patients to Columbia, causing Columbia $21.5 million in lost cash flow and other damages, including the lost opportunity to hold a gala fundraiser reasonably expected to garner more than $1.5 million in contributions, and the lost opportunity to obtain a $35 million, low-interest HUD loan that would have reduced the hospital's cost of capital form 10.5% to 4.5% per month. Columbia incorporates by reference its Response to Supplemental Interrogatory No. 8.

SUPPLEMENTAL INTERROGATORY NO. 13: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 10 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 13: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC made and false and misleading representations of fact that disparaged the quality of Columbia's services as a health care facility. NCRIC made the false representations

16d-001920

intentionally and with full knowledge that these statements would cast doubt upon the quality of Columbia's services as a health care facility. As a result of these false representations, NCRIC proximately caused Columbia damages in the form of harm to its reputation and substantial economic loss. NCRIC's defamatory statements caused doctors to terminate their association with Columbia and move their practices to Sibley and/or GW hospitals. These physicians ceased or cut back referring patients to Columbia, causing Columbia $21.5 million in lost cash flow and other damages, including the lost opportunity to hold a gala fundraiser reasonably expected to garner more than $1.5 million in contributions, and the lost opportunity to obtain a $35 million, low-interest HUD loan that would have reduced the hospital's cost of capital form 10.5% to 4.5% per month. Columbia incorporates by reference its Response to Supplemental Interrogatory No. 8.

SUPPLEMENTAL INTERROGATORY NO. 14: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 11 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 14: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC unlawfully exercised ownership, dominion, and control over Columbia's $1 million deposit, in denial or repudiation of Columbia's rights thereto. The parties agreed in 1998 to treat Columbia's $1 million as a deposit, and once it was realized that NCRIC was performing Reconciliations inaccurately, Columbia demanded in vain that its money be returned. Columbia is owed the $1 million deposit, plus interest.

16d-001921

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SMF2 ¶¶ 35-36, 157-59; SJ Opp. at 51-53. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 15: Identify each and every individual who made any of the statements alleged to be defamatory that remain in Columbia's counterclaim and provide the statement or statements each individual is alleged to have made.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 15: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as it blatantly disregards the Court's express admonition that its Order authorizing NCRIC to serve these Supplemental Interrogatories "is not an opportunity for NCRIC to inquire more broadly than the subject matter stated in plaintiff's Notice of Deposition pursuant to Rule 30(b)(6)." Order of 4/7/03 at 1-2 n.1. That Notice identified the following topic (No. 10): "Defamatory actions or statements by plaintiff about defendant." That topic arguably encompasses Supplemental Interrogatory No. 17, which concerns the *substance* of the defamatory statements. But the subject matter of this Interrogatory – *who made* the defamatory statements – and the subject matter of Supplemental Interrogatory No. 16 – *who heard* the defamatory statements – is not fairly encompassed in Topic No. 10 of NCRIC's Notice of Deposition pursuant to Rule 30(b)(6) that was at issue in the motion to compel. Supplemental Interrogatory Nos. 15 & 16 thus plainly exceed the scope of the discovery authorized by the Court's Order.

Subject to and without waiving the foregoing objections, Columbia responds as follows:

(a) Dr. Leonard Glassman, Chairman of the Board of NCRIC, Inc., announced in Columbia's cafeteria on September 1, 2000 that (1) the Entity Policy covering Columbia's Clinic and the physicians working there (the Columbia Physicians Group ("CPG")) had expired; (2) CPG physicians with NCRIC individual medical malpractice insurance policies were not covered

16d-001922

under those policies when practicing at the Clinic; (3) Columbia's self-insurance trust fund was insufficiently funded to insure the Clinic; and (4) Columbia was planning to cease operations.

Many physicians overheard Dr. Glassman make these statements, including Dr. Nabil Asterbadi and Dr. Safa Rifka.

Also in about September 2000, staff members in the Radiology Department at Columbia, where Dr. Glassman worked, repeatedly overheard him telling patients to pick up their films and bring them to his office in the suburbs because Columbia was planning to close, and telling physicians employed by the Hospital to start looking for jobs elsewhere for the same reason. Those who heard these statements include Elizabeth Jackson and Francis Renee Perkins. Because Dr. Glassman's door was open, other radiology patients in the office also could hear his statements.

Around that same time, Dr. Glassman told another physician, Dr. Gideon Kioko, to move his group to Sibley, because (Dr. Glassman urged) Columbia was about to close. Other physicians who were eating in the cafeteria at the time heard these remarks – including Dr. Richard Newman, who shortly thereafter moved to Sibley, and Dr. Jerome O'Connell.

Later, Dr. Glassman told Dr. O'Connell in the hallway at Columbia that, because the hospital was closing, another physician, Dr. Evelyn Karson, was leaving.

(b) Dr. Morton Roberts, a physician who often passed along information from NCRIC purporting to speak on its behalf, informed a nurse anesthetist, David Young, in early July 2000 that Young should start looking for a job elsewhere because Columbia was closing. Dr. Roberts also made this statement to other staff members at about the same time. Dr. Asterbadi sent Dr. Roberts a cease-and-desist letter, in an effort to get him to cease disparaging Columbia.

(c) On or about September 1, 2000, a representative of NCRIC's Policyholder

Services Department (*i.e.*, either David Osborn, Eric Hempelman or Grant Sohm -- the identity of the individual that made these statements is solely in NCRIC's possession, and NCRIC has not provided that information to Columbia) informed Attending Faculty member Dr. Heather Johnson that (1) the Entity Policy covering CPG physicians had expired; (2) CPG physicians with NCRIC medical malpractice insurance were not covered under their individual policies when practicing at the Clinic; (3) Columbia's self-insurance trust fund was insufficiently funded to insure the CPG and its physicians; and (4) due to the Retro Plan's termination, Columbia was ceasing operations.

A representative of NCRIC's Policyholder Services Department also made these statements to other physicians, including Dr. Edward Koch, who also is a member of NCRIC's Board of Directors.

Dr. Koch and Dr. Johnson informed Columbia's management and other physicians at Columbia what they had been told.

Other unnamed individuals heard and repeated the defamatory statements, as well.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SMF2 ¶¶ 160-75 and SJ Opp. at 30-44. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 16: Identify each and every individual who heard any of the statements alleged to be defamatory that remain in Columbia's counterclaim and indicate what statement was allegedly heard.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 16: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia further responds as follows: Columbia incorporates by reference its Objections and Response to Interrogatory No. 15.

SUPPLEMENTAL INTERROGATORY NO. 17: Identify and describe the substance of each and every statement made by anyone identified in the answer to Supplemental Interrogatory No. 15 that Columbia claims to be defamatory.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 17: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia further responds as follows: Columbia incorporates by reference its Objections and Response to Interrogatory No. 15.

SUPPLEMENTAL INTERROGATORY NO. 18: Describe how Columbia claims NCRIC should have calculated: (a) its loss reserves; (b) adjustment of loss reserves; (c) positive loss experiences of Columbia under the Contract; (d) use of additional years in calculating premiums, and (e) each element of the formula or other requirements for reconciliation of premiums due under the Retro Plan.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 18: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as NCRIC has refused to provide Columbia with data sufficient to audit NCRIC's calculation of Loss Reserves. Columbia also specifically objects to this Interrogatory insofar as it is vague and ambiguous. In particular, it is unclear what is meant by the phrase, "how Columbia claims NCRIC should have calculated." The terms "additional years" and "formula" are vague, as well. Subject to and without waiving the foregoing objections, Columbia responds as follows:

(a) NCRIC should have calculated its Loss Reserves in accordance with generally accepted standards in the insurance industry.

(b) NCRIC either knowingly or due to lack of reasonable care failed adequately to adjust its loss reserves downward in response to Columbia's positive loss experience under the Plan. As a result, for some claims NCRIC maintained higher Loss Reserves than were reasonably necessary to cover malpractice claims under the Retro Plan, and improperly raised the incurred cost of the Plan.

16d-001925

Further, NCRIC either knowingly or due to lack of reasonable care used incorrect Development Factors when calculating the Retro Premium, and thereby considered a greater percentage of its Loss Reserves than it was allowed to consider under the Retro Plan. As a result, NCRIC improperly raised the incurred cost of the Plan.

Moreover, for each quarterly reconciliation that NCRIC sent to Columbia, NCRIC either knowingly or due to lack of reasonable care adjusted its Loss Reserves upwards based on increases in its Loss Reserves during that quarter. But NCRIC knew or should have known that under the Plan it was proper to bill Columbia for Loss Reserves based only on yearly Reconciliations.

(c) NCRIC either knowingly or due to lack of reasonable care failed adequately to adjust its loss reserves downward in response to Columbia's positive loss experience under the Plan. As a result, for some claims NCRIC maintained higher Loss Reserves than were reasonably necessary to cover malpractice claims under the Retro Plan, and improperly raised the incurred cost of the Plan.

Further, NCRIC either knowingly or due to lack of reasonable care used incorrect Development Factors when calculating the Retro Premium, and thereby considered a greater percentage of its Loss Reserves than it was allowed to consider under the Retro Plan. As a result, NCRIC improperly raised the incurred cost of the Plan.

(d) NCRIC either knowingly or due to lack of reasonable care reconciled too many Experience Periods. NCRIC thereby improperly raised the incurred cost of the Plan.

For instance, in performing the September 1997 Reconciliation, NCRIC included the 1995-96 Experience Period in its calculations. Proper operation of the Plan at that time, however, dictated that a Reconciliation should not include calculations for either of the prior *two*

16d-001926

Experience Periods. Accordingly, the September 1997 Reconciliation should not have included calculations for either the 1995-96 or 1996-97 Experience Periods. As a result of this error by NCRIC in performing the September 1997 Reconciliation, NCRIC informed Columbia that Columbia would owe approximately $1.77 million in Additional Premium. Had NCRIC performed the 1997 Reconciliation correctly and not included in its calculations the 1995-96 or 1996-97 Experience Periods, that Reconciliation would have shown that Columbia was owed $78,000 in Return Premium.

(e) Proper Reconciliations under the Retro Plan should have been performed as follows:

1. Calculate the Retro Premium for each Experience Period by using the Retro Formula.

2. Limit the Retro Premium for each Experience Period by applying the Minimum Premium or Maximum Premium, if applicable.

3. Calculate the Additional Premium or Return Premium due for each Experience Period by subtracting the Retro Premium (as limited by any applicable minimum or maximum) from the Deposit Premium for each Experience Period.

4. Calculate the total Additional Premium or Return Premium for all Experience Periods that are properly subject to Reconciliation.

5. Apply a credit for Columbia's deposit and/or for NCRIC's payment to obtain the current total premium due.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Reply Exh. 1. *See also* Responses to Supplemental Interrogatory Nos. 1-4; SMF2 ¶¶ 86-88, 106-07; Columbia's Previously Submitted Papers.

16d-001927

SUPPLEMENTAL INTERROGATORY NO. 19: Identify the specific errors, miscalculations and overstatements in the statement(s) from NCRIC referenced in paragraphs 72 and 101 of the counterclaim including the reasons and bases for the errors and the corrections required to make the bill accurate.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 19: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

Paragraph 72 of the counterclaim concerns the September 1998 reconciliation. In performing that Reconciliation, NCRIC applied an incorrect Minimum Premium factor, an incorrect Deposit Premium factor, and incorrect Development Factors. NCRIC also disregarded the oral agreement between NCRIC and Columbia that the parties would exchange Additional or Return Premium only for those Experience Periods for which all claims were closed. NCRIC failed to pay Columbia interest on Columbia's $1 million deposit, and NCRIC ignored Columbia's demand that the deposit be returned.

Had NCRIC applied the proper Minimum Premium factor, the proper Deposit Premium factor, and the proper Development Factors, and had NCRIC complied with the parties' oral agreement, NCRIC would have concluded that it owed Columbia $670,000 in Return Premium (rather than the $172,000 that NCRIC paid Columbia after performing that Reconciliation). NCRIC also should have paid Columbia interest on the $1 million deposit and, in fact, should have returned the $1 million to Columbia.

Paragraph 101 of the counterclaim concerns the September 2000 Reconciliation. In performing that Reconciliation, NCRIC applied an incorrect Minimum Premium factor, an incorrect Deposit Premium factor, and incorrect Development Factors. NCRIC also disregarded the oral agreement between NCRIC and Columbia that the parties would exchange Additional or

16d-001928

Return Premium only for those Experience Periods for which all claims were closed. NCRIC failed to pay Columbia interest on Columbia's $1 million deposit, and NCRIC ignored Columbia's demand that the deposit be returned.

Had NCRIC applied the proper Minimum Premium factor, the proper Deposit Premium factor, and the proper Development Factors, and had NCRIC complied with the parties' oral agreement, NCRIC would have concluded that it owed Columbia $765,347.39 in Return Premium. NCRIC also should have paid Columbia interest on the $1 million deposit and, in fact, should have returned the $1 million to Columbia, plus interest.

Columbia incorporates by reference the Responses to Supplemental Interrogatory Nos. 1-4, which describe in further detail the specific errors, miscalculations, and overstatements in NCRIC's Reconciliations generally and the September 2000 Reconciliation in particular, as well as the reasons and bases for the errors, and the corrections required to make the Reconciliation accurate.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. & SMF; SMF Exhs. 10, 14; SMF2 ¶¶ 115-33, 239-42; SJ Reply Exh. 1. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 20: Identify the amount of Return Premium Columbia claims it is owed from 1993 to date and describe how each amount was calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 20: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as the term "to date" is vague and ambiguous. Columbia also objects to this Interrogatory insofar as it requests information not in Columbia's possession, but rather, in NCRIC's possession. In particular, the amount that Columbia is owed "to date" is in NCRIC's sole possession. Columbia cannot know

16d-001929

how much it is owed because NCRIC has not furnished Columbia with the 2001 or 2002 Reconciliations. Columbia's Responses therefore utilize the numbers from the September 2000 Reconciliation. Columbia further objects insofar as any accurate calculation of Return Premium depends on the fair and correct calculation of Subject Premium under the Plan – but NCRIC has refused to provide Columbia with data sufficient to verify NCRIC's calculation of Subject Premium.

Subject to and without waiving the foregoing objections, Columbia responds as follows: For each year, or Experience Period, a Reconciliation should be performed (correctly, per Interrogatories Nos. 1-4) to determine whether Columbia owes Additional Premium or is due Return Premium. Additional Premium is any positive balance (*i.e.*, in NCRIC's favor); Additional Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is greater than the Deposit Premium. Return Premium is any negative balance (*i.e.*, in Columbia's favor); Return Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is less than the Deposit Premium.

According to the September 2000 Reconciliation, NCRIC owed Columbia Return Premium of "$587,568.66" for the Experience Period 1993-94; NCRIC owed Columbia Return Premium of "$350,593.73" for the Experience Period 1994-95; Columbia owed NCRIC Additional Premium of "$333,392.45" for the Experience Period 1995-96; Columbia owed NCRIC Additional Premium of "$722,049.71" for the Experience Period 1996-97; NCRIC owed Columbia Return Premium of "$233,841.30" for the Experience Period 1997-98; and Columbia owed NCRIC Additional Premium of "$383,948.84" for the Experience Period 1998-99. This totals $267,387.31 in Additional Premium that Columbia owed NCRIC. Taking into account the $172,815.00 that NCRIC paid Columbia for the first Experience Period and the $1,000,000.00

16d-001930

that Columbia deposited with NCRIC leaves NCRIC owing Columbia Return Premium of $559,797.69.

The parties, however, agreed orally that they would exchange Additional or Return Premium only for those Experience Periods for which all claims were closed. The amounts calculated under the September 2000 Reconciliation therefore are not the actual amounts owed, for as of September 2000, only the Experience Periods 1993-94 and 1994-95 had closed. According to the September 2000 Reconciliation, NCRIC owed Columbia Return Premium of "$587,568.66" for the Experience Period 1993-94; NCRIC owed Columbia Return Premium of "$350,593.73" for the Experience Period 1994-95. NCRIC paid Columbia $172,815.00 for the 1993-94 Experience Period. Therefore, NCRIC in fact owes Columbia $765,347.39 in Return Premium (in addition to owing Columbia its $1 million deposit back, plus interest).

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. & SMF; SJ Reply Exh. 1. *See also* Columbia's Previously Submitted Papers.

16d-001931

DATED: May 14, 2003

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-001932

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 14th day of May, 2003, a copy of the foregoing *Defendant's Objections and Responses to Plaintiff's Supplemental Interrogatories* was served upon the following by FedEx:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Eli C. Schulman

EXHIBIT F

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INC.,

Plaintiff,

vs. C.A. No. 00-007308

Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR
WOMEN MEDICAL CENTER,
INC.,

Defendant.

****

Washington, D.C.

June 21, 2001

Deposition of:

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Designated Representative

SAFA RIFKA, M.D.,

called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 9:50 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

to the organization. And when we fund-raised it was at a great pain, at a great effort, at an exceedingly time consumption business and it was very frustrating.

Q. Was this gala in April-May 2001, was it an annual event?

A. Yeah, annual event. We did one in 1997. Then when we went into Chapter 11, obviously you could not fund-raise. And then we planned one for the year 2001.

Q. Do you know how much you raised in 1997?

A. $1.5 million.

Q. Were the rumors in the fall of 2000 the sole reason why the gala was canceled?

A. Yes. I think that the rumors -- and I want to say that the rumors did not start at 6:00 o'clock on September and ended at 9:00 o'clock. Rumors take time to die, and rumors proliferate, and rumors disseminate, and rumors require a humongous effort by an institution to go and quell it by mounting a positive PR campaign,

COPY

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

NCRIC, INC.,	:	
Plaintiff,	:	Civil Action No.
v.	:	00-0007308
COLUMBIA HOSPITAL FOR WOMEN	:	Calendar # 8 --
MEDICAL CENTER, INC.,	:	Judge Blackburne-Rigsby
Defendant.	:	Washington, D.C.
	:	January 18, 2002

Deposition of:

SAFA RIFKA, M.D.

called for examination by counsel for the Plaintiff, pursuant to notice, at the offices of Bryan Cave, L.L.P., 700 Thirteenth Street, N.W., Washington, D.C. 20005-3960, commencing at 1:40 p.m., before Carla L. Andrews, Notary Public for the District of Columbia.

TURNER REPORTING SERVICES

10510 Sideburn Court

Fairfax, Virginia 22032

(703) 425-0139

hospital cannot meet its malpractice obligations, has instilled fear in the hospital and physicians to go out and practice somewhere else.

That translated into tremendous logistic problems for Columbia, retention of administrative staff, staying viable, bad PR problem, Washington Post article, cancelling of a gala that would have netted the hospital millions of dollars, messing up our HUD refinancing, and then establishing a similar analogous program across the circle with George Washington Hospital that will give physicians a 30 percent discount and asking them to go across the circle and go to GW.

I think that the war that NCRIC had launched against this community-owned hospital has been devastating and has precluded our efforts in complete recovery, refinancing, establishing long-term debt with long interest, and really raising money from the community -- devastating effects.

BY MR. EDGAR:

Q Are you finished?

A Yes.

EXHIBIT G

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Diaz
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Court Event: Initial Conf., Jan. 1, 2001
	)	
Defendant.	)	

DEFENDANT'S OBJECTIONS AND RESPONSES
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

COMES NOW Defendant, Columbia Hospital for Women Medical Center, Inc. ("Medical Center"), by and through its attorneys, Mark C. Hansen, Esquire, Steven F. Benz, Esquire, Joseph K. Leahy, Esquire, and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., and in response to Plaintiff's First Set of Interrogatories ("Plaintiff's Interrogatories"), propounded by Plaintiff NCRIC, Inc. ("NCRIC"), states as follows:

GENERAL OBJECTIONS

The following General Objections apply to each and every interrogatory and form an integral part of Medical Center's response to each interrogatory:

1. Defendant Medical Center objects to Plaintiff's Interrogatories insofar as they seek disclosure of information protected by the peer review privilege, the attorney-client privilege, the work-product privilege, the party-communication privilege or the investigative privilege. Medical Center further objects to Plaintiff's Interrogatories insofar as they call for information otherwise protected under the District of Columbia Superior Court Rules of Civil Procedure or any other

applicable law. Medical Center does not intend by these responses or objections, or by the inadvertent production of any privileged documents, to waive any protection to which it is entitled.

2. Medical Center objects to the numbering of Plaintiff's Interrogatories insofar as some of the interrogatories have "subparts" that constitute more than one interrogatory as defined by District of Columbia Superior Court Rules of Civil Procedure 33(a).

3. Medical Center objects to Plaintiff's Interrogatories insofar as the information sought by such interrogatories is more appropriate for disclosure in deposition and can be more efficiently and less burdensomely obtained thereby.

4. Medical Center objects to Plaintiff's Interrogatories to the extent that they are vague, ambiguous, overly broad, burdensome, harassing, and/or not reasonably calculated to lead to the discovery of admissible evidence in this action.

5. Medical Center objects to Plaintiff's Interrogatories insofar as they seek information that is already in NCRIC's possession.

6. Medical Center objects to Plaintiff's Interrogatories insofar as they seek information not in Medical Center's possession.

7. Medical Center has not yet completed its investigation relating to the litigation and anticipates that as the litigation proceeds, further information may be discovered. Medical Center reserves the right to modify or supplement its objections and responses based on such pertinent information as it may subsequently discover.

16d-001941

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1: State the names and addresses of any individuals who you know or believe have any information or knowledge of any matters concerning the subject matter of (i) this action, (ii) your defenses to plaintiff's claims, and (iii) your counterclaims, including as to each individual: what that information is (or you believe it to be), and whether the individual was an eye-witness or claims to have been eye-witnesses to the event(s) which is the subject of this litigation.

RESPONSE TO INTERROGATORY NO. 1: See General Objections. Medical Center specifically objects to Interrogatory No. 1, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client privilege and/or the work-product privilege. Medical Center also objects to this Interrogatory insofar as it is vague and ambiguous. This interrogatory is vague and ambiguous because, among other reasons, it is not clear what event or events this Interrogatory refers to as "the subject of this litigation."

Subject to and without waiving the foregoing objections, Medical Center responds that it knows or believes that the following people possess knowledge or information concerning NCRIC's claim, Medical Center's defenses thereto, and/or Medical Center's counterclaims:

Persons Believed to Possess Information or Knowledge	**Subjects About Which Person Is Believed to Possess Information or Knowledge**
Mr. Larry Wilson, Jr. President and CEO Columbia Hospital for Women Medical Center 2425 L Street, N.W. Washington, D.C. 20037 (202) 293-6500	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • NCRIC's Negligent and Improper Administration of the Plan • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Robert T, Greenfield, Jr., M.D. 3300 Pennsylvania Avenue, SE Washington, DC 20020 (202) 479-2800	• 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

Melinda Murray 3331 Stuyvesant Place Washington, DC 20015 [no forwarding number]	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • 1996 Amendments and Renewal • January 1998 Renewal
Ann Gaffey 1937 N. Utah Street Arlington, VA 22207 (703) 841-5122	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • January 1998 Renewal • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Gerald Beaulieu 1639 Park Road, NW #2 Washington, DC 20010 (202) 216-2347	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • January 1998 Renewal • September 1998 Renewal
Dwaine Gasser 6203 Glenshawn Row Alexandria, VA 22315	• September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Susan Hansen 6925 Scotforth Rd. Philadelphia, PA 19119 [no known number]	• NCRIC's Obligations Under the Plan • 1996 Amendments and Renewal
James Rodgers, President The CIMA Companies 316 South Peyton Street Alexandria, VA 22314 (703) 739-9300	• Background to the Plan • NCRIC's Proposal and Representations to Medical Center • Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan
Dana Serafin Carey, R.N. Vice Pres., Health Care Practice Aon Risk Services 1120 20th Street, NW, Suite 600 Washington, DC 20036	• Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

16d-001943

Michael R. Feldman, Senior Vice President Riggs, Counselman, Michaels and Downes, Inc. 555 Fairmont Avenue Baltimore, MD 221286 (410) 583-5443	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • Medical Entity Policy • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Nabil Asterbadi, M.D. 2440 M Street, NW -- Suite 703 Washington, DC 20037 (202) 822-8368	• NCRIC's Obligations Under the Plan • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Safa Rifka, M.D. 2440 M Street, NW -- Suite 401 Washington, DC 20037 (202) 293-2042	• NCRIC's Obligations Under the Plan • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Daryl A. Chamblee Steptoe & Johnson LLP 1330 Connecticut Avenue, N.W. Washington, DC 20036 (202) 429-3000	• September 1998 Renewal
Lynn L. Petersons Nichols & Associates, Inc. 1800 John F. Kennedy Boulevard Philadelphia, PA 19103 (215) 587-1200	• September 1998 Renewal
Patrick E. Kane, (former President & CEO) 1806 Merrifields Drive Silver Spring, MD 20906 (301) 598-6422	• Background to the Plan • Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan

16d-001944

David K. Little, (former President) NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• Background to the Plan • Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan
Jeffrey Marsh NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• NCRIC's Obligations Under the Plan • 1996 Amendments and Renewal • September 1998 Renewal • Medical Entity Policy
Grant Sohn, Director of Underwriting NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Steve Fargis, President, and David Osborne, Vice President NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • NCRIC's Negligent and Improper Administration of the Plan • 1996 Amendments and Renewal • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

INTERROGATORY NO. 2: Identify any individuals you intend to call at the trial of this matter and state the subject matter and information known as to each.

RESPONSE TO INTERROGATORY NO. 2: See General Objections. Medical Center specifically objects to Interrogatory No. 2 insofar as it is premature at this early stage of the litigation. Subject to and without waiving the foregoing objections, Medical Center responds as follows: Medical Center has not presently identified any of the witnesses it expects to call at

trial. The information sought by this Interrogatory will be provided at the time and in the form compliant with District of Columbia Superior Court Rule of Civil Procedure 16.

INTERROGATORY NO. 3: Provide the name, address, title and phone number of all persons who investigated for you the matters concerning the subject matter of (i) this action, (ii) your defenses to plaintiff's claims, and (iii) your counterclaims, the dates of the investigation and describe what each person did. In the event that you claim any privilege exempts these from production, provide the information requested in Instruction 3.

RESPONSE TO INTERROGATORY NO. 3: See General Objections. Medical Center specifically objects to Interrogatory No. 3, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client privilege and/or the work-product privilege. Medical Center also objects to this Interrogatory insofar as it is vague and ambiguous.

Subject to and without waiving the foregoing objections, Medical Center responds as follows: The investigation on behalf of Medical Center was performed by counsel.

INTERROGATORY NO. 4: State the name and address of each and every expert whom you expect to call as an expert witness at trial, and as to each state:

(a) the subject matter on which the expert is expected to testify;
(b) the substance of the facts and opinions to which the expert is expected to testify; and
(c) a summary of the grounds for each opinion.

RESPONSE TO INTERROGATORY NO. 4: See General Objections. Medical Center objects to Interrogatory No. 4 insofar as it is premature at this stage of the litigation.

Subject to and without waiving the foregoing objections, Medical Center responds as follows: Medical Center has not presently identified which experts, if any, it expects to call as witnesses at trial. The information sought by this Interrogatory will be provided at the time and in the form compliant with District of Columbia Superior Court Rule of Civil Procedure 16.

INTERROGATORY NO. 5: Describe all of your oral communications with plaintiff and its agents or representatives concerning the subject matter of (i) this action, (ii) your defenses to plaintiff's claims, and (iii) your counterclaims.

RESPONSE TO INTERROGATORY NO. 5: See General Objections. Medical Center specifically objects to Interrogatory No. 5 insofar as it seeks information that is more appropriately disclosed in a deposition and can be more efficiently and less burdensomely obtained thereby. Medical Center also objects to this Interrogatory insofar as it seeks information in NCRIC's possession, and insofar as it seeks information not in Medical Center's possession.

Subject to and without waiving the foregoing objections, Medical Center will respond by producing selected non-privileged, business records pursuant to District of Columbia Superior Court Rule of Civil Procedure Rule 33(d).

INTERROGATORY NO. 6: State the method of calculation and factual bases for any monetary damages you claim against defendant by way of counterclaim, setoff, recoupment or otherwise.

RESPONSE TO INTERROGATORY NO. 6: See General Objections. Medical Center specifically objects to Interrogatory No. 6, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client privilege and/or the work-product privilege. Medical Center also objects to this Interrogatory insofar as it seeks information in NCRIC's possession, and insofar as it seeks information not in Medical Center's possession.

Subject to and without waiving the foregoing objections, Medical Center responds as follows: At this early point in the litigation, Medical Center has not yet completed the process of assessing and calculating its damages. At present, Medical Center is unable to accurately assess and calculate its damages because, among other reasons, it does not possess the data necessary to determine the exact amount NCRIC owes Medical Center pursuant to the alleged agreement

16d-001947

between the parties ("the Plan"). Upon information and b1elief, this data is solely in NCRIC's possession. After Medical Center obtains this data, it will assess and calculate its damages, and supplement its response to this Interrogatory.

INTERROGATORY NO. 7: Identify by reference to interrogatory number they support, all documents which support your answers.

RESPONSE TO INTERROGATORY NO. 7: See General Objections. Medical Center specifically objects to Interrogatory No. 7, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client privilege and/or the work-product privilege. Medical Center also objects to this Interrogatory insofar it is vague, ambiguous, overly broad and unduly burdensome. This Interrogatory is unclear because, without limitation: (1) it is not clear to what "answers" the Interrogatory refers and (2) the language "documents which support your answers" is unintelligible.

Subject to and without waiving the foregoing objections, Medical Center will respond by producing non-privileged documents that Medical Center or its representatives consulted or reviewed in the process of preparing these Interrogatories.

INTERROGATORY NO. 8: Identify each amount shown on the attached Exhibit A by reference to row/line and column which you contend is incorrect, overstated, or not accurate of the true amounts in any way (collectively defined as "incorrect").

RESPONSE TO INTERROGATORY NO. 8: See General Objections. Medical Center specifically objects to this Interrogatory insofar as it is unduly burdensome, and insofar as it is vague and ambiguous. The Interrogatory is vague and ambiguous because, without limitation: it is not clear whether the Interrogatory seeks verification that the amounts shown on Exhibit A correctly reflect (1) the amounts that NCRIC represented to Medical Center were

determined by the Plan and/or (2) the actual amounts set by the Plan. Medical Center also objects to this Interrogatory insofar as it requests information not in Medical Center's possession, but rather, in NCRIC's possession. For example, upon information and belief, the data necessary to calculate most of the amounts shown on Exhibit A is in NCRIC's sole possession.

Medical Center also objects insofar as this Interrogatory is premature at this early stage in the litigation. Medical Center has not yet completed its investigation relating to this litigation, and has not yet received any discovery from NCRIC. Accordingly, Medical Center reserves the right to modify or supplement its response to this Interrogatory at any time, based on pertinent information it may subsequently discover in its continuing investigation.

Subject to and without waiving the foregoing objections, Medical Center responds as follows: Attached hereto as Exhibit 1 is a photocopy of Exhibit A, overlaid by a grid to set off each column and row. The columns are labeled 1 through 20; the rows are labeled A through F. Each column except F corresponds to a one-year period that the Plan was in operation (e.g., Column A, which is labeled "Y94-95," corresponds to the period between September 1, 1994 to and August 31, 1995); Column F corresponds to the five-year period from September 1, 1994 to August 31, 1999. Each row corresponds to a specific term defined in the Plan or concept contemplated by the Plan (e.g., Row 2 corresponds to the term "Deposit Premium," as defined in the Plan; Row 5 corresponds to the concept of indemnity reserves contemplated by the Plan).

Medical Center contends that, for Columns B through F of Row 2; for Columns C through E in Row 12 ("Development Factor"); for each Column in Rows 13 ("Retrospective Premium"), 14 ("Return Premium" or "Additional Premium" due), and 16 (total "Return Premium" or "Additional Premium" less funds deposited by Medical Center); and for Column A of Rows 17

16d-001949

("Maximum Premium"), 18 ("Minimum Premium"), 19 (Maximum Premium multiplier) and 20 (Minimum Premium multiplier), the amount shown on Exhibit 1 is *not* the correct amount set by the Plan, for the term or concept corresponding to that row and the period corresponding to that column. Further, upon information and belief, for each column of Rows 5, 6 (corresponding to the concept of ALAE reserves), 7 (corresponding to the term "Loss Reserves") and 11 (Paid Losses plus Loss Reserves), the amount shown on Exhibit 1 is *not* the correct amount, for the term or concept corresponding to that row and the period corresponding to that column.

INTERROGATORY NO. 9: For each amount identified in your answer to Interrogatory No. 8, state:

a. The factual bases for your contention;
b. How or in what manner the amount is incorrect;
c. The correct amount for the amount you claim is incorrect; and
d. The method of calculation of the amount you claim is correct.

RESPONSE TO INTERROGATORY NO. 9: See General Objections. Medical Center specifically objects to this Interrogatory insofar as it is vague and ambiguous. Medical Center objects to this Interrogatory insofar as it requests information not in Medical Center's possession, but rather, in NCRIC's possession. Upon information and belief, the data necessary to calculate most of the amounts shown on Exhibit A is in NCRIC's sole possession.

Medical Center also objects to this Interrogatory insofar as it is premature at this early stage in the litigation. Medical Center has not yet completed its investigation relating to this litigation, and has not yet received any discovery from NCRIC. Accordingly, Medical Center reserves the right to modify or supplement its response to this Interrogatory at any time, based on pertinent information it may subsequently discover in its continuing investigation.

Subject to and without waiving the foregoing objections, Medical Center responds, based on the facts presently known to it, as follows:

(1) For Medical Center's factual bases for contending, in its response to Interrogatory No. 8, that certain amounts shown on Exhibit 1 are incorrect, see Medical Center's Answer and Counterclaims, including inter alia paragraphs 27 through 43 and 46 through 54 thereof.

(2) For each column of Rows 1, 2, 4, 5 through 11, 13, 14, 16, 17 and 18 of Exhibit 1, Medical Center does not possess the data necessary to calculate the correct amount, set by the Plan, for the term or concept corresponding to the row and the period corresponding to the column. Upon information and belief, such data is in NCRIC's sole possession. Until Medical Center obtains this data, it cannot determine how and in what manner the amounts referred to in its response to Interrogatory No. 8 are incorrect.

(3) The correct amount, set by the Plan, for the term corresponding to Row 12 of Exhibit 1 is: "80%" for the period corresponding to Column C; "65%" for the period corresponding to Column D; and "55%" for the period corresponding to Column E. Under the Plan, the correct amount for the term corresponding to Row 19, for the period corresponding to Column A, is "1.33"; for that same period, the correct amount for the term corresponding to Row 20 is ".60". For each column of Rows 1, 2, 4, 5 through 11, 13, 14, 16, 17 and 18 of Exhibit 1, Medical Center does not possess the data necessary to calculate the correct amount, set by the Plan, for the term or concept corresponding to the row and the period corresponding to the column.

(4) Despite lacking the data necessary to calculate many amounts set by the Plan, Medical Center determined that NCRIC's miscalculations of some amounts shown on Exhibit 1 resulted in

part from its improper application of the retro formula under the Plan. See Medical Center's Answer and Counterclaims, including inter alia paragraphs 39 through 41, and 45 through 54.

NCRIC's miscalculations of the retro formula include, without limitation:

(a) The Plan dictates that the amount for the term corresponding to Row 2 must be calculated by applying a multiplier. The proper multiplier is .67 for the periods corresponding to Columns C through F, and ((.81 * 1/3) +(.67 * 2/3)) for the period corresponding to Column B. NCRIC applied an incorrect multiplier, approximately .62, when calculating all the amounts in Columns B through F of Row 2, thereby miscalculating each corresponding amount in Row 2. As a result, NCRIC also improperly calculated the amounts in Column F of Rows 14 and 16, which are all based in part on the miscalculated amounts in Columns B through F of Row 2.

(b) The Plan dictates that the amount for the term corresponding to Rows 13 and 14 must be calculated by applying a multiplier corresponding to Row 12. As set forth above, the multiplier shown in Columns C through E of Row 12 is incorrect. NCRIC applied this incorrect multiplier in calculating each amount in Columns C through E of Rows 13 and 14, thereby miscalculating each such amount. As a result, NCRIC also improperly calculated the amount in Column F of Rows 13, 14 and 16, which are all based in part on the miscalculated amounts in Rows 13 and 14.

(c) The Plan dictates that the amounts for the term corresponding to Row 17 must be calculated by applying a multiplier corresponding to Row 19, and that the amounts for the term corresponding to Row 18 must be calculated by applying a multiplier corresponding to Row 20. As set forth above, the multiplier shown in Column A of Rows 19 and 20 is incorrect. NCRIC applied this incorrect multiplier in calculating each amount in Column A of Rows 17 and 18, and thereby miscalculated each such amount. As a result, NCRIC also improperly calculated the

amounts in Column F of Row 13, 14, 16, 17 and 18, all of which are based in part on the amounts in Column A of Rows 17 and 18.

(d) The Plan dictates that the amount for the term corresponding to Column F of Row 16 must be calculated based in part on data from the period between September 1, 1993 and August 31, 1994. NCRIC did not include such data (which is not shown on Exhibit 1) in its calculations of Column F of Row 16. As a result, NCRIC miscalculated that amount.

INTERROGATORY NO. 10: State the factual bases supporting any denial by you of any allegation of the complaint and identify any documents on which you rely to support your denial.

RESPONSE TO INTERROGATORY NO. 10: See General Objections. Medical Center specifically objects to Interrogatory No. 10, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client privilege and/or the work-product privilege. Medical Center also objects to this Interrogatory insofar it is vague, ambiguous, overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Medical Center responds by referring NCRIC to the detailed allegations set forth in Medical Center's Answer and Counterclaims, including but not limited to the allegations set forth in Paragraphs 20 through 55. Medical Center also will respond by producing non-privileged documents that Medical Center or its representatives consulted or referred to in preparing its Answer and Counterclaims.

INTERROGATORY NO. 11: State the factual bases supporting and related to any affirmative defense you raise in your answer to the complaint.

RESPONSE TO INTERROGATORY NO. 11: See General Objections. Medical Center specifically objects to Interrogatory No. 11 insofar it is vague, ambiguous, overly broad

September 6, 2000
At 4th Qtr 2000 Plan Year

COLUMBIA HOSPITAL FOR WOMEN
RETRO-PROGRAM
Years : Sept 01,1993 - August 31,2000

16d-001954

		A Y 94-95	B Y 95-96	C Y96-97	D Y97-98	E Y98-99	F Cumulative 1994 - 1999
PREMIUM							
Subject (1st 500 Layer)	1	$ 2,844,913	$ 3,288,170	$ 3,495,306	$ 3,340,590	$ 3,609,667	$ 16,578,646
Deposit	2	$ 2,311,491	$ 2,045,242	$ 2,174,080	$ 2,077,847	$ 2,245,213	$ 10,853,873
Basic Premium Chg.	3	16.84%	16.84%	16.84%	16.84%	16.84%	
Basic	4	$ 479,083	$ 553,728	$ 588,609	$ 562,555	$ 607,868	$ 2,791,844
SSES							
Indemnity Reserves	5	$ -	$ 725,000	$ 1,070,000	*$ 800,000*	*$ 3,125,000*	$ 5,720,000
ALAE Reserves	6	$ -	*$ 460,000*	*$ 282,000*	*$ 240,000*	*$ 440,000*	$ 1,422,000
Total Reserves	7	$ -	$ 1,185,000	$ 1,352,000	$ 1,040,000	$ 3,565,000	$ 7,142,000
Indemnity Paid	8	$ 1,375,000	$ 600,000	$ 1,050,000	*$ 500,000*	$ 500,000	$ 4,025,000
Expense Paid	9	$ 341,454	$ 452,447	*$ 735,648*	*$ 148,723*	*$ 81,307*	$ 1,759,579
Total Paid	10	$ 1,716,454	$ 1,052,447	$ 1,785,648	$ 648,723	$ 581,307	$ 5,784,579
Total Losses	11	$ 1,716,454	$ 2,237,447	$ 3,137,648	$ 1,688,723	$ 4,146,307	$ 12,926,579
Development Factor	12	105.00%	105.00%	105.00%	80%	65%	
		capped at MIN			*capped at MIN*		
Retro Premium	13	$ 1,960,898	$ 2,536,466	$ 3,355,700	$ 1,840,863	$ 3,110,192	$ 13,140,397
(Refund)/Due	14	$ (177,806)	$ 491,225	$ 1,181,620	$ (73,493)	$ 864,979	$ 2,286,525
Columbia Payment	15						*$ (1,000,000)*
Net (Refund)/Due	16						***$ 1,286,525***
Max. Premium	17	$ 3,271,650	$ 4,373,266	$ 4,648,756	$ 4,442,984	$ 4,800,858	$ 21,537,514
Min. Premium	18	$ 2,133,685	$ 1,972,902	$ 2,097,183	$ 2,004,354	$ 2,165,800	$ 10,373,924
Max. Factor	19	1.15	1.33	1.33	1.33	1.33	
Min. Factor	20	0.75	0.60	0.60	0.60	0.60	

and unduly burdensome. Medical Center also objects to this Interrogatory insofar as it requests information that is not in Medical Center's possession, and insofar as it requests information that is in NCRIC's possession.

Subject to and without waiving the foregoing objections, Medical Center responds by referring NCRIC to the detailed allegations set forth in Medical Center's Answer and Counterclaims, including but not limited to the allegations set forth in Paragraphs 20 through 63.

INTERROGATORY NO. 12: State the factual bases for each allegation made by you, and identify all documents supporting, concerning or related to, any counterclaim, setoff, or recoupment you assert or allege against plaintiff.

RESPONSE TO INTERROGATORY NO. 12: See General Objections. Medical Center specifically objects to Interrogatory No. 12 insofar it is vague, ambiguous, overly broad and unduly burdensome.

Medical Center also objects insofar as this Interrogatory is premature at this early stage in the litigation. Medical Center has not yet completed its investigation relating to this litigation, and has not yet received any discovery from NCRIC. Accordingly, Medical Center reserves the right to modify or supplement its response to this Interrogatory at any time, based on pertinent information it may subsequently discover in its continuing investigation.

Subject to and without waiving the foregoing objections, Medical Center responds by referring NCRIC to the detailed allegations in Medical Center's Answer and Counterclaims. Medical Center also will respond by producing selected non-privileged, business records pursuant to District of Columbia Superior Court Rule of Civil Procedure Rule 33(d).

INTERROGATORY NO. 13: If you contend that you do not owe the amount of money claimed by plaintiff in the complaint, describe each and every factual or legal basis for your contention.

RESPONSE TO INTERROGATORY NO. 13: See General Objections. Medical Center specifically objects to Interrogatory No. 13 insofar it is vague, ambiguous, overly broad and unduly burdensome. Medical Center also objects to this Interrogatory insofar as it requests information not in Medical Center's possession, but rather, in NCRIC's possession.

Medical Center also objects insofar as this Interrogatory is premature at this early stage in the litigation. Medical Center has not yet completed its investigation relating to this litigation, and has not yet received any discovery from NCRIC. Accordingly, Medical Center reserves the right to modify or supplement its response to this Interrogatory at any time, based on pertinent information it may subsequently discover in its continuing investigation.

Subject to and without waiving the foregoing objections, Medical Center responds by referring NCRIC to the detailed allegations in Medical Center's Answer and Counterclaims.

INTERROGATORY NO. 14: Describe each and every factual basis for your denial of any admission requested of you by plaintiff.

RESPONSE TO INTERROGATORY NO. 14: See General Objections. Medical Center specifically objects to Interrogatory No. 14 insofar it is vague, ambiguous, overly broad and unduly burdensome. Medical Center also objects to this Interrogatory insofar as it requests information not in Medical Center's possession, but rather, in NCRIC's possession.

Medical Center also objects insofar as this Interrogatory is premature at this early stage in the litigation. Medical Center has not yet completed its investigation relating to this litigation, and has not yet received any discovery from NCRIC. Accordingly, Medical Center reserves the right to modify or supplement its response to this Interrogatory at any time, based on pertinent information it may subsequently discover in its continuing investigation.

Subject to and without waiving the foregoing objections, Medical Center responds by referring NCRIC to the detailed allegations set forth in Medical Center's Answer and Counterclaims and to its Objections and Response to Plaintiff's First Request for Admissions.

INTERROGATORY NO. 15: Describe all of your oral communications with persons other than plaintiff and its agents or representatives, including Michael Feldman, concerning the subject matter of (i) this action, (ii) your defenses to plaintiff's claims, and (iii) your counterclaims.

RESPONSE TO INTERROGATORY NO. 15: See General Objections. Medical Center specifically objects to Interrogatory No. 15, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client and/or the work-product privileges.

Subject to and without waiving the foregoing objections, Medical Center will respond by producing selected non-privileged, business records pursuant to District of Columbia Superior Court Rule of Civil Procedure Rule 33(d).

DATED: November __, 2000

Respectfully submitted,

Mark C. Hansen
D.C. Bar No. 425930
Steven F. Benz
D.C. Bar No. 428026
Joseph K. Leahy
D.C. Bar No. 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-001957

DISTRICT OF COLUMBIA) ss.

I, Larry A. Wilson, Jr., of Columbia Hospital for Women Medical Center, Inc., being duly sworn on behalf of Columbia Hospital for Women Medical Center, Inc. ("Medical Center"), Defendant in the above-entitled action, depose and say that I am the President and Chief Executive Officer of Medical Center, that I am authorized to respond to Plaintiff's First Set of Interrogatories ("Plaintiff's Interrogatories") on behalf of Medical Center, that I have read Plaintiff's Interrogatories and know the contents thereof, and that the same is true of my own knowledge, except as to the matters that are stated on information and belief, and, as to those matters, that I believe them to be true.

Larry A. Wilson, Jr.

Subscribed and sworn to before me
this 27th day of November 2000.

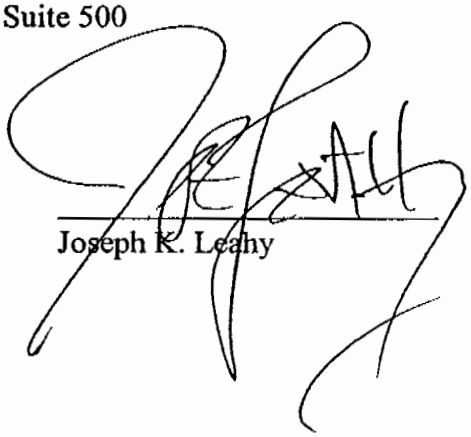
Notary Public

My commission expires: J. TERRELL
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires October 31, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of November 2000, I caused one copy of Defendant's Objections and Responses to Plaintiff's First Request for Admissions, Defendant's Objections and Responses to Plaintiff's First Set of Document Requests, and Defendant's Objections and Responses to Plaintiff's First Set of Interrogatories to be served upon the following by First Class Mail:

Roy I. Neidermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814



Joseph K. Leahy

EXHIBIT H

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. Defendant.	)	Civil Action No. 00-007308 Calendar #8 Judge Linda Kay Davis Next Event: Discovery deadline 8/12/01

REQUEST OF PLAINTIFF TO DEFENDANT FOR SUPPLEMENTATION OF DISCOVERY RESPONSES

Plaintiff, by counsel, pursuant to the Superior Court Rule 26(f)(3) requests that defendant supplement its prior discovery responses and in particular supplement the following answers to interrogatories and responses to requests for production of documents with particular regard to defendant's calculation of damages and experts' opinions:

1. Plaintiff's First Set of Interrogatories Nos. 6, 7, and 12.

2. Plaintiff's First Requests for Production of Documents Nos. 2 and 6.

3. Plaintiff's Second Requests for Production of Documents Nos. 2, 4, 7, 13, 36 and 37.

/s/

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN	)	Judge Linda Kay Davis
MEDICAL CENTER, INC.	)	Next Event: Discovery close 5/12/01
	)	
Defendant.	)	

CERTIFICATE OF SERVICE OF DISCOVERY

I HEREBY CERTIFY, that on July 5, 2001, a copy of the plaintiff's Request of Plaintiff to Defendant for Supplementation of Discovery Responses was sent by facsimile transmission and mailed, first class mail, postage prepaid to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

/s/

Roy I. Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

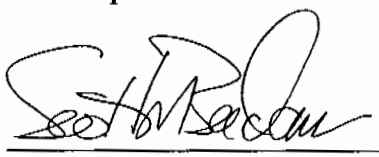
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion, Statement of Points and Authorities in Support and Proposed Order were served this 5th day of June 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women



Scott M. Badami

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Pretrial Conference -- June 19, 2003
Defendant.	

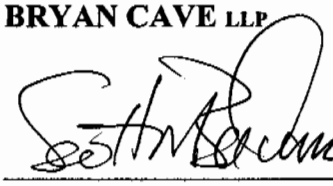
NCRIC'S MOTION TO EXCLUDE THE OPINIONS AND TESTIMONY OF DEFENDANT COLUMBIA'S DESIGNATED DAMAGES EXPERT

Pursuant to the applicable standards governing the admission of expert testimony and the equitable power of the Court, for the reasons stated in the attached Statement of Points and Authorities in Support, Plaintiff NCRIC, Inc. ("NCRIC") moves that the Court exclude the opinions and expected testimony of Defendant Columbia Hospital for Women Medical Center Inc.'s ("Columbia") designated damages witness. Pursuant to D. C. Superior Court Rule 12-I(e), a Proposed Order and Statement of Points and Authorities in Support of this Motion are also attached.

Oral Hearing Requested.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

CERTIFICATION REQUIRED BY D.C. SUPERIOR COURT RULE 12-I(a)

Counsel for Plaintiff NCRIC, Inc. certifies pursuant to Rule 12-I (a) that the parties discussed this motion during a telephone conference on June 3, 2003 and consent from counsel for Defendant Columbia Hospital for Women could not be and was not obtained. Accordingly, this motion is necessary for Plaintiff NCRIC, Inc. to obtain the necessary relief.

16d-001965

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF NCRIC'S MOTION TO EXCLUDE THE OPINIONS AND TESTIMONY OF COLUMBIA'S DESIGNATED DAMAGES EXPERT

Plaintiff NCRIC, Inc. ("NCRIC") submits this Memorandum of Points and Authorities in Support of its Motion to Exclude the opinions and expected testimony of Ddefendant Columbia Hospital for Women Medical Center, Inc.'s ("Columbia") designated damages expert, Peter Ben Ezra. The testimony of this alleged expert is inherently defective, speculative, and unqualified. Columbia cannot be permitted to put forward and rely upon a witness: (1) who without independent verification accepted Columbia's counsel's representations concerning the group of physicians who allegedly stopped (or reduced) admitting patients at Columbia, a fact upon which his entire damage analysis is premised; (2) who used unaudited and speculative data having no reliable support; (3) who simply presumed causation of damages; (4) who performed no analysis or investigation related to the other factors which may have been involved in a physician's decision to leave or reduce the number of patients he or she admitted to Columbia; and (5) who cannot be independent or objective because he is the Chairman of the Board of Columbia.

I. Introduction

In this case, Columbia has asserted a number of tort and contract based claims under which it alleges NCRIC damaged the hospital. During discovery, it was incumbent upon Columbia to put forward evidence of its claimed damages which were proximately caused by NCRIC's conduct. Columbia failed to do so.

In its Rule 26(b)(4) statement, Columbia informed NCRIC and this Court that its proposed expert damages witness would provide testimony:

> with regard to the calculation of damages proximately caused by NCRIC's torts, including (1) the economic effects, such as lost revenue from decreased patient volume, of certain practice groups moving their practices from Columbia to competing hospitals, and any reputational harms stemming from related events; (2) the lost revenue resulting from the non-occurrence of specific fundraising activities and events; and (3) the loss of specific sources of financing and partnership opportunities that otherwise would have been available to Columbia.
>
> The substance of the facts and opinions to which Mr. Ben Ezra is expected to testify is: that, as a proximate result of NCRIC's torts, Columbia has suffered and will suffer economic harm including loss of revenue, damaged reputation in the community, and loss of good will . . . .

See Columbia's Rule 26(b)(4) statement, attached as Exhibit A.

Contrary to Columbia's direct representation, Mr. Ben Ezra did little analysis. Specifically, Mr. Ben Ezra admitted that he did no damage calculations and had no conclusions (and did no investigation) resulting from NCRIC's alleged torts concerning: (1) loss of good will (Ben Ezra Dep. at 10-11) (Excerpts of the Deposition of Peter Ben Ezra attached as Exhibit B); (2) damaged reputation in the community (Ben Ezra Dep. at 11); (3) loss of specific sources of financing and partnership opportunities (Ben Ezra Dep. at 11); and (4) lost revenue from the non-occurrence fundraising activities and events (Ben Ezra Dep. at 10-14).[1]

[1] Under separate cover, NCRIC has also submitted a separate Motion in Limine concerning additional categories of damages which Columbia failed to provide factual support and which should be excluded at trial.

16d-001967

With respect to the single damage claim for which he attempted to establish a damage number (estimated lost cash flow), Mr. Ben Ezra: (a) simply accepted as true the representation of counsel with respect to the doctors who allegedly left Columbia (Ben Ezra Dep. at 140); (b) did no analysis or investigation why doctors left Columbia (Ben Ezra Dep. at 140); (c) used unaudited data (Ben Ezra Dep. at 164); (d) did no analysis or research to determine causation (Ben Ezra Dep. at 133);[2] (e) presumed that each doctor would work until he or she turned age 65 without reviewing any studies or analysis concerning the retirement age of physicians (Ben Ezra Dep. at 154-55); and (f) simply assumed a 20 year damage projection without offering any facts as to why he selected that time period (Ben Ezra Dep. at 151-153).

Based upon these "facts," Columbia seeks to have Mr. Ben Ezra opine that Columbia will incur over $20 million in damages over the next 20 years based on the conduct of NCRIC. Mr. Ben Ezra's report is fundamentally flawed and must be excluded as a matter of law.

Mr. Ben Ezra's report and its findings are based on unreliable data, which is not the type reasonably relied upon by experts calculating damages. *See Dyas v. United States,* 376 A.2d 827, 832 (D.C. 1977); *In re Melton,* 597 A.2d 892, 901 n.10 (D.C. 1991) *(en banc).* Mr. Ben Ezra's opinion fails to satisfy even the minimal standard for admissibility of expert opinion testimony imposed by District of Columbia courts. *See Washington Metro. Area Transit Auth. v. Davis*, 606 A.2d 165, 177-78 (D.C. 1992) (holding that speculative expert testimony about lost earnings should be excluded where unsupported by sufficient facts); *Toy v. District of Columbia*,

2 "Question: 'I just want to make clear, you don't have any information with respect to causation? You're not here for that purpose, are you?' Answer: 'No. I was just given a list and ran my analysis.' " (Ben Ezra Dep. at 133).

549 A.2d 1, 7-8 (D.C. 1988) (finding that expert testimony lacked a sufficient factual basis to establish national standard of care for police departments). To be admissible, expert opinion testimony must be based on facts or data "of a type reasonably relied upon by experts in the particular field," although "the facts or data need not be admissible in evidence." *Melton,* 597 A.2d at 901-02 (adopting Federal Rule of Evidence 703 in the District of Columbia). Although the Court should give an expert latitude to choose the sources of information on which to base an opinion, it has an "independent responsibility" to determine whether this underlying data "meet[s] minimum standards of admissibility." *See Melton*, 597 A.2d at 903. If the data underlying an expert's opinion "are so lacking in probative force and reliability that no reasonable expert could base an opinion on them, an opinion which rests entirely on them must be excluded." *Id.*

Additionally, any relevance that can be attributed to Mr. Ben Ezra's opinions is substantially outweighed by the danger of unfair prejudice to NCRIC. *See Johnson v. United States,* 683 A.2d 1087, 1099 (D.C. 1996) ("regarding the admission of evidence generally, this jurisdiction will follow the policy set forth in Federal Rule of Evidence 403 –'evidence [otherwise relevant] may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.'"). For the reasons discussed below, Mr. Ben Ezra's testimony should be excluded in its entirety.

II. Mr. Ben Ezra's Purported Testimony is Sheer Speculation and is Inadmissible

Less than one day before the scheduled deposition (and one week before the close of discovery), counsel for Columbia provided NCRIC the Report of Peter Ben Ezra dated January 22, 2002 (the "Ben Ezra Report," attached as Ex. C). Mr. Ben Ezra's report purports to quantify the "estimated total lost cashflow to the Columbia Hospital for Women as a result of the

NCRIC group of doctors leaving or cutting back on patients referred to the Columbia Hospital for Women . . . ." *See* Ben Ezra Report at 1.

Mr. Ben Ezra professed to calculate the estimated lost cash flow using two alternative damages analyses. Each analysis relies on a list, provided by Columbia's *counsel,* of doctors who allegedly left Columbia, or remained there but admitted fewer patients, because of alleged unlawful acts of NCRIC.[3/] As he admitted, Mr. Ben Ezra conducted no independent investigation or inquiry to determine why those doctors left Columbia or admitted fewer patients, and he has no understanding if NCRIC was even a factor. *See* Ben Ezra Dep. at 140.

Both of Mr. Ben Ezra's damage analyses are based on the same underlying data. Although he admitted that he was unsure of the sources upon which he relied, Mr. Ben Ezra nonetheless relied exclusively on Columbia documents indicating: (1) total "charges" of patients admitted by NCRIC doctors, and (2) total "adjustments" for those admitted patients.[4/] Mr. Ben Ezra used data for only fiscal year 2000 (before the alleged wrongdoing) and fiscal year 2001 (after). Mr. Ben Ezra performed a simple mathematical calculation to arrive at the difference between the fiscal year 2000 and 2001 net charges for those doctors who, according to representations made only by Columbia's counsel, have left or decreased patient admissions due to NCRIC's conduct. Mr. Ben Ezra's first model assumes lost cash flow will continue for 20 years, while the second model projects damages to continue for three to thirty years depending on a doctor's retirement age, which he assumed to be 65.

[3/] For convenience only with respect to this motion, those doctors on the list provided by Columbia counsel to Mr. Ben Ezra will be referred to as the "NCRIC doctors." *See* Ben Ezra Report (Ex. C at 1).

[4/] Mr. Ben Ezra testified that he "did not know what goes into the adjustment column." *See* Ben Ezra Dep. at 59-60, 160. He also admitted the data was unaudited. *See* Ben Ezra Dep. at 164.

While Mr. Ben Ezra purported to use a "scientifically valid methodology"-- a discounted cash flow analysis -- his application of this method warrants exclusion because: (1) there is no evidence that the underlying benchmark data he used was statistically meaningful or appropriate; (2) he applied a marginal cost percentage strictly (and literally) based on an accounting textbook example with no assurance that such percentage approximates Columbia's true variable costs; and (3) he relied upon a list of doctors provided by Columbia counsel which finds no support in the record. Although a discounted cash flow analysis may well in theory be based on sound economic principles, Mr. Ben Ezra's application of this methodology here is unreasonable and unreliable. *See K.W. Plastics v. United States Can Co.*, 131 F. Supp. 2d 1289, 1292 (M.D. Ala. 2001) (excluding expert's calculation of lost profits, which was based on "impermissibly flawed" application of "sound economic principles").

The underlying facts and assumptions relied upon by Mr. Ben Ezra find no support in the record, and cannot be relied upon by a reasonable expert calculating damages. Mr. Ben Ezra's opinion should be excluded because it amounts to mere conjecture and raw speculation derived from an impermissibly flawed application of economic principles. *See Washington v. Washington Hosp. Ctr.*, 579 A.2d 177, 181 (D.C. 1990) (noting that, "[t]he purpose of expert opinion testimony is to avoid jury findings based on mere speculation and conjecture . . . [and] [t]he sufficiency of the foundation for those opinions should be measured with this purpose in mind.").

A. Mr. Ben Ezra's Use of One Year of Benchmark Data is Improper.

When calculating the amount Columbia allegedly lost due to NCRIC's actions, Mr. Ben Ezra did not conduct an historical analysis of Columbia's rate of collections based on services provided over time. Rather, he chose an arbitrary single year of data -- fiscal year 2000

-- as his benchmark and simply compared that data to the subsequent fiscal year.[5] Mr. Ben Ezra testified that his primary objective was simply to ascertain a "delta," or change, between the two years. Ben Ezra Dep. at 165.

Mr. Ben Ezra's use of a single data point does not represent the type of data reasonably relied upon in conducting a cash flow analysis. In effect, Mr. Ben Ezra assumed that a single data point could represent an historical trend, and took no measures to verify whether this sole data point represented a typical year for Columbia. Ben Ezra Dep. at 165 ("I'm not sure what a good year or a bad year would be."). Essentially, Mr. Ben Ezra speculated that, because that data was the most current, he was justified in using it. Additionally, Mr. Ben Ezra admits that he chose to ignore data for other years simply because "[i]t didn't look right." Ben Ezra Dep. at 161.

It cannot be credibly asserted that a reasonable expert conducting the type of analysis performed by Mr. Ben Ezra would blindly rely upon limited, incomplete and speculative data. When the facts underlying an expert's opinion "are so lacking in probative force and reliability that no reasonable expert could base an opinion on them, an opinion which rests entirely upon them must be excluded." *See In re Melton*, 597 A.2d at 903; *Davis*, 606 A.2d at 177-78; *Carter v. Shoppers Food Warehouse Md. Corp.*, 727 A.2d 958, 963 (Md. Ct. Spec. App. 1999) (stating, "[a]n expert's opinion 'has no probative force unless there is a sufficient basis upon which to support his conclusions.'") (citation omitted) . There is nothing to suggest that the damages Mr. Ben Ezra estimated for 2001 will extend at an identical rate for the subsequent nineteen years. By his own admission, he did nothing to verify this critical assumption upon which he relied. *See Keranen v. National R.R. Passenger Corp.*, 743 A.2d 703, 717 (D.C. 2000)

[5] Q . . . [Y]ou chose one year as your benchmark where you had the data, correct? A. Correct. *See* Ben Ezra Dep. at 164-65.

(stating that the facts on which experts rely must permit "reasonably accurate conclusions, as distinguished from guesswork or conjecture," and "'must be in terms of the probable and not of the possible'") (citation omitted) ; *see also Anderson v. Whittaker Corp.*, 692 F. Supp. 764, 769-70 (W.D. Mich. 1988) (rejecting expert's calculation of future earnings, which were based on growth rates calculated using data from earnings over only "a few recent years"), *rev'd on other grounds*, 894 F.2d 804 (6th Cir. 1990); *K.W. Plastics,* 131 F. Supp.2d at 1295 (excluding an expert opinion based on a simplistic extrapolation where expert failed "'to give more than fleeting thought to numerous matters that are relevant'") (citation omitted). In fact, Mr. Ben Ezra seemingly ignored other data in Columbia's files. See Ben Ezra Dep. at 161. He did not review any data that could justify his assumption that the decrease in patient revenues of the NCRIC doctors would continue at a constant rate, despite having access to this type of information as Chairman of Columbia's Board of Directors.

B. Mr. Ben Ezra Relied on a Marginal Cost Figure Which Does Not Bear Any Relation to Columbia's Actual Marginal Costs.

In calculating the contribution margin lost by Columbia as a result of the NCRIC doctors leaving or cutting back on patient admissions at Columbia, Mr. Ben Ezra utilized a marginal cost of providing services equal to 30% of the net realizable value. This assumption drives his calculation of damages by deducting the marginal cost from each doctor's estimated revenues. Columbia proudly touts this figure as a "textbook" methodology.

The 30% figure assumed by Mr. Ben Ezra, however, is wholly speculative. The number was taken from a random accounting textbook problem at the end of a chapter, rather than from a review of Columbia's financial records. Ben Ezra Dep. at 181. Mr. Ben Ezra testified that "because [he] was looking for a number for marginal cost, the best [he] could find was [an] example problem in the textbook that [he] use[d] for the management accounting

course" he taught. Ben Ezra Dep. at 180. Mr. Ben Ezra admitted that he had no knowledge regarding whether St. Vincent's Hospital (the entity named in the workbook problem contained in the book), was comparable to Columbia, or even that it existed. Ben Ezra Dep. at 181. Despite acknowledging that finding a percentage was very difficult (Ben Ezra Dep. at 179), Mr. Ben Ezra performed no analysis at Columbia to ascertain true marginal costs or to test the 30% figure that he simply applied from a textbook example. He failed to review actual cost accounting information or any other financial documents at Columbia, all of which would certainly be available to him in his role as Chairman of the Board of Directors.

Mr. Ben Ezra's assumption that Columbia had an overall 30% variable cost figure is pure speculation, and his assertion that he found the number to be "reasonable" does not suffice for the type of expert analysis required of him under the standards imposed by this Court. *See Melton*, 597 A.2d at 903 (noting that "the court may not abdicate its independent responsibilities to decide if the bases meet minimum standards of reliability as a condition of admissibility"); *K.W. Plastics*, 131 F. Supp. 2d at 1294 (excluding expert testimony in part because the expert "was unable to articulate with any degree of specificity the basis for his cost calculations[,] . . . explain how his experience led to his conclusion, ... or even [explain] why his experience is a sufficient basis for the conclusion"); *see also Skrabak v. Skrabak*, 673 A.2d 732, 739-40 (Md. Ct. Spec. App. 1996) (affirming exclusion of expert valuation testimony with "no logical basis, other than guesswork and speculation"). It is unreasonable for an expert to rely on an unproven, speculative figure -- taken blindly from a problem in a book -- and the calculations based on this unwarranted reliance should be excluded.

C. The List of NCRIC Doctors Finds No Support in the Record.

The reliability of Mr. Ben Ezra's report is further undermined by its unreasonable reliance on a list of departing doctors supplied by counsel, which is central to the damage calculations. It is axiomatic that an expert's opinion cannot be based on speculation or conjecture. *See, e.g., Keranen v. National R.R. Passenger Corp.*, 743 A.2d at 717 (acknowledging that the facts on which experts rely must permit "reasonably accurate conclusions, as distinguished from guesswork or conjecture," and "'must be in terms of the probable and not of the possible'") (citation omitted). When an expert uses assumptions in arriving at his conclusions, those assumptions must find some support in the record. *See, e.g., Pennsylvania Dental Ass'n v. Med. Serv. Ass'n,* 745 F.2d 248, 262 (3d Cir. 1984) ("the factual predicate of an expert's opinion must find some support in the record"); *Shaw v. Strackhouse,* 920 F.2d 1135, 1142 (3d Cir. 1990) (holding that where an expert's opinion is predicated on factual assumptions, those assumptions must find some support in the record); *Concord Boat Corp. v. Brunswick Corp.,* 207 F.3d 1039, 1057 (8th Cir. 2000) (noting that an "expert opinion cannot sustain a jury's verdict when it 'is not supported by sufficient facts to validate it in the eyes of the law, or when indisputable record facts contradict or otherwise render the opinion unreasonable'" and that "[e]xpert testimony that is speculative is not competent proof and contributes 'nothing to a "legally sufficient evidentiary basis."'") (citation omitted).

Mr. Ben Ezra's entire analysis relies on a list of doctors provided by Columbia's counsel, and counsel's unsupported representation that these doctors left or decreased admissions to Columbia because of NCRIC's alleged conduct. It is undisputed that Mr. Ben Ezra did

nothing to ensure the accuracy of the data provided by Columbia's counsel.[6/] He accepted the list as it was presented to him, and took no measures to verify its reasonableness or accuracy. *See* Ben Ezra Dep. at 96-97 ("I relied on this list as represented by counsel."); *id.* at 106 ("My presumption is if they were on the list . . . it is because of the NCRIC dispute."). Mr. Ben Ezra made no independent investigation regarding the reasons why the NCRIC doctors left Columbia or admitted fewer patients in fiscal year 2001 than in fiscal year 2000. In his capacity as Chairman of Columbia's Board of Directors, it can hardly be said that Mr. Ben Ezra did not have access to the doctors included on the list provided by Columbia counsel.

Mr. Ben Ezra failed to consider the possibility that doctors on the list may have left Columbia for reasons unrelated to NCRIC, and did not factor this likelihood into his analysis. For example, the list includes doctors who admitted fewer patients to Columbia in fiscal year 2001, but does not consider whether these doctors, for any reason, also admitted fewer patients to other hospitals at which they enjoy admitting privileges. *See* Ben Ezra Dep. at 139-40 (acknowledging that he made no inquiry regarding whether physicians maintained hospital admitting privileges at other hospitals).

Without even attempting to discover *why* these doctors admitted fewer patients to Columbia, Mr. Ben Ezra cannot reasonably attribute the decrease to NCRIC.[7/] Any damages calculated on the basis of this list are the result of unreasonable reliance on speculative facts, and should not be admitted into evidence.

[6/] Significantly, Mr. Ben Ezra also failed to make *any* independent inquiry in support of his opinions in this case. He did not review a single deposition, Columbia's financial statements or data related to actual cash collections and patient mix.

[7/] Inexplicably, Mr. Ben Ezra excludes from his analysis any physician who he characterizes as "non dilutive." *See* Ben Ezra Dep. at 102. Those doctors created net charges in fiscal year 2001 that were *greater* than fiscal year 2000 and therefore, Mr. Ben Ezra reasons, must be excluded.

16d-001976

D. Mr. Ben Ezra Speculates the Length of Time Damages Would Accrue

As discussed above, Mr. Ben Ezra presented two cash flow methodologies: the first based on an assumed damages period of 20 years and the second is based on a retirement age of 65. Mr. Ben Ezra conducted no analysis to arrive at either of these projections. First, there is no evidence in the record that Columbia will be damaged for the next twenty years. Second, Mr. Ben Ezra had no basis for assuming that the NCRIC doctors would retire at age 65. He testified as follows concerning his assumptions:

> Q: Have you done any studies or analysis with respect to what the average retirement date of a physician in the District of Columbia is?
>
> A: No, I have not.
>
> Q: Do you know what the number would be?
>
> A: No, I do not.

See Ben Ezra Dep. at 154.

Mr. Ben Ezra then admitted that he had no data to support the assumed retirement age except his "general experience." *See* Ben Ezra Dep. at 243. Both of these assumptions are critical to the alleged damages estimated by Mr. Ben Ezra. Neither figure, however, is supported by facts in the record, and his reliance on both is speculative and unreasonable.

E. Mr. Ben Ezra's Opinion Must be Excluded Under the Principles Espoused in Fed. R. Evid. 403

Mr. Ben Ezra's report and proposed testimony should also be excluded because its probative value is substantially outweighed by the very real danger of unfair prejudice to NCRIC. *See Johnson,* 683 A.2d at 1099. Courts regularly reject evidence under Rule 403 when the "evidence" might mislead a jury because of an impression of scientific or economic infallibility. *See, e.g., United States v. Carswell,* 287 U.S. App. D.C. 348, 922 F.2d 876, 879

(D.C. Cir. 1991) (noting if a witness' expertise on a subject appears to be attenuated or questionable, then the trial court may conclude the danger of prejudice by labeling the witness an expert outweighs the possibility the testimony may be helpful).

To illustrate application of this principle, in *City of New York v. Pullman Inc.*, 662 F.2d 910, 915 (2d Cir. 1981), the appellate court affirmed the decision of the trial judge in excluding a report that had "'an aura of special reliability and trustworthiness'" but was actually based largely on hearsay, was incomplete, and was prepared for purposes different than those for which it was offered. Similarly, Mr. Ben Ezra's unreasonable reliance on an insufficient benchmark for data, an arbitrary and unsupported marginal cost figure, as well as an unchecked list of physicians who allegedly left or decreased admissions to Columbia, fails the test for admission under Rule 403 as it will be difficult for a jury to understand the inherent problems with its accuracy.

The reasons for excluding the proffered expert testimony here are magnified by the involvement of the witness as a Board Member of Columbia. Mr. Ben Ezra is not a disinterested expert, but is a party representative. By claiming he is an expert, Columbia and its counsel hope to dress up their speculative damage claim and pass it off in front of a jury as if it has a sound economic or scientific basis. Nothing could be further from the truth. Mr. Ben Ezra and Columbia's counsel should not be permitted to conduct that charade at trial.

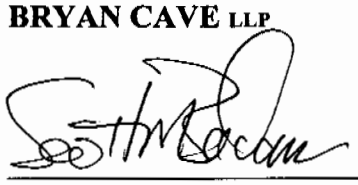
III. Conclusion

Taken together, Mr. Ben Ezra's mistakes and inaccuracies combine to produce an unreliable and prejudicial report and proposed testimony, the admission of which at trial would

significantly and unfairly prejudice the jury against NCRIC.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

DC244361

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

ORDER EXCLUDING THE OPINIONS AND TESTIMONY OF COLUMBIA'S DESIGNATED DAMAGES EXPERT, PETER BEN EZRA

Pending before the Court is NCRIC's Motion to Exclude the Opinions and Testimony of Peter Ben Ezra in the above-captioned action. For the reasons stated in the Motion, and the issues being fully considered, the Court finds that good cause exists to grant the Motion, and, therefore it is so:

ORDERED, that NCRIC's Motion to Exclude the Opinions and Testimony of Columbia's Designated Damages Expert, Peter Ben Ezra is **GRANTED,** this ___ day of _____, 2003. Columbia Hospital for Women Medical Center shall be precluded from introducing the testimony or opinions of Peter Ben Ezra.

_____
The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

EXHIBIT A

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Proponent's Rule 26(b)(4)
MEDICAL CENTER, INC.,	)	Statement Due: June 26, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DEFENDANT'S RULE 26(B)(4) STATEMENT
AS A PROPONENT OF A CLAIM

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby states, pursuant to District of Columbia Superior Court Rules of Civil Procedure 16(b)(3) and 26(b)(4), that it expects to call at trial, as an expert witness on its behalf:

1. **Peter Ben Ezra, 4930 Fort Sumner Drive, Bethesda, MD 20816-1945.**

Mr. Ben Ezra (whose curriculum vitae is attached hereto as Exhibit A) is expected to testify with regard to the calculation of damages proximately caused by NCRIC's torts, including (1) the economic effects, such as lost revenue from decreased patient volume, of certain practice groups moving their practices from Columbia to competing hospitals, and any reputational harms stemming from related events; (2) the lost revenue resulting from the non-occurrence of specific fundraising activities and events; and (3) the loss of specific sources of financing and partnership opportunities that otherwise would have been available to Columbia.

The substance of the facts and opinions to which Mr. Ben Ezra is expected to testify is: that, as a proximate result of NCRIC's torts, Columbia has suffered and will suffer economic harm including loss of revenue, damaged reputation in the community, and loss of good will; and

further, that the total sum of economic harm that Columbia has suffered and will suffer as a result of NCRIC's torts runs in the tens of millions of dollars.

For his expected opinion testimony, Mr. Ben Ezra, a Certified Public Accountant and Professorial Lecturer in the Department of Accountancy at the George Washington University, draws upon his professional training, knowledge and experience in the fields of financial accounting, managerial accounting, and financial statement analysis. The factual data upon which Mr. Ben Ezra's expected testimony depends includes his analysis of Columbia's historical records and reports, operating statistics and financial results, and other relevant market and financial data. Mr. Ben Ezra's expected testimony also will draw upon the intimate knowledge of Columbia's financial affairs the he developed as a financial advisor and consultant to the hospital for several years, from the period of receivership through the period of bankruptcy.

2. **Ms. Julia M. Brill, Esq. 2105 Bay Front Terrace, Annapolis, MD 21401**

Ms. Brill (whose curriculum vitae is attached hereto as Exhibit B), or any similarly-qualified expert who may assist her, is expected to testify with regard to (1) methods, formulas and criteria for setting loss reserves by hospitals and/or insurers for medical malpractice liability claims in the District of Columbia and/or surrounding metropolitan area; and (2) the reasonableness and propriety, in light of the industry standards for setting loss reserves for medical malpractice liability claims in the District of Columbia and/or surrounding metropolitan area, and in light of other loss reserves of the same nature set by NCRIC in the same region, of the loss reserves set by NCRIC under the Retrospective Rating Plan Agreement.

Due to NCRIC, Inc.'s untimely production of documents, Ms. Brill has not had an adequate opportunity to review and analyze all of the documents necessary for her to evaluate the reasonableness and propriety of NCRIC's loss reserves. As such, Ms. Brill has not yet fully

developed her factual and opinion testimony. However, Columbia expects that, once Ms. Brill complete her review of the relevant NCRIC claim files, she may testify that NCRIC's loss reserves are unreasonable and improper, in light of the aforementioned industry standards.

The factual basis for Ms. Brill's opinions, should she complete her review of NCRIC's claim files and fully develop her testimony, will be a detailed understanding of each claim for which NCRIC set a loss reserve, developed through a careful review of the files. Ms. Brill's opinion will be based, it is expected, on her experience as an attorney and risk management consultant in this area.

* * *

Columbia makes the forgoing statements regarding the experts it expects to call at trial subject to the following qualifications: (1) Columbia reserves the right to call any witness listed in Defendant's Initial Rule 26(B)(4) Statement as a Proponent of a Claim (March 12, 2001), or any other suitable person later discovered by Columbia, if it is unable to retain Ms. Brill as an expert; (2) Columbia reserves its right to supplement or change this statement, including its expert witness designations, at any time during the course of discovery, or if its currently-pending motion to extend the time for filing this statement is granted; and (3) Columbia reserves its right to designate any of the foregoing, or others, as rebuttal expert witnesses at a later time.

DATED: June 26, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-001986

EXHIBIT B

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

NCRIC, INC., :

:

Plaintiff, :

:

vs. : CA No. 00-0007308

: Calendar # 8

COLUMBIA HOSPITAL FOR WOMEN : Judge Davis

MEDICAL CENTER, INC., :

:

Defendant. :

January 24, 2002

Washington, D.C.

Deposition of:

PETER BEN EZRA

called for examination by counsel for the Plaintiff, pursuant to Agreement, taken at the offices of Bryan Cave, LLP, 700 Thirteenth Street, N.W., Suite 700, Washington, D.C. 20005-3960, before John W. Whitman, RMR, Notary Public in and for the District of Columbia, commencing at 10:04 a.m., when were present on behalf of the respective parties:

of which are called major procedures, some of which are called minor procedures. I have the quantities for those procedures; I don't have the prices; and until I get prices that I can depend on I can't do that extension, price times quantity equals total. It would be a good way of checking the results in the model that we have in front of us today.

Q. Have you made a request of Columbia or its lawyers to provide you with this additional data?

A. Yes, I have. But to this point in time there is not acceptable data. In other words, I can't rely on the data they have given me.

MR. LEAHY: I represent on the record Mr. Ben Ezra has been working for about four or five months to try and get this and hasn't yet successfully gotten this data. He can testify to that if you want.

BY MR. BADAMI:

Q. I would like to ask you just a couple questions about what you were designated to do in this case. Does your expert report contain any information with respect to any loss of goodwill suffered by

Columbia Hospital?

A. Negative. It does not.

Q. Does your report contain any calculations for damages related to the reputation of Columbia in the community?

A. No, it does not.

Q. Does your report contain any information or calculations concerning the loss of specific sources of financing and partnership opportunities that otherwise would have been made available to Columbia?

A. No, it does not.

Q. Does your report contain any information concerning the lost revenue resulting from the non-occurrence of specific fund raising activities?

A. No, it does not.

Q. How about any reputational harms stemming from related events?

MR. LEAHY: Objection; asked and answered.

Whenever I object, you can answer the question.

THE WITNESS: No, it does not.

BY MR. BADAMI:

Q. Do you anticipate doing any further calculations or analysis with respect to goodwill?

A. If I'm requested to, I will.

Q. Have you been requested to?

A. At this point I have not been requested.

Q. Would your answer be the same for damages to reputation in the community?

A. Yes, it is. If requested I will be glad to furnish an expert opinion on that.

Q. But you haven't been requested to do so at this point?

A. No, I have not been requested to do that.

Q. Can I get you to confirm, sir, that you are the witness who will be testifying at trial in this case?

A. I assume I am.

Q. Has anybody been working with you, try it that way, on this report?

A. No. I did this report. I'm the only person that worked on this report. This is my

product.

Q. In addition to the other forms of damages, which I have just asked you about, are you aware of other damages that you did not calculate?

A. There was supposed to be a series of galas for fund raising. I know that the hospital was planning to receive net proceeds, in the order of magnitude of about $2 million on an annual basis, I believe, for about two or three years. That has not happened.

Q. Have you done any work related to those?

A. I have been at meetings where that has been discussed.

Q. I'm sorry, for the purposes of this case, have you done any damage calculation with respect to those issues?

A. No, I haven't, other than I am aware that they expected about $2 million a year.

Q. But that's not contained in your report?

A. No, it is not contained in my report.

Q. And you're not going to testify about that

today?
A. I don't think so. I thought the subject was going to be my report.
Q. I'm just asking all the things you considered, sir, that's all.
A. In addition, it was my understanding that they were trying to seek financing from the Department of Housing and Urban Development.
Q. When you say, "they," do you mean Columbia Hospital?
A. It's interesting. When we say Columbia Hospital, there is really a Columbia Hospital Foundation and then there is also a Columbia Hospital Medical Center and so we'll just talk about an entity called Columbia Hospital, but legally they are different legal entities.
Q. I appreciate that.
A. Yes. As I recall, the scope of magnitude was somewhere in the order of about $15 million to $20 million on a refinancing, which would have allowed the hospital to borrow funds from HUD at the Treasury cost

of borrowing plus maybe a quarter or a half a point, but that would be very favorable.
Q. That's not contained in that report?
A. That is not contained in that report at all.
Q. And you're not expected to testify about that?
A. No. However, would it would have affected the calculations here if they had obtained that financing, because I used the cost of capital being the current cost of financing on the real estate, which is the highest cost of capital.
So for purposes of discussion the Treasury cost of borrowing today for 30 years is five percent, and if HUD were to put a quarter or a half point on that the cost of borrowing to the hospital would be 5 1/4 or 5 1/2 as opposed to 10 1/2 that I did use for my analysis.
MR. BADAMI: I would like to ask the court reporter to mark this as Exhibit No. 2.

(Ben Ezra Exhibit 2 was marked for identification.)
BY MR. BADAMI:
Q. Mr. Ben Ezra, I'm showing you what's been marked as Ben Ezra Exhibit No. 2 and ask you, sir, if you recognize this?
A. Yes.
Q. Can you tell me what it is, please?
A. It's basically my curriculum vitae. It's like a resume. It explains my professional experience.
Q. Is this resume accurate?
A. Yes, it is.
Q. Can you tell me about your post-high school education?
A. I graduated Montgomery Blair High School. Then I went to the University of Maryland. My major was information systems management, and my minor was accounting. I graduated with high honors from the University of Maryland.
I then got my graduate degree at George

Washington University. My major was managerial accounting.
From there I passed the CPA exam on the first sitting and was one of the highest scorers in the State of Maryland on the CPA exam.
Subsequently, I've been working at George Washington University from about 1976 --
Q. You have '78, I believe.
A. -- from 1978 to current. I'm an adjunct professor.
Q. What does that mean?
A. Basically, a part-time professor. I don't get full benefits as a full-time professor would. I'm called a professorial lecturer, which is the highest rank for an adjunct professor. And I've been doing that since 1978 to the current time.
And I brought a couple of my textbooks, if you're interested in them. I encourage everybody to take a managerial accounting course and a financial accounting course.
Q. I appreciate that. Let me ask you about

differences in non-NCRIC doctors, and this is a unit cost data.

Q. Okay, so when you say that, what was Columbia's net revenue per discharge?

A. Assuming a discharge is a patient.

Q. Right.

A. Let's go to the -- where it says, "Total doctors"?

Q. Right.

MR. LEAHY: Do you want him to write on the exhibit?

BY MR. BADAMI:

Q. You can write on the exhibit.

A. I'm sorry.

Q. That's all right.

A. For the period, let's say, 10/1/2000 to 9/30/2001.

Q. Okay.

A. The number of patients in total were 33,688.

Q. That's the number of patients at Columbia

Hospital for that year?

A. That is correct. Based on the information provided to me by the hospital.

Q. If that information is wrong your data is wrong?

A. Absolutely.

Q. Okay.

A. When I took that number and divided it into the total charges I got $1,975.56 was the average charge for each one of the patients. On the records of the hospital they have the amount of adjustments. I would use the term, write downs.

Q. Let's talk about that. You say adjustments; what are you including in adjustments?

A. It's whatever they had in that field that they provided me for adjustments, I'll use the term, discounts, that they provide to the health insurers because health insurers, like, Blue Cross-Blue Shield don't pay 100 percent of the bill charged, and they pay something less than that. And that adjustment figure is the amount of the discount, and this is

based on various contracts.

Q. You list the number of adjustments and you said the Blue Cross contract. What about the Medicare contract?

A. Medicare.

Q. Other HMOs?

A. All of them. No one seems to pay full price anymore.

Q. How about bad debts?

A. I believe the charity cases are probably part of that adjustment column.

Q. You believe, or do you know?

A. I don't know for a fact. It's whatever the write-downs were.

Q. You're not sure what encompassed all of those write-downs?

A. No, I don't know, nor did I audit that.

Q. You took what Columbia gave you and ran with it?

A. That's exactly it.

Q. Keep going.

A. Therefore, taking the total payments that they received to date, dividing it by the number patients, I arrived at the payments per patient. I did that for the NCRIC doctor group, which is a group of doctors that there is a list of. It's in the reports.

Q. We'll get there.

A. And subtracted the NCRIC doctors group from the total doctors to arrive at the non-NCRIC doctors group. So that explains the top.

MR. LEAHY: By non-NCRIC, you don't know whether those doctors who have NCRIC insurance, you simply are designating them as such?

THE WITNESS: It's the difference between the doctors that are on the list that I have in here --

BY MR. BADAMI:

Q. Right.

A. -- and the total doctors.

Q. Right.

A. This a mathematical process.

(Discussion off the record.)
MR. BADAMI: I ask the court reporter to mark the next exhibit, numbered CHWMC 5640 as, I guess, Ben Ezra 8.
(Ben Ezra Exhibit 8 was marked for identification.)
BY MR. BADAMI:
Q. Mr. Ben Ezra, I'm showing you what's been marked as Ben Ezra Deposition Exhibit No. 8, and I'll ask you, sir, if you recognize this document?
A. Okay, the first sheet I recognize. It was a sheet that was faxed to me containing the doctors' names and numbers.
Q. Right.
A. That's labeled 5640.
Q. Right.
A. This other physician listing has never been furnished to me, to my knowledge.
Q. I've just been informed by my colleague that was a copying error. You were only supposed to get the first page. I apologize for that.

A. No problem.
MR. LEAHY: May I point out this document is designated for counsel only, so Mr. Fargis is not supposed to see it.
MR. BADAMI: He has not seen it.
BY MR. BADAMI:
Q. Ben Ezra Exhibit 8, 5640, the single page, did you review this document in doing your report?
A. I utilized this document in doing my report, yes.
Q. How did you use this document for your report?
A. I used it to select the physicians that I have in tables in which I used to generate the projections for the total dollars lost to Columbia and their present value.
Q. Do you know where this list came from? How were these doctors selected? Let's try it that way.
MR. LEAHY: Object to the form.
THE WITNESS: I was furnished that by counsel to Columbia.

BY MR. BADAMI:
Q. Do you have any idea how this group was picked?
A. No.
Q. You accepted the representation on its face?
A. Yes.
Q. What was the representation about who these doctors represent?
A. These represented doctors that either left, or have no one providing patients to Columbia, or potentially have cut back on the patients that they have sent to Columbia.
Q. Let's talk about that for a minute. When you say potentially cut back, what does that mean?
A. Well, when I looked at some of these doctors it looked like they didn't cut back.
Q. So is this list, then, in your opinion inaccurate?
A. It's a list of doctors' names and numbers. I don't know whether it's accurate or not. I didn't

audit it. I relied on this list as represented by counsel. This represents the population or pool of doctors that may have left or cut back at Columbia.
Q. And I apologize if I am misspeaking, but I thought that you testified a minute ago that you found that some of these doctors either didn't leave Columbia or didn't cut back, is that correct?
A. Yes.
Q. Which doctors are those?
A. The ones that are not part of my report. I can do that match if you like.
Q. Yes, I would appreciate that.
A. I would like to refer your attention to Page 8713.
Q. Referring to your report, Page 8713?
A. Yes.
Q. I'm with you.
A. So as we go down the list the first doctor that I used was Dr. 202, which means Dr. 19, 20 and 222 were not used in the report.
Q. Dr. 19, 20 and --

A. Yes.
Q. Do you have any idea how this list was created?
A. What we were looking for is the doctors that have left or cut back at Columbia.
Q. Did you participate in creating this list?
A. No.
Q. You just testified to that you have excluded a number of doctors from your report?
A. Yes.
Q. Tell me why you did that.
A. When I did the analysis, for example, I think it was Dr. 44039, there was no data. There was nothing there.
Q. How about Dr. Becker, No. 19?
A. Dr. Becker, as I recall, he was either close to retirement or had retired. Basically, to use my phrase, was not dilutive in nature; in other words, was not significant or actually may have increased.
Q. So he might have been improperly put on this list?

A. That's correct.
Q. How about Dr. Berryman, No. 20?
A. The same.
Q. You say, "The same." Could you -- either he didn't have enough admissions or it could have increased?
A. Yes.
Q. Dr. Birnkrant, No. 222?
A. The same.
Q. Is it the same for all the doctors?
A. Yes. Basically, if they are not dilutive in nature I did not include them.
Q. When you say dilutive in nature, did you make a determination it was dilutive?
A. Yes.
Q. What was the criteria whether it was dilutive?
A. When I did the analysis, if the number of cases had gone up or even the money had gone up, then it would not be dilutive in nature.
Q. So if the number of cases or the dollars

went down a little they were included on your list?
A. That's correct.
Q. Let's talk about the reasons why some of that might have happened. Do you know why a doctor might have referred either less patients or less dollar value to Columbia?
MR. LEAHY: Object to the form.
THE WITNESS: Do I know on an individual case?
BY MR. BADAMI:
Q. Generally, and then we'll get to specifics.
A. In general, no, I don't.
Q. You don't know why a doctor would switch from, you say, Columbia to Sibley?
A. No. The presumption is they have all left because of the NCRIC dispute.
Q. And when you say that presumption, what facts do you -- what facts underlie that presumption?
A. Basically, that is a list of doctors that was furnished to me by counsel.
Q. So you're not making any independent

determination as to why the doctors left?
A. That's correct.
Q. I don't mean this to come out wrong, is your answer to my question because counsel told you these are the people who left because of the NCRIC dispute?
A. Basically, that's the list that was furnished to me, yes.
Q. Have you done any analysis with respect to why any of these specific doctors, in your opinion, left Columbia?
A. Independent analysis, no.
Q. Have you reviewed any analysis or any study that might have indicated why these doctors left Columbia?
A. No, I have not.
MR. LEAHY: Are you asking for an expert opinion with regard to why these doctors left Columbia?
MR. BADAMI: I'm asking for his opinion why they left Columbia.

MR. LEAHY: I object to that.
Go ahead.
THE WITNESS: I don't have any independent knowledge of why they left Columbia. My presumption is if they were on the list and indeed it went down it is because of the NCRIC dispute.
BY MR. BADAMI:
Q. Did you interview any of these doctors to find out why they would have left Columbia?
A. No, I did not.
MR. BADAMI: Off the record.
(Discussion off the record.)
BY MR. BADAMI:
Q. I think when we broke Mr. Ben Ezra, you were saying you had done no analysis with respect to why doctors had left Columbia?
A. No, that's correct. I relied on the list that was furnished to me.
Q. So if the list is incorrect, then the data in your report is incorrect?
A. No.

Q. No. Why is that if the list isn't correct?
A. If there are additional doctors that have left as a result of this dispute, and those doctors were not on the list, then it is not included on the report.
Q. I was imprecise. Let's say, for example, Dr. Heather Johnson, who is on your list, No. 333, if she left Columbia for a reason other than what counsel has represented to you as a dispute with NCRIC, she should not be on this report, is that correct?
MR. LEAHY: Object to the form.
THE WITNESS: There are two factors, if she left totally for factors not related to the dispute with NCRIC, then she should not be on the list, but if she -- in other words, I have a dating in here, too, as you'll see, so it, basically, would depend on the facts and circumstances of each individual case.
BY MR. BADAMI:
Q. But you did no analysis of the facts and circumstances of each individual case?
A. No. However, if those were brought to my

attention and agreed to by counsel, I would make adjustments to this report to accurately reflect the true nature.
Q. You don't know if any of these doctors left, first, because of the NCRIC dispute or otherwise?
MR. LEAHY: Object to the form.
THE WITNESS: Again, this is a list presented to me by counsel representing the doctors that left because of the NCRIC dispute.
BY MR. BADAMI:
Q. I'm sorry, I don't know if I asked this, do you know why doctors would choose to leave hospitals in general?
MR. LEAHY: Object to the form.
THE WITNESS: Doctors would leave hospitals for an assorted number of reasons.
BY MR. BADAMI:
Q. Tell me some of those reasons.
A. Dr. Oweiss, Zacharia, murdered his wife this summer, so he would no longer be practicing at

Columbia Hospital, but it's my understanding that he handed off his patients to other doctors which are on this list, but those patients are not reflected here on this report.
Q. Let me try it this way: Do you know, for example, if managed care organizations pay a higher rate at a different hospital than Columbia, that might not be a reason for a physician to want to move?
MR. LEAHY: Object to the form.
THE WITNESS: I don't think so.
BY MR. BADAMI:
Q. You don't think so?
A. No.
Q. How about if another hospital, for example, paid a portion of the physician's malpractice insurance premium?
MR. LEAHY: Object to the form.
THE WITNESS: Repeat the question, please.
BY MR. BADAMI:
Q. Would a reason for a physician to leave one hospital to go to another hospital, would a reason be

MR. LEAHY: Do you want a representation?
MR. BADAMI: If you can tell me when he talked to you about the counterclaim, sure.
MR. LEAHY: My representation is that my recollection with regard to when I spoke with Mr. Ben Ezra is sometime shortly before the 26(b)(4) Statement in which the tens of millions of dollars figure that he used was drafted and filed, at about that time.
MR. BADAMI: I'll accept that representation.
BY MR. BADAMI:
Q. But you haven't read the counterclaim that was filed by Columbia against NCRIC in this case?
A. I haven't read it. We did discuss that particular wording.
Q. How did you come up with the tens of millions figure that you used in your Rule 26(b)(4) Statement?
A. I'm not even sure. If you're going to represent that's where it was.
Q. That's what Mr. Leahy just represented to

us.
MR. LEAHY: I represented on the record that is what a pleading filed in this action to summarize what it is expected the expert will testify to, Mr. Ben Ezra was consulted with regard to, although he didn't have the data at the time, what it was he expected he would testify to. That's my representation.
THE WITNESS: That is correct.
BY MR. BADAMI:
Q. Can you tell me how you estimated at that time the tens of millions of dollars?
A. That was an educated guess.
Q. What's on what data?
A. I didn't have data. I had a feeling or belief.
Q. Where did you get the feeling or belief?
A. Based upon my knowledge of the hospital and what was going on and its financial condition.
Q. There is nothing specific you can point to?
A. No.

MR. BADAMI: I would like to show you the 26(b)(4) Statement, if I might. I would ask the court reporter to mark it as Ben Ezra Exhibit No. 11.
(Ben Ezra Exhibit 11 was marked for identification.)
MR. BADAMI: Mr. Ben Ezra, I'm showing you what's been marked as Ben Ezra Exhibit No. 11, and I'll ask you, sir, if you have ever seen it. I'll represent to you that it's two pages long. The document was originally longer, but No. 1 on the first two pages references you, which is what's been copied, which is what identifies you, and what's been copied.
MR. LEAHY: Are you going to represent who this has been signed by?
MR. BADAMI: Off the record.
(Discussion off the record.)
MR. LEAHY: This document was signed by myself, I believe if this is, in fact, the document counsel purports it to be.
MR. BADAMI: I believe it is.
THE WITNESS: I have received Exhibit No.

11. I have not seen Exhibit 11 before.
BY MR. BADAMI:
Q. Can I ask you to look at the paragraph closest to the bottom on Page 1 where it talks about the substance of the facts and opinions to which Mr. Ben Ezra is expected to testify is, and then it talks about as a proximate result of NCRIC's torts, do you see that?
A. Yes.
Q. I want to just make clear, you don't have any information with respect to causation? You're not here for that purpose, are you?
A. No. I was just given a list and ran my analysis.
Q. Have you reviewed any other pleadings or filings in this case?
A. No, I have not.
Q. Have you reviewed any deposition transcripts in this case?
A. No, I have not.
Q. Have you done any interviews or had any

to show the model and the procedure I used to generate those estimates.

Q. But with the exception, then, of that one, I guess, group, or one line in your report, was the rest of your report the same?

A. It was basically the same, yes.

Q. When you say basically the same, I don't mean to split hairs with you, what else?

A. Basically, the model was there. It may have had a couple of typos, but, basically, what you see is that model.

Q. You mentioned this draft report. Were there other previous drafts of your report?

A. No.

Q. So you consider what you produced to us today Version 2?

A. I would say this would be Version 1.

Q. What do you --

A. The draft was, basically, a working paper, a draft of this version.

MR. BADAMI: Off the record.

(Discussion off the record.)

BY MR. BADAMI:

Q. Mr. Ben Ezra, I'd like to focus your attention now on your report.

A. Yes.

Q. On the first page of your report, which is marked 8708, you refer to the NCRIC group of doctors?

A. That's correct.

Q. We've talked about this a little bit, but I would like to confirm again who the NCRIC group of doctors is.

A. The NCRIC group of doctors are the physicians that are listed on Page 8713.

Q. Right.

A. Where I defined the NCRIC group of doctors by their physician name and their number.

Q. Did you determine if any of these doctors maintained hospital privileges at any other District of Columbia hospital?

A. No, I did not.

Q. Did you determine if any of these

physicians maintained hospital admitting privileges in either Suburban Maryland or Northern Virginia?

A. No, I did not. However, I know from my own knowledge that Dr. Edward G. Koch does maintain an office in, I guess it is, Virginia.

Q. We also briefly touched upon this, but I like to focus on the first page with respect to leaving or cutting back. Obviously, leaving means they stopped referring patients at all to Columbia, is that correct?

A. That's correct.

Q. And tell me how you defined cutting back.

A. That the amount of business they brought to the hospital was less than the previous year.

Q. But, again, you made no analysis or investigation into why those doctors may have cut back or left Columbia?

A. No. It was from -- this is a subset of the list that was furnished to me by counsel, which is Exhibit No. 8.

Q. In doing your analysis, Mr. Ben Ezra, did

you take into account that some of these doctors might switch back to Columbia Hospital in the future?

A. It's my hope that they will.

Q. Is that included anywhere in your report?

A. No, it is not.

Q. So if a doctor made the decision two years from now to go back to Columbia your numbers would be in error?

A. That's correct. Without saying error, if you would tell me which doctors are going to return, I could run the numbers accordingly and determine the net economic lost.

Q. You indicated a moment ago it is your hope, I believe is your word, that these doctors would return to Columbia. Why is it your hope?

A. So we would not have the scope and magnitude of damages, that the hospital would have their business.

Q. I asked you earlier a little bit about insurance. Do you have any knowledge with respect to the effective dates or the insurance coverages of the

breakdown?
A. No, I did not break it down into a subset.
Q. Would that have been helpful to do that analysis?
A. Probably not.
Q. Why not?
A. We don't have the data available. That's part of -- I would like to break it down between inpatient and outpatient, major procedure, minor procedure, even mix of payers, but I don't have that data.
Q. But you'd like to do that if you had the data?
A. If the data was available I certainly would like to do that analysis.
Q. But your testimony is Columbia has not provided you that data?
A. That is correct, has not provided me with the data.
Q. Have you asked for that data?
A. Yes, I have.

Q. Do you know if they have that data?
A. As late as yesterday evening, no, they did not.
Q. You did a projection over the next 20 years?
A. Two different ways.
Q. I'm trying to -- I would like to start, I guess, with how you picked 20 years out in the way you did your analysis?
A. The reason I did 20 years was when you look at the present value of future cash flow, and I draw your attention to the column 20 years will be on Page 8712.
Q. Right.
A. As you go further and further out in time that discount rate eventually goes to zero. So if I had done it for a hundred years the result would not have been much different.
I did it for 20 years in this analysis. I, also, did it by expected age of retirement, which we presumed or I presumed to be 65, and actually I took

the month in which the doctor would turn 65.
Q. We'll get to that. Let's start with the 20 years, first.
A. This analysis shows the present value of future cash flow over a 20-year period, but if you were to say, for example -- let's do only ten years, then I have the results for ten years. So for 20 years, using this approach the present value of the lost cash flows would be approximately $22 million. If you were to say, "What if it's only ten," the answer would be a little over $16.5 million.
Q. I recognize that. I recognize that you picked 20 years as the front page of your report.
A. That's correct.
Q. I'm trying to figure out what facts led you to take that 20-year period?
A. That was my experience. I assumed, and this is an assumption, that the lost cash flow would be over a period of 20 years. If you want to say, well, we think ten is better than 20, then the answer would be different, but that answer is disclosed in

this report.
Q. Again, you just assumed it. You didn't do any further investigative analysis with respect to why the 20-year number works?
MR. LEAHY: Objection to form.
THE WITNESS: My initial approach was to do it for the 20 years. Then when I did it based on the age of the physician, the result was not much different than the 20 years. Actually, the first approach I used was the 20 years. Then, when I found I could get the data for how old they were and when I could presume, that's an assumption that they would retire on their 65th birthday, I ran those numbers. The results are not materially different between the two.
BY MR. BADAMI:
Q. You mentioned the age 65 issue and I was going to come to that. How did you make the decision to choose 65 as the date that the physician would retire?
A. Okay, again, that's a presumption. My

experience has been many doctors work past 65. At the Columbia Hospital there is a Dr. Savarese who I believe is still working, but has worked into his 70s.

At the World Bank, where I'm also a consultant, there is a mandatory retirement around that happens to be 65.

I have a client that found he was separated at age 65 and he had about four days' notice.

Q. I appreciate that. Have you done any studies or analysis with respect to what the average retirement date of a physician in the District of Columbia is?

A. No, I have not.

Q. Do you know what that number would be?

A. No, I do not.

Q. Sixty-five is your presumption?

A. That is a presumption, yes.

Q. Specifically, with respect to OB/GYN doctors, do you know if there is a -- let me start the question over.

With respect to OB/GYN physicians, do you

know if they typically practice longer, in other words, years, an opposed to, say, surgeons?

A. No, I have not done any formal analysis, but, however, Dr. Savarese, I believe was an OB/GYN that has practiced into his 70s.

Q. But do certain OB/GYNs retire when they are 50?

A. I would assume that some do.

Q. Some retire in their early 60s?

A. I assume that there would be a continuum. I assume it's going to be some sort of a bell-shaped curve.

Q. You did no analysis as to when the doctors retire?

A. No. However, when you do the present value of future cash flows as the years go out the value that's contributing to that present value declines tremendously. So even if I was off by one year that present value is way off in time, as you can see in the analysis. So the dollar today is worth a lot more than, let's say, a dollar 20 years from now.

Q. We talked about this a little bit in the beginning, we're back to Page 8710, the 94.22 percentage?

A. Right.

Q. Did you do any analysis with respect to hospitals and their collection rates here in the District of Columbia?

A. No, I did not.

Q. Why not?

A. It's not necessary for this analysis.

Q. If other hospitals collected, say, 60 percent, wouldn't that be relevant to your analysis?

A. Negative.

Q. Why not?

A. I'd like to refer you to Page 8715.

Q. Sure.

A. This is why I felt very comfortable with this model. I had from the printouts, and let's look under total NCRIC doctors group.

Q. That's the top of the chart?

A. The top of the chart. I point your

direction to that top third --

Q. Okay.

A. -- which represents a year ago. Okay, my presumption is if I take the total charges, subtract total adjustments, I will arrive at total charges less adjustments; okay.

I was given by the hospital the total charges and the total adjustments. I imputed mathematically the difference, okay, then I compared the actual payments against that difference and found that they had collected about 94.22 percent, okay, and I still know that they still have about another six percent to collect, and maybe they won't collect all that six percent, so in my analysis I'm trying to be objective and free from bias. I used the conservative 94.22 percent, what they have actually collected to date, in imputing the net realizable value.

So your question is why didn't I look at anybody else's. I see that I've got a good indicator here of the difference between total charges and total adjustments as to the amount that is collectable, and

the record of the hospital for that particular year was to date they have collected 94.22 percent.

Q. Do you have a document, have you even a document that shows that, that they have collected 94.22 percent?

A. Yes. I have the numbers. I computed the 94.22 percent.

Q. I recognize that. I'm asking you do you have a document from Columbia Hospital that shows that's what they collected. Mr. Ben Ezra, I think that is an extraordinarily high percentage. I'm unaware that any hospital has ever collected that high percentage.

A. Okay, then I need to clarify your understanding, so let me explain, okay? Please bear with me.

They bill in this case $11,695,055.78.

Q. Unaudited?

A. Yes, based on the numbers provided to me on the printout.

Q. Okay.

A. They also have another field for adjustments. Basically, they know they're not going to collect the 11.6 million, they are going to collect something less, so they put an adjustment there, $6,455,263.14, and for our purposes when I compute that, when I look at the ratio of total charges -- I'm sorry, the adjustments to the total charges, we see they are writing off, right off the bat, 55.2 percent.

Q. Right.

A. Which means they expect to collect or what is collectable is only 44.8 percent. In this case that's $5,239,792.64.

To date of that amount they have collected is $4,936,978.35. So based on the records provided to me by the hospital they have collected 42.21 percent of what they billed. And that's a number I think that's within reason. I would expect about 45 percent, just based on my experience, past experience with the hospital, and so I'm showing 42.21 percent.

So if you were to say to me as you did before, I find it unusual to collect 94.22 percent,

well, in reality they have collected for this particular year 42.21 percent, but that represents, the 94.22 percent represents what I call the net collectable value.

Q. Which is less the adjustments?

A. Which is less the adjustments.

Q. Do those collections include Medicare?

A. I assume it's every discount the hospital gets.

Q. But you don't know what those assumptions are?

A. I don't know what goes into the adjustment column. I assume, and my presumption is it's the discounts asked by all these HMOs and Blue Cross-Blue Shield and Medicare and everybody else that wants a discount.

Q. Would it have been helpful in your analysis, to know what makes you have the adjustments?

A. No. What I care about is the money, how much money they expect to receive. I'm looking strictly cash. I'm not using the accrual basis of

accounting. I'm using the cash basis of accounting.

Q. You did this analysis, I think, for -- how many years did you do this analysis for?

A. The analysis is based on the difference between two years. I did look at the prior year data that was furnished to me. I elected not to use it. I was not comfortable in using that data.

Q. Why?

A. I don't think it was complete.

Q. And how did you know it wasn't complete?

A. It didn't look right.

Q. I'm sorry, I don't mean, again, to argue with you but what does, "It didn't look right," mean?

A. The number of records and the totals I couldn't rely on. I mean, I'm not going to use data in my analysis that I don't feel is correct.

Q. What year was this data?

A. It was data acquired two years from here.

Q. I guess you were uncomfortable with that data?

A. Yes.

MR. BADAMI: It's a good time for a lunch break.

(Whereupon, at 1:10 p.m. a luncheon recess was taken until 2:05 p.m. that same day.)

AFTERNOON SESSION.

BY MR. BADAMI:

Q. Mr. Ben Ezra, when we left off I had asked you some questions about data which you said did not look right. I believe that is the data for 1997 and 1998?

A. Right, it's data I did not use. It appeared to me to be a subset of the entire file. It did not appear to me to be the entire file.

Q. To your knowledge, does audited data for 1997 and 1998 exist?

A. I'm not sure.

Q. Should it exist? Let me try it that way.

MR. LEAHY: Object to the form of the question.

THE WITNESS: I'm not sure. I know that there were audits that were performed. Whether there is an actual audit report, I don't recall. Was it furnished for the record, here?

MR. LEAHY: Let me just ask, are you asking audited financial status or this type of data that has

actually been produced to him?

MR. BADAMI: Data that was produced to him that he would have relied on for his report.

MR. LEAHY: We produced audited financial statements. I'm not aware of anything else, but if you are, ask for it and he'll produce it.

THE WITNESS: To my knowledge, this data has not been audited.

BY MR. BADAMI:

Q. Would it have been helpful to your analysis to have data for 1997 and 1998, as well?

MR. LEAHY: Object to the form.

THE WITNESS: No, not for this purpose.

BY MR. BADAMI:

Q. Why not?

A. The most current data was the most useful data. I don't have audited data. I don't think I would have utilized it.

Q. I guess where I'm trying to go is you chose one year as your benchmark where you had the data, correct?

A. Correct.

Q. What if that year was a particularly good year or a particularly bad year, away from the mean, wouldn't that skew your result?

MR. LEAHY: Object to the form.

THE WITNESS: That year's data was the most current data, and then the next year we have the comparable results. I'm not sure what a good year or a bad year would be. What I'm trying to do is find that delta, that change.

Basically, I came up with the difference and tried to quantify that in terms of cash. I need to caution, when you're talking about audited financial data you're talking about the accrual basis of accounting.

I used the cash basis. I'm looking for cash collections, not what they earned on the accrual basis, how much cash did they collect, how much cash will they collect.

BY MR. BADAMI:

Q. Could I turn now to Page 8710, Section 2?

purposes of your report, did you?
A. No.
Q. Can we flip to Page 8711, please?
A. Sure.
Q. I'd like to focus on the marginal cost issue?
A. Okay.
Q. I believe you noted a 30 percent marginal cost?
A. That's correct.
Q. I'd like to know how you got there.
A. Initially, I used it sort of as a rule of thumb.
Q. And where did you --
A. And I've asked the hospital management, and, personally, I think 30 is too high because the marginal cost is the extra cost that would be incurred for the next patient to come in, and most of the costs at the hospital are fixed, and my guess is it is between 70 and 80 percent fixed costs.
Q. Are those fixed costs accommodated or

referenced in your report, here?
A. No. What is accommodated is the marginal cost, because that's the relevant cost for making this decision.
Q. So the fixed costs and the labor costs don't come into play?
A. No. If you've got a hundred percent of the costs, you subtract the fixed cost, you'll have your marginal costs. So if the fixed costs are 70 to 80 percent and your marginal costs will be 20 to 30 percent. Quite frankly, finding a percentage was very difficult. But in a course I was teaching this semester, I found a chapter in a textbook.
Has that been provided to them?
MR. LEAHY: Indeed, it has.
THE WITNESS: That's one of the benefits of teaching a management accounting course.
MR. BADAMI: Mr. Ben Ezra, let me have it marked.
MR. LEAHY: Let's just use the exhibit.
MR. BADAMI: I ask the court reporter to

mark the next exhibit as Ben Ezra Exhibit No. 12.
(Ben Ezra Exhibit 12 was marked for identification.)
BY MR. BADAMI:
Q. Mr. Ben Ezra, I'm showing you what has been marked as Ben Ezra Exhibit No. 12. I'm wondering if this is the page in the textbook you were referring to?
A. Yes, it is, sir.
Q. I notice that phrase has been circled?
A. Yes.
Q. Can you tell me, did you do that circling?
A. Yes, I did.
Q. What did you use this textbook to determine?
A. I used the textbook, because I was looking for a number for marginal cost, the best I could find was this example problem in the textbook that I use for the management accounting course at the undergraduate level.
Q. Could you give me the title and the authors

of that textbook?
A. Sure. It is "Introduction to Management Accounting," it is the 12th edition, which is the most current edition, just got off the press. The authors are Horngren, Sundem and Stratton.
Q. You can keep going, thank you.
A. It's published by Prentice Hall.
Q. And you circled a provision in that page?
A. Right. The sentence says, and it's Problem No. 2-32, "Hospital costs and pricing," and it begins, "St. Vincent Hospital" -- it's on Page 70 of the textbook. It says, "St. Vincent Hospital has overall variable costs of 30 percent of total revenue and fixed costs of $42 million per year."
Q. Do you know what St. Vincent Hospital in the textbook is referring to?
A. No, I do not.
Q. Do you know if this textbook is referring to a real St. Vincent Hospital somewhere in America?
A. No, I do not, but I believe there are some St. Vincent Hospitals somewhere in America.

of revenue and cash flow that you have for that year was not sustainable?

MR. BADAMI: Object to the form of the question.

THE WITNESS: I have no knowledge of that being the case at all.

BY MR. LEAHY:

Q. As a member of board of Columbia who is actively involved in understanding, although not auditing the hospital's financials, do you have any reason whatsoever to believe that had the NCRIC doctors not left Columbia would have in the year, 2000 and subsequently -- those years covered by your report -- done much worse than 1999?

MR. BADAMI: Object to the form of the question.

THE WITNESS: No. Based upon my analysis and understanding of the operating activities of Columbia Hospital, there would be a significant increase in cash flow from operations or from operating activities had the NCRIC doctors stayed.

MR. LEAHY: Mr. Ben Ezra, I'm sorry for burdening you with the additional questions. I'm done, although I assume opposing counsel may have a few follow ups.

MR. BADAMI: Mr. Leahy is correct. Do you want to take a break?

THE WITNESS: I would like a break.

(A brief recess was taken.)

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. BADAMI:

Q. Mr. Ben Ezra, I want to close a loop on a couple items that Mr. Leahy raised.

I want to make clear, you have acknowledged you're speculating with respect to the retirement age of the physicians?

A. That is an assumption that I used for the model.

Q. It is an assumption you used without any data to back it up?

A. Other than my general experience that most doctors retire around age 65.

Q. But you have no data that's been provided to me or that you reviewed to support that conclusion?

A. That's correct. This is a basic underlying assumption. The other assumption I used was 20 years straight out. I was quite surprised to find that the results were quite comparable.

Q. But, again, that was your assumption that you used for purposes of this compilation?

A. That's correct. I call it a model. I wouldn't call it a compilation. A compilation has a different connotation.

Q. You retired in your 40s, though, didn't you?

A. I retired at age 47 1/2, yes, I did.

Q. I also want to make clear that nowhere in your report or your testimony today have you indicated that NCRIC was -- there is any causation of any damages that are in your report?

MR. LEAHY: Object to the form.

THE WITNESS: That's not true.

BY MR. BADAMI:

Q. What facts have you provided that NCRIC has been responsible for these damages?

A. I was given a list of doctors. I did the analysis. I found that there was a reduction in the revenue to Columbia Hospital for Women as a result of any of them leaving or cutting back, and then I attempted to quantify the dollar amount of each one of these doctors, so I would say there is a cause and effect.

Q. Perhaps I was imprecise and I apologize. You testified that you were given the list of doctors to begin your analysis with?

A. That's correct.

Q. If that list is incorrect, then your analysis fails?

A. No.

Q. No?

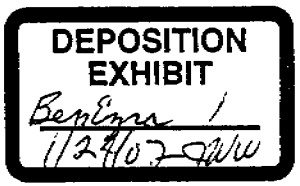
A. If, let's say, there is a doctor on that list that for purposes of discussion left for a different reason, then I have a schedule which appears on Page 8713, the amount of that cash flow that was

EXHIBIT C

Report of:
Peter Ben Ezra
Expert Witness

Estimated Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women (in total dollars lost and the present value of the dollars lost discounted at the cost of capital)

01/22/02



16d-002004

1/22/02 13:51

Opinion of Peter Ben Ezra, Expert Witness:

It is my expert opinion that the Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women in total dollars lost is about $50 million and the present value of the dollars lost discounted at the hospital's highest (marginal) cost of capital is about $21.5 million.

FINDINGS:

1/22/02 13:51

Estimated Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women (in total dollars lost and the present value of the dollars lost discounted at the cost of capital) projected over the next 20 years.

1 The estimated net realizable value is calculated by taking total charges less adjustments which is the total amount available for collections times the percentage of charges collected to date for the previous one year period. The percentage of charges collected based on the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women for the previous year ended 9/30/2000 was **94.22%**

2 As a result of the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women, the total available for collections from the patient referrals to the the Columbia Hospital for Women by this group, decreased by **$ 3,932,163.09**

(from $ 5,239,792.64 to $ 1,307,629.55 = $ 3,932,163.09)
from the one year period "October 1, 1999 to September 30, 2000" to the one year period "October 1, 2000 to September 30, 2001".

3 As a result of the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women, the total available for collections from the patient referrals to the the Columbia Hospital for Women by this group, percentage decreased by **75.04%**

($ 3,932,163.09 divided by $ 5,239,792.64 = 75.04%)
from the one year period "October 1, 1999 to September 30, 2000" to the one year period "October 1, 2000 to September 30, 2001".

16d-002006

4 The net realizable value of the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women was **$ 3,704,918.38** calculated as follows

(94.22% times $ 3,932,163.09 = $ 3,704,918.38)

5 Assuming that the marginal cost of providing services is equal to 30% of the net realizable value, then the cost savings as of a result of the the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women by this group, decreased by **$ 1,111,475.51**

($ 3,704,918.38 times 30% = $ 1,111,475.51)

from the one year period "October 1, 1999 to September 30, 2000" to the one year periiod "October 1, 2000 to September 30, 2001".

6 Assuming that the marginal cost of providing services is equal to 30% of the net realizable value, then the conbtribution margin as of a result of the the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women by this group, decreased by **$ 2,593,442.86**

($ 3,704,918.38 less $ 1,111,475.51 = $ 2,593,442.86)

from the one year period "October 1, 1999 to September 30, 2000" to the one year periiod "October 1, 2000 to September 30, 2001".

7 Assuming that the cost of capital for the Columbia Hospital for Women is **10.50%** and the annual loss in contribution margin (lost net income) as a result of the the NCRIC Doctors Group leaving or cutting back on patients referred to the Columbia Hospital for Women by this group, decreased by a total of: **$ 2,593,442.86** per year,

8 Then the net present value of the total loss to the Columbia Hospital for Women was **$ 22,013,195.55** over the next 20 years assuming an interest rate (or discount rate) of 10.50% as of September 1, 2001.

16d-002007

Estimated Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women (in total dollars lost and the present value of the dollars lost discounted at the cost of capital) projected over the next 20 years.

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 2,593,442.86	$ 2,593,442.86	100.0000%	$ 2,593,442.86	$ 2,593,442.86
2	10/1/01-9/30/02	$ 2,593,442.86	$ 5,186,885.73	89.5000%	$ 2,321,131.36	$ 4,914,574.23
3	10/1/02-9/30/03	$ 2,593,442.86	$ 7,780,328.59	80.1025%	$ 2,077,412.57	$ 6,991,986.80
4	10/1/03-9/30/04	$ 2,593,442.86	$ 10,373,771.45	71.6917%	$ 1,859,284.25	$ 8,851,271.05
5	10/1/04-9/30/05	$ 2,593,442.86	$ 12,967,214.32	64.1641%	$ 1,664,059.40	$ 10,515,330.45
6	10/1/05-9/30/06	$ 2,593,442.86	$ 15,560,657.18	57.4269%	$ 1,489,333.17	$ 12,004,663.61
7	10/1/06-9/30/07	$ 2,593,442.86	$ 18,154,100.04	51.3971%	$ 1,332,953.18	$ 13,337,616.80
8	10/1/07-9/30/08	$ 2,593,442.86	$ 20,747,542.91	46.0004%	$ 1,192,993.10	$ 14,530,609.90
9	10/1/08-9/30/09	$ 2,593,442.86	$ 23,340,985.77	41.1703%	$ 1,067,728.82	$ 15,598,338.72
10	10/1/09-9/30/10	$ 2,593,442.86	$ 25,934,428.63	36.8474%	$ 955,617.30	$ 16,553,956.02
11	10/1/10-9/30/11	$ 2,593,442.86	$ 28,527,871.50	32.9785%	$ 855,277.48	$ 17,409,233.50
12	10/1/11-9/30/12	$ 2,593,442.86	$ 31,121,314.36	29.5157%	$ 765,473.35	$ 18,174,706.85
13	10/1/12-9/30/13	$ 2,593,442.86	$ 33,714,757.22	26.4166%	$ 685,098.64	$ 18,859,805.49
14	10/1/13-9/30/14	$ 2,593,442.86	$ 36,308,200.09	23.6428%	$ 613,163.29	$ 19,472,968.78
15	10/1/14-9/30/15	$ 2,593,442.86	$ 38,901,642.95	21.1603%	$ 548,781.14	$ 20,021,749.92
16	10/1/15-9/30/16	$ 2,593,442.86	$ 41,495,085.81	18.9385%	$ 491,159.12	$ 20,512,909.04
17	10/1/16-9/30/17	$ 2,593,442.86	$ 44,088,528.68	16.9500%	$ 439,587.41	$ 20,952,496.46
18	10/1/17-9/30/18	$ 2,593,442.86	$ 46,681,971.54	15.1702%	$ 393,430.74	$ 21,345,927.19
19	10/1/18-9/30/19	$ 2,593,442.86	$ 49,275,414.40	13.5773%	$ 352,120.51	$ 21,698,047.70
20	10/1/19-9/30/20	$ 2,593,442.86	$ 51,868,857.27	12.1517%	$ 315,147.85	$ 22,013,195.55
TOTAL		$ 51,868,857.27			$ 22,013,195.55	

16d-002008

1/22/02 13:51

Estimated Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women (in total dollars lost and the present value of the dollars lost discounted at the cost of capital) assuming each doctor retires on their 65th birthday.

NCRIC Group of Doctors by Physician Name	Number	Assumed Retirement Date (age 65)	Total Lost Cashflow	Present Value of Lost Cashflow
BIS, KATHLEEN, MD	202	11/1/11	$ 377,536.65	$ 240,019.18
BIS/ROBERTS	44141	11/1/11	$ 7,857.22	$ 4,995.23
BLANK, KENNETH A., MD	176	4/1/21	$ 5,842,851.55	$ 2,434,730.26
BOHON, CONSTANCE H., MD	18	10/1/17	$ 1,057,812.74	$ 522,924.97
BOLAN, JEAN C., MD	244	10/1/16	$ 716,388.59	$ 354,143.48
BRONSKY, GEORGE F., MD	131	10/1/12	$ 1,434,331.16	$ 837,642.91
BUSCH, REBECCA J., MD	166	9/1/24	$ 2,858,701.68	$ 1,058,142.80
DROGULA, CYNTHIA L., MD	7726	8/1/27	$ 232,336.49	$ 78,255.77
DUKES, MARTIN W. JR., MD	45	10/1/10	$ 1,610,611.37	$ 1,028,053.87
FLAX, RICHARD, MD	750	6/1/05	$ 286,292.04	$ 235,620.58
HIRSCH, FLORIE, MD	75	2/1/14	$ 413,342.48	$ 227,883.59
HORWITZ, STEPHEN I, MD	80	5/1/15	$ 3,128,108.74	$ 1,637,050.13
JOHNSON, HEATHER I, MD	333	10/1/18	$ 3,140,934.91	$ 1,436,232.57
KOCH, EDWARD G. , MD	195	7/1/07	$ 58,444.89	$ 43,416.59
KESSELMAN, AMY J. MD	349	4/1/24	$ 2,430,505.11	$ 912,237.80
LARSON, CHARLOTTE G., MD	1104	1/1/29	$ 2,657,566.91	$ 856,871.61
NEWMAN, RICHARD S., MD	125	4/1/17	$ 4,371,201.16	$ 2,117,854.33
NGUYEN, H. LISA, MD	1124	8/1/32	$ 6,766,040.29	$ 1,964,951.50
POWERS, DAVID N., MD	136	10/1/17	$ 1,323,252.86	$ 628,858.61
ROBERTS, MORTON J., MD	141	8/1/07	$ 170,593.67	$ 126,251.66
RUBIN, APRIL, MD	138	9/1/16	$ 290,758.38	$ 144,199.34
S,H,B,N,B,B,K,P	44146	8/1/32	$ 637,119.67	$ 185,028.35
SAFRAN, JULIAN E., MD	146	11/1/15	$ 923,951.63	$ 473,875.40
SANDERS, NANCY L., MD	102	4/1/22	$ 4,199,226.55	$ 1,688,567.06
SCHAFFEL, JANET, MD	147	7/1/19	$ 3,379,546.91	$ 1,558,679.58
TALEON, VITTORIO S., MD	276	7/1/19	$ 1,393,919.97	$ 619,462.47
W.P.A., BSJSN	44170	8/1/27	$ 316,196.57	$ 106,501.60
TOTAL			$ 50,025,430.18	$ 21,522,451.23

16d-002009

1/22/02 13:51

Estimated Total Lost Cashflow to the Columbia Hospital for Women as a result of the NCRIC Group of Doctors leaving or cutting back on patients referred to the Columbia Hospital for Women (in total dollars lost and the present value of the dollars lost discounted at the cost of capital) projected over the next 20 years.

Assumptions

Lost Total Amount Available for Collections:	$ 3,932,163.09
Precentage of Available Charges collected for the previous year to date:	94.22%
Lost Marginal Revenue [Calculated]	$ 3,704,918.38
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 2,593,442.86
Cost of Capital to the Columbia Hospital for Women:	10.50%

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 2,593,442.86	$ 2,593,442.86	100.0000%	$ 2,593,442.86	$ 2,593,442.86
2	10/1/01-9/30/02	$ 2,593,442.86	$ 5,186,885.73	89.5000%	$ 2,321,131.36	$ 4,914,574.23
3	10/1/02-9/30/03	$ 2,593,442.86	$ 7,780,328.59	80.1025%	$ 2,077,412.57	$ 6,991,986.80
4	10/1/03-9/30/04	$ 2,593,442.86	$ 10,373,771.45	71.6917%	$ 1,859,284.25	$ 8,851,271.05
5	10/1/04-9/30/05	$ 2,593,442.86	$ 12,967,214.32	64.1641%	$ 1,664,059.40	$ 10,515,330.45
6	10/1/05-9/30/06	$ 2,593,442.86	$ 15,560,657.18	57.4269%	$ 1,489,333.17	$ 12,004,663.61
7	10/1/06-9/30/07	$ 2,593,442.86	$ 18,154,100.04	51.3971%	$ 1,332,953.18	$ 13,337,616.80
8	10/1/07-9/30/08	$ 2,593,442.86	$ 20,747,542.91	46.0004%	$ 1,192,993.10	$ 14,530,609.90
9	10/1/08-9/30/09	$ 2,593,442.86	$ 23,340,985.77	41.1703%	$ 1,067,728.82	$ 15,598,338.72
10	10/1/09-9/30/10	$ 2,593,442.86	$ 25,934,428.63	36.8474%	$ 955,617.30	$ 16,553,956.02
11	10/1/10-9/30/11	$ 2,593,442.86	$ 28,527,871.50	32.9785%	$ 855,277.48	$ 17,409,233.50
12	10/1/11-9/30/12	$ 2,593,442.86	$ 31,121,314.36	29.5157%	$ 765,473.35	$ 18,174,706.85
13	10/1/12-9/30/13	$ 2,593,442.86	$ 33,714,757.22	26.4166%	$ 685,098.64	$ 18,859,805.49
14	10/1/13-9/30/14	$ 2,593,442.86	$ 36,308,200.09	23.6428%	$ 613,163.29	$ 19,472,968.78
15	10/1/14-9/30/15	$ 2,593,442.86	$ 38,901,642.95	21.1603%	$ 548,781.14	$ 20,021,749.92
16	10/1/15-9/30/16	$ 2,593,442.86	$ 41,495,085.81	18.9385%	$ 491,159.12	$ 20,512,909.04
17	10/1/16-9/30/17	$ 2,593,442.86	$ 44,088,528.68	16.9500%	$ 439,587.41	$ 20,952,496.46
18	10/1/17-9/30/18	$ 2,593,442.86	$ 46,681,971.54	15.1702%	$ 393,430.74	$ 21,345,927.19
19	10/1/18-9/30/19	$ 2,593,442.86	$ 49,275,414.40	13.5773%	$ 352,120.51	$ 21,698,047.70
20	10/1/19-9/30/20	$ 2,593,442.86	$ 51,868,857.27	12.1517%	$ 315,147.85	$ 22,013,195.55
TOTAL		$ 51,868,857.27			$ 22,013,195.55	

16d-002010

FINDINGS

TOTAL

TOTAL - NCRIC DOCTORS GROUP		10/01/2000 - 09/30/2001	%		10/01/1999 - 09/30/2000	%
NUMBER OF PATIENTS		1,514.00			3,434.00	
TOTAL CHARGES	$	3,058,943.41	100.00%	$	11,695,055.78	100.00%
TOTAL ADJUSTMENTS	$	1,751,313.86	57.25%	$	6,455,263.14	55.20%
TOTAL CHARGES LESS ADJUSTMENTS	$	1,307,629.55	42.75%	$	5,239,792.64	44.80%
TOTAL PAYMENTS	$	1,132,720.93	37.03%	$	4,936,978.35	42.21%
Percentage of Net Charges Collected To Date		86.62%	86.62%		94.22%	94.22%
Estimated Net Realizable Value	$	1,232,059.97	94.22%			

TOTAL - ALL DOCTORS		10/01/2000 - 09/30/2001			10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		33,688.00			28,529.00	
TOTAL CHARGES	$	66,552,627.05	100.00%	$	55,696,477.27	100.00%
TOTAL ADJUSTMENTS	$	34,893,907.05	52.43%	$	30,626,015.64	54.99%
TOTAL CHARGES LESS ADJUSTMENTS	$	31,658,720.00	47.57%	$	25,070,461.63	45.01%
TOTAL PAYMENTS	$	21,031,313.81	31.60%	$	21,916,011.12	39.35%
Percentage of Net Charges Collected To Date		66.43%	66.43%		87.42%	87.42%
Estimated Net Realizable Value	$	27,675,312.48	87.42%			

TOTAL - NON-NCRIC DOCTORS GROUP		10/01/2000 - 09/30/2001			10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		32,174.00			25,095.00	
TOTAL CHARGES	$	63,493,683.64	100.00%	$	44,001,421.49	100.00%
TOTAL ADJUSTMENTS	$	33,142,593.19	52.20%	$	24,170,752.50	54.93%
TOTAL CHARGES LESS ADJUSTMENTS	$	30,351,090.45	47.80%	$	19,830,668.99	45.07%
TOTAL PAYMENTS	$	19,898,592.68	31.34%	$	16,979,032.77	38.59%
Percentage of Net Charges Collected To Date		65.56%	65.56%		85.62%	85.62%
Estimated Net Realizable Value	$	25,986,625.04	85.62%			

FINDINGS

Per Patient

TOTAL - NCRIC DOCTORS GROUP		10/01/2000 - 09/30/2001			10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		1,514.00			3,434.00	
TOTAL CHARGES	$	2,020.44	100.00%	$	3,405.67	100.00%
TOTAL ADJUSTMENTS	$	1,156.75	57.25%	$	1,879.81	55.20%
TOTAL CHARGES LESS ADJUSTMENTS	$	863.69	42.75%	$	1,525.86	44.80%
TOTAL PAYMENTS	$	748.16	37.03%	$	1,437.68	42.21%
Percentage of Net Charges Collected To Date		86.62%	86.62%		94.22%	94.22%
Estimated Net Realizable Value	$	813.78	94.22%			

TOTAL - ALL DOCTORS		10/01/2000 - 09/30/2001			10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		33,688.00			28,529.00	
TOTAL CHARGES	$	1,975.56	100.00%	$	1,952.28	100.00%
TOTAL ADJUSTMENTS	$	1,035.80	52.43%	$	1,073.50	54.99%
TOTAL CHARGES LESS ADJUSTMENTS	$	939.76	47.57%	$	878.77	45.01%
TOTAL PAYMENTS	$	624.30	31.60%	$	768.20	39.35%
Percentage of Net Charges Collected To Date		66.43%	66.43%		87.42%	87.42%
Estimated Net Realizable Value	$	821.52	87.42%			

TOTAL - NON-NCRIC DOCTORS GROUP		10/01/2000 - 09/30/2001			10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS		32,174.00			25,095.00	
TOTAL CHARGES	$	1,973.45	100.00%	$	1,753.39	100.00%
TOTAL ADJUSTMENTS	$	1,030.10	52.20%	$	963.17	54.93%
TOTAL CHARGES LESS ADJUSTMENTS	$	943.34	47.80%	$	790.22	45.07%
TOTAL PAYMENTS	$	616.47	31.34%	$	676.59	38.59%
Percentage of Net Charges Collected To Date		65.56%	65.56%		85.62%	85.62%
Estimated Net Realizable Value	$	807.69	85.62%			

16d-002012

BIS, KATHLEEN, MD

Number 202 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	54	62
TOTAL CHARGES	$ 9,941.86	$ 123,351.40
TOTAL ADJUSTMENTS	$ 4,154.06	$ 57,603.80
TOTAL CHARGES LESS ADJUSTMENTS	$ 5,787.80	$ 65,747.60
TOTAL PAYMENTS	$ 4,968.65	$ 58,651.17
Percentage of Net Charges Collected To Date	85.85%	89.21%
Estimated Net Realizable Value	$ 5,163.10	

Assumptions

Lost Total Amount Available for Collections:	$ 59,959.80
Precentage of Available Charges collected for the previous year to date:	89.21%
Lost Marginal Revenue [Calculated]	$ 53,488.07
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 37,441.65
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 11/1/11

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 37,441.65	$ 37,441.65	100.0000%	$ 37,441.65	$ 37,441.65
2	10/1/01-9/30/02	$ 37,441.65	$ 74,883.30	89.5000%	$ 33,510.28	$ 70,951.93
3	10/1/02-9/30/03	$ 37,441.65	$ 112,324.95	80.1025%	$ 29,991.70	$ 100,943.63
4	10/1/03-9/30/04	$ 37,441.65	$ 149,766.60	71.6917%	$ 26,842.57	$ 127,786.20
5	10/1/04-9/30/05	$ 37,441.65	$ 187,208.26	64.1641%	$ 24,024.10	$ 151,810.30
6	10/1/05-9/30/06	$ 37,441.65	$ 224,649.91	57.4269%	$ 21,501.57	$ 173,311.87
7	10/1/06-9/30/07	$ 37,441.65	$ 262,091.56	51.3971%	$ 19,243.90	$ 192,555.77
8	10/1/07-9/30/08	$ 37,441.65	$ 299,533.21	46.0004%	$ 17,223.29	$ 209,779.07
9	10/1/08-9/30/09	$ 37,441.65	$ 336,974.86	41.1703%	$ 15,414.85	$ 225,193.92
10	10/1/10-9/30/11	$ 37,441.65	$ 374,416.51	36.8474%	$ 13,796.29	$ 238,990.21
11	10/1/11-11/01/11	$ 3,120.14	$ 377,536.65	32.9785%	$ 1,028.97	$ 240,019.18
TOTAL		$ 377,536.65			$ 240,019.18	

BIS/ROBERTS

Number 44141 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	2	14
TOTAL CHARGES	$ 37.00	$ 1,971.00
TOTAL ADJUSTMENTS	$ 32.66	$ 544.42
TOTAL CHARGES LESS ADJUSTMENTS	$ 4.34	$ 1,426.58
TOTAL PAYMENTS	$ 4.34	$ 1,116.58
Percentage of Net Charges Collected To Date	100.00%	78.27%
Estimated Net Realizable Value	$ 3.40	

Assumptions

Lost Total Amount Available for Collections:	$ 1,422.24
Precentage of Available Charges collected for the previous year to date:	78.27%
Lost Marginal Revenue [Calculated]	$ 1,113.18
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 779.23
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 11/1/11 Used Kathleen Bis

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 779.23	$ 779.23	100.0000%	$ 779.23	$ 779.23
2	10/1/01-9/30/02	$ 779.23	$ 1,558.46	89.5000%	$ 697.41	$ 1,476.64
3	10/1/02-9/30/03	$ 779.23	$ 2,337.68	80.1025%	$ 624.18	$ 2,100.82
4	10/1/03-9/30/04	$ 779.23	$ 3,116.91	71.6917%	$ 558.64	$ 2,659.46
5	10/1/04-9/30/05	$ 779.23	$ 3,896.14	64.1641%	$ 499.98	$ 3,159.45
6	10/1/05-9/30/06	$ 779.23	$ 4,675.37	57.4269%	$ 447.49	$ 3,606.93
7	10/1/06-9/30/07	$ 779.23	$ 5,454.60	51.3971%	$ 400.50	$ 4,007.43
8	10/1/07-9/30/08	$ 779.23	$ 6,233.83	46.0004%	$ 358.45	$ 4,365.88
9	10/1/08-9/30/09	$ 779.23	$ 7,013.05	41.1703%	$ 320.81	$ 4,686.69
10	10/1/10-9/30/11	$ 779.23	$ 7,792.28	36.8474%	$ 287.13	$ 4,973.82
11	10/1/11-11/01/11	$ 64.94	$ 7,857.22	32.9785%	$ 21.41	$ 4,995.23
TOTAL		$ 7,857.22			$ 4,995.23	

16d-002014

BLANK, KENNETH A., MD

Number 176 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	44	242
TOTAL CHARGES	$ 101,282.97	$ 1,039,230.95
TOTAL ADJUSTMENTS	$ 54,865.08	$ 567,739.37
TOTAL CHARGES LESS ADJUSTMENTS	$ 46,417.89	$ 471,491.58
TOTAL PAYMENTS	$ 39,593.65	$ 451,629.88
Percentage of Net Charges Collected To Date	85.30%	95.79%
Estimated Net Realizable Value	$ 44,462.52	

Assumptions

Lost Total Amount Available for Collections:	$ 426,073.69
Precentage of Available Charges collected for the previous year to date:	95.79%
Lost Marginal Revenue [Calculated]	$ 407,167.38
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 285,017.15
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 4/1/21

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 285,017.15	$ 285,017.15	100.0000%	$ 285,017.15	$ 285,017.15
2	10/1/01-9/30/02	$ 285,017.15	$ 570,034.30	89.5000%	$ 255,090.35	$ 540,107.50
3	10/1/02-9/30/03	$ 285,017.15	$ 855,051.45	80.1025%	$ 228,305.86	$ 768,413.36
4	10/1/03-9/30/04	$ 285,017.15	$ 1,140,068.59	71.6917%	$ 204,333.75	$ 972,747.10
5	10/1/04-9/30/05	$ 285,017.15	$ 1,425,085.74	64.1641%	$ 182,878.70	$ 1,155,625.81
6	10/1/05-9/30/06	$ 285,017.15	$ 1,710,102.89	57.4269%	$ 163,676.44	$ 1,319,302.25
7	10/1/06-9/30/07	$ 285,017.15	$ 1,995,120.04	51.3971%	$ 146,490.41	$ 1,465,792.66
8	10/1/07-9/30/08	$ 285,017.15	$ 2,280,137.19	46.0004%	$ 131,108.92	$ 1,596,901.58
9	10/1/08-9/30/09	$ 285,017.15	$ 2,565,154.34	41.1703%	$ 117,342.48	$ 1,714,244.06
10	10/1/10-9/30/11	$ 285,017.15	$ 2,850,171.49	36.8474%	$ 105,021.52	$ 1,819,265.58
11	10/1/11-9/30/12	$ 285,017.15	$ 3,135,188.63	32.9785%	$ 93,994.26	$ 1,913,259.85
12	10/1/12-9/30/13	$ 285,017.15	$ 3,420,205.78	29.5157%	$ 84,124.86	$ 1,997,384.71
13	10/1/13-9/30/14	$ 285,017.15	$ 3,705,222.93	26.4166%	$ 75,291.75	$ 2,072,676.46
14	10/1/14-9/30/15	$ 285,017.15	$ 3,990,240.08	23.6428%	$ 67,386.12	$ 2,140,062.58
15	10/1/15-9/30/16	$ 285,017.15	$ 4,275,257.23	21.1603%	$ 60,310.58	$ 2,200,373.16
16	10/1/16-9/30/17	$ 285,017.15	$ 4,560,274.38	18.9385%	$ 53,977.97	$ 2,254,351.13
17	10/1/17-9/30/18	$ 285,017.15	$ 4,845,291.53	16.9500%	$ 48,310.28	$ 2,302,661.41
18	10/1/18-9/30/19	$ 285,017.15	$ 5,130,308.67	15.1702%	$ 43,237.70	$ 2,345,899.11
19	10/1/19-9/30/20	$ 285,017.15	$ 5,415,325.82	13.5773%	$ 38,697.74	$ 2,384,596.85
20	10/1/19-9/30/20	$ 285,017.15	$ 5,700,342.97	12.1517%	$ 34,634.48	$ 2,419,231.33
21	10/1/20-4/01/21	$ 142,508.57	$ 5,842,851.55	10.8758%	$ 15,498.93	$ 2,434,730.26
TOTAL		$ 5,842,851.55			$ 2,434,730.26	

16d-002015

BOHON, CONSTANCE H., MD

Number 18

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	18	60
TOTAL CHARGES	$ 4,476.00	$ 207,473.72
TOTAL ADJUSTMENTS	$ 1,599.22	$ 103,309.55
TOTAL CHARGES LESS ADJUSTMENTS	$ 2,876.78	$ 104,164.17
TOTAL PAYMENTS	$ 2,557.58	$ 97,130.08
Percentage of Net Charges Collected To Date	88.90%	93.25%
Estimated Net Realizable Value	$ 2,682.51	

Assumptions

Lost Total Amount Available for Collections:	$ 101,287.39
Precentage of Available Charges collected for the previous year to date:	93.25%
Lost Marginal Revenue [Calculated]	$ 94,447.57
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 66,113.30
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/17

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 66,113.30	$ 66,113.30	100.0000%	$ 66,113.30	$ 66,113.30
2	10/1/01-9/30/02	$ 66,113.30	$ 132,226.59	89.5000%	$ 59,171.40	$ 125,284.70
3	10/1/02-9/30/03	$ 66,113.30	$ 198,339.89	80.1025%	$ 52,958.40	$ 178,243.10
4	10/1/03-9/30/04	$ 66,113.30	$ 264,453.18	71.6917%	$ 47,397.77	$ 225,640.87
5	10/1/04-9/30/05	$ 66,113.30	$ 330,566.48	64.1641%	$ 42,421.00	$ 268,061.87
6	10/1/05-9/30/06	$ 66,113.30	$ 396,679.78	57.4269%	$ 37,966.80	$ 306,028.67
7	10/1/06-9/30/07	$ 66,113.30	$ 462,793.07	51.3971%	$ 33,980.29	$ 340,008.96
8	10/1/07-9/30/08	$ 66,113.30	$ 528,906.37	46.0004%	$ 30,412.36	$ 370,421.31
9	10/1/08-9/30/09	$ 66,113.30	$ 595,019.66	41.1703%	$ 27,219.06	$ 397,640.37
10	10/1/10-9/30/11	$ 66,113.30	$ 661,132.96	36.8474%	$ 24,361.06	$ 422,001.43
11	10/1/11-9/30/12	$ 66,113.30	$ 727,246.26	32.9785%	$ 21,803.15	$ 443,804.58
12	10/1/12-9/30/13	$ 66,113.30	$ 793,359.55	29.5157%	$ 19,513.82	$ 463,318.39
13	10/1/13-9/30/14	$ 66,113.30	$ 859,472.85	26.4166%	$ 17,464.86	$ 480,783.26
14	10/1/14-9/30/15	$ 66,113.30	$ 925,586.14	23.6428%	$ 15,631.05	$ 496,414.31
15	10/1/15-9/30/16	$ 66,113.30	$ 991,699.44	21.1603%	$ 13,989.79	$ 510,404.10
16	10/1/16-9/30/17	$ 66,113.30	$ 1,057,812.74	18.9385%	$ 12,520.87	$ 522,924.97
TOTAL		$ 1,057,812.74			$ 522,924.97	

16d-002016

BOLAN, JEAN C., MD

Number 244

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	68	99
TOTAL CHARGES	$ 485,721.63	$ 581,190.34
TOTAL ADJUSTMENTS	$ 301,189.90	$ 329,947.65
TOTAL CHARGES LESS ADJUSTMENTS	$ 184,531.73	$ 251,242.69
TOTAL PAYMENTS	$ 186,143.44	$ 240,894.50
Percentage of Net Charges Collected To Date	100.87%	95.88%
Estimated Net Realizable Value	$ 176,931.23	

Assumptions

Lost Total Amount Available for Collections:	$ 66,710.96
Precentage of Available Charges collected for the previous year to date:	95.88%
Lost Marginal Revenue [Calculated]	$ 63,963.27
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 44,774.29
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/16

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 44,774.29	$ 44,774.29	100.0000%	$ 44,774.29	$ 44,774.29
2	10/1/01-9/30/02	$ 44,774.29	$ 89,548.57	89.5000%	$ 40,072.99	$ 84,847.27
3	10/1/02-9/30/03	$ 44,774.29	$ 134,322.86	80.1025%	$ 35,865.32	$ 120,712.60
4	10/1/03-9/30/04	$ 44,774.29	$ 179,097.15	71.6917%	$ 32,099.46	$ 152,812.06
5	10/1/04-9/30/05	$ 44,774.29	$ 223,871.44	64.1641%	$ 28,729.02	$ 181,541.08
6	10/1/05-9/30/06	$ 44,774.29	$ 268,645.72	57.4269%	$ 25,712.47	$ 207,253.56
7	10/1/06-9/30/07	$ 44,774.29	$ 313,420.01	51.3971%	$ 23,012.66	$ 230,266.22
8	10/1/07-9/30/08	$ 44,774.29	$ 358,194.30	46.0004%	$ 20,596.33	$ 250,862.55
9	10/1/08-9/30/09	$ 44,774.29	$ 402,968.58	41.1703%	$ 18,433.72	$ 269,296.27
10	10/1/08-9/30/09	$ 44,774.29	$ 447,742.87	36.8474%	$ 16,498.18	$ 285,794.45
11	10/1/10-9/30/11	$ 44,774.29	$ 447,742.87	32.9785%	$ 14,765.87	$ 284,062.14
12	10/1/11-9/30/12	$ 44,774.29	$ 492,517.16	29.5157%	$ 13,215.45	$ 297,277.60
13	10/1/12-9/30/13	$ 44,774.29	$ 537,291.45	26.4166%	$ 11,827.83	$ 309,105.43
14	10/1/13-9/30/14	$ 44,774.29	$ 582,065.73	23.6428%	$ 10,585.91	$ 319,691.34
15	10/1/14-9/30/15	$ 44,774.29	$ 626,840.02	21.1603%	$ 9,474.39	$ 329,165.72
16	10/1/15-9/30/16	$ 44,774.29	$ 671,614.31	18.9385%	$ 8,479.58	$ 337,645.30
TOTAL		$ 716,388.59			$ 354,143.48	

16d-002017

BRONSKY, GEORGE F., MD

Number 131

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	95	89
TOTAL CHARGES	$ 708,577.99	$ 1,002,608.68
TOTAL ADJUSTMENTS	$ 403,055.35	$ 525,345.15
TOTAL CHARGES LESS ADJUSTMENTS	$ 305,522.64	$ 477,263.53
TOTAL PAYMENTS	$ 264,779.19	$ 474,520.18
Percentage of Net Charges Collected To Date	86.66%	99.43%
Estimated Net Realizable Value	$ 303,766.47	

Assumptions

Lost Total Amount Available for Collections:	$ 171,740.89
Precentage of Available Charges collected for the previous year to date:	99.43%
Lost Marginal Revenue [Calculated]	$ 170,753.71
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] Is the lost cash flow per year	$ 119,527.60
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/12

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 119,527.60	$ 119,527.60	100.0000%	$ 119,527.60	$ 119,527.60
2	10/1/01-9/30/02	$ 119,527.60	$ 239,055.19	89.5000%	$ 106,977.20	$ 226,504.80
3	10/1/02-9/30/03	$ 119,527.60	$ 358,582.79	80.1025%	$ 95,744.59	$ 322,249.39
4	10/1/03-9/30/04	$ 119,527.60	$ 478,110.39	71.6917%	$ 85,691.41	$ 407,940.80
5	10/1/04-9/30/05	$ 119,527.60	$ 597,637.98	64.1641%	$ 76,693.81	$ 484,634.61
6	10/1/05-9/30/06	$ 119,527.60	$ 717,165.58	57.4269%	$ 68,640.96	$ 553,275.57
7	10/1/06-9/30/07	$ 119,527.60	$ 836,693.18	51.3971%	$ 61,433.66	$ 614,709.24
8	10/1/07-9/30/08	$ 119,527.60	$ 956,220.77	46.0004%	$ 54,983.13	$ 669,692.36
9	10/1/08-9/30/09	$ 119,527.60	$ 1,075,748.37	41.1703%	$ 49,209.90	$ 718,902.26
10	10/1/09-9/30/10	$ 119,527.60	$ 1,195,275.96	36.8474%	$ 44,042.86	$ 762,945.12
11	10/1/10-9/30/11	$ 119,527.60	$ 1,195,275.96	32.9785%	$ 39,418.36	$ 758,320.62
12	10/1/11-9/30/12	$ 119,527.60	$ 1,314,803.56	29.5157%	$ 35,279.43	$ 793,600.05
TOTAL		$ 1,434,331.16			$ 837,642.91	

16d-002018

BUSCH, REBECCA J., MD

Number 166

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	95	69
TOTAL CHARGES	$ 708,577.99	$ 1,002,606.68
TOTAL ADJUSTMENTS	$ 403,055.35	$ 525,345.15
TOTAL CHARGES LESS ADJUSTMENTS	$ 305,522.64	$ 477,263.53
TOTAL PAYMENTS	$ 264,779.19	$ 474,520.18
Percentage of Net Charges Collected To Date	86.66%	99.43%
Estimated Net Realizable Value	$ 303,766.47	

Assumptions

Lost Total Amount Available for Collections:	$ 171,740.69
Precentage of Available Charges collected for the previous year to date:	99.43%
Lost Marginal Revenue [Calculated]	$ 170,753.71
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 119,527.60
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 9/1/24

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 119,527.60	$ 119,527.60	100.0000%	$ 119,527.60	$ 119,527.60
2	10/1/01-9/30/02	$ 119,527.60	$ 239,055.19	89.5000%	$ 106,977.20	$ 226,504.80
3	10/1/02-9/30/03	$ 119,527.60	$ 358,582.79	80.1025%	$ 95,744.59	$ 322,249.39
4	10/1/03-9/30/04	$ 119,527.60	$ 478,110.39	71.6917%	$ 85,691.41	$ 407,940.80
5	10/1/04-9/30/05	$ 119,527.60	$ 597,637.98	64.1641%	$ 76,693.81	$ 484,634.61
6	10/1/05-9/30/06	$ 119,527.60	$ 717,165.58	57.4269%	$ 68,640.96	$ 553,275.57
7	10/1/06-9/30/07	$ 119,527.60	$ 836,693.18	51.3971%	$ 61,433.66	$ 614,709.24
8	10/1/07-9/30/08	$ 119,527.60	$ 956,220.77	46.0004%	$ 54,983.13	$ 669,692.36
9	10/1/08-9/30/09	$ 119,527.60	$ 1,075,748.37	41.1703%	$ 49,209.90	$ 718,902.26
10	10/1/09-9/30/10	$ 119,527.60	$ 1,195,275.96	36.8474%	$ 44,042.86	$ 762,945.12
11	10/1/10-9/30/11	$ 119,527.60	$ 1,314,803.56	32.9785%	$ 39,418.36	$ 802,363.48
12	10/1/11-9/30/12	$ 119,527.60	$ 1,434,331.16	29.5157%	$ 35,279.43	$ 837,642.91
13	10/1/12-9/30/13	$ 119,527.60	$ 1,553,858.75	26.4166%	$ 31,575.09	$ 869,218.00
14	10/1/13-9/30/14	$ 119,527.60	$ 1,673,386.35	23.6426%	$ 28,259.71	$ 897,477.71
15	10/1/14-9/30/15	$ 119,527.60	$ 1,792,913.95	21.1603%	$ 25,292.44	$ 922,770.14
16	10/1/15-9/30/16	$ 119,527.60	$ 1,912,441.54	18.9365%	$ 22,636.73	$ 945,406.88
17	10/1/16-9/30/17	$ 119,527.60	$ 2,031,969.14	16.9500%	$ 20,259.87	$ 965,666.75
18	10/1/17-9/30/18	$ 119,527.60	$ 2,151,496.74	15.1702%	$ 18,132.59	$ 983,799.34
19	10/1/18-9/30/19	$ 119,527.60	$ 2,271,024.33	13.5773%	$ 16,228.67	$ 1,000,028.00
20	10/1/19-9/30/20	$ 119,527.60	$ 2,390,551.93	12.1517%	$ 14,524.66	$ 1,014,552.66
21	10/1/20-9/30/21	$ 119,527.60	$ 2,510,079.53	10.8758%	$ 12,999.57	$ 1,027,552.23
22	10/1/21-9/30/22	$ 119,527.60	$ 2,629,607.12	9.7338%	$ 11,634.61	$ 1,039,186.84
23	10/1/22-9/30/23	$ 119,527.60	$ 2,749,134.72	8.7118%	$ 10,412.98	$ 1,049,599.82
24	10/1/23-9/01/24	$ 109,566.96	$ 2,858,701.68	7.7970%	$ 8,542.98	$ 1,058,142.80
TOTAL		$ 2,858,701.68			$ 1,058,142.80	

16d-002019

DROGULA, CYNTHIA L., MD

Number 7726 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	154	185
TOTAL CHARGES	$ 272,456.00	$ 359,211.33
TOTAL ADJUSTMENTS	$ 167,095.12	$ 238,514.47
TOTAL CHARGES LESS ADJUSTMENTS	$ 105,362.88	$ 120,696.86
TOTAL PAYMENTS	$ 81,468.72	$ 97,361.18
Percentage of Net Charges Collected To Date	77.32%	80.67%
Estimated Net Realizable Value	$ 84,991.89	

Assumptions

Lost Total Amount Available for Collections:	$ 15,333.98
Precentage of Available Charges collected for the previous year to date:	80.67%
Lost Marginal Revenue [Calculated]	$ 12,369.29
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 8,658.50
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 8/1/27

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 8,658.50	$ 8,658.50	100.0000%	$ 8,658.50	$ 8,658.50
2	10/1/01-9/30/02	$ 8,658.50	$ 17,317.01	89.5000%	$ 7,749.36	$ 16,407.86
3	10/1/02-9/30/03	$ 8,658.50	$ 25,975.51	80.1025%	$ 6,935.68	$ 23,343.54
4	10/1/03-9/30/04	$ 8,658.50	$ 34,634.01	71.6917%	$ 6,207.43	$ 29,550.97
5	10/1/04-9/30/05	$ 8,658.50	$ 43,292.51	64.1641%	$ 5,555.65	$ 35,106.62
6	10/1/05-9/30/06	$ 8,658.50	$ 51,951.02	57.4269%	$ 4,972.31	$ 40,078.93
7	10/1/06-9/30/07	$ 8,658.50	$ 60,609.52	51.3971%	$ 4,450.22	$ 44,529.14
8	10/1/07-9/30/08	$ 8,658.50	$ 69,268.02	46.0004%	$ 3,982.94	$ 48,512.09
9	10/1/08-9/30/09	$ 8,658.50	$ 77,926.52	41.1703%	$ 3,564.73	$ 52,076.82
10	10/1/09-9/30/10	$ 8,658.50	$ 86,585.03	36.8474%	$ 3,190.44	$ 55,267.26
11	10/1/10-9/30/11	$ 8,658.50	$ 95,243.53	32.9785%	$ 2,855.44	$ 58,122.70
12	10/1/11-9/30/12	$ 8,658.50	$ 103,902.03	29.5157%	$ 2,555.62	$ 60,678.32
13	10/1/12-9/30/13	$ 8,658.50	$ 112,560.53	26.4166%	$ 2,287.28	$ 62,965.60
14	10/1/13-9/30/14	$ 8,658.50	$ 121,219.04	23.6428%	$ 2,047.12	$ 65,012.71
15	10/1/14-9/30/15	$ 8,658.50	$ 129,877.54	21.1603%	$ 1,832.17	$ 66,844.88
16	10/1/15-9/30/16	$ 8,658.50	$ 138,536.04	18.9385%	$ 1,639.79	$ 68,484.67
17	10/1/16-9/30/17	$ 8,658.50	$ 147,194.54	16.9500%	$ 1,467.61	$ 69,952.28
18	10/1/17-9/30/18	$ 8,658.50	$ 155,853.05	15.1702%	$ 1,313.51	$ 71,265.79
19	10/1/18-9/30/19	$ 8,658.50	$ 164,511.55	13.5773%	$ 1,175.59	$ 72,441.39
20	10/1/19-9/30/20	$ 8,658.50	$ 173,170.05	12.1517%	$ 1,052.16	$ 73,493.55
21	10/1/20-9/30/21	$ 8,658.50	$ 181,828.55	10.8756%	$ 941.68	$ 74,435.23
22	10/1/21-9/30/22	$ 8,658.50	$ 190,487.06	9.7338%	$ 842.80	$ 75,278.03
23	10/1/22-9/30/23	$ 8,658.50	$ 199,145.56	8.7118%	$ 754.31	$ 76,032.34
24	10/1/23-9/30/24	$ 8,658.50	$ 207,804.06	7.7970%	$ 675.11	$ 76,707.45
25	10/1/24-9/30/25	$ 8,658.50	$ 216,462.56	6.9764%	$ 604.22	$ 77,311.67
26	10/1/25-9/30/26	$ 8,658.50	$ 225,121.07	6.2456%	$ 540.76	$ 77,852.44
27	10/1/26-8/01/27	$ 7,215.42	$ 232,336.49	5.5898%	$ 403.33	$ 78,255.77
TOTAL		$ 232,336.49			$ 78,255.77	

16d-002020

DUKES, MARTIN W. JR., MD

Number 45

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	222	334
TOTAL CHARGES	$ 230,134.97	$ 765,409.71
TOTAL ADJUSTMENTS	$ 135,650.56	$ 417,725.24
TOTAL CHARGES LESS ADJUSTMENTS	$ 94,484.41	$ 347,684.47
TOTAL PAYMENTS	$ 83,709.57	$ 315,946.98
Percentage of Net Charges Collected To Date	88.60%	90.87%
Estimated Net Realizable Value	$ 85,859.64	

Assumptions

Lost Total Amount Available for Collections:	$ 253,200.06
Precentage of Available Charges collected for the previous year to date:	90.87%
Lost Marginal Revenue [Calculated]	$ 230,087.34
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 161,061.14
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/10

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 161,061.14	$ 161,061.14	100.0000%	$ 161,061.14	$ 161,061.14
2	10/1/01-9/30/02	$ 161,061.14	$ 322,122.27	89.5000%	$ 144,149.72	$ 305,210.85
3	10/1/02-9/30/03	$ 161,061.14	$ 483,183.41	80.1025%	$ 129,014.00	$ 434,224.85
4	10/1/03-9/30/04	$ 161,061.14	$ 644,244.55	71.6917%	$ 115,467.53	$ 549,692.38
5	10/1/04-9/30/05	$ 161,061.14	$ 805,305.68	64.1641%	$ 103,343.44	$ 653,035.82
6	10/1/05-9/30/06	$ 161,061.14	$ 966,366.82	57.4269%	$ 92,492.38	$ 745,528.19
7	10/1/06-9/30/07	$ 161,061.14	$ 1,127,427.96	51.3971%	$ 82,780.68	$ 828,308.87
8	10/1/07-9/30/08	$ 161,061.14	$ 1,288,489.09	46.0004%	$ 74,088.71	$ 902,397.57
9	10/1/08-9/30/09	$ 161,061.14	$ 1,449,550.23	41.1703%	$ 66,309.39	$ 968,706.97
10	10/1/09-9/30/10	$ 161,061.14	$ 1,610,611.37	36.8474%	$ 59,346.91	$ 1,028,053.87
TOTAL		$ 1,610,611.37			$ 1,028,053.87	

16d-002021

FLAX, RICHARD, MD

Number 750

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	224	301
TOTAL CHARGES	290435.44	549778.62
TOTAL ADJUSTMENTS	182266.87	341827.52
TOTAL PAYMENTS	$ 108,168.57	$ 207,951.10
TOTAL PAYMENTS	$ 88,160.32	$ 182,646.42
Percentage of Net Charges Collected To Date	81.50%	87.83%
Estimated Net Realizable Value	$ 95,006.00	

Assumptions

Lost Total Amount Available for Collections:	$ 99,782.53
Precentage of Available Charges collected for the previous year to date:	87.83%
Lost Marginal Revenue [Calculated]	$ 87,640.42
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 61,348.29
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 6/1/05

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 61,348.29	$ 61,348.29	100.0000%	$ 61,348.29	$ 61,348.29
2	10/1/01-9/30/02	$ 61,348.29	$ 122,696.59	89.5000%	$ 54,906.72	$ 116,255.02
3	10/1/02-9/30/03	$ 61,348.29	$ 184,044.88	80.1025%	$ 49,141.52	$ 165,396.54
4	10/1/03-9/30/04	$ 61,348.29	$ 245,393.18	71.6917%	$ 43,981.66	$ 209,378.19
5	10/1/04-6/1/05	$ 40,898.86	$ 286,292.04	64.1641%	$ 26,242.39	$ 235,620.58
TOTAL		$ 286,292.04			$ 235,620.58	

16d-002022

HIRSCH, FLORIE, MD

Number 75 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	35	87
TOTAL CHARGES	$ 10,101.23	$ 111,950.77
TOTAL ADJUSTMENTS	$ 1,806.47	$ 58,237.77
TOTAL CHARGES LESS ADJUSTMENTS	$ 8,294.76	$ 53,713.00
TOTAL PAYMENTS	$ 6,904.86	$ 52,374.80
Percentage of Net Charges Collected To Date	83.24%	97.51%
Estimated Net Realizable Value	$ 8,088.11	

Assumptions

Lost Total Amount Available for Collections:	$ 45,418.24
Precentage of Available Charges collected for the previous year to date:	97.51%
Lost Marginal Revenue [Calculated]	$ 44,286.69
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 31,000.69
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 2/1/14

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 31,000.69	$ 31,000.69	100.0000%	$ 31,000.69	$ 31,000.69
2	10/1/01-9/30/02	$ 31,000.69	$ 62,001.37	89.5000%	$ 27,745.61	$ 58,746.30
3	10/1/02-9/30/03	$ 31,000.69	$ 93,002.06	80.1025%	$ 24,832.32	$ 83,578.63
4	10/1/03-9/30/04	$ 31,000.69	$ 124,002.75	71.6917%	$ 22,224.93	$ 105,803.56
5	10/1/04-9/30/05	$ 31,000.69	$ 155,003.43	64.1641%	$ 19,891.31	$ 125,694.87
6	10/1/05-9/30/06	$ 31,000.69	$ 186,004.12	57.4269%	$ 17,802.73	$ 143,497.59
7	10/1/06-9/30/07	$ 31,000.69	$ 217,004.80	51.3971%	$ 15,933.44	$ 159,431.03
8	10/1/07-9/30/08	$ 31,000.69	$ 248,005.49	46.0004%	$ 14,260.43	$ 173,691.46
9	10/1/08-9/30/09	$ 31,000.69	$ 279,006.18	41.1703%	$ 12,763.08	$ 186,454.54
10	10/1/09-9/30/10	$ 31,000.69	$ 310,006.86	36.8474%	$ 11,422.96	$ 197,877.50
11	10/1/10-9/30/11	$ 31,000.69	$ 341,007.55	32.9785%	$ 10,223.55	$ 208,101.05
12	10/1/11-9/30/12	$ 31,000.69	$ 372,008.24	29.5157%	$ 9,150.08	$ 217,251.13
13	10/1/12-9/30/13	$ 31,000.69	$ 403,008.92	26.4166%	$ 8,189.32	$ 225,440.45
14	10/1/13-2/1/14	$ 10,333.56	$ 413,342.48	23.6428%	$ 2,443.15	$ 227,883.59
TOTAL		$ 413,342.48			$ 227,883.59	

16d-002023

HORWITZ, STEPHEN I, MD

Number 80 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	31	129
TOTAL CHARGES	49218.28	896978.65
TOTAL ADJUSTMENTS	25972.68	519009.01
TOTAL CHARGES LESS ADJUSTMENTS	$ 23,245.60	$ 377,969.64
TOTAL PAYMENTS	$ 21,848.54	$ 326,507.60
Percentage of Net Charges Collected To Date	93.99%	86.38%
Estimated Net Realizable Value	$ 20,080.62	

Assumptions

Lost Total Amount Available for Collections:	$ 354,724.04
Precentage of Available Charges collected for the previous year to date:	86.38%
Lost Marginal Revenue [Calculated]	$ 306,426.98
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 214,498.89
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 5/1/15

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 214,498.89	$ 214,498.89	100.0000%	$ 214,498.89	$ 214,498.89
2	10/1/01-9/30/02	$ 214,498.89	$ 428,997.77	89.5000%	$ 191,976.50	$ 406,475.39
3	10/1/02-9/30/03	$ 214,498.89	$ 643,496.66	80.1025%	$ 171,818.97	$ 578,294.36
4	10/1/03-9/30/04	$ 214,498.89	$ 857,995.54	71.6917%	$ 153,777.98	$ 732,072.34
5	10/1/04-9/30/05	$ 214,498.89	$ 1,072,494.43	64.1641%	$ 137,631.29	$ 869,703.63
6	10/1/05-9/30/06	$ 214,498.89	$ 1,286,993.31	57.4269%	$ 123,180.00	$ 992,883.63
7	10/1/06-9/30/07	$ 214,498.89	$ 1,501,492.20	51.3971%	$ 110,246.10	$ 1,103,129.73
8	10/1/07-9/30/08	$ 214,498.89	$ 1,715,991.08	46.0004%	$ 98,670.26	$ 1,201,800.00
9	10/1/08-9/30/09	$ 214,498.89	$ 1,930,489.97	41.1703%	$ 88,309.89	$ 1,290,109.88
10	10/1/09-9/30/10	$ 214,498.89	$ 2,144,988.85	36.8474%	$ 79,037.35	$ 1,369,147.23
11	10/1/10-9/30/11	$ 214,498.89	$ 2,359,487.74	32.9785%	$ 70,738.43	$ 1,439,885.66
12	10/1/11-9/30/12	$ 214,498.89	$ 2,573,986.62	29.5157%	$ 63,310.89	$ 1,503,196.55
13	10/1/12-9/30/13	$ 214,498.89	$ 2,788,485.51	26.4166%	$ 56,663.25	$ 1,559,859.80
14	10/1/13-9/30/14	$ 214,498.89	$ 3,002,984.39	23.6428%	$ 50,713.61	$ 1,610,573.40
15	10/1/14-5/1/15	$ 125,124.35	$ 3,128,108.74	21.1603%	$ 26,476.73	$ 1,637,050.13
TOTAL		$ 3,128,108.74			$ 1,637,050.13	

16d-002024

JOHNSON, HEATHER I, MD

Number 333 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	11	135
TOTAL CHARGES	10003.44	593575.93
TOTAL ADJUSTMENTS	5589.95	331684.2
TOTAL CHARGES LESS ADJUSTMENTS	$ 4,413.49	$ 261,891.73
TOTAL PAYMENTS	$ 4,413.49	$ 253,553.52
Percentage of Net Charges Collected To Date	100.00%	96.82%
Estimated Net Realizable Value	$ 4,272.97	

Assumptions

Lost Total Amount Available for Collections:	$ 257,476.24
Precentage of Available Charges collected for the previous year to date;	96.82%
Lost Marginal Revenue [Calculated]	$ 249,280.55
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 174,496.38
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/18

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 174,496.38	$ 174,496.38	100.0000%	$ 174,496.38	$ 174,496.38
2	10/1/01-9/30/02	$ 174,496.38	$ 348,992.77	89.5000%	$ 156,174.28	$ 330,670.65
3	10/1/02-9/30/03	$ 174,496.38	$ 523,489.15	80.1025%	$ 139,775.97	$ 470,446.61
4	10/1/03-9/30/04	$ 174,496.38	$ 697,985.54	71.6917%	$ 125,099.49	$ 595,546.10
5	10/1/04-9/30/05	$ 174,496.38	$ 872,481.92	64.1641%	$ 111,964.04	$ 707,510.15
6	10/1/05-9/30/06	$ 174,496.38	$ 1,046,978.30	57.4269%	$ 100,207.82	$ 807,717.96
7	10/1/06-9/30/07	$ 174,496.38	$ 1,221,474.69	51.3971%	$ 89,686.00	$ 897,403.96
8	10/1/07-9/30/08	$ 174,496.38	$ 1,395,971.07	46.0004%	$ 80,268.97	$ 977,672.93
9	10/1/08-9/30/09	$ 174,496.38	$ 1,570,467.45	41.1703%	$ 71,840.73	$ 1,049,513.66
10	10/1/09-9/30/10	$ 174,496.38	$ 1,744,963.84	36.8474%	$ 64,297.45	$ 1,113,811.11
11	10/1/10-9/30/11	$ 174,496.38	$ 1,919,460.22	32.9785%	$ 57,546.22	$ 1,171,357.32
12	10/1/11-9/30/12	$ 174,496.38	$ 2,093,956.61	29.5157%	$ 51,503.86	$ 1,222,861.19
13	10/1/12-9/30/13	$ 174,496.38	$ 2,268,452.99	26.4166%	$ 46,095.96	$ 1,268,957.15
14	10/1/13-9/30/14	$ 174,496.38	$ 2,442,949.37	23.6428%	$ 41,255.88	$ 1,310,213.03
15	10/1/14-9/30/15	$ 174,496.38	$ 2,617,445.76	21.1603%	$ 36,924.02	$ 1,347,137.05
16	10/1/15-9/30/16	$ 174,496.38	$ 2,791,942.14	18.9385%	$ 33,046.99	$ 1,380,184.04
17	10/1/16-9/30/17	$ 174,496.38	$ 2,966,438.53	16.9500%	$ 29,577.06	$ 1,409,761.10
18	10/1/17-9/30/18	$ 174,496.38	$ 3,140,934.91	15.1702%	$ 26,471.47	$ 1,436,232.57
TOTAL		$ 3,140,934.91			$ 1,436,232.57	

16d-002025

KESSELMAN, AMY J. MD Number 349 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	35	62
TOTAL CHARGES	$ 895.20	$ 299,000.96
TOTAL ADJUSTMENTS	$ 328.04	$ 144,610.10
TOTAL CHARGES LESS ADJUSTMENTS	$ 567.16	$ 154,390.86
TOTAL PAYMENTS	$ 406.76	$ 148,295.84
Percentage of Net Charges Collected To Date	71.72%	96.05%
Estimated Net Realizable Value	$ 544.77	

Assumptions

Lost Total Amount Available for Collections:	$ 153,823.70
Precentage of Available Charges collected for the previous year to date:	96.05%
Lost Marginal Revenue [Calculated]	$ 147,751.07
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 103,425.75
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 4/1/24

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 103,425.75	$ 103,425.75	100.0000%	$ 103,425.75	$ 103,425.75
2	10/1/01-9/30/02	$ 103,425.75	$ 206,851.50	89.5000%	$ 92,566.05	$ 195,991.79
3	10/1/02-9/30/03	$ 103,425.75	$ 310,277.25	80.1025%	$ 82,846.61	$ 278,838.41
4	10/1/03-9/30/04	$ 103,425.75	$ 413,703.00	71.6817%	$ 74,147.72	$ 352,986.12
5	10/1/04-9/30/05	$ 103,425.75	$ 517,128.75	64.1641%	$ 66,362.21	$ 419,348.33
6	10/1/05-9/30/06	$ 103,425.75	$ 620,554.50	57.4269%	$ 59,394.17	$ 478,742.50
7	10/1/06-9/30/07	$ 103,425.75	$ 723,980.24	51.3971%	$ 53,157.79	$ 531,900.29
8	10/1/07-9/30/08	$ 103,425.75	$ 827,405.99	46.0004%	$ 47,576.22	$ 579,476.51
9	10/1/08-9/30/09	$ 103,425.75	$ 930,831.74	41.1703%	$ 42,580.72	$ 622,057.22
10	10/1/09-9/30/10	$ 103,425.75	$ 1,034,257.49	36.8474%	$ 38,109.74	$ 660,166.96
11	10/1/10-9/30/11	$ 103,425.75	$ 1,137,683.24	32.9785%	$ 34,108.22	$ 694,275.18
12	10/1/11-9/30/12	$ 103,425.75	$ 1,241,108.99	29.5157%	$ 30,526.86	$ 724,802.04
13	10/1/12-9/30/13	$ 103,425.75	$ 1,344,534.74	26.4166%	$ 27,321.54	$ 752,123.57
14	10/1/13-9/30/14	$ 103,425.75	$ 1,447,960.49	23.6428%	$ 24,452.77	$ 776,576.35
15	10/1/14-9/30/15	$ 103,425.75	$ 1,551,386.24	21.1603%	$ 21,885.23	$ 798,461.58
16	10/1/15-9/30/16	$ 103,425.75	$ 1,654,811.99	18.9385%	$ 19,587.28	$ 818,048.86
17	10/1/16-9/30/17	$ 103,425.75	$ 1,758,237.74	16.9500%	$ 17,530.62	$ 835,579.48
18	10/1/17-9/30/18	$ 103,425.75	$ 1,861,663.49	15.1702%	$ 15,689.90	$ 851,269.39
19	10/1/18-9/30/19	$ 103,425.75	$ 1,965,089.23	13.5773%	$ 14,042.46	$ 865,311.85
20	10/1/19-9/30/20	$ 103,425.75	$ 2,068,514.98	12.1517%	$ 12,568.01	$ 877,879.85
21	10/1/20-9/30/21	$ 103,425.75	$ 2,171,940.73	10.8758%	$ 11,248.36	$ 889,128.22
22	10/1/21-9/30/22	$ 103,425.75	$ 2,275,366.48	9.7338%	$ 10,067.29	$ 899,195.50
23	10/1/22-9/30/23	$ 103,425.75	$ 2,378,792.23	8.7118%	$ 9,010.22	$ 908,205.73
24	10/1/23-4/1/24	$ 51,712.87	$ 2,430,505.11	7.7970%	$ 4,032.07	$ 912,237.80
TOTAL		$ 2,430,505.11			$ 912,237.80	

16d-002026

CHWMC 008730

KOCH, EDWARD G. , MD

Number 195

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	154	185
TOTAL CHARGES	$ 272,458.00	$ 359,211.33
TOTAL ADJUSTMENTS	$ 167,095.12	$ 238,514.47
TOTAL CHARGES LESS ADJUSTMENTS	$ 105,362.88	$ 120,696.86
TOTAL PAYMENTS	$ 81,468.72	$ 97,361.18
Percentage of Net Charges Collected To Date	77.32%	80.67%
Estimated Net Realizable Value	$ 84,991.89	

Assumptions

Lost Total Amount Available for Collections:	$ 15,333.98
Precentage of Available Charges collected for the previous year to date:	80.67%
Lost Marginal Revenue [Calculated]	$ 12,369.29
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 8,658.50
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 7/1/07

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 8,658.50	$ 8,658.50	100.0000%	$ 8,658.50	$ 8,658.50
2	10/1/01-9/30/02	$ 8,658.50	$ 17,317.01	89.5000%	$ 7,749.36	$ 16,407.86
3	10/1/02-9/30/03	$ 8,658.50	$ 25,975.51	80.1025%	$ 6,935.68	$ 23,343.54
4	10/1/03-9/30/04	$ 8,658.50	$ 34,634.01	71.6917%	$ 6,207.43	$ 29,550.97
5	10/1/04-9/30/05	$ 8,658.50	$ 43,292.51	64.1641%	$ 5,555.65	$ 35,106.62
6	10/1/05-9/30/06	$ 8,658.50	$ 51,951.02	57.4269%	$ 4,972.31	$ 40,078.93
7	10/1/06-7/1/07	$ 6,493.88	$ 58,444.89	51.3971%	$ 3,337.66	$ 43,416.59
TOTAL		$ 58,444.89			$ 43,416.59	

16d-002027

LARSON, CHARLOTTE G., MD

Number 1104

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	84	190
TOTAL CHARGES	291942.56	667223.69
TOTAL ADJUSTMENTS	153718.73	386276.014
TOTAL CHARGES LESS ADJUSTMENTS	$ 138,223.83	$ 280,947.68
TOTAL PAYMENTS	$ 106,826.47	$ 264,543.21
Percentage of Net Charges Collected To Date	77.29%	94.16%
Estimated Net Realizable Value	$ 130,152.97	

Assumptions

Lost Total Amount Available for Collections:	$ 142,723.85
Precentage of Available Charges collected for the previous year to date:	94.16%
Lost Marginal Revenue [Calculated]	$ 134,390.24
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 94,073.16
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 1/1/29

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 94,073.16	$ 94,073.16	100.0000%	$ 94,073.16	$ 94,073.16
2	10/1/01-9/30/02	$ 94,073.16	$ 188,146.33	89.5000%	$ 84,195.48	$ 178,268.65
3	10/1/02-9/30/03	$ 94,073.16	$ 282,219.49	80.1025%	$ 75,354.96	$ 253,623.60
4	10/1/03-9/30/04	$ 94,073.16	$ 376,292.66	71.6917%	$ 67,442.69	$ 321,066.29
5	10/1/04-9/30/05	$ 94,073.16	$ 470,365.82	64.1641%	$ 60,361.20	$ 381,427.50
6	10/1/05-9/30/06	$ 94,073.16	$ 564,438.99	57.4269%	$ 54,023.28	$ 435,450.77
7	10/1/06-9/30/07	$ 94,073.16	$ 658,512.15	51.3971%	$ 48,350.83	$ 483,801.61
8	10/1/07-9/30/08	$ 94,073.16	$ 752,585.32	46.0004%	$ 43,274.00	$ 527,075.60
9	10/1/08-9/30/09	$ 94,073.16	$ 846,658.48	41.1703%	$ 38,730.23	$ 565,805.83
10	10/1/09-9/30/10	$ 94,073.16	$ 940,731.65	36.8474%	$ 34,663.55	$ 600,469.38
11	10/1/10-9/30/11	$ 94,073.16	$ 1,034,804.81	32.9785%	$ 31,023.88	$ 631,493.26
12	10/1/11-9/30/12	$ 94,073.16	$ 1,128,877.98	29.5157%	$ 27,766.37	$ 659,259.63
13	10/1/12-9/30/13	$ 94,073.16	$ 1,222,951.14	26.4166%	$ 24,850.90	$ 684,110.54
14	10/1/13-9/30/14	$ 94,073.16	$ 1,317,024.31	23.6428%	$ 22,241.56	$ 706,352.10
15	10/1/14-9/30/15	$ 94,073.16	$ 1,411,097.47	21.1603%	$ 19,906.19	$ 726,258.29
16	10/1/15-9/30/16	$ 94,073.16	$ 1,505,170.64	18.9385%	$ 17,816.04	$ 744,074.34
17	10/1/16-9/30/17	$ 94,073.16	$ 1,599,243.80	16.9500%	$ 15,945.36	$ 760,019.70
18	10/1/17-9/30/18	$ 94,073.16	$ 1,693,316.97	15.1702%	$ 14,271.10	$ 774,290.79
19	10/1/18-9/30/19	$ 94,073.16	$ 1,787,390.13	13.5773%	$ 12,772.63	$ 787,063.42
20	10/1/19-9/30/20	$ 94,073.16	$ 1,881,463.30	12.1517%	$ 11,431.51	$ 798,494.93
21	10/1/20-9/30/21	$ 94,073.16	$ 1,975,536.46	10.8758%	$ 10,231.20	$ 808,726.13
22	10/1/21-9/30/22	$ 94,073.16	$ 2,069,609.63	9.7338%	$ 9,156.92	$ 817,883.05
23	10/1/22-9/30/23	$ 94,073.16	$ 2,163,682.79	8.7118%	$ 8,195.44	$ 826,078.49
24	10/1/23-9/30/24	$ 94,073.16	$ 2,257,755.96	7.7970%	$ 7,334.92	$ 833,413.42
25	10/1/24-9/30/25	$ 94,073.16	$ 2,351,829.12	6.9784%	$ 6,564.76	$ 839,978.17
26	10/1/25-9/30/26	$ 94,073.16	$ 2,445,902.29	6.2456%	$ 5,875.46	$ 845,853.63
27	10/1/26-9/30/27	$ 94,073.16	$ 2,539,975.45	5.5898%	$ 5,258.53	$ 851,112.16
28	10/1/26-9/30/28	$ 94,073.16	$ 2,634,048.62	5.0029%	$ 4,706.39	$ 855,818.55
29	10/1/27-1/1/29	$ 23,518.29	$ 2,657,566.91	4.4778%	$ 1,053.05	$ 856,871.61
TOTAL		$ 2,657,566.91			$ 856,871.61	

16d-002028

NEWMAN, RICHARD S., MD

Number 125 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	43	234
TOTAL CHARGES	$ 125,448.65	$ 1,021,329.32
TOTAL ADJUSTMENTS	$ 72,437.79	$ 571,340.16
TOTAL CHARGES LESS ADJUSTMENTS	$ 53,010.86	$ 449,989.16
TOTAL PAYMENTS	$ 51,422.82	$ 428,996.84
Percentage of Net Charges Collected To Date	97.00%	95.33%
Estimated Net Realizable Value	$ 50,537.87	

Assumptions

Lost Total Amount Available for Collections:	$ 396,978.30
Precentage of Available Charges collected for the previous year to date:	95.33%
Lost Marginal Revenue [Calculated]	$ 378,456.97
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 264,921.28
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 4/1/17

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 264,921.28	$ 264,921.28	100.0000%	$ 264,921.28	$ 264,921.28
2	10/1/01-9/30/02	$ 264,921.28	$ 529,842.56	89.5000%	$ 237,104.55	$ 502,025.83
3	10/1/02-9/30/03	$ 264,921.28	$ 794,763.85	80.1025%	$ 212,208.57	$ 714,234.40
4	10/1/03-9/30/04	$ 264,921.28	$ 1,059,685.13	71.6917%	$ 189,926.67	$ 904,161.07
5	10/1/04-9/30/05	$ 264,921.28	$ 1,324,606.41	64.1641%	$ 169,984.37	$ 1,074,145.44
6	10/1/05-9/30/06	$ 264,921.28	$ 1,589,527.69	57.4269%	$ 152,136.01	$ 1,226,281.45
7	10/1/06-9/30/07	$ 264,921.28	$ 1,854,448.98	51.3971%	$ 136,161.73	$ 1,362,443.18
8	10/1/07-9/30/08	$ 264,921.28	$ 2,119,370.26	46.0004%	$ 121,864.75	$ 1,484,307.93
9	10/1/08-9/30/09	$ 264,921.28	$ 2,384,291.54	41.1703%	$ 109,068.95	$ 1,593,376.88
10	10/1/09-9/30/10	$ 264,921.28	$ 2,649,212.82	36.8474%	$ 97,616.71	$ 1,690,993.59
11	10/1/10-9/30/11	$ 264,921.28	$ 2,914,134.11	32.9785%	$ 87,366.96	$ 1,778,360.55
12	10/1/11-9/30/12	$ 264,921.28	$ 3,179,055.39	29.5157%	$ 78,193.43	$ 1,856,553.97
13	10/1/12-9/30/13	$ 264,921.28	$ 3,443,976.67	26.4166%	$ 69,983.12	$ 1,926,537.09
14	10/1/13-9/30/14	$ 264,921.28	$ 3,708,897.95	23.6428%	$ 62,634.89	$ 1,989,171.98
15	10/1/14-9/30/15	$ 264,921.28	$ 3,973,819.24	21.1603%	$ 56,058.23	$ 2,045,230.20
16	10/1/15-9/30/16	$ 264,921.28	$ 4,238,740.52	18.9385%	$ 50,172.11	$ 2,095,402.31
17	10/1/16-4/1/17	$ 132,460.64	$ 4,371,201.16	16.9500%	$ 22,452.02	$ 2,117,854.33
TOTAL		$ 4,371,201.16			$ 2,117,854.33	

16d-002029

NGUYEN, H. LISA, MD

Number 1124

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	7	154
TOTAL CHARGES	$ 21,542.97	$ 628,450.91
TOTAL ADJUSTMENTS	$ 12,495.15	$ 321,818.34
TOTAL CHARGES LESS ADJUSTMENTS	$ 9,047.82	$ 306,632.57
TOTAL PAYMENTS	$ 9,047.82	$ 312,866.64
Percentage of Net Charges Collected To Date	100.00%	102.03%
Estimated Net Realizable Value	$ 9,231.83	

Assumptions

Lost Total Amount Available for Collections:	$ 297,584.75
Precentage of Available Charges collected for the previous year to date:	102.03%
Lost Marginal Revenue (Calculated)	$ 303,636.81
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 212,545.77
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 8/1/32

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 212,545.77	$ 212,545.77	100.0000%	$ 212,545.77	$ 212,545.77
2	10/1/01-9/30/02	$ 212,545.77	$ 425,091.54	89.5000%	$ 190,228.46	$ 402,774.23
3	10/1/02-9/30/03	$ 212,545.77	$ 637,637.31	80.1025%	$ 170,254.47	$ 573,028.71
4	10/1/03-9/30/04	$ 212,545.77	$ 850,183.07	71.6917%	$ 152,377.75	$ 725,406.46
5	10/1/04-9/30/05	$ 212,545.77	$ 1,062,728.84	64.1641%	$ 136,378.09	$ 861,784.55
6	10/1/05-9/30/06	$ 212,545.77	$ 1,275,274.61	57.4288%	$ 122,058.39	$ 983,842.94
7	10/1/06-9/30/07	$ 212,545.77	$ 1,487,820.38	51.3971%	$ 109,242.26	$ 1,093,085.20
8	10/1/07-9/30/08	$ 212,545.77	$ 1,700,366.15	46.0004%	$ 97,771.82	$ 1,190,857.02
9	10/1/08-9/30/09	$ 212,545.77	$ 1,912,911.92	41.1703%	$ 87,505.78	$ 1,278,362.80
10	10/1/09-9/30/10	$ 212,545.77	$ 2,125,457.68	36.8474%	$ 78,317.67	$ 1,356,680.48
11	10/1/10-9/30/11	$ 212,545.77	$ 2,338,003.45	32.9785%	$ 70,094.32	$ 1,426,774.80
12	10/1/11-9/30/12	$ 212,545.77	$ 2,550,549.22	29.5157%	$ 62,734.41	$ 1,489,509.21
13	10/1/12-9/30/13	$ 212,545.77	$ 2,763,094.99	26.4166%	$ 56,147.30	$ 1,545,656.51
14	10/1/13-9/30/14	$ 212,545.77	$ 2,975,640.76	23.6426%	$ 50,251.83	$ 1,595,908.35
15	10/1/14-9/30/15	$ 212,545.77	$ 3,188,186.53	21.1603%	$ 44,975.39	$ 1,640,883.74
16	10/1/15-9/30/16	$ 212,545.77	$ 3,400,732.29	18.9385%	$ 40,252.98	$ 1,681,136.71
17	10/1/16-9/30/17	$ 212,545.77	$ 3,613,278.06	16.9500%	$ 36,026.41	$ 1,717,163.13
18	10/1/17-9/30/18	$ 212,545.77	$ 3,825,823.83	15.1702%	$ 32,243.64	$ 1,749,406.77
19	10/1/18-9/30/19	$ 212,545.77	$ 4,038,369.60	13.5773%	$ 28,858.06	$ 1,778,264.83
20	10/1/19-9/30/20	$ 212,545.77	$ 4,250,915.37	12.1517%	$ 25,827.96	$ 1,804,092.79
21	10/1/20-9/30/21	$ 212,545.77	$ 4,463,461.14	10.8758%	$ 23,116.03	$ 1,827,208.81
22	10/1/21-9/30/22	$ 212,545.77	$ 4,676,006.91	9.7338%	$ 20,688.84	$ 1,847,897.66
23	10/1/22-9/30/23	$ 212,545.77	$ 4,888,552.67	8.7118%	$ 18,516.51	$ 1,866,414.17
24	10/1/23-9/30/24	$ 212,545.77	$ 5,101,098.44	7.7970%	$ 16,572.28	$ 1,882,986.45
25	10/1/24-9/30/25	$ 212,545.77	$ 5,313,644.21	6.9784%	$ 14,832.19	$ 1,897,818.64
26	10/1/25-9/30/26	$ 212,545.77	$ 5,526,189.98	6.2456%	$ 13,274.81	$ 1,911,093.45
27	10/1/26-9/30/27	$ 212,545.77	$ 5,738,735.75	5.5898%	$ 11,880.96	$ 1,922,974.41
28	10/1/27-9/30/28	$ 212,545.77	$ 5,951,281.52	5.0029%	$ 10,633.46	$ 1,933,607.86
29	10/1/28-9/30/29	$ 212,545.77	$ 6,163,827.28	4.4776%	$ 9,516.94	$ 1,943,124.81
30	10/1/29-9/30/30	$ 212,545.77	$ 6,376,373.05	4.0074%	$ 8,517.66	$ 1,951,642.47
31	10/1/30-9/30/31	$ 212,545.77	$ 6,588,918.82	3.5867%	$ 7,623.31	$ 1,959,265.78
32	10/1/31-8/1/32	$ 177,121.47	$ 6,766,040.29	3.2101%	$ 5,685.72	$ 1,964,951.50
TOTAL		$ 6,766,040.29			$ 1,964,951.50	

16d-002030

POWERS, DAVID N., MD

Number 136 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	51	83
TOTAL CHARGES	$ 64,180.19	$ 328,801.76
TOTAL ADJUSTMENTS	$ 33,194.68	$ 180,511.92
TOTAL CHARGES LESS ADJUSTMENTS	$ 30,985.51	$ 148,289.84
TOTAL PAYMENTS	$ 18,322.69	$ 140,570.19
Percentage of Net Charges Collected To Date	59.13%	94.79%
Estimated Net Realizable Value	$ 29,372.47	

Assumptions

Lost Total Amount Available for Collections:	$ 117,304.33
Precentage of Available Charges collected for the previous year to date:	94.79%
Lost Marginal Revenue [Calculated]	$ 111,197.72
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 77,838.40
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 10/1/17

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 77,838.40	$ 77,838.40	100.0000%	$ 77,838.40	$ 77,838.40
2	10/1/01-9/30/02	$ 77,838.40	$ 155,676.81	89.5000%	$ 69,665.37	$ 147,503.77
3	10/1/02-9/30/03	$ 77,838.40	$ 233,515.21	80.1025%	$ 62,350.51	$ 209,854.28
4	10/1/03-9/30/04	$ 77,838.40	$ 311,353.61	71.6917%	$ 55,803.70	$ 265,657.98
5	10/1/04-9/30/05	$ 77,838.40	$ 389,192.02	64.1641%	$ 49,944.31	$ 315,602.30
6	10/1/05-9/30/06	$ 77,838.40	$ 467,030.42	57.4259%	$ 44,700.16	$ 360,302.46
7	10/1/06-9/30/07	$ 77,838.40	$ 544,868.82	51.3971%	$ 40,006.64	$ 400,309.11
8	10/1/07-9/30/08	$ 77,838.40	$ 622,707.23	46.0004%	$ 35,805.95	$ 436,115.05
9	10/1/08-9/30/09	$ 77,838.40	$ 700,545.63	41.1703%	$ 32,046.32	$ 468,161.38
10	10/1/09-9/30/10	$ 77,838.40	$ 778,384.03	36.8474%	$ 28,681.46	$ 496,842.84
11	10/1/10-9/30/11	$ 77,838.40	$ 856,222.44	32.9765%	$ 25,669.91	$ 522,512.74
12	10/1/11-9/30/12	$ 77,838.40	$ 934,060.84	29.5157%	$ 22,974.57	$ 545,487.31
13	10/1/12-9/30/13	$ 77,838.40	$ 1,011,899.24	26.4166%	$ 20,562.24	$ 566,049.54
14	10/1/13-9/30/14	$ 77,838.40	$ 1,089,737.65	23.6428%	$ 18,403.20	$ 584,452.74
15	10/1/14-9/30/15	$ 77,838.40	$ 1,167,576.05	21.1603%	$ 16,470.87	$ 600,923.61
16	10/1/15-9/30/16	$ 77,838.40	$ 1,245,414.45	18.9385%	$ 14,741.42	$ 615,665.03
17	10/1/16-9/30/17	$ 77,838.40	$ 1,323,252.86	16.9500%	$ 13,193.57	$ 628,858.61
TOTAL		$ 1,323,252.86			$ 628,858.61	

16d-002031

ROBERTS, MORTON J., MD

Number 141

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	30	44
TOTAL CHARGES	6024	81702.35
TOTAL ADJUSTMENTS	2047.07	40837.88
TOTAL CHARGES LESS ADJUSTMENTS	$ 3,976.93	$ 40,864.47
TOTAL PAYMENTS	$ 3,617.49	$ 39,509.22
Percentage of Net Charges Collected To Date	90.96%	96.68%
Estimated Net Realizable Value	$ 3,845.04	

Assumptions

Lost Total Amount Available for Collections:	$ 36,887.54
Precentage of Available Charges collected for the previous year to date:	96.68%
Lost Marginal Revenue [Calculated]	$ 35,664.18
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 24,964.93
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 8/1/07

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 24,964.93	$ 24,964.93	100.0000%	$ 24,964.93	$ 24,964.93
2	10/1/01-9/30/02	$ 24,964.93	$ 49,929.86	89.5000%	$ 22,343.61	$ 47,308.54
3	10/1/02-9/30/03	$ 24,964.93	$ 74,894.78	80.1025%	$ 19,997.53	$ 67,306.07
4	10/1/03-9/30/04	$ 24,964.93	$ 99,859.71	71.6917%	$ 17,897.79	$ 85,203.86
5	10/1/04-9/30/05	$ 24,964.93	$ 124,824.64	64.1641%	$ 16,018.52	$ 101,222.38
6	10/1/05-9/30/06	$ 24,964.93	$ 149,789.57	57.4269%	$ 14,336.58	$ 115,558.96
7	10/1/06-8/1/07	$ 20,804.11	$ 170,593.67	51.3971%	$ 10,692.70	$ 126,251.66
TOTAL		$ 170,593.67			$ 126,251.66	

16d-002032

RUBIN, APRIL, MD

Number 138

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	26	52
TOTAL CHARGES	45216.29	117369.19
TOTAL ADJUSTMENTS	17905.1	62881.36
TOTAL CHARGES LESS ADJUSTMENTS	$ 27,311.19	$ 54,487.83
TOTAL PAYMENTS	$ 27,387.15	$ 52,322.18
Percentage of Net Charges Collected To Date	100.28%	96.03%
Estimated Net Realizable Value	$ 26,225.69	

Assumptions

Lost Total Amount Available for Collections:	$ 27,176.64
Precentage of Available Charges collected for the previous year to date:	96.03%
Lost Marginal Revenue [Calculated]	$ 26,096.49
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 18,267.54
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 9/1/16

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 18,267.54	$ 18,267.54	100.0000%	$ 18,267.54	$ 18,267.54
2	10/1/01-9/30/02	$ 18,267.54	$ 36,535.08	89.5000%	$ 16,349.45	$ 34,616.99
3	10/1/02-9/30/03	$ 18,267.54	$ 54,802.63	80.1025%	$ 14,632.76	$ 49,249.75
4	10/1/03-9/30/04	$ 18,267.54	$ 73,070.17	71.6917%	$ 13,096.32	$ 62,346.07
5	10/1/04-9/30/05	$ 18,267.54	$ 91,337.71	64.1641%	$ 11,721.20	$ 74,067.27
6	10/1/05-9/30/06	$ 18,267.54	$ 109,605.25	57.4269%	$ 10,490.48	$ 84,557.75
7	10/1/06-9/30/07	$ 18,267.54	$ 127,872.80	51.3971%	$ 9,388.98	$ 93,946.73
8	10/1/07-9/30/08	$ 18,267.54	$ 146,140.34	46.0004%	$ 8,403.14	$ 102,349.87
9	10/1/08-9/30/09	$ 18,267.54	$ 164,407.88	41.1703%	$ 7,520.81	$ 109,870.67
10	10/1/09-9/30/10	$ 18,267.54	$ 182,675.42	36.8474%	$ 6,731.12	$ 116,601.79
11	10/1/10-9/30/11	$ 18,267.54	$ 200,942.96	32.9785%	$ 6,024.35	$ 122,626.15
12	10/1/11-9/30/12	$ 18,267.54	$ 219,210.51	29.5157%	$ 5,391.80	$ 128,017.94
13	10/1/12-9/30/13	$ 18,267.54	$ 237,478.05	26.4166%	$ 4,825.66	$ 132,843.60
14	10/1/13-9/30/14	$ 18,267.54	$ 255,745.59	23.6428%	$ 4,318.96	$ 137,162.57
15	10/1/14-9/30/15	$ 18,267.54	$ 274,013.13	21.1603%	$ 3,865.47	$ 141,028.04
16	10/1/15-9/1/16	$ 16,745.25	$ 290,758.38	18.9385%	$ 3,171.30	$ 144,199.34
TOTAL		$ 290,758.38			$ 144,199.34	

16d-002033

S,H,B,N,B,B,K,P

Number 44146 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	35	176
TOTAL CHARGES	49527.62	118542.58
TOTAL ADJUSTMENTS	25540.3	58718.39
TOTAL CHARGES LESS ADJUSTMENTS	$ 23,987.32	$ 59,824.19
TOTAL PAYMENTS	$ 18,026.93	$ 47,729.58
Percentage of Net Charges Collected To Date	75.15%	79.78%
Estimated Net Realizable Value	$ 19,137.82	

Assumptions

Lost Total Amount Available for Collections:	$ 35,836.87
Precentage of Available Charges collected for the previous year to date:	79.78%
Lost Marginal Revenue [Calculated]	$ 26,591.78
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 20,014.23
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 8/1/32 NGUYEN, H. LISA, MD

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 20,014.23	$ 20,014.23	100.0000%	$ 20,014.23	$ 20,014.23
2	10/1/01-9/30/02	$ 20,014.23	$ 40,028.46	89.5000%	$ 17,912.74	$ 37,926.97
3	10/1/02-9/30/03	$ 20,014.23	$ 60,042.69	80.1025%	$ 16,031.90	$ 53,958.87
4	10/1/03-9/30/04	$ 20,014.23	$ 80,056.92	71.6917%	$ 14,348.55	$ 68,307.42
5	10/1/04-9/30/05	$ 20,014.23	$ 100,071.15	64.1641%	$ 12,841.95	$ 81,149.37
6	10/1/05-9/30/06	$ 20,014.23	$ 120,085.38	57.4269%	$ 11,493.55	$ 92,642.91
7	10/1/06-9/30/07	$ 20,014.23	$ 140,099.61	51.3871%	$ 10,286.72	$ 102,929.64
8	10/1/07-9/30/08	$ 20,014.23	$ 160,113.84	46.0004%	$ 9,206.82	$ 112,136.26
9	10/1/08-9/30/09	$ 20,014.23	$ 180,128.07	41.1703%	$ 8,239.92	$ 120,376.18
10	10/1/09-9/30/10	$ 20,014.23	$ 200,142.30	36.8474%	$ 7,374.73	$ 127,750.91
11	10/1/10-9/30/11	$ 20,014.23	$ 220,156.54	32.9785%	$ 6,600.38	$ 134,351.30
12	10/1/11-9/30/12	$ 20,014.23	$ 240,170.77	29.5157%	$ 5,907.34	$ 140,258.64
13	10/1/12-9/30/13	$ 20,014.23	$ 260,185.00	26.4166%	$ 5,287.07	$ 145,545.71
14	10/1/13-9/30/14	$ 20,014.23	$ 280,199.23	23.6426%	$ 4,731.93	$ 150,277.64
15	10/1/14-9/30/15	$ 20,014.23	$ 300,213.46	21.1603%	$ 4,235.08	$ 154,512.72
16	10/1/15-9/30/16	$ 20,014.23	$ 320,227.69	18.9365%	$ 3,790.39	$ 158,303.12
17	10/1/16-9/30/17	$ 20,014.23	$ 340,241.92	16.9500%	$ 3,392.40	$ 161,695.52
18	10/1/17-9/30/18	$ 20,014.23	$ 360,256.15	15.1702%	$ 3,036.20	$ 164,731.72
19	10/1/18-9/30/19	$ 20,014.23	$ 380,270.38	13.5773%	$ 2,717.40	$ 167,449.12
20	10/1/19-9/30/20	$ 20,014.23	$ 400,284.61	12.1517%	$ 2,432.07	$ 169,881.19
21	10/1/20-9/30/21	$ 20,014.23	$ 420,298.84	10.8758%	$ 2,176.71	$ 172,057.90
22	10/1/21-9/30/22	$ 20,014.23	$ 440,313.07	9.7338%	$ 1,948.15	$ 174,006.05
23	10/1/22-9/30/23	$ 20,014.23	$ 460,327.30	8.7118%	$ 1,743.60	$ 175,749.65
24	10/1/23-9/30/24	$ 20,014.23	$ 480,341.53	7.7970%	$ 1,560.52	$ 177,310.16
25	10/1/24-9/30/25	$ 20,014.23	$ 500,355.76	6.9784%	$ 1,396.66	$ 178,706.83
26	10/1/25-9/30/26	$ 20,014.23	$ 520,369.99	6.2456%	$ 1,250.01	$ 179,956.84
27	10/1/26-9/30/27	$ 20,014.23	$ 540,384.22	5.5898%	$ 1,118.78	$ 181,075.60
28	10/1/27-9/30/28	$ 20,014.23	$ 560,398.45	5.0029%	$ 1,001.29	$ 182,076.89
29	10/1/28-9/30/29	$ 20,014.23	$ 580,412.68	4.4776%	$ 896.16	$ 182,973.05
30	10/1/29-9/30/30	$ 20,014.23	$ 600,426.91	4.0074%	$ 802.06	$ 183,775.11
31	10/1/30-9/30/31	$ 20,014.23	$ 620,441.15	3.5867%	$ 717.84	$ 184,492.96
32	10/1/31-8/1/32	$ 16,678.53	$ 637,119.67	3.2101%	$ 535.39	$ 185,028.35
TOTAL		$ 637,119.67			$ 185,028.35	

16d-002034

CHWMC 008738

SAFRAN, JULIAN E., MD

Number 146 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	12	58
TOTAL CHARGES	$ 22,282.51	$ 185,596.44
TOTAL ADJUSTMENTS	$ 12,276.80	$ 85,385.72
TOTAL CHARGES LESS ADJUSTMENTS	$ 10,005.71	$ 100,210.72
TOTAL PAYMENTS	$ 6,431.49	$ 97,215.92
Percentage of Net Charges Collected To Date	64.28%	97.01%
Estimated Net Realizable Value	$ 9,706.69	

Assumptions

Lost Total Amount Available for Collections:	$ 90,205.01
Precentage of Available Charges collected for the previous year to date:	97.01%
Lost Marginal Revenue [Calculated]	$ 87,509.23
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 61,256.46
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 11/1/15

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 61,256.46	$ 61,256.46	100.0000%	$ 61,256.46	$ 61,256.46
2	10/1/01-9/30/02	$ 61,256.46	$ 122,512.92	89.5000%	$ 54,824.53	$ 116,080.99
3	10/1/02-9/30/03	$ 61,256.46	$ 183,769.38	80.1025%	$ 49,067.96	$ 165,148.95
4	10/1/03-9/30/04	$ 61,256.46	$ 245,025.85	71.6917%	$ 43,915.82	$ 209,064.77
5	10/1/04-9/30/05	$ 61,256.46	$ 306,282.31	64.1641%	$ 39,304.66	$ 248,369.43
6	10/1/05-9/30/06	$ 61,256.46	$ 367,538.77	57.4269%	$ 35,177.67	$ 283,547.11
7	10/1/06-9/30/07	$ 61,256.46	$ 428,795.23	51.3971%	$ 31,484.02	$ 315,031.12
8	10/1/07-9/30/08	$ 61,256.46	$ 490,051.69	46.0004%	$ 28,178.19	$ 343,209.31
9	10/1/08-9/30/09	$ 61,256.46	$ 551,308.15	41.1703%	$ 25,219.48	$ 368,428.80
10	10/1/09-9/30/10	$ 61,256.46	$ 612,564.62	36.8474%	$ 22,571.44	$ 391,000.24
11	10/1/10-9/30/11	$ 61,256.46	$ 673,821.08	32.9785%	$ 20,201.44	$ 411,201.67
12	10/1/11-9/30/12	$ 61,256.46	$ 735,077.54	29.5157%	$ 18,080.29	$ 429,281.96
13	10/1/12-9/30/13	$ 61,256.46	$ 796,334.00	26.4166%	$ 16,181.86	$ 445,463.81
14	10/1/13-9/30/14	$ 61,256.46	$ 857,590.46	23.6428%	$ 14,482.76	$ 459,946.58
15	10/1/14-9/30/15	$ 61,256.46	$ 918,846.92	21.1603%	$ 12,962.07	$ 472,908.65
16	10/1/15-11/1/15	$ 5,104.71	$ 923,951.63	18.9385%	$ 966.75	$ 473,875.40
TOTAL		$ 923,951.63			$ 473,875.40	

16d-002035

SANDERS, NANCY L., MD

Number 102 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	24	148
TOTAL CHARGES	27620.62	677076.21
TOTAL ADJUSTMENTS	13578.04	379618.17
TOTAL CHARGES LESS ADJUSTMENTS	$ 14,042.58	$ 297,458.04
TOTAL PAYMENTS	$ 12,535.70	$ 292,843.09
Percentage of Net Charges Collected To Date	89.27%	98.45%
Estimated Net Realizable Value	$ 13,824.71	

Assumptions

Lost Total Amount Available for Collections:	$ 283,415.46
Precentage of Available Charges collected for the previous year to date:	98.45%
Lost Marginal Revenue [Calculated]	$ 279,018.36
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 195,312.86
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 4/1/22

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 195,312.86	$ 195,312.86	100.0000%	$ 195,312.86	$ 195,312.86
2	10/1/01-9/30/02	$ 195,312.86	$ 390,625.73	89.5000%	$ 174,805.01	$ 370,117.87
3	10/1/02-9/30/03	$ 195,312.86	$ 585,938.59	80.1025%	$ 156,450.49	$ 526,568.36
4	10/1/03-9/30/04	$ 195,312.86	$ 781,251.45	71.6917%	$ 140,023.18	$ 666,591.55
5	10/1/04-9/30/05	$ 195,312.86	$ 976,564.31	64.1641%	$ 125,320.75	$ 791,912.30
6	10/1/05-9/30/06	$ 195,312.86	$ 1,171,877.18	57.4269%	$ 112,162.07	$ 904,074.37
7	10/1/06-9/30/07	$ 195,312.86	$ 1,367,190.04	51.3971%	$ 100,385.05	$ 1,004,459.42
8	10/1/07-9/30/08	$ 195,312.86	$ 1,562,502.90	46.0004%	$ 89,844.62	$ 1,094,304.05
9	10/1/08-9/30/09	$ 195,312.86	$ 1,757,815.76	41.1703%	$ 80,410.94	$ 1,174,714.98
10	10/1/09-9/30/10	$ 195,312.86	$ 1,953,128.63	36.8474%	$ 71,967.79	$ 1,246,682.77
11	10/1/10-9/30/11	$ 195,312.86	$ 2,148,441.49	32.9785%	$ 64,411.17	$ 1,311,093.94
12	10/1/11-9/30/12	$ 195,312.86	$ 2,343,754.35	29.5157%	$ 57,648.00	$ 1,368,741.94
13	10/1/12-9/30/13	$ 195,312.86	$ 2,539,067.22	26.4166%	$ 51,594.96	$ 1,420,336.90
14	10/1/13-9/30/14	$ 195,312.86	$ 2,734,380.08	23.6428%	$ 46,177.49	$ 1,466,514.39
15	10/1/14-9/30/15	$ 195,312.86	$ 2,929,692.94	21.1603%	$ 41,328.85	$ 1,507,843.24
16	10/1/15-9/30/16	$ 195,312.86	$ 3,125,005.80	18.9385%	$ 36,989.32	$ 1,544,832.56
17	10/1/16-9/30/17	$ 195,312.86	$ 3,320,318.67	16.9500%	$ 33,105.44	$ 1,577,938.01
18	10/1/17-9/30/18	$ 195,312.86	$ 3,515,631.53	15.1702%	$ 29,629.37	$ 1,607,567.38
19	10/1/18-9/30/19	$ 195,312.86	$ 3,710,944.39	13.5773%	$ 26,518.29	$ 1,634,085.67
20	10/1/19-9/30/20	$ 195,312.86	$ 3,906,257.26	12.1517%	$ 23,733.87	$ 1,657,819.54
21	10/1/20-9/30/21	$ 195,312.86	$ 4,101,570.12	10.8758%	$ 21,241.81	$ 1,679,061.35
22	10/1/21-4/1/22	$ 97,656.43	$ 4,199,226.55	9.7338%	$ 9,505.71	$ 1,688,567.06
TOTAL		$ 4,199,226.55			$ 1,688,567.06	

16d-002036

SCHAFFEL, JANET, MD

Number 147

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	30	161
TOTAL CHARGES	18770.72	693681.57
TOTAL ADJUSTMENTS	10571.58	392116.37
TOTAL CHARGES LESS ADJUSTMENTS	$ 8,199.14	$ 301,565.20
TOTAL PAYMENTS	$ 7,227.59	$ 279,843.84
Percentage of Net Charges Collected To Date	88.15%	92.80%
Estimated Net Realizable Value	$ 7,608.57	

Assumptions

Lost Total Amount Available for Collections:	$ 293,366.06
Precentage of Available Charges collected for the previous year to date:	92.80%
Lost Marginal Revenue [Calculated]	$ 272,235.37
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 190,564.76
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 7/1/19

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 190,564.76	$ 190,564.76	100.0000%	$ 190,564.76	$ 190,564.76
2	10/1/01-9/30/02	$ 190,564.76	$ 381,129.52	89.5000%	$ 170,555.48	$ 361,120.22
3	10/1/02-9/30/03	$ 190,564.76	$ 571,694.28	80.1025%	$ 152,647.14	$ 513,767.36
4	10/1/03-9/30/04	$ 190,564.76	$ 762,259.04	71.6917%	$ 136,619.19	$ 650,386.54
5	10/1/04-9/30/05	$ 190,564.76	$ 952,823.80	64.1641%	$ 122,274.17	$ 772,660.72
6	10/1/05-9/30/06	$ 190,564.76	$ 1,143,388.56	57.4269%	$ 109,435.38	$ 882,096.10
7	10/1/06-9/30/07	$ 190,564.76	$ 1,333,953.32	51.3971%	$ 97,944.67	$ 980,040.77
8	10/1/07-9/30/08	$ 190,564.76	$ 1,524,518.08	46.0004%	$ 87,660.48	$ 1,067,701.25
9	10/1/08-9/30/09	$ 190,564.76	$ 1,715,082.84	41.1703%	$ 78,456.13	$ 1,146,157.38
10	10/1/09-9/30/10	$ 190,564.76	$ 1,905,647.60	36.8474%	$ 70,218.24	$ 1,216,375.61
11	10/1/10-9/30/11	$ 190,564.76	$ 2,096,212.36	32.9785%	$ 62,845.32	$ 1,279,220.93
12	10/1/11-9/30/12	$ 190,564.76	$ 2,286,777.12	29.5157%	$ 56,246.56	$ 1,335,467.49
13	10/1/12-9/30/13	$ 190,564.76	$ 2,477,341.88	26.4166%	$ 50,340.67	$ 1,385,808.17
14	10/1/13-9/30/14	$ 190,564.76	$ 2,667,906.64	23.6428%	$ 45,054.90	$ 1,430,863.07
15	10/1/14-9/30/15	$ 190,564.76	$ 2,858,471.40	21.1603%	$ 40,324.14	$ 1,471,187.21
16	10/1/15-9/30/16	$ 190,564.76	$ 3,049,036.15	18.9385%	$ 36,090.10	$ 1,507,277.31
17	10/1/16-9/30/17	$ 142,923.57	$ 3,191,959.72	16.9500%	$ 24,225.48	$ 1,531,502.79
18	10/1/17-9/30/18	$ 107,192.68	$ 3,299,152.40	15.1702%	$ 16,261.35	$ 1,547,764.15
19	10/1/18-7/1/19	$ 80,394.51	$ 3,379,546.91	13.5773%	$ 10,915.43	$ 1,558,679.58
TOTAL		$ 3,379,546.91			$ 1,558,679.58	

16d-002037

TALEON, VITTORIO S., MD

Number 276 1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000		
NUMBER OF PATIENTS	11	26		
TOTAL CHARGES	$ 16,108.92	$ 359,211.33		
TOTAL ADJUSTMENTS	$ 7,205.14	$ 238,514.47		
TOTAL CHARGES LESS ADJUSTMENTS	$ 8,903.78	$ 120,696.86		
TOTAL PAYMENTS	$ 10,048.22	$ 38,583.50		
Percentage of Net Charges Collected To Date	112.85%	31.97%	USE	95%
Estimated Net Realizable Value	$ 2,846.30			

Assumptions

Lost Total Amount Available for Collections:			$ 111,793.08
Precentage of Available Charges collected for the previous year to date:	ADJUSTED TO	95%	95.00%
Lost Marginal Revenue [Calculated]			$ 106,203.43
Marginal Cost of Services as a Percentage of Marginal Revenue			30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year			$ 74,342.40
Cost of Capital to the Columbia Hospital for Women:			10.50%

Month and Year Physician Turns 65: 7/1/19

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 74,342.40	$ 74,342.40	100.0000%	$ 74,342.40	$ 74,342.40
2	10/1/01-9/30/02	$ 74,342.40	$ 148,684.80	89.5000%	$ 66,536.45	$ 140,878.84
3	10/1/02-9/30/03	$ 74,342.40	$ 223,027.19	80.1025%	$ 59,550.12	$ 200,428.96
4	10/1/03-9/30/04	$ 74,342.40	$ 297,369.59	71.6917%	$ 53,297.36	$ 253,726.32
5	10/1/04-9/30/05	$ 74,342.40	$ 371,711.99	64.1641%	$ 47,701.13	$ 301,427.46
6	10/1/05-9/30/06	$ 74,342.40	$ 446,054.39	57.4269%	$ 42,692.52	$ 344,119.97
7	10/1/06-9/30/07	$ 74,342.40	$ 520,396.79	51.3971%	$ 38,209.80	$ 382,329.77
8	10/1/07-9/30/08	$ 74,342.40	$ 594,739.19	46.0004%	$ 34,197.77	$ 416,527.54
9	10/1/08-9/30/09	$ 74,342.40	$ 669,081.58	41.1703%	$ 30,607.01	$ 447,134.55
10	10/1/09-9/30/10	$ 74,342.40	$ 743,423.98	36.8474%	$ 27,393.27	$ 474,527.82
11	10/1/10-9/30/11	$ 74,342.40	$ 817,766.38	32.9785%	$ 24,516.98	$ 499,044.80
12	10/1/11-9/30/12	$ 74,342.40	$ 892,108.78	29.5157%	$ 21,942.69	$ 520,987.49
13	10/1/12-9/30/13	$ 74,342.40	$ 966,451.18	26.4166%	$ 19,638.71	$ 540,626.20
14	10/1/13-9/30/14	$ 74,342.40	$ 1,040,793.57	23.6428%	$ 17,576.65	$ 558,202.85
15	10/1/14-9/30/15	$ 74,342.40	$ 1,115,135.97	21.1603%	$ 15,731.10	$ 573,933.95
16	10/1/15-9/30/16	$ 74,342.40	$ 1,189,478.37	18.9385%	$ 14,079.33	$ 588,013.28
17	10/1/16-9/30/17	$ 74,342.40	$ 1,263,820.77	16.9500%	$ 12,601.00	$ 600,614.29
18	10/1/17-9/30/18	$ 74,342.40	$ 1,338,163.17	15.1702%	$ 11,277.90	$ 611,892.18
19	10/1/18-7/1/19	$ 55,756.80	$ 1,393,919.97	13.5773%	$ 7,570.29	$ 619,462.47
TOTAL		$ 1,393,919.97			$ 619,462.47	

16d-002038

W.P.A., BSJSN

Number 44170

1/22/02 13:51

Data	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS	12	111
TOTAL CHARGES	$ -	$ 40,607.81
TOTAL ADJUSTMENTS	$ -	$ 16,825.40
TOTAL CHARGES LESS ADJUSTMENTS	$ -	$ 23,782.41
TOTAL PAYMENTS	$ -	$ 16,833.89
Percentage of Net Charges Collected To Date	N/A	70.78%
Estimated Net Realizable Value	$ -	

Assumptions

Lost Total Amount Available for Collections:	$ 23,782.41
Precentage of Available Charges collected for the previous year to date:	70.78%
Lost Marginal Revenue [Calculated]	$ 16,833.89
Marginal Cost of Services as a Percentage of Marginal Revenue	30.0000%
Net Contribution Margin Lost (Reduction in Net Income) [Calculated] is the lost cash flow per year	$ 11,783.72
Cost of Capital to the Columbia Hospital for Women:	10.50%

Month and Year Physician Turns 65: 8/1/27

Year	Period	Lost Cash Flow	Cumulative Sum of the Lost Cash Flows	10.50% Discount Rate	Net Present Value of Lost Cash Flow	Cumulative Sum of the Present Value of Cash Flows
1	10/1/00-9/30/01	$ 11,783.72	$ 11,783.72	100.0000%	$ 11,783.72	$ 11,783.72
2	10/1/01-9/30/02	$ 11,783.72	$ 23,567.45	89.5000%	$ 10,546.43	$ 22,330.16
3	10/1/02-9/30/03	$ 11,783.72	$ 35,351.17	80.1025%	$ 9,439.06	$ 31,769.21
4	10/1/03-9/30/04	$ 11,783.72	$ 47,134.89	71.6917%	$ 8,447.96	$ 40,217.17
5	10/1/04-9/30/05	$ 11,783.72	$ 58,918.61	64.1641%	$ 7,560.92	$ 47,778.09
6	10/1/05-9/30/06	$ 11,783.72	$ 70,702.34	57.4269%	$ 6,767.02	$ 54,545.11
7	10/1/06-9/30/07	$ 11,783.72	$ 82,486.06	51.3971%	$ 6,056.49	$ 60,601.60
8	10/1/07-9/30/08	$ 11,783.72	$ 94,269.78	46.0004%	$ 5,420.56	$ 66,022.15
9	10/1/08-9/30/09	$ 11,783.72	$ 106,053.51	41.1703%	$ 4,851.40	$ 70,873.55
10	10/1/09-9/30/10	$ 11,783.72	$ 117,837.23	36.8474%	$ 4,342.00	$ 75,215.55
11	10/1/10-9/30/11	$ 11,783.72	$ 129,620.95	32.9785%	$ 3,886.09	$ 79,101.64
12	10/1/11-9/30/12	$ 11,783.72	$ 141,404.68	29.5157%	$ 3,478.05	$ 82,579.69
13	10/1/12-9/30/13	$ 11,783.72	$ 153,188.40	26.4166%	$ 3,112.86	$ 85,692.55
14	10/1/13-9/30/14	$ 11,783.72	$ 164,972.12	23.6428%	$ 2,786.01	$ 88,478.55
15	10/1/14-9/30/15	$ 11,783.72	$ 176,755.85	21.1603%	$ 2,493.48	$ 90,972.03
16	10/1/15-9/30/16	$ 11,783.72	$ 188,539.57	18.9385%	$ 2,231.66	$ 93,203.69
17	10/1/16-9/30/17	$ 11,783.72	$ 200,323.29	16.9500%	$ 1,997.34	$ 95,201.02
18	10/1/17-9/30/18	$ 11,783.72	$ 212,107.01	15.1702%	$ 1,787.62	$ 96,988.64
19	10/1/18-9/30/19	$ 11,783.72	$ 223,890.74	13.5773%	$ 1,599.92	$ 98,588.55
20	10/1/19-9/30/20	$ 11,783.72	$ 235,674.46	12.1517%	$ 1,431.92	$ 100,020.48
21	10/1/20-9/30/21	$ 11,783.72	$ 247,458.18	10.8758%	$ 1,281.57	$ 101,302.05
22	10/1/21-9/30/22	$ 11,783.72	$ 259,241.91	9.7338%	$ 1,147.01	$ 102,449.06
23	10/1/22-9/30/23	$ 11,783.72	$ 271,025.63	8.7118%	$ 1,026.57	$ 103,475.63
24	10/1/23-9/30/24	$ 11,783.72	$ 282,809.35	7.7970%	$ 918.78	$ 104,394.41
25	10/1/24-9/30/25	$ 11,783.72	$ 294,593.08	6.9784%	$ 822.31	$ 105,216.72
26	10/1/25-9/30/26	$ 11,783.72	$ 306,376.80	6.2456%	$ 735.97	$ 105,952.69
27	10/1/26-8/01/27	$ 9,819.77	$ 316,196.57	5.5898%	$ 548.91	$ 106,501.60
TOTAL		$ 316,196.57			$ 106,501.60	

16d-002039

CHWMC 008743

PER PHYSICIAN

1/22/02 14:06

Physician	Number	Period		Period	
BIS, KATHLEEN, MD	202	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			54		62
TOTAL CHARGES		$	9,941.86	$	123,351.40
TOTAL ADJUSTMENTS		$	4,154.06	$	57,603.80
TOTAL PAYMENTS		$	4,968.65	$	58,651.17
BIS/ROBERTS	44141	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			2		14
TOTAL CHARGES		$	37.00	$	1,971.00
TOTAL ADJUSTMENTS		$	32.66	$	544.42
TOTAL PAYMENTS		$	4.34	$	1,116.58
BLANK, KENNETH A., MD	176	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			44		242
TOTAL CHARGES		$	101,282.97	$	1,039,230.95
TOTAL ADJUSTMENTS		$	54,865.08	$	567,739.37
TOTAL PAYMENTS		$	39,593.65	$	451,629.88
BOHON, CONSTANCE H., MD	18	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			18		60
TOTAL CHARGES		$	4,476.00	$	207,473.72
TOTAL ADJUSTMENTS		$	1,599.22	$	103,309.55
TOTAL PAYMENTS		$	2,557.58	$	97,130.08
BOLAN, JEAN C., MD	244	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			68		99
TOTAL CHARGES		$	485,721.63	$	581,190.34
TOTAL ADJUSTMENTS		$	301,189.90	$	329,947.65
TOTAL PAYMENTS		$	186,143.44	$	240,894.50

16d-002040

BRONSKY, GEORGE F., MD	131	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			95		89
TOTAL CHARGES		$	708,577.99	$	1,002,608.68
TOTAL ADJUSTMENTS		$	403,055.35	$	525,345.15
TOTAL PAYMENTS		$	264,779.19	$	474,520.18
BUSCH, REBECCA J., MD	166	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			75		109
TOTAL CHARGES		$	52,040.49	$	234,355.21
TOTAL ADJUSTMENTS		$	22,861.45	$	136,169.74
TOTAL PAYMENTS		$	29,127.14	$	91,338.13
DROGULA, CYNTHIA L., MD	7726	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			154		185
TOTAL CHARGES		$	272,458.00	$	359,211.33
TOTAL ADJUSTMENTS		$	167,095.12	$	238,514.47
TOTAL PAYMENTS		$	81,468.72	$	97,361.18
DUKES, MARTIN W. JR., MD	45	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			222		334
TOTAL CHARGES		$	230,134.97	$	765,409.71
TOTAL ADJUSTMENTS		$	135,650.56	$	417,725.24
TOTAL PAYMENTS		$	83,709.57	$	315,946.98
FLAX, RICHARD, MD	750	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			224		301
TOTAL CHARGES		$	290,435.44	$	549,778.62
TOTAL ADJUSTMENTS		$	182,266.87	$	341,827.52
TOTAL PAYMENTS		$	88,160.32	$	182,646.42
HIRSCH, FLORIE, MD	75	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			35		87
TOTAL CHARGES		$	10,101.23	$	111,950.77
TOTAL ADJUSTMENTS		$	1,806.47	$	58,237.77
TOTAL PAYMENTS		$	6,904.86	$	52,374.80

16d-002041

HORWITZ, STEPHEN I, MD	80	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			31		129
TOTAL CHARGES		$	49,218.28	$	896,978.65
TOTAL ADJUSTMENTS		$	25,972.68	$	519,009.01
TOTAL PAYMENTS		$	21,848.54	$	326,507.60
JOHNSON, HEATHER I, MD	333	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			11		135
TOTAL CHARGES		$	10,003.44	$	593,575.93
TOTAL ADJUSTMENTS		$	5,589.95	$	331,684.20
TOTAL PAYMENTS		$	4,413.49	$	253,553.52
KOCH, EDWARD G. , MD	195	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			81		89
TOTAL CHARGES		$	144,953.86	$	274,368.61
TOTAL ADJUSTMENTS		$	83,876.07	$	132,227.94
TOTAL PAYMENTS		$	47,740.31	$	133,151.29
KESSELMAN, AMY J. MD	349	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			35		62
TOTAL CHARGES		$	895.20	$	299,000.96
TOTAL ADJUSTMENTS		$	328.04	$	144,610.10
TOTAL PAYMENTS		$	406.76	$	148,295.84
LARSON, CHARLOTTE G., MD	1104	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			84		190
TOTAL CHARGES		$	291,942.56	$	667,223.69
TOTAL ADJUSTMENTS		$	153,718.73	$	386,276.01
TOTAL PAYMENTS		$	106,826.47	$	264,543.21
NEWMAN, RICHARD S., MD	125	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			43		234
TOTAL CHARGES		$	125,448.65	$	1,021,329.32
TOTAL ADJUSTMENTS		$	72,437.79	$	571,340.16
TOTAL PAYMENTS		$	51,422.82	$	428,996.84

NGUYEN, H. LISA, MD	1124	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			7		154
TOTAL CHARGES		$	21,542.97	$	628,450.91
TOTAL ADJUSTMENTS		$	12,495.15	$	321,818.34
TOTAL PAYMENTS		$	9,047.82	$	312,868.64
POWERS, DAVID N., MD	136	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			51		83
TOTAL CHARGES		$	64,180.19	$	328,801.76
TOTAL ADJUSTMENTS		$	33,194.68	$	180,511.92
TOTAL PAYMENTS		$	18,322.69	$	140,570.19
ROBERTS, MORTON J., MD	141	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			30		44
TOTAL CHARGES		$	6,024.00	$	81,702.35
TOTAL ADJUSTMENTS		$	2,047.07	$	40,837.88
TOTAL PAYMENTS		$	3,617.49	$	39,509.22
RUBIN, APRIL, MD	138	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			26		52
TOTAL CHARGES		$	45,216.29	$	117,369.19
TOTAL ADJUSTMENTS		$	17,905.10	$	62,881.36
TOTAL PAYMENTS		$	27,387.15	$	52,322.18
S,H,B,N,B,B,K,P	44146	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			35		176
TOTAL CHARGES		$	49,527.62	$	118,542.58
TOTAL ADJUSTMENTS		$	25,540.30	$	58,718.39
TOTAL PAYMENTS		$	18,026.93	$	47,729.58
SAFRAN, JULIAN E., MD	146	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			12		58
TOTAL CHARGES		$	22,282.51	$	185,596.44
TOTAL ADJUSTMENTS		$	12,276.80	$	85,385.72
TOTAL PAYMENTS		$	6,431.49	$	97,215.92

16d-002043

SANDERS, NANCY L., MD	102	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			24		148
TOTAL CHARGES		$	27,620.62	$	677,076.21
TOTAL ADJUSTMENTS		$	13,578.04	$	379,618.17
TOTAL PAYMENTS		$	12,535.70	$	292,843.09
SCHAFFEL, JANET, MD	147	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			30		161
TOTAL CHARGES		$	18,770.72	$	693,681.57
TOTAL ADJUSTMENTS		$	10,571.58	$	392,116.37
TOTAL PAYMENTS		$	7,227.59	$	279,843.94
TALEON, VITTORIO S., MD	276	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			11		26
TOTAL CHARGES		$	16,108.92	$	94,218.07
TOTAL ADJUSTMENTS		$	7,205.14	$	54,437.49
TOTAL PAYMENTS		$	10,048.22	$	38,583.50
W.P.A., BSJSN	44170	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			12		111
TOTAL CHARGES		$	-	$	40,607.81
TOTAL ADJUSTMENTS		$	-	$	16,825.40
TOTAL PAYMENTS		$	-	$	16,833.89

16d-002044

TOTAL - NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		1,514.00	3,434.00
TOTAL CHARGES		$ 3,058,943.41	$ 11,695,055.78
TOTAL ADJUSTMENTS		$ 1,751,313.86	$ 6,455,263.14
TOTAL PAYMENTS		$ 1,132,720.93	$ 4,936,978.35

TOTAL - ALL DOCTORS	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		33,688.00	28,529.00
TOTAL CHARGES		66,552,627.05	$ 55,696,477.27
TOTAL ADJUSTMENTS		34,893,907.05	$ 30,626,015.64
TOTAL PAYMENTS		21,031,313.61	$ 21,916,011.12

TOTAL - NON-NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		32,174.00	25,095.00
TOTAL CHARGES		$ 63,493,683.64	$ 44,001,421.49
TOTAL ADJUSTMENTS		$ 33,142,593.19	$ 24,170,752.50
TOTAL PAYMENTS		$ 19,898,592.68	$ 16,979,032.77

TOTAL - NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		1,514.00	3,434.00
TOTAL CHARGES		3,058,943.41	11,695,055.78
TOTAL ADJUSTMENTS		57.25%	55.20%
TOTAL PAYMENTS		37.03%	42.21%

TOTAL - ALL DOCTORS	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		33,688.00	28,529.00
TOTAL CHARGES		66,552,627.05	55,696,477.27
TOTAL ADJUSTMENTS		52.43%	54.99%
TOTAL PAYMENTS		31.60%	39.35%

TOTAL - NON-NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		32,174.00	25,095.00
TOTAL CHARGES		63,493,683.64	44,001,421.49
TOTAL ADJUSTMENTS		52.20%	54.93%
TOTAL PAYMENTS		31.34%	38.59%

Physician	Number	Period		Period	
BIS, KATHLEEN, MD	202	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			54		62
TOTAL CHARGES		$	184.11	$	1,989.54
TOTAL ADJUSTMENTS		$	76.93	$	929.09
TOTAL PAYMENTS		$	92.01	$	945.99
BIS/ROBERTS	44141	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			2		14
TOTAL CHARGES		$	18.50	$	140.79
TOTAL ADJUSTMENTS		$	16.33	$	38.89
TOTAL PAYMENTS		$	2.17	$	76.76
BLANK, KENNETH A., MD	176	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			44		242
TOTAL CHARGES		$	2,301.89	$	4,294.34
TOTAL ADJUSTMENTS		$	1,246.93	$	2,346.03
TOTAL PAYMENTS		$	699.86	$	1,868.24
BOHON, CONSTANCE H., MD	18	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			18		60
TOTAL CHARGES		$	248.67	$	3,457.90
TOTAL ADJUSTMENTS		$	86.85	$	1,721.83
TOTAL PAYMENTS		$	142.09	$	1,618.83
BOLAN, JEAN C., MD	244	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			68		99
TOTAL CHARGES		$	7,142.97	$	5,870.61
TOTAL ADJUSTMENTS		$	4,429.26	$	3,332.80
TOTAL PAYMENTS		$	2,737.40	$	2,433.28
BRONSKY, GEORGE F., MD	131	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			95		89
TOTAL CHARGES		$	7,458.72	$	11,265.27
TOTAL ADJUSTMENTS		$	4,242.69	$	5,902.75
TOTAL PAYMENTS		$	2,787.15	$	5,331.69
BUSCH, REBECCA J., MD	166	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			75		109
TOTAL CHARGES		$	693.87	$	2,150.05
TOTAL ADJUSTMENTS		$	304.82	$	1,249.26
TOTAL PAYMENTS		$	388.36	$	837.86

DROGULA, CYNTHIA L., MD	7728	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		154	165
TOTAL CHARGES		$ 1,769.21	$ 1,941.88
TOTAL ADJUSTMENTS		$ 1,085.03	$ 1,289.27
TOTAL PAYMENTS		$ 529.02	$ 526.26
DUKES, MARTIN W. JR., MD	45	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		222	334
TOTAL CHARGES		$ 1,036.64	$ 2,291.65
TOTAL ADJUSTMENTS		$ 611.04	$ 1,250.87
TOTAL PAYMENTS		$ 377.07	$ 945.95
FLAX, RICHARD, MD	750	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		224	301
TOTAL CHARGES		$ 1,296.59	$ 1,826.51
TOTAL ADJUSTMENTS		$ 813.69	$ 1,135.64
TOTAL PAYMENTS		$ 393.57	$ 606.80
HIRSCH, FLORIE, MD	75	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		35	67
TOTAL CHARGES		$ 288.61	$ 1,286.79
TOTAL ADJUSTMENTS		$ 51.61	$ 669.40
TOTAL PAYMENTS		$ 197.28	$ 602.01
HORWITZ, STEPHEN I, MD	80	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		31	129
TOTAL CHARGES		$ 1,587.69	$ 6,953.32
TOTAL ADJUSTMENTS		$ 837.83	$ 4,023.33
TOTAL PAYMENTS		$ 704.79	$ 2,531.07
JOHNSON, HEATHER I, MD	333	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		11	135
TOTAL CHARGES		$ 909.40	$ 4,396.86
TOTAL ADJUSTMENTS		$ 508.18	$ 2,458.92
TOTAL PAYMENTS		$ 401.23	$ 1,876.17

16d-002047

KOCH, EDWARD G. , MD	195	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			61		89
TOTAL CHARGES		$	1,769.55	$	3,082.79
TOTAL ADJUSTMENTS		$	1,035.51	$	1,485.71
TOTAL PAYMENTS		$	589.39	$	1,496.08
KESSELMAN, AMY J. MD	349	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			35		82
TOTAL CHARGES		$	25.58	$	4,822.60
TOTAL ADJUSTMENTS		$	9.37	$	2,332.42
TOTAL PAYMENTS		$	11.62	$	2,391.87
LARSON, CHARLOTTE G., MD	1104	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			84		190
TOTAL CHARGES		$	3,475.51	$	3,511.70
TOTAL ADJUSTMENTS		$	1,829.98	$	2,033.03
TOTAL PAYMENTS		$	1,271.74	$	1,392.33
NEWMAN, RICHARD S., MD	125	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			43		234
TOTAL CHARGES		$	2,917.41	$	4,364.66
TOTAL ADJUSTMENTS		$	1,684.60	$	2,441.62
TOTAL PAYMENTS		$	1,195.66	$	1,833.32
NGUYEN, H. LISA, MD	1124	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			7		154
TOTAL CHARGES		$	3,077.57	$	4,080.85
TOTAL ADJUSTMENTS		$	1,785.02	$	2,089.73
TOTAL PAYMENTS		$	1,292.55	$	2,031.61
POWERS, DAVID N., MD	136	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			51		83
TOTAL CHARGES		$	1,258.44	$	3,961.47
TOTAL ADJUSTMENTS		$	650.88	$	2,174.84
TOTAL PAYMENTS		$	359.27	$	1,693.62

ROBERTS, MORTON J., MD	141	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			30		44
TOTAL CHARGES		$	200.80	$	1,856.87
TOTAL ADJUSTMENTS		$	66.24	$	928.13
TOTAL PAYMENTS		$	120.58	$	897.94
RUBIN, APRIL, MD	138	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			26		52
TOTAL CHARGES		$	1,739.09	$	2,257.10
TOTAL ADJUSTMENTS		$	686.68	$	1,209.26
TOTAL PAYMENTS		$	1,053.35	$	1,006.20
S,H,B,N,B,B,K,P	44146	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			35		176
TOTAL CHARGES		$	1,415.07	$	873.54
TOTAL ADJUSTMENTS		$	729.72	$	333.63
TOTAL PAYMENTS		$	515.06	$	271.19
SAFRAN, JULIAN E., MD	146	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			12		58
TOTAL CHARGES		$	1,856.88	$	3,199.94
TOTAL ADJUSTMENTS		$	1,023.07	$	1,472.17
TOTAL PAYMENTS		$	535.96	$	1,676.14
SANDERS, NANCY L., MD	102	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			24		148
TOTAL CHARGES		$	1,150.86	$	4,574.84
TOTAL ADJUSTMENTS		$	565.75	$	2,564.99
TOTAL PAYMENTS		$	522.32	$	1,978.67
SCHAFFEL, JANET, MD	147	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			30		161
TOTAL CHARGES		$	625.69	$	4,308.58
TOTAL ADJUSTMENTS		$	352.39	$	2,435.51
TOTAL PAYMENTS		$	240.92	$	1,736.16
TALEON, VITTORIO S., MD	276	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			11		26
TOTAL CHARGES		$	1,464.45	$	3,623.77
TOTAL ADJUSTMENTS		$	655.01	$	2,093.75
TOTAL PAYMENTS		$	913.47	$	1,483.98
W.P.A., BSJSN	44170	10/01/2000 - 09/30/2001		10/01/1999 - 09/30/2000	
NUMBER OF PATIENTS			12		111
TOTAL CHARGES		$	-	$	365.84
TOTAL ADJUSTMENTS		$	-	$	151.58
TOTAL PAYMENTS		$	-	$	151.66

TOTAL - NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		1,514.00	3,434.00
TOTAL CHARGES		$ 2,020.44	$ 3,405.67
TOTAL ADJUSTMENTS		$ 1,156.75	$ 1,679.81
TOTAL PAYMENTS		$ 748.16	$ 1,437.88

TOTAL - ALL DOCTORS	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		33,688.00	28,529.00
TOTAL CHARGES		$ 1,975.56	$ 1,952.28
TOTAL ADJUSTMENTS		$ 1,035.80	$ 1,073.50
TOTAL PAYMENTS		$ 624.30	$ 768.20

TOTAL - NON-NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		32,174.00	25,095.00
TOTAL CHARGES		$ 1,973.45	$ 1,753.39
TOTAL ADJUSTMENTS		$ 1,030.10	$ 963.17
TOTAL PAYMENTS		$ 618.47	$ 676.59

TOTAL - NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		1,514.00	3,434.00
TOTAL CHARGES		$ 2,020.44	$ 3,405.67
TOTAL ADJUSTMENTS		52%	55%
TOTAL PAYMENTS		31%	39%

TOTAL - ALL DOCTORS	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		33,688.00	28,529.00
TOTAL CHARGES		$ 1,975.56	$ 1,952.28
TOTAL ADJUSTMENTS		52%	55%
TOTAL PAYMENTS		32%	38%

TOTAL - NON-NCRIC DOCTORS GROUP	TOTAL	10/01/2000 - 09/30/2001	10/01/1999 - 09/30/2000
NUMBER OF PATIENTS		32,174.00	25,095.00
TOTAL CHARGES		$ 1,973.45	$ 1,753.39
TOTAL ADJUSTMENTS		52%	55%
TOTAL PAYMENTS		31%	39%

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion, Statement of Points and Authorities in Support and Proposed Order were served this 5TH day of June 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

16d-002051

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

NCRIC'S MOTION TO EXCLUDE THE
TESTIMONY OF COLUMBIA'S NEWLY NAMED WITNESSES

Pursuant to D.C. Superior Court Rules 16, 26, and 37 and based on the submissions in the accompanying Memorandum in Support, plaintiff NCRIC, Inc. ("NCRIC") moves that the following witnesses – only recently identified by defendant Columbia Hospital for Women Medical Center Inc. ("Columbia") – be excluded from giving evidence in this case and that their names be stricken from defendant's witness list:

Elizabeth Jackson

Francis Renee Perkins

Gideon Kioko

Jerome O'Connell

David Young

Pursuant to D. C. Superior Court Rule 12-I(E), a Proposed Order and Statement of Points and Authorities in Support of this Motion are also attached.

Oral Hearing Requested.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

CERTIFICATION REQUIRED BY D.C. SUPERIOR COURT RULE 12-I(a)

Counsel for Plaintiff NCRIC, Inc. certifies pursuant to Rule 12-I (a) that the parties conducted a telephone conference on June 3, 2003 concerning this motion and that consent from counsel for Defendant Columbia Hospital for Women could not be and was not obtained. Accordingly, this motion is necessary for Plaintiff NCRIC, Inc. to obtain the necessary relief.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF NCRIC'S MOTION TO EXCLUDE COLUMBIA'S NEWLY IDENTIFIED WITNESSES

Both the scheduling orders issued by this Court, as well as the D.C. Superior Court Rules of Civil Procedure, require that parties identify their witnesses promptly, as well as amending discovery responses when new information is discovered. In the instant case, initial witness lists were submitted in March 2001 and June 2001. Discovery closed at the end of January 2002.

Following the pretrial meeting between the parties mandated by D.C. Superior Court Rule of Civil Procedure 16(c) on May 29, 2003, Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") identified the following individuals it intends to call as witnesses at trial for the first time:[1/]

1/ The first notice to NCRIC that Columbia intended to add more witnesses, in addition to any named in Columbia's Rule 16 disclosures, came during the parties' Rule 16(c) conference, a year and a half after the close of discovery. On May 30, 2003, the parties exchanged witness lists, and Columbia disclosed the names of witnesses identified for the first time. NCRIC anticipates these names will be incorporated into Columbia's witness list in the Final Pretrial Statement.

Elizabeth Jackson

Francis Renee Perkins

Gideon Kioko

Jerome O'Connell

David Young

None of these persons (collectively, the "Newly Named Witnesses") had been included in two previous listings of witnesses provided by Columbia pursuant to D.C. Superior Court Rule 16 and the Court's Scheduling Order setting out the deadline for the exchange of witness lists. *See* Order dated May 16, 2001 attached as Ex. A. Nor were any of these individuals identified in response to NCRIC's discovery request seeking the names of individuals with relevant knowledge. Indeed, three of the proposed witnesses (Ms. Jackson, Ms. Perkins and Dr. Kioko) were only first identified *after the close of discovery* – in Columbia's Opposition to NCRIC's Motion for Summary Judgment. The two other witnesses, Dr. O'Connell and Mr. Young, were mentioned briefly in the depositions of Dr. Safa Rifka (O'Connell and Young) and Dr. Nabil Asterbadi (O'Connell). Columbia never amended its witness list or discovery response to include the names of these individuals. The prejudice to NCRIC is manifest. Columbia unfairly withheld this information and prevented NCRIC from obtaining any information about these witnesses.

Finally, in response to this Court's Order granting NCRIC's Motion to Compel Discovery, less than one month ago, Columbia named all five of the individuals in its answers to the supplemental interrogatories propounded by NCRIC. *See* Defendant's Objections and Responses to Plaintiff's Supplemental Interrogatories, No. 15, attached as Ex. B.

The belated designation of these individuals as trial witnesses by Columbia is an abuse of the orderly pretrial process by which the Court has managed this case. Permitting them to testify would unfairly prejudice NCRIC. Exclusion of this testimony would be an appropriate sanction under D.C. Superior Court Rule 16(b) (2) and the inherent authority of the Court. *See Nolan v. Nolan*, 568 A.2d 479, 487 (D.C. 1990) ("A trial court has inherent power to protect the integrity of the discovery process by imposing a wide range of sanctions for a party's violation of the discovery rules, including the exclusion of evidence.").

ARGUMENT

A. Exclusion is the Proper Remedy for Failure to Disclose Witnesses.

D.C. Superior Court Rule 16 mandates automatic disclosure of the names of potential witnesses. Rule 16(b)(2) states that "[n]o witness may be called at trial, except for rebuttal or impeachment purposes, unless he or she was named on the list filed by one of the parties on or before [the date set by the Court] or the calling party can establish that it did not learn of the witness until after this date." The Court's initial Scheduling Order set a deadline of June 12, 2001 to exchange witness lists. *See* Ex. A.

On March 12, 2001, Columbia served its Initial List of Fact Witnesses for Trial. *See* Ex. C. The list did not include any of the Newly Named Witnesses. On June 12, 2001, Columbia amended its list adding four new potential witnesses. *See* Ex. D. Again, none of the Newly Named Witnesses were identified. Columbia's witness submissions contained a reservation of rights to supplement the witness lists, but the record shows no such supplementation by Columbia in the three years that have elapsed since the last list was filed.[2/]

[2/] D.C. Super. Ct. Rule 16(e) further provides that no party may offer the testimony of any witness not listed in the *pretrial statement*. This provision clearly contemplates the earlier disclosure of witnesses pursuant to

Moreover, NCRIC sought in its First Set of Interrogatories:

> the names and addresses of any individuals who [Columbia] know[s] or believe[s] [to] have any information or knowledge of any matters concerning the subject matter of (i) this action, (ii) [Columbia's] defenses to [NCRIC's] claims, and (iii) [Columbia's counterclaims, including as to each individual: what the information is (or [Columbia] believes it to be) and whether the individual was an eye-witness or claims to have been eye-witnesses to the event(s) which is the subject of this litigation.

See Defendant's Objections and Responses to Plaintiff's First Set of Interrogatories dated November 27, 2000, No. 1, attached as Ex. E. None of the Newly Named Witnesses were identified in response to this interrogatory. Columbia now asserts that the Newly Named Witnesses have knowledge of the alleged 2000 statements which are the very foundation of Columbia's defamation, injurious falsehood, and tortious interference claims. Accordingly, there can be no credible argument that their identification does not fall squarely within the scope of NCRIC's interrogatory request.

In addition, Columbia never supplemented its discovery response with the names of the Newly Named Witnesses.[3/] D.C. Superior Court Rule 26 (f)(1) provides, in relevant part:

> A party is under a duty seasonably to supplement the [discovery] response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matter . . .

"The purpose of the duty to supplement is to prevent unfair surprise and to narrow and define the issues prior to trial so that the progress of the trial may be efficient and orderly." *Williams v.*

16(b)(2). To allow a party to first disclose a potential witness in the pretrial statement would undermine the purpose of pretrial discovery.

3/ On July 5, 2001, NCRIC served its Request for Supplementation of Discovery Responses seeking a supplementation of all prior discovery responses including Columbia's Response to NCRIC's First Set of Interrogatories in which Columbia identified those individuals with knowledge of matters relevant to its counterclaims. Ex. F.

Washington Hosp. Ctr., 601 A.2d 28, 34 (D.C. 1991). This Court may enforce the "duty of supplementation . . . through sanctions . . . including exclusion of evidence . . . ." *Corley v. BP Oil Corp.*, 402 A.2d 1258, 1261 (D.C. 1979); *Hollins v. Sneed*, 300 A.2d 447, 449 n.4 (D.C. 1973) (same); *Williams*, 601 A.2d at 34; *see also Freedmen's Hosp. v. Heath*, 318 A.2d 593, 595 (D.C. 1974) (striking testimony of expert based on late notification); *cf. Black v. Columbus Public Schs.*, 124 F. Supp. 2d 550, 561 (S.D. Ohio 2000) (striking the use of an affidavit of an individual pursuant to Rule 37(a)(1) because that individual was not named as a witness during discovery);[4/] *Wilson v. Bradlees of New England, Inc.*, 250 F.3d 10, 20-21 (1st Cir. 2001) (noting that Rule 37(c)(1) "requires the near automatic exclusion of Rule 26 information that is not timely disclosed . . . [and] it is the obligation of the party facing sanctions for belated disclosure to show that its failure to comply with the Rule was either justified or harmless and therefore deserving of some lesser sanction.").

Columbia's withholding of the names of its witnesses was not harmless. Allowing their testimony at this late date would unfairly prejudice NCRIC.

B. Permitting the Testimony of Newly Named Witnesses Would be Unfair.

It is self-evident that the lack of an opportunity to conduct discovery from witnesses who are expected to testify about meaningful issues puts NCRIC at a significant disadvantage. NCRIC suspects, based on the affidavits submitted in support of Columbia's Opposition to Summary Judgment and Columbia's belated discovery responses, that the

---

4/ The Federal Rules of Civil Procedure establish a substantially similar scheme regarding the exclusion of witnesses not properly identified during discovery. "[I]f a Superior Court rule is identical to or substantially identical to a corresponding federal rule, it would have, just as the federal rule, the force and effect of law." *In re C.A.P.*, 356 A.2d 335, 343 (D.C. 1976) (*citing Campbell v. United States*, 295 A.2d 498, 501 (D.C. 1972)); *see also Weiner v. Kneller*, 557 A.2d 1306, 1310 n.3 (D.C. 1989) ("Federal Rule of Civil Procedure 26(e)(1)(b) is identical to Super. Ct. Civ. R. 26(f)(1)(b) and federal cases interpreting it are therefore relevant to our interpretation of the latter rule, though not controlling.").

individuals will testify that they overheard individuals, alleged to be affiliated with NCRIC, that Columbia was going to close. *See* Defendant's Objections and Responses to Plaintiff's Supplemental Interrogatories, No. 15, attached at Ex. B; Declarations of Dr. O'Connell, Ms. Perkins and Ms. Jackson, Exs. 5, 7, and 8 to Columbia Opposition to NCRIC's Motion for Summary Judgment; attached as Ex. G-I. Based on these representations, it would be important to NCRIC to be able to learn from these individuals, prior to trial, the precise nature of their testimony since the alleged statements form the basis of Columbia's defamation, injurious falsehood claims and tortious interference claims. *See* Columbia counterclaims ¶¶ 123-34, 154-64. Without this discovery, NCRIC would have to essentially fly blind in cross-examining these witnesses because Columbia failed to disclose their identity. *See Corley*, 402 A.2d at 1262 (recognizing that "[t]he purpose of discovery is to explore everything available and narrow down the fact issues in controversy so that the trial process may be efficient and economical" and that late identified witnesses "would unfairly destroy the means for informative cross-examination on the basis of pretrial preparation").

Any suggestion that because the names of Mr. Kioko and Mr. O'Connell surfaced in depositions so that NCRIC could have deposed them is without merit. Probably close to one hundred names of individuals were discussed in depositions. To hold that this puts NCRIC on sufficient notice that Columbia may call these witnesses at trial would ignore that the purpose of providing identification of witnesses early on and timely supplementing such identification is so NCRIC is not forced to guess at who to depose.

If any assumptions NCRIC may hold about the relevant knowledge of the Newly Named Witnesses (and hence the purpose for their testimony) is incorrect, the cross-examiner would be at an even greater disadvantage. This uncertainty serves to illustrate NCRIC's

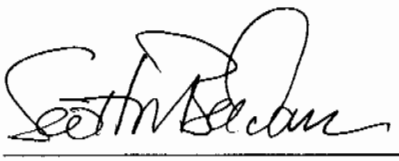
predicament. It cannot establish the extent of the harm of nondisclosure because it was prevented by the nondisclosure from learning in advance the details of the witnesses' testimony. Representations by Columbia at this late date about the Newly Named Witnesses and the nature of their testimony cannot cure the harm. Columbia willfully denied NCRIC the opportunity to learn about these Newly Named Witnesses through proper discovery. NCRIC must not now be forced to cross-examine these witnesses without having the opportunity to obtain discovery from them (or Columbia) concerning issues of relevance to the claims and defenses raised in this case.

CONCLUSION

Persuasive precedents and this Court's own procedures dictate that Columbia's Newly Named Witnesses not be allowed to testify at trial. NCRIC's motion to exclude them should therefore be granted.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

DC 244644

16d-002060

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

ORDER

UPON CONSIDERATION of NCRIC's Motion to Exclude the Testimony of Columbia's Newly Named Witnesses and the grounds stated in the Memorandum in Support thereof, it is this _____ day of ____ 2003 hereby

ORDERED, that NCRIC's Motion to Exclude the Testimony of Columbia's Newly Named Witnesses is **GRANTED**. The names of the following persons are stricken from the witness list of Columbia:

Elizabeth Jackson

Francis Renee Perkins

Gideon Kioko

Jerome O'Connell

David Young

Judge Anna Blackburne-Rigsby
District of Columbia Superior Court Judge

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

16d-002062

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, upon consideration of the points and authorities submitted by the parties, and for good cause shown, Defendant Columbia Hospital for Women Medical Center, Inc.'s Motion to Amend Scheduling Order is hereby GRANTED, and the Scheduling Order dated January 12, 2001 is amended as follows:

1. This case is transferred to Track 4; and

2. the deadlines for this case are amended to state as follows:

Deadline for discovery requests	6/12/01
Exchange witness lists:	6/12/01
Proponent's rule 26(b):	6/26/01
Opponent's rule 26(b):	7/12/01 for Defendant/Counter-Plaintiff and 7/26/01 for Plaintiff/Counter.
Discovery closes:	8/12/01
Deadline for filing motions:	8/27/01
Dispositive motions decided:	9/27/01
ADR:	10/12/01 - 11/12/01
Pretrial:	30~~60~~ days

SO ORDERED.

Judge Linda K. Davis

Dated: 5/16, 2001.

16d-002063

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Hearing, May 6, 2003
	)	
Defendant/Counter-Plaintiff.	)	

DEFENDANT'S OBJECTIONS AND RESPONSES
TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES

COMES NOW Defendant, Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by and through its attorneys, Mark C. Hansen, Esquire, David E. Ross, Esquire, Eli C. Schulman, Esquire, and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., and in response to Plaintiff's Supplemental Interrogatories ("Plaintiff's Interrogatories"), propounded by Plaintiff NCRIC, Inc. ("NCRIC"), states as follows:

GENERAL OBJECTIONS

The following General Objections apply to each and every interrogatory and form an integral part of Columbia's response to each interrogatory:

1. Columbia objects to Plaintiff's Interrogatories insofar as they seek information that Columbia already has provided to NCRIC in this litigation. The discovery at issue was sought by NCRIC at the outset of this case, some two and a half years ago. By the time that the parties completed discovery and undertook extensive briefing of cross-motions for summary judgment, Columbia had provided NCRIC with detailed discovery in the form of documents,

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SMF2 ¶¶ 35-36, 157-59; SJ Opp. at 51-53. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 15: Identify each and every individual who made any of the statements alleged to be defamatory that remain in Columbia's counterclaim and provide the statement or statements each individual is alleged to have made.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 15: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as it blatantly disregards the Court's express admonition that its Order authorizing NCRIC to serve these Supplemental Interrogatories "is not an opportunity for NCRIC to inquire more broadly than the subject matter stated in plaintiff's Notice of Deposition pursuant to Rule 30(b)(6)." Order of 4/7/03 at 1-2 n.1. That Notice identified the following topic (No. 10): "Defamatory actions or statements by plaintiff about defendant." That topic arguably encompasses Supplemental Interrogatory No. 17, which concerns the *substance* of the defamatory statements. But the subject matter of this Interrogatory – *who made* the defamatory statements – and the subject matter of Supplemental Interrogatory No. 16 – *who heard* the defamatory statements – is not fairly encompassed in Topic No. 10 of NCRIC's Notice of Deposition pursuant to Rule 30(b)(6) that was at issue in the motion to compel. Supplemental Interrogatory Nos. 15 & 16 thus plainly exceed the scope of the discovery authorized by the Court's Order.

Subject to and without waiving the foregoing objections, Columbia responds as follows:

(a) Dr. Leonard Glassman, Chairman of the Board of NCRIC, Inc., announced in Columbia's cafeteria on September 1, 2000 that (1) the Entity Policy covering Columbia's Clinic and the physicians working there (the Columbia Physicians Group ("CPG")) had expired; (2) CPG physicians with NCRIC individual medical malpractice insurance policies were not covered

under those policies when practicing at the Clinic; (3) Columbia's self-insurance trust fund was insufficiently funded to insure the Clinic; and (4) Columbia was planning to cease operations.

Many physicians overheard Dr. Glassman make these statements, including Dr. Nabil Asterbadi and Dr. Safa Rifka.

Also in about September 2000, staff members in the Radiology Department at Columbia, where Dr. Glassman worked, repeatedly overheard him telling patients to pick up their films and bring them to his office in the suburbs because Columbia was planning to close, and telling physicians employed by the Hospital to start looking for jobs elsewhere for the same reason. Those who heard these statements include Elizabeth Jackson and Francis Renee Perkins. Because Dr. Glassman's door was open, other radiology patients in the office also could hear his statements.

Around that same time, Dr. Glassman told another physician, Dr. Gideon Kioko, to move his group to Sibley, because (Dr. Glassman urged) Columbia was about to close. Other physicians who were eating in the cafeteria at the time heard these remarks – including Dr. Richard Newman, who shortly thereafter moved to Sibley, and Dr. Jerome O'Connell.

Later, Dr. Glassman told Dr. O'Connell in the hallway at Columbia that, because the hospital was closing, another physician, Dr. Evelyn Karson, was leaving.

(b) Dr. Morton Roberts, a physician who often passed along information from NCRIC purporting to speak on its behalf, informed a nurse anesthetist, David Young, in early July 2000 that Young should start looking for a job elsewhere because Columbia was closing. Dr. Roberts also made this statement to other staff members at about the same time. Dr. Asterbadi sent Dr. Roberts a cease-and-desist letter, in an effort to get him to cease disparaging Columbia.

(c) On or about September 1, 2000, a representative of NCRIC's Policyholder

Services Department (*i.e.*, either David Osborn, Eric Hempelman or Grant Sohm – the identity of the individual that made these statements is solely in NCRIC's possession, and NCRIC has not provided that information to Columbia) informed Attending Faculty member Dr. Heather Johnson that (1) the Entity Policy covering CPG physicians had expired; (2) CPG physicians with NCRIC medical malpractice insurance were not covered under their individual policies when practicing at the Clinic; (3) Columbia's self-insurance trust fund was insufficiently funded to insure the CPG and its physicians; and (4) due to the Retro Plan's termination, Columbia was ceasing operations.

A representative of NCRIC's Policyholder Services Department also made these statements to other physicians, including Dr. Edward Koch, who also is a member of NCRIC's Board of Directors.

Dr. Koch and Dr. Johnson informed Columbia's management and other physicians at Columbia what they had been told.

Other unnamed individuals heard and repeated the defamatory statements, as well.

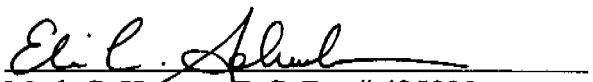
The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SMF2 ¶¶ 160-75 and SJ Opp. at 30-44. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 16: Identify each and every individual who heard any of the statements alleged to be defamatory that remain in Columbia's counterclaim and indicate what statement was allegedly heard.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 16: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia further responds as follows: Columbia incorporates by reference its Objections and Response to Interrogatory No. 15.

DATED: May 14, 2003

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 14th day of May, 2003, a copy of the foregoing *Defendant's Objections and Responses to Plaintiff's Supplemental Interrogatories* was served upon the following by FedEx:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Eli C. Schulman

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Deadline for Discovery
MEDICAL CENTER, INC.,	)	Requests, March 12, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DEFENDANT'S INITIAL LIST OF FACT WITNESSES FOR TRIAL

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby submits the following initial list of fact witnesses who may be called at trial:

1. R. Ray Pate, Jr.
2. Larry Wilson, Jr.
3. Robert Greenfield, Jr., M.D.
4. Melinda Murray
5. Ann Gaffey
6. Gerald Beaulieu
7. Thomas Foley
8. Dwaine Gasser
9. Susan Hansen
10. James Rodgers
11. Dana Serafin Carey
12. Michael R. Feldman
13. Nabil Asterbadi, M.D.
14. Safa Rifka, M.D.
15. Daryl Chamblee

16. Lynn Petersons

17. Patrick Kane

18. David Little

19. Jeffrey Marsh

20. Grant Sohm

21. Stephen Fargis

22. William Burgess

23. Diana Winter

24. Henry Chukwueizi

25. David Osborne

26. Harry Custis

27. George Samman

28. Herman Hunter

29. Lawrence Mirel

30. Colin van Niel

31. Robert Sloan

32. Michael Poe

33. Nancy Connolly

34. Any person involved in any way with calculation of NCRIC's loss reserves under the Retrospective Ration Plan Agreement between the parties

35. Any current or past member of the Attending Faculty, including any member of the Attending Faculty who moved his or her practice to Sibley Memorial Hospital.

36. Any current or past member of the Columbia Physician's Group.

37. All persons listed on any fact witness list of Plaintiff NCRIC, Inc.

38. Any attendee at the August 1998 meeting attended by NCRIC and Attending Faculty, as described in the Amended Answer and Counterclaims.

39. As discovery in this matter is continuing, Defendant reserves the right to supplement this List to include any and all individuals identified in discovery.

40. Columbia reserves the right to modify this List in the event that its pending motion to amend the Court's January 12, 2001 scheduling order is granted.

Dated: March 12, 2001.

Respectfully Submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-002072

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Deadline for Discovery Requests, June 12, 2001
	)	
Defendant.	)	
	)	

DEFENDANT'S LIST OF FACT WITNESSES FOR TRIAL

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby submits the following list of fact witnesses who may be called at trial:

1. R. Ray Pate, Jr.
2. Larry Wilson, Jr.
3. Robert Greenfield, Jr., M.D.
4. Melinda Murray
5. Ann Gaffey
6. Gerald Beaulieu
7. Thomas Foley
8. Dwaine Gasser
9. Susan Hansen
10. James Rodgers
11. Dana Serafin Carey
12. Michael R. Feldman
13. Nabil Asterbadi, M.D.
14. Safa Rifka, M.D.
15. Daryl Chamblee
16. Lynn Petersons
17. Patrick Kane
18. David Little
19. Jeffrey Marsh
20. Grant Sohm
21. Stephen Fargis
22. William Burgess
23. Diana Winter
24. Henry Chukwueizi
25. David Osborne
26. Harry Custis
27. George Samman, M.D.
28. Herman Hunter
29. Lawrence Mirel
30. Colin van Niel

31. Robert Sloan

32. Michael Poe

33. Nancy Connolly

34. Raul Galarraga

35. Barbara Hayes

36. Elnora Johnson

37. Robert Winfrey

38. Any person involved with calculating NCRIC's loss reserves under the Retrospective Rating Plan Agreement between the parties

39. Any current or former member of the Columbia Physician's Group.

40. All persons listed on any fact witness list of Plaintiff NCRIC, Inc.

41. All persons listed in Plaintiff NCRIC, Inc.'s response to Columbia's Interrogatory 13.

42. All persons listed in Plaintiff NCRIC, Inc.'s response to Columbia's Interrogatory 16.

43. Any attendee at the August 1998 meeting attended by NCRIC and Attending Faculty, as described in the Amended Answer and Counterclaims.

44. Any current or former member of the Attending Faculty, including any member of the Attending Faculty who moved his or her practice to, or applied for privileges at, Sibley Memorial Hospital or George Washington University Hospital from 1998 to 2001.

This list supercedes Defendant's Initial List of Fact Witnesses for Trial (March 12, 2001).

As discovery in this matter is continuing, Defendant reserves the right to supplement this List to include any and all individuals identified in discovery.

16d-002074

Dated: March 12, 2001.

Respectfully Submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-002075

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Diaz
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Court Event: Initial Conf., Jan. 1, 2001
	)	
Defendant.	)	

DEFENDANT'S OBJECTIONS AND RESPONSES
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

COMES NOW Defendant, Columbia Hospital for Women Medical Center, Inc. ("Medical Center"), by and through its attorneys, Mark C. Hansen, Esquire, Steven F. Benz, Esquire, Joseph K. Leahy, Esquire, and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., and in response to Plaintiff's First Set of Interrogatories ("Plaintiff's Interrogatories"), propounded by Plaintiff NCRIC, Inc. ("NCRIC"), states as follows:

GENERAL OBJECTIONS

The following General Objections apply to each and every interrogatory and form an integral part of Medical Center's response to each interrogatory:

1. Defendant Medical Center objects to Plaintiff's Interrogatories insofar as they seek disclosure of information protected by the peer review privilege, the attorney-client privilege, the work-product privilege, the party-communication privilege or the investigative privilege. Medical Center further objects to Plaintiff's Interrogatories insofar as they call for information otherwise protected under the District of Columbia Superior Court Rules of Civil Procedure or any other

applicable law. Medical Center does not intend by these responses or objections, or by the inadvertent production of any privileged documents, to waive any protection to which it is entitled.

2. Medical Center objects to the numbering of Plaintiff's Interrogatories insofar as some of the interrogatories have "subparts" that constitute more than one interrogatory as defined by District of Columbia Superior Court Rules of Civil Procedure 33(a).

3. Medical Center objects to Plaintiff's Interrogatories insofar as the information sought by such interrogatories is more appropriate for disclosure in deposition and can be more efficiently and less burdensomely obtained thereby.

4. Medical Center objects to Plaintiff's Interrogatories to the extent that they are vague, ambiguous, overly broad, burdensome, harassing, and/or not reasonably calculated to lead to the discovery of admissible evidence in this action.

5. Medical Center objects to Plaintiff's Interrogatories insofar as they seek information that is already in NCRIC's possession.

6. Medical Center objects to Plaintiff's Interrogatories insofar as they seek information not in Medical Center's possession.

7. Medical Center has not yet completed its investigation relating to the litigation and anticipates that as the litigation proceeds, further information may be discovered. Medical Center reserves the right to modify or supplement its objections and responses based on such pertinent information as it may subsequently discover.

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1: State the names and addresses of any individuals who you know or believe have any information or knowledge of any matters concerning the subject matter of (i) this action, (ii) your defenses to plaintiff's claims, and (iii) your counterclaims, including as to each individual: what that information is (or you believe it to be), and whether the individual was an eye-witness or claims to have been eye-witnesses to the event(s) which is the subject of this litigation.

RESPONSE TO INTERROGATORY NO. 1: See General Objections. Medical Center specifically objects to Interrogatory No. 1, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client privilege and/or the work-product privilege. Medical Center also objects to this Interrogatory insofar as it is vague and ambiguous. This interrogatory is vague and ambiguous because, among other reasons, it is not clear what event or events this Interrogatory refers to as "the subject of this litigation."

Subject to and without waiving the foregoing objections, Medical Center responds that it knows or believes that the following people possess knowledge or information concerning NCRIC's claim, Medical Center's defenses thereto, and/or Medical Center's counterclaims:

Persons Believed to Possess Information or Knowledge	**Subjects About Which Person Is Believed to Possess Information or Knowledge**
Mr. Larry Wilson, Jr. President and CEO Columbia Hospital for Women Medical Center 2425 L Street, N.W. Washington, D.C. 20037 (202) 293-6500	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • NCRIC's Negligent and Improper Administration of the Plan • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Robert T, Greenfield, Jr., M.D. 3300 Pennsylvania Avenue, SE Washington, DC 20020 (202) 479-2800	• 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

Melinda Murray 3331 Stuyvesant Place Washington, DC 20015 [no forwarding number]	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • 1996 Amendments and Renewal • January 1998 Renewal
Ann Gaffey 1937 N. Utah Street Arlington, VA 22207 (703) 841-5122	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • January 1998 Renewal • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Gerald Beaulieu 1639 Park Road, NW #2 Washington, DC 20010 (202) 216-2347	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • January 1998 Renewal • September 1998 Renewal
Dwaine Gasser 6203 Glenshawn Row Alexandria, VA 22315	• September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Susan Hansen 6925 Scotforth Rd. Philadelphia, PA 19119 [no known number]	• NCRIC's Obligations Under the Plan • 1996 Amendments and Renewal
James Rodgers, President The CIMA Companies 316 South Peyton Street Alexandria, VA 22314 (703) 739-9300	• Background to the Plan • NCRIC's Proposal and Representations to Medical Center • Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan
Dana Serafin Carey, R.N. Vice Pres., Health Care Practice Aon Risk Services 1120 20th Street, NW, Suite 600 Washington, DC 20036	• Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

Michael R. Feldman, Senior Vice President Riggs, Counselman, Michaels and Downes, Inc. 555 Fairmont Avenue Baltimore, MD 221286 (410) 583-5443	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • Medical Entity Policy • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Nabil Asterbadi, M.D. 2440 M Street, NW -- Suite 703 Washington, DC 20037 (202) 822-8368	• NCRIC's Obligations Under the Plan • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Safa Rifka, M.D. 2440 M Street, NW -- Suite 401 Washington, DC 20037 (202) 293-2042	• NCRIC's Obligations Under the Plan • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Daryl A. Chamblee Steptoe & Johnson LLP 1330 Connecticut Avenue, N.W. Washington, DC 20036 (202) 429-3000	• September 1998 Renewal
Lynn L. Petersons Nichols & Associates, Inc. 1800 John F. Kennedy Boulevard Philadelphia, PA 19103 (215) 587-1200	• September 1998 Renewal
Patrick E. Kane, (former President & CEO) 1806 Merrifields Drive Silver Spring, MD 20906 (301) 598-6422	• Background to the Plan • Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan

16d-002080

David K. Little, (former President) NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• Background to the Plan • Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan
Jeffrey Marsh NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• NCRIC's Obligations Under the Plan • 1996 Amendments and Renewal • September 1998 Renewal • Medical Entity Policy
Grant Sohn, Director of Underwriting NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy
Steve Fargis, President, and David Osborne, Vice President NCRIC, Inc. 2710 Wisconsin Avenue Washington, D.C. 20007 (202) 342-6690	• Premium Calculations Under the Plan • NCRIC's Obligations Under the Plan • NCRIC's Negligent and Improper Administration of the Plan • 1996 Amendments and Renewal • September 1998 Renewal • Medical Entity Policy • 1999 Renewals • Failed 2000 Renewal Negotiations and NCRIC's Cancellation of the Medical Entity Policy

INTERROGATORY NO. 2: Identify any individuals you intend to call at the trial of this matter and state the subject matter and information known as to each.

RESPONSE TO INTERROGATORY NO. 2: See General Objections. Medical Center specifically objects to Interrogatory No. 2 insofar as it is premature at this early stage of the litigation. Subject to and without waiving the foregoing objections, Medical Center responds as follows: Medical Center has not presently identified any of the witnesses it expects to call at

16d-002081

Subject to and without waiving the foregoing objections, Medical Center responds by referring NCRIC to the detailed allegations set forth in Medical Center's Answer and Counterclaims and to its Objections and Response to Plaintiff's First Request for Admissions.

INTERROGATORY NO. 15: Describe all of your oral communications with persons other than plaintiff and its agents or representatives, including Michael Feldman, concerning the subject matter of (i) this action, (ii) your defenses to plaintiff's claims, and (iii) your counterclaims.

RESPONSE TO INTERROGATORY NO. 15: See General Objections. Medical Center specifically objects to Interrogatory No. 15, and will not respond thereto insofar as it seeks disclosure of information protected by the attorney-client and/or the work-product privileges.

Subject to and without waiving the foregoing objections, Medical Center will respond by producing selected non-privileged, business records pursuant to District of Columbia Superior Court Rule of Civil Procedure Rule 33(d).

DATED: November __, 2000

Respectfully submitted,

Mark C. Hansen
D.C. Bar No. 425930
Steven F. Benz
D.C. Bar No. 428026
Joseph K. Leahy
D.C. Bar No. 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-002082

DISTRICT OF COLUMBIA) ss.

I, Larry K. Wilson, Jr., of Columbia Hospital for Women Medical Center, Inc., being duly sworn on behalf of Columbia Hospital for Women Medical Center, Inc. ("Medical Center"), Defendant in the above-entitled action, depose and say that I am the President and Chief Executive Officer of Medical Center, that I am authorized to respond to Plaintiff's First Set of Interrogatories ("Plaintiff's Interrogatories") on behalf of Medical Center, that I have read Plaintiff's Interrogatories and know the contents thereof, and that the same is true of my own knowledge, except as to the matters that are stated on information and belief, and, as to those matters, that I believe them to be true.

Larry K. Wilson, Jr.

Subscribed and sworn to before me
this 27th day of November 2000.

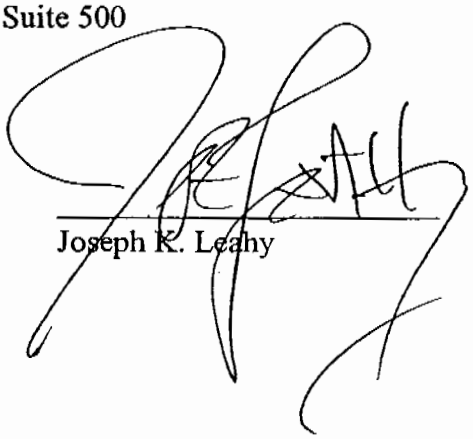
Notary Public

My commission expires: J. TERRELL
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires October 31, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of November 2000, I caused one copy of Defendant's Objections and Responses to Plaintiff's First Request for Admissions, Defendant's Objections and Responses to Plaintiff's First Set of Document Requests, and Defendant's Objections and Responses to Plaintiff's First Set of Interrogatories to be served upon the following by First Class Mail:

Roy I. Neidermayer, Esq.
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814



Joseph K. Leahy

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery deadline
	)	8/12/01
Defendant.	)	

REQUEST OF PLAINTIFF TO DEFENDANT FOR SUPPLEMENTATION OF DISCOVERY RESPONSES

Plaintiff, by counsel, pursuant to the Superior Court Rule 26(f)(3) requests that defendant supplement its prior discovery responses and in particular supplement the following answers to interrogatories and responses to requests for production of documents with particular regard to defendant's calculation of damages and experts' opinions:

1. Plaintiff's First Set of Interrogatories Nos. 6, 7, and 12.

2. Plaintiff's First Requests for Production of Documents Nos. 2 and 6.

3. Plaintiff's Second Requests for Production of Documents Nos. 2, 4, 7, 13, 36 and 37.

/s/

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-007308
	)	Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	)	Judge Linda Kay Davis
	)	Next Event: Discovery close 5/12/01
	)	
Defendant.	)	

CERTIFICATE OF SERVICE OF DISCOVERY

I HEREBY CERTIFY, that on July 5, 2001, a copy of the plaintiff's Request of Plaintiff to Defendant for Supplementation of Discovery Responses was sent by facsimile transmission and mailed, first class mail, postage prepaid to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

/s/

Roy I. Niedermayer, Esq. #180380
7475 Wisconsin Avenue, Suite 500
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DECLARATION OF JEROME O'CONNELL, SR., IN SUPPORT OF DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NCRIC'S MOTION FOR SUMMARY JUDGMENT

JEROME O'CONNELL, SR., affirms the following under penalty of perjury:

I am over 18 years of age. I have personal knowledge of the facts stated herein, and if called as a witness, I could testify competently thereto.

1. I am Chief of the Pathology Department at Columbia Hospital for Women Medical Center ("Columbia"), a position I have held since July 1, 2000.

2. In approximately late 2000, in the cafeteria at Columbia, I overheard Dr. Leonard Glassman, a member of NCRIC's Board of Directors, tell Dr. Gideon Kioko that Columbia was going to close. During this conversation, Dr. Glassman also told Dr. Kioko that he should move his practice to Sibley Memorial Hospital and use Georgetown for neonatology. Other physicians present, including Dr. Richard Newman, also witnessed these statements.

3. At around the same time, in a hallway outside of Columbia's Clinic, Dr. Glassman informed me that Dr. Evelyn Karson was leaving Columbia because the hospital was

closing. Dr. Karson subsequently confirmed that she was leaving Columbia because (she believed) the hospital was closing, and further, that Dr. Glassman had encouraged her to leave.

16d-002088

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, DC
February 27, 2002

Jerome O'Connell, Sr.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DECLARATION OF FRANCIS RENEE PERKINS IN SUPPORT OF DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NCRIC'S MOTION FOR SUMMARY JUDGMENT

FRANCIS RENEE PERKINS affirms the following under penalty of perjury:

I am over 18 years of age. I have personal knowledge of the facts stated herein, and if called as a witness, I could testify competently thereto.

1. I am employed as Director of Radiology of the Radiology Department at Columbia Hospital for Women Medical Center ("Columbia"), a position I have held for approximately twelve years.

2. In October 2000, I overheard Dr. Leonard Glassman, talking loudly on the telephone in the Department, repeatedly tell other physicians not to refer patients to the Radiology Department anymore because Columbia was planning to close.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, DC
February 28, 2002

Francis Renee Perkins

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

DECLARATION OF ELIZABETH JACKSON IN SUPPORT OF DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NCRIC'S MOTION FOR SUMMARY JUDGMENT

ELIZABETH JACKSON affirms the following under penalty of perjury:

I am over 18 years of age. I have personal knowledge of the facts stated herein, and if called as a witness, I could testify competently thereto.

1. I am employed as Chief Technician of the Radiology Department at Columbia Hospital for Women Medical Center ("Columbia"), a position I have held for approximately eleven years.

2. In September 2000, on several occasions, I overheard Dr. Leonard Glassman, talking loudly on the telephone in the Department's ultrasound room, telling patients to pick up their films and bring them to his office in the suburbs because Columbia was planning to close. The door to the ultrasound room was open when he made these statements, so I could hear him from across the hall in the reading room. Patients in the ultrasound room next door also overheard his statements.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, DC
February 28, 2002

Elizabeth Jackson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion, Statement of Points and Authorities in Support and Proposed Order were served this 5th day of June 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

16d-002094

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference-- June 19, 2003**
Defendant.	

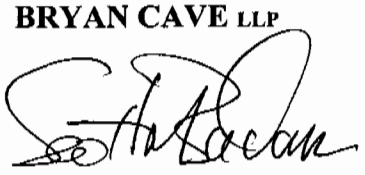
NCRIC'S MOTION TO REQUIRE DEFENDANT TO PROVIDE SECURITY FOR COSTS

Pursuant to D.C. Superior Court Rule 54-I and 54-II and under the equitable power of the Court, for the reasons stated in the attached Memorandum in Support, Plaintiff NCRIC, Inc. ("NCRIC") moves that the Court order Defendant Columbia Hospital for Women Medical Center Inc. ("Columbia") to post a bond or provide other security to secure Columbia's obligation to pay NCRIC the costs available to a prevailing party under the rules. Pursuant to D. C. Superior Court Rule 12-I(e), a Proposed Order and Statement of Points and Authorities in Support of this Motion are also attached.

Oral Hearing Requested.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

CERTIFICATION REQUIRED BY D.C. SUPERIOR COURT RULE 12-I(a)

Counsel for Plaintiff NCRIC, Inc. certifies pursuant to Rule 12-I (a) that the parties discussed this motion during a telephone conference on June 3, 2003 and consent from counsel for Defendant Columbia Hospital for Women could not be and was not obtained. Accordingly, this motion is necessary for Plaintiff NCRIC, Inc. to obtain the necessary relief.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	**Judge Blackburne-Rigsby**
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference-- June 19, 2003**
Defendant.	

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO REQUIRE DEFENDANT TO PROVIDE SECURITY FOR COSTS

Under D.C. Superior Court Rule 54(d), trial judges have the discretion to award costs (such as witness fecs, expert fees, copying, and deposition transcripts) to the prevailing party. *See, e.g., Harris v. Sears Roebuck & Co.*, 695 A.2d 108 (D.C. 1997). Plaintiff NCRIC, Inc. ("NCRIC") requests this Court to exercise its discretion to require defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") to post a bond or other security in this case to ensure Columbia is able to pay costs associated with the trial in this action.

Although not produced during discovery to NCRIC or sent directly to NCRIC as a valid creditor of the hospital, Columbia has sent letters to other creditors in which Columbia describes that "there are no remaining assets available to satisfy these debts and claims." *See* Columbia's October 15, 2002 Letter at 1, attached as Exhibit A. The letter further requests of its creditors that "pending litigation ... be ceased and no additional litigation initiated" as "no funds are available to pay debts owed or judgment obtained." *Id.* This letter is signed by two individuals who identify themselves as Liquidating Trustees of Columbia. Thus, it is clear that,

on the one hand, Columbia is attempting to convince certain creditors to dismiss meritorious claims pending against the hospital because Columbia will not be able to pay, while at the same time Columbia is proceeding with the instant case as if nothing has changed.

Even if Columbia were proceeding *in forma pauperis* (which it has not so claimed), that fact alone "does not absolve a party from the ultimate responsibility of paying the costs of litigation." *Robinson v. Howard Univ.*, 455 A.2d 1363, 1366 (D.C. 1983). The D.C. Court of Appeals has made clear that no party should be entirely relieved of the costs of litigation because:

> [paying costs] ensures that an indigent party, like any other litigant, will have access to the courts for the resolution of disputes, but will weigh the costs of litigation against the likelihood of success before proceeding in court.

Id. at 1367.

Columbia portrays itself as "judgment proof" when any party presents a valid claim to it while still attempting to recover on weak or non-existent claims here. Here, perhaps because Columbia has raised numerous counterclaims, it pretends that it is still a financially responsible litigant. This Court should exercise its discretion under Rule 54 to require Columbia to post a bond or other security to protect NCRIC in the event, as NCRIC expects, Columbia fails on its claims and then attempts to avoid payment of valid costs and fees incurred in a lengthy jury trial.

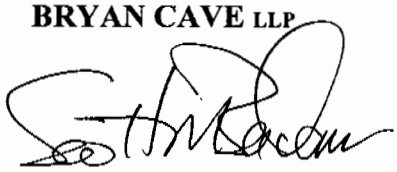
A bond is particularly appropriate here as NCRIC has not been provided with Columbia's decree of dissolution or its plans for distribution of assets as set forth in D.C. law. *See* D.C. Code § 29-301.48. NCRIC believes that the self-identified "Liquidating Trustees" of Columbia may be responsive to any valid order of this Court awarding costs.

It would be patently unfair to NCRIC to allow Columbia to incur substantial costs in this case after Columbia has publicly informed other creditors and litigants – but not this Court – that it is financially unable to pay anything to creditors. The only way to prevent an abuse being visited on NCRIC is for this Court to require Columbia to provide security in the form of a bond, or otherwise, in an amount reasonably calculated to cover awardable costs during a lengthy, multi-witness jury trial. NCRIC believes a reasonable amount for such security will be $35,000.00.

The Court has ample authority in the exercise of its inherent equitable power to prevent Columbia from proceeding to trial without providing necessary security.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: June 5, 2003

DC244784

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

ORDER

UPON CONSIDERATION of Plaintiff NCRIC's Motion to Require Columbia to Post a Bond or Other Security, the Memorandum in Support, and any opposition, it is this _____ day of ____ 2003 hereby

ORDERED, that NCRIC's Motion is **GRANTED** and that Columbia is required to post a bond or other security with the Court in the amount of $35,000.00.

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

EXHIBIT A

COLUMBIA HOSPITAL FOR WOMEN & MEDICAL CENTER

October 15, 2002

Brault, Graham, Scott &
Brault, L.L.C.
1140 Connecticut Avenue - Suite 250
Washington, DC 20036

RE: Columbia Hospital for Women Medical Center, Inc., (the "Hospital")

Dear Sir/Madam:

The records of the Hospital indicate that you may be a creditor of or claimant against the Hospital, and this letter is being forwarded to you pursuant to §29-301.47 of the District of Columbia Code in order to advise you of the status of the Hospital's financial affairs.

The Hospital's assets included its real estate located at 2425 L Street, NW., Washington, DC 20037 (the "Real Estate"), accounts receivable (the "Receivables") and equipment (the "Equipment"). As you may know, these assets have been encumbered by indebtedness, which exceeds the Collective value of these assets. The Real Estate and much of the Equipment has been sold to unrelated and unaffiliated third parties, and the proceeds of such sales were substantially less than the indebted secured thereby. The Receivables have been placed in the hands of a third party for collection, and after payment if amounts outstanding to the Hospital's accounts receivable lender (including, interest, late charges, etc.), and costs of collection, it is unlikely that any significant amount will be available for unsecured creditors. In light of these circumstances, the Hospital will be unable to pay you any additional amounts or satisfy any claims you may now or hereafter have against the Hospital. Unfortunately, there are no remaining assets available to satisfy these debts and claims.

Although the Hospital has pursued an orderly liquidation of its assets, the debts of and claims against the Hospital far exceed its assets. Regretfully, there is no further action the Hospital can take to alter this situation.

The undersigned have been appointed as Liquidating Trustees, to continue the wind-down of the affairs of the Hospital. We expect the continuing wind-down will take between 90 to 120 days, during which time we will be addressing any remaining medical-related or business issues that may arise. You may contact us at (202)293-6512, but please understand that the Hospital has virtually no remaining assets, and no additional payments are expected to be made to you or your organization. In light of the unavailability of any assets for recovery, we would hope that pending litigation would be ceased and no additional litigation initiated, but of course, that is in your discretion. We would like to make it clear, however, that the Hospital's operations have ceased, and no funds are available to pay debts owed or judgments obtained.

Again, we regret having to advise you of this situation, and more importantly, we regret the loss of Columbia Hospital for Women, which has served our community well for more than 100 years.

Very truly yours,

Michael M. Barch, Liquidating Trustee

Robin C. Newton, M.D., Liquidating Trustee

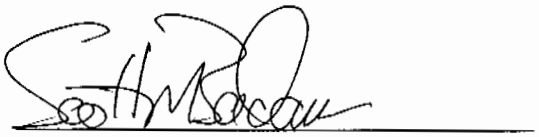
16d-002104
CONFIDENTIAL
NCRIC 005246

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion, Statement of Points and Authorities in Support and Proposed Order were served this 5th day of June 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women



Scott M. Badami

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference, July 31, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S OPPOSITION TO NCRIC'S MOTION TO COMPEL AND FOR SANCTIONS PURSUANT TO RULES 33(b) and 37(a)

Mark C. Hansen
David E. Ross
Eli C. Schulman
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036-3209
(202) 326-7900 – Telephone

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

June 19, 2003

TABLE OF CONTENTS

BACKGROUND 5

ARGUMENT 7

I. NCRIC'S MOTION IS PROCEDURALLY BARRED AND SHOULD BE SUMMARILY DENIED 7

A. NCRIC Failed To Meet in an Effort To Resolve the Matter Before Filing this Motion 7

B. NCRIC Failed To Seek Leave of Court Before Filing this Motion 8

II. COLUMBIA'S INTERROGATORY RESPONSES ARE COMPLETE 9

A. Columbia's Referencing Previously Submitted Materials Is Entirely Proper 9

B. NCRIC Is Unable to Identify Any Response That Is Not Complete 11

1. Columbia's Response to Supplemental Interrogatory No. 3 Is Complete 11
2. Columbia's Responses to Supplemental Interrogatory Nos. 5-7, 10-11 Are Complete 13
3. Columbia's Responses to Supplemental Interrogatory Nos. 8-9, 12-13 Are Complete 16
4. Columbia's Responses to Supplemental Interrogatory Nos. 15-17 Are Complete 16
5. Columbia's Response to Supplemental Interrogatory No. 19 Is Complete 17
6. Columbia's Response to Supplemental Interrogatory No. 20 Is Complete 18

C. Columbia's Objections Are a Non-Issue 20

III. COLUMBIA'S RULE 30(b)(6) WITNESS GAVE COMPLETE RESPONSES 23

A. NCRIC Fails to Show that Columbia Did Not Respond to Any Question 23

B. Dr. Rifka Adequately Answered NCRIC's Questions 24

1. Dr. Rifka Adequately Answered NCRIC's Questions on the Attending Faculty 24
2. Dr. Rifka Adequately Answered NCRIC's Questions on NCRIC's Awareness of Columbia's Financial Situation 26
3. Dr. Rifka Adequately Answered NCRIC's Questions on Doctors Leaving Columbia 27
4. Dr. Rifka Adequately Answered NCRIC's Questions on Preventing Performance 27
5. Dr. Rifka Properly Referred to Other Case Materials 28

C. NCRIC's Unauthorized Document Requests Were Improper, and NCRIC Has Not Even Attempted to Justify Them 28

CONCLUSION 30

16d-002107

NCRIC's motion is but one more in a series of last-ditch efforts to delay a trial on the merits by seeking to prolong discovery. The suggestion that NCRIC has not had an opportunity to learn the facts underlying Columbia's counterclaims cannot withstand actual review of either Columbia's interrogatory responses or of the deposition transcript of Columbia's Rule 30(b)(6) designee. Nor can NCRIC's accusations be squared with the entire record of the extensive discovery to which NCRIC has had access in this case. The motion is baseless and should be denied.

As a threshold matter, NCRIC's motion is procedurally barred. NCRIC failed to comply with this Court's General Order by declining to hold a "reasonable," "face to face" meeting in an effort to resolve this matter before filing this motion. And NCRIC failed to comply with Superior Court rules requiring leave of court to file a discovery motion after the discovery period set by the Court's Scheduling Order has closed. These are more than shortcomings in technical compliance; these failures improperly defy a framework that seeks both to avoid needless disputes and to rein in boundless discovery. (Point I, *infra.*)

Even looking to the merits, NCRIC's complaints concerning Columbia's interrogatories are unfounded. NCRIC elevates form over substance, failing to point to anything that makes Columbia's answers incomplete.

First, NCRIC objects that Columbia's interrogatory responses ("Responses") refer to previously submitted materials. Though NCRIC would have the Court believe that Columbia has done no more than reference other materials, in each instance Columbia in fact has made such references by way of supplementation, only after first supplying a detailed, self-standing response. Moreover, as explained more fully below, referencing other materials in a discovery response is entirely proper. It is particularly so in the unusual posture present here, where the

parties' positions were necessarily fleshed out in detail throughout the course of extensive summary judgment briefing, including the painstaking preparation by Columbia of detailed statements of material facts, which lay out the factual bases for Columbia's claims. NCRIC's interrogatories ask questions that are answered straightforwardly in those materials. (Point II.A., *infra*.)

Again elevating form over substance, NCRIC objects that Columbia answered one interrogatory by incorporating by reference an earlier response. There is nothing improper about incorporating by reference, and NCRIC offers no basis for concluding that there is – particularly where doing so merely makes use of an earlier comprehensive response that went beyond what may have been strictly necessary in crafting a coherent response. (Point II.B.1, *infra*.)

In those instances in which NCRIC does attempt to point to actual facts allegedly missing from Columbia's Responses, that feeble effort in fact demonstrates how far NCRIC has overreached in this motion. For instance, NCRIC complains that in response to interrogatories about damages, Columbia has not provided evidence of causation. But the interrogatories at issue did not come close to asking for any information about causation. Those interrogatories asked, as to each of Columbia's claims, as follows: "Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count [1-11] of its counterclaim and describe how that amount has been calculated." *See* Supp. Interrogs. Nos. 5-14 (attached to NCRIC's Mem. as Exh. A). Inquiry into the amount of damages suffered and how that amount has been calculated plainly does not require an excursion into causation. It is *NCRIC*'s obligation to "frame an interrogatory calculated to elicit [the] information" that NCRIC desires. *See, e.g., Wolf v. Dickinson*, 15 F.R.D. 407, 408 (E.D. Pa. 1953). Its failure to do so does not justify a motion to compel. (Point II.B.2, *infra*.)

NCRIC similarly complains that it is unable to determine Columbia's asserted contract damages. But it is difficult to understand how Columbia could be more specific than it was in its answer to NCRIC's interrogatory on the subject: Columbia provided a dollar figure down to the penny. *See* Response to Supp. Interrog. No. 5 (identifying damages for breach of contract of $765,347.49) (attached to NCRIC's Mem. as Exh. B).[1] Indeed, Columbia's Response specifies both the amount and, in detail, the specific calculations that yield this figure. *See id.* (Point II.B.6, *infra.*)

NCRIC also objects to certain Responses on the ground that Columbia has provided new information – specifically, damages arising out of Columbia's bankruptcy. Setting aside the irony of the assertion, it is wrong. Columbia identified the matter as far back as its counterclaims themselves and produced documents substantiating the point, as well. (Point II.B.2, *infra.*)

NCRIC makes unjustified assumptions that create issues where none exist. NCRIC objects to Columbia's referencing unnamed individuals who heard and repeated NCRIC's defamatory statements. But Columbia is not seeking to conceal trial witnesses, as NCRIC assumes. Rather, Columbia is producing evidence relevant to the extent of the statements' circulation, as it is entitled to do for purposes of establishing damages from the defamation. (Point II.B.4, *infra.*)

Driving home its attempt to use this discovery as an excuse to re-litigate summary judgment, NCRIC argues that Columbia allegedly has withheld information "lest this Court

[1] As further explained in Response No. 5, Columbia also deems the $1 million deposit demanded by NCRIC to be a breach of the parties' oral agreement, and has alleged that that payment caused Columbia to become insolvent, leading to some $1.5 million in bankruptcy expenses. NCRIC's criticism regarding Columbia's contract damages center on the calculation of Return Premium due to Columbia under the parties' contract itself.

discover what little substance there is behind Columbia's outward swagger." Statement of Points and Authorities in Support of NCRIC's Motion to Compel and for Sanctions Pursuant to Rules 33(b) and 37(a) ("NCRIC Mem.") at 8. Of course, the Court already has evaluated the "substance" of Columbia's claims, finding that Columbia has created material issues of fact requiring resolution by a jury. Similarly, NCRIC's rehashing of its argument at summary judgment that Columbia depends on statements of counsel rather than on evidence supporting its claims is also stale and irrelevant at this point in the proceedings. (Point II.B.1, *infra.*)

In sum, NCRIC's motion papers are filled with conclusory statement after conclusory statement alleging that Columbia's Responses are inadequate. But NCRIC offers little detail concerning specific information that NCRIC believes it is lacking. And the information that NCRIC wishes it had simply was not called for by NCRIC's interrogatories. Columbia's answers are complete and warrant neither further discovery nor sanctions. (Point II, *infra.*)

NCRIC's throw-in complaints about the Rule 30(b)(6) deposition are no more availing. NCRIC merely lists topics about which NCRIC claims Columbia's designee, Dr. Safa Rifka, failed to respond. But NCRIC does not even attempt to demonstrate how any specific answers by Dr. Rifka fall short of adequately answering the particular questions posed, as NCRIC must under Superior Court Rule 37(a). (Point III.A., *infra.*) Nor could it, because the record shows otherwise. In only one of the instances raised by NCRIC was Dr. Rifka arguably unable to respond to NCRIC's question: where NCRIC insisted that Dr. Rifka recite, one by one, the names of each of the scores of physicians that had practiced as members of Columbia's Attending Faculty. Such a question plainly disregards the established principle that a deposition not be transformed into a "memory contest." In any event, NCRIC ignores Dr. Rifka's response alluding to documents produced by Columbia that contain the answer (much as NCRIC's own

documents provide the answer), demonstrating further that NCRIC is not genuinely interested in obtaining the information but in devising excuses for delay.[2] (Point III.B., *infra.*)

The Court should put an end to NCRIC's gamesmanship. NCRIC has been given extensive opportunities to learn information in order to prepare for trial, including the supplemental interrogatories and supplemental Rule 30(b)(6) deposition. The time has come to accept the close of discovery and to ready the case for trial. Accordingly, the Court should deny NCRIC's motion and remove this latest attempt to delay trial.

BACKGROUND

NCRIC filed this suit in October 2000. Days later, NCRIC plunged into discovery, propounding requests for admissions, requests for production of documents, and interrogatories. Over the course of the ensuing months, NCRIC engaged in robust discovery through the close of discovery in January 2002. NCRIC sought additional documents in January and August 2001; it served additional interrogatories in June 2001; and it issued deposition notices in March, June, July, August, and December 2001. Columbia produced to NCRIC thousands of documents (more than three times as many as NCRIC) in approximately six boxes over the course of 26 productions.

When Columbia objected to a number of NCRIC's 30(b)(6) deposition topics and contended that the subject matter was more appropriate for interrogatories, NCRIC moved to compel. The Court largely agreed with Columbia and, in April 2003, authorized limited supplemental discovery: the Court directed that most of NCRIC's 30(b)(6) topics instead be

[2] As is evident from NCRIC's repeated cross-references to its motions *in limine*, NCRIC transparently seeks to find another avenue to exclude from trial evidence for which NCRIC lacks any convincing basis for exclusion. As explained below, however, the duplicative "second bite at the apple" embodied in this motion is unavailing.

lodged as interrogatories, and the Court authorized a circumscribed Rule 30(b)(6) deposition on five topics. The Court put NCRIC on notice: the Order authorizing further limited discovery was "not an opportunity for NCRIC to inquire more broadly than the subject matter" that was at issue in NCRIC's motion. Exh. 2 (Order of 4/7/03) at 1-2 n.1.

Columbia furnished some 30 pages of detailed Responses. In order to facilitate completion of the outstanding discovery, Columbia in fact expedited completion of the Responses, serving them a full week before the deadline set under the local rules. Exh. 3 (Letter from Schulman to Badami of 5/14/03). Columbia also produced a corporate designee some three weeks earlier than NCRIC requested him, and Columbia accommodated NCRIC's schedule for the deposition. Exh. 4 (Letter from Schulman to Badami of 5/23/03). In short, Columbia took multiple steps to provide complete and prompt discovery to NCRIC.

But NCRIC has attempted to use this discovery to concoct one excuse after another for delaying trial. For instance, NCRIC lodged document requests nowhere authorized by the Court, purportedly as a prerequisite to the Rule 30(b)(6) deposition. *See* Exh. 5 (Letter from Badami to Schulman of 4/21/03) (enclosing deposition notice and document requests). NCRIC then sought to use the supplemental discovery as an excuse to avoid beginning pretrial preparations, taking the baseless position that Columbia's "responses and depositions [were] prerequisites to NCRIC's obligations under Rule 16." *See* Exh. 6 (Letter from Schulman to Berger of 5/13/03). When the Rule 30(b)(6) deposition convened, NCRIC criticized Columbia's witness for being unable to recite from memory the names of every doctor that practiced at Columbia and threatened to move to compel whenever Columbia voiced objection to questions that exceeded the scope of the authorized topics. *See infra.* And, tellingly, NCRIC filed this motion without first seeking to resolve any of its purported concerns.

ARGUMENT

I. NCRIC'S MOTION IS PROCEDURALLY BARRED AND SHOULD BE SUMMARILY DENIED

A. NCRIC Failed To Meet in an Effort To Resolve the Matter Before Filing this Motion

This Court's General Order provides that before filing motions to compel discovery or motions otherwise relating to discovery, the parties must meet "face to face, for a reasonable period of time (usually at least 60 minutes) in an effort to resolve the matter before filing a motion." Exh. 1 at 2. According to the General Order, motions lacking certification that such a meeting took place "will be summarily denied." *Id.*

NCRIC's motion was filed without any such good-faith effort to resolve the matter. Rather, during a telephonic meet-and-confer held on June 3, 2003 to discuss anticipated motions *in limine* in advance of the then-scheduled June 19, 2003 Pretrial Conference, NCRIC indicated for the first time that it intended to move to compel with respect to Columbia's supplemental interrogatory responses. *See* Exh. 7 (Letter from Schulman to Badami of 6/4/03). In the weeks that had passed since Columbia has supplied the Responses, NCRIC had never raised any concerns with these Responses. *See id.* When Columbia expressed surprise and immediately inquired as to the basis for any motion to compel, NCRIC spoke in generalities about such matters as its objection to referencing of previously submitted materials but declined to identify any specific answer that it believed was in fact incomplete. *See id.*

Columbia promptly wrote to NCRIC the following day inquiring about the specifics of any areas that NCRIC deemed incomplete and encouraging NCRIC to discuss these matters further with Columbia in order to avoid needlessly involving the Court. *See id.* NCRIC simply repackaged these motion papers in the form of a letter (faxed long after close of business) and

rushed to file this motion mere hours later, before Columbia could have a chance to respond. Exh. 8 (Letter from Badami to Schulman of 6/4/03 (received 6/5/03)). NCRIC did not invite Columbia to a face-to-face meeting or otherwise seek to confer beyond the passing telephone conversation of June 3, 2003.

NCRIC's failure to confer meaningfully with Columbia has led it to create disputes where none exist. For instance, when NCRIC objected that Columbia had not included a verified signature for the Responses, Columbia committed to correct the oversight – and has supplied one. Exh. 9 (Letter from Schulman to Badami of 6/19/03) (enclosing verified signature of Larry Wilson). Likewise, straightforward inquiries concerning Columbia's position on such issues as the damages from its bankruptcy, *see infra*, and the repetition of defamatory statements, *see infra*, could have been clarified without involving the Court.

B. NCRIC Failed To Seek Leave of Court Before Filing this Motion

NCRIC's motion also must be denied because of NCRIC's failure to seek leave to file this discovery motion after the Court's discovery cutoff. Superior Court Rule 16 expressly provides that once the date identified on the Court's Scheduling Order as the close of discovery has passed, the filing of any discovery motion requires leave of court. SCR 16(b)(5), (6). The discovery period closed in January 2002, about a year and a half ago, and the Court's order authorizing the discovery here at issue did not re-open discovery in wholesale fashion. NCRIC did not seek the requisite leave of court before filing this motion. Rule 16(b)(5) promotes the important interest of achieving some finality in discovery, and NCRIC flouts that goal with this motion.

II. COLUMBIA'S INTERROGATORY RESPONSES ARE COMPLETE

A. Columbia's Referencing Previously Submitted Materials Is Entirely Proper

Contrary to NCRIC's portrayal, Columbia's Responses do not merely refer to previously submitted materials, but comprise some 30 pages providing detailed responses to each interrogatory posed. Where, however, the interrogatory pointed to subjects about which Columbia had already gone on the record in some detail, Columbia referenced those prior submissions in order to offer further elucidation via an even more extensive discussion of the topic than was necessary to answer the interrogatory or that read the interrogatories as not seeking a mammoth answer that would be unduly burdensome.

To the extent that the Responses reference prior discovery, that is entirely proper, and it is particularly so here. NCRIC's rigid approach notwithstanding, "[a]nswering interrogatories is more a matter of art than of science," and "the sufficiency of an answer to an interrogatory frequently depends on the surrounding circumstances." *Faigin v. Kelly*, 184 F.3d 67, 84 (1st Cir. 1999). Consequently, "[p]arties sometimes can answer interrogatories satisfactorily by reference to information previously produced." *Id.* (deeming sufficient interrogatory responses that did so).

Indeed, such flexibility is expressly built into the Superior Court Rules themselves. Those rules, like the Federal Rules, permit a party in certain circumstances simply to respond to an interrogatory by referencing business records. *See* SCR 33(d); Fed. R. Civ. P. 33(d); *McKesson Corp. v. Islamic Republic of Iran*, 185 F.R.D. 70, 82 (D.D.C. 1999) (holding interrogatory response adequate when it identified specific documents from which opposing party could obtain the requested information).

Though Rule 33(d) does not apply here, the present situation remains precisely the type of case calling for the contextualized analysis to which *Faigin* refers. NCRIC initially identified these topics two years ago. Since that time, much discovery has taken place and the parties filed detailed cross-motions for summary judgment in which Columbia fleshed out in considerable detail its position on many of the very issues that were addressed in NCRIC's supplemental interrogatories. Unlike usual circumstances, in which the answering of interrogatories takes place during an early stage of a case's development, NCRIC's supplemental interrogatories were lodged after Columbia had developed its positions in exhaustive detail. Though Columbia provided detailed, self-standing responses, by way of supplementation and for the sake of efficiency Columbia directed NCRIC to prior submissions where appropriate and made clear that it stood by those accounts.

Tellingly, the only authority that NCRIC cites for the supposed proposition that answers to interrogatories may not reference other submissions are cases that held references to the complaint or answer to be improper. *See King v. E.F. Hutton & Co.*, 117 F.R.D. 2, 6 (D.D.C. 1987) (complaint); *Zatko v. Rogers Mfg. Co.*, 37 F.R.D. 29, 33 (N.D. Ohio 1964) (answer); NCRIC Mem. at 7. Such a result is not surprising, for a complaint or answer includes only allegations, and ones that have yet to be developed through discovery. But pleadings that spell out those allegations in detail, such as Statements of Material Facts that Columbia cites, are a different story altogether. Moreover, the crux of the holding in *Zatko* was the unremarkable proposition that one cannot reply to interrogatories seeking elucidation of the answer by referencing that very answer. *See Zatko*, 37 F.R.D. at 33.[3] Columbia's Responses hardly seek to employ such a circular approach.

[3] Notably, the objectionable responses in both *King* and *Zatko*, which NCRIC cites, apparently

In sum, as Wright and Miller put it, "when the answers as a whole disclose a conscientious endeavor to understand the questions and to answer fully those questions as are proper, the rule has been satisfied" and the answers will be deemed sufficient. 8A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2177 (2d ed. 1994). As is evident from Columbia's detailed Responses and its explanation laid out below, Columbia has undertaken a more than "conscientious endeavor" in furnishing its Responses – Responses that are complete and require no further elaboration.

B. NCRIC Is Unable to Identify Any Response That Is Not Complete

1. Columbia's Response to Supplemental Interrogatory No. 3 Is Complete

NCRIC protests that in responding to Supplemental Interrogatory No. 3, Columbia "merely incorporate[d] by reference its answers to [interrogatories] 1 and 2." NCRIC Mem. at 9. NCRIC misses the point. There is no rule against incorporating by reference; the issue is whether the Response is complete, and Columbia's plainly is.

Supplemental Interrogatory No. 1 had asked about certain calculations that Columbia deemed incorrect. *See* Supp. Interrog. No. 1 ("Identify and describe all facts and reasons forming the basis for Columbia's claim that" certain of NCRIC's calculations were incorrect). That is, as to NCRIC's calculations that Columbia believed to be incorrect, Supplemental Interrogatory No. 1 asked Columbia both (1) to identify the calculations at issue *and* (2) to describe *why* Columbia believed those calculations to be *incorrect*. Supplemental Interrogatory Nos. 2 and 3 then asked parallel questions about calculations that Columbia believed to be

---

relied on references to the complaint or answer alone. *See, e.g.*, *King*, 117 F.R.D. at 6 (rejecting plaintiff's assertion that the details requested by the defendant's interrogatories were set forth adequately in the complaint). Here, in stark contrast, Columbia nowhere relies on references to previously submitted materials alone, but merely cites those documents for further elucidation after first supplying in each instance a detailed interrogatory response.

correct. But instead of combining the two inquiries into a single question, as NCRIC had in Supplemental Interrogatory No. 1, this time (for reasons that are not apparent) NCRIC asked the two questions separately: Supplemental Interrogatory No. 2 asked Columbia only to identify the correct calculations, while Supplemental Interrogatory No. 3 asked Columbia to explain the "why" of No. 2 – *i.e.*, *why* Columbia believed the calculations in Supplemental Interrogatory No. 2 were in fact correct. *Compare* Supp. Interrog. No. 2 ("Identify and describe the amounts Columbia believes to be the correct amounts . . .") *with* Supp. Interrog. No. 3 ("Describe and identify the facts and reasons why Columbia believes the amounts contained in your response to Supplemental Interrogatory No. 2 to be the proper amounts and calculations to be used in calculating the amount of premium due Columbia under the Contract.") (attached to NCRIC's Mem. as Exh. A).

In order to provide meaningful responses to Supplemental Interrogatory No. 2 in the first instance, Columbia delved into detail concerning not merely which numbers were correct, but *why* that was so – rather than providing less coherent responses and artificially saving the "why" for Columbia's Response to Supplemental Interrogatory No. 3 alone. And Columbia's Response to Supplemental Interrogatory No. 1 had necessarily provided further explication of the why, in detailing Columbia's position as to which calculations were incorrect. It was thus entirely proper to answer No. 3 by referencing the earlier responsive answers to Nos. 1 and 2, which included all of the information necessary to answer No. 3 – and in a more coherent form than would have been possible had Columbia artificially broken up the two issues of (1) which numbers were correct, and (2) why Columbia believed those calculations to be correct. As noted, NCRIC had itself combined the two inquiries in Interrogatory No. 1. If there is a deficiency here, it would be in NCRIC's structuring of its interrogatories. But all this demonstrates as to Columbia is its

good faith in responding meaningfully to NCRIC's interrogatories. Incorporating by reference does not make Columbia's Response incomplete; rather, doing so pointed NCRIC to the precise location that addressed the question asked. To the extent that NCRIC sought further detail, the incorporated Responses referred to specific earlier submissions in which Columbia had addressed the issue in even greater detail.

NCRIC's dissatisfaction with Columbia's Response amounts to nothing more than another attempt by NCRIC to re-litigate summary judgment. NCRIC made the very same arguments in its summary judgment briefs that it advances here – namely, that Columbia was relying on statements of counsel rather than on evidence supporting its claims – and the Court did not adopt NCRIC's self-serving characterizations. *Compare, e.g.*, NCRIC Mem. at 10 (criticizing Columbia's supposed "rel[iance] on counsel to attempt to perform calculations") *with* Exh. 10 (4/2/03 Order Denying Columbia's Motion for Summary Judgment) at 5 (describing NCRIC argument that "Columbia wrongfully relies upon its counsel's unsupported argument"); *id.* at 6 (describing NCRIC contention that "Columbia relies only on its counsel's interpretation instead of expert testimony"); *and id.* at 8 (denying motion for summary judgment because "[t]here are material issues of fact in dispute"). Those characterizations are no more helpful to NCRIC here than they were there, and they provide no basis for a conclusion that Columbia's Responses are deficient in any way.

2. Columbia's Responses to Supplemental Interrogatory Nos. 5-7, 10-11 Are Complete

These Responses identify various damages caused to Columbia by NCRIC. NCRIC challenges the Responses because, purportedly, "these specific damages were not previously identified in the pleadings." NCRIC Mem. at 11. This argument is remarkable in two respects. First, it is strikingly inconsistent with the very foundation of NCRIC's motion: NCRIC has

moved to compel on the theory that Columbia has not provided NCRIC with the information that NCRIC seeks, yet here NCRIC somehow criticizes Columbia's Response for providing the new information that NCRIC ostensibly was seeking. NCRIC cannot have it both ways. It seems that the real problem with the Responses is that NCRIC does not like the arguments advanced by Columbia – which NCRIC may point out at trial but which it may not now use as a basis for continuing discovery.

Second, NCRIC's contention that "these specific damages were not previously identified in the pleadings" is demonstrably false. NCRIC has been on notice since the filing of Columbia's counterclaims at the outset of this case in January 2001 that Columbia claims damages from NCRIC relating to Columbia's bankruptcy. *See, e.g.*, Columbia Hospital for Women Medical Center, Inc.'s Amended Answer and Counterclaims ¶ 63 ("In February 1998, Medical Center filed for bankruptcy, and remained in bankruptcy until early 1999. During this time, Medical Center incurred additional expenses as a result of its bankruptcy, including several hundred thousand dollars per month in legal fees"); *id.* ¶ 109 ("As a result of NCRIC's failure to perform its obligations under the Plan, NCRIC caused Medical Center damages including the overpayment of Additional Premium, thereby causing Medical Center to become insolvent."); *id.* ¶ 116 (same allegation as ¶ 109); *id.* ¶ 138 ("NCRIC 's negligence proximately caused Medical Center damage by causing it to overpay Additional Premium and fail to demand Return Premium it was due, and further, by causing Medical Center to become insolvent."); *id.* ¶ 146 ("Medical Center has been directly and proximately damaged by NCRIC's false representations and concealments by, among other things, overpaying premium, which in turn proximately and directly led Medical Center to become insolvent"); *id.* ¶ 153 (same allegation as ¶ 146).

Moreover, Columbia's assertion of these damages is supported by documents that Columbia produced to NCRIC long ago. For instance, a statement that Columbia incurred over $1.5 million in administrative expenses can be located at bates number CHWMC 0002511. That is part of a pleading (which begins at CHWMC 0002504), titled "Debtors' Amended Joint Plan of Reorganization (Second Revised) Under Chapter 11 of the Bankruptcy Code"; the pleading was filed January 8, 1999 in *In re Columbia Hospital for Women*, No. 98-0200, in the U.S. Bankruptcy Court for the District of Columbia. Columbia produced the document to NCRIC almost two years ago, on July 23, 2001, as part of Columbia's thirteenth production in the case.

NCRIC's protestations greatly overreach. The interrogatories addressing damages, like Supplemental Interrogatory No. 5, straightforwardly ask that Columbia identify an amount of damages and describe how that amount was calculated:

> Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 1 of its counterclaim and describe how that amount has been calculated.

Supp. Interrog. No. 5 (attached to NCRIC's Mem. as Exh. A).

Columbia's Responses answer the question posed. They both (1) identify the amount of damages claimed in connection with each claim, and (2) describe how that amount was calculated. NCRIC's allegation that the Responses are incomplete because they do "not provide any factual evidence" demonstrating that NCRIC *caused* those damages, *see* NCRIC Mem. at 12, bears no connection to the interrogatories actually posed: *causation simply is not a topic raised by these interrogatories*. The same can be said for NCRIC's criticism that Columbia's Responses fail to refer to "documents or testimonial evidence to support" its figures, *id.* at 11: no such references are called for by the interrogatory. Thus, to the extent that Columbia has not provided further evidence in support of its Responses, that is because NCRIC's interrogatories

did not ask for it. NCRIC's arguments have little to do with the actual questions asked and the actual Reponses given.

3. Columbia's Responses to Supplemental Interrogatory Nos. 8-9, 12-13 Are Complete

In attacking these Responses, NCRIC parrots its objections to the previous group of Responses – namely, that Columbia has not provided sufficient evidence of such issues as causation. As before, however, the interrogatory does not call for such information. Columbia has answered the question actually posed, and NCRIC's description of what it wishes it had asked cannot serve as a basis for a motion to compel.

4. Columbia's Responses to Supplemental Interrogatory Nos. 15-17 Are Complete

These Responses address the details of NCRIC's defamation of Columbia. NCRIC acknowledges, as it must, that "Columbia's Responses do include some named individuals identified as either speaking or hearing the alleged defamatory statements." NCRIC Mem. at 14. That is not enough for NCRIC, however, and NCRIC objects to Columbia's pointing out that the statements at issue were heard and repeated by other, unnamed individuals.

NCRIC misconstrues Columbia's Responses. Columbia has no intention of calling someone not named on its witness list to testify as to the substance of the defamatory statements. But *the fact that the statements were repeated* is itself of consequence, for as a matter of defamation law, circulation of the defamatory statements is relevant to proof of damages. *See, e.g., Ingber v. Ross*, 479 A.2d 1256, 1265 (D.C. 1984) ("the fact finder has substantial latitude in awarding compensatory damages for slander," and "'may take into account,'" *inter alia*, "'the extent of distribution of the defamation'") (quoting Robert Sack, *Libel, Slander, & Related Problems* 354-55 (1980)); *Manbeck v. Ostrowski*, 384 F.2d 970, 977, 128 U.S. App. D.C. 1, 8 (D.C. Cir. 1967) (in evaluating damages, "trier of fact may consider such relevant factors as 'the

character of the defamatory publication and the probable effect of the language used as well as the effect which it is proved to have had. So too, it may consider the area of dissemination and the extent and duration of the circulation of the publication.'") (citing *Restatement of Torts* § 621, cmt. c (1938)); *Moss v. Stockard*, 580 A.2d 1011, 1036 (D.C. 1990) (same); *Grossman v. Goemans*, 631 F. Supp. 972, 974 (D.D.C. 1986) (same); *Collins v. Brown*, 268 F. Supp. 198, 202 (D.D.C. 1967) (same); *see also, e.g., Murdaugh Volkswagen, Inc. v. First Nat'l Bank of S. Carolina*, 801 F.2d 719, 727 (4th Cir. 1986) (upholding jury instruction on defamation, which invited jury to consider the extent of defamatory statements' circulation).[4] Accordingly, NCRIC's objection as to these interrogatories is beside the point.

5. Columbia's Response to Supplemental Interrogatory No. 19 Is Complete

"Similar to Supplemental Interrogatory No. 3," NCRIC suggests, Supplemental Interrogatory No. 19 does not include "any documentary or testimonial evidence." NCRIC Mem. at 15. Aside from implicitly acknowledging that this interrogatory is duplicative of Supplemental Interrogatory No. 3, NCRIC explicitly concedes that "Columbia's Responses identified the Minimum Premium factor, Deposit Premium factor and Development factors as allegedly incorrect." As to both paragraphs 72 and 101, respectively, Columbia did the three things requested: Columbia (1) identified specific errors, miscalculations and overstatements; (2) identified the reasons and bases for the errors; and (3) identified the corrections required to

[4] NCRIC certainly has not cited any authority suggesting that to recover damages for defamation it is necessary to name every person who heard the defamatory statements. Nor could that be the law. *See, e.g., Affordable Elegance Travel, Inc. v. Worldspan, L.P.*, 774 A.2d 320, 329 (D.C. 2001) (once "fact of damages" is proven, it is settled law that a plaintiff "need prove damages only with reasonable certainty.") (quoting *Edmund J. Flynn Co. v. LaVay*, 431 A.2d 543, 550 (D.C. 1981)); *District of Columbia v. Gandy*, 450 A.2d 896, 901 (D.C. 1982) (damages claimed by a plaintiff "need not be susceptible of computation with exactitude"), *modified on other grounds*, 458 A.2d 414 (D.C. 1983).

16d-002124

make the bill accurate. That is all that is called for. *See* Supp. Interrog. No. 19 ("Identify the specific errors, miscalculations and overstatements in the statement(s) from NCRIC referenced in paragraphs 72 and 101 of the counterclaim including the reasons and bases for the errors and the corrections required to make the bill accurate.") (attached to NCRIC's Mem. as Exh. A). Ultimately, NCRIC fails to explain how Columbia's Responses fall short in any of these respects. NCRIC now wishes that it had asked for more, but it did not. It is NCRIC's obligation to frame appropriate interrogatories, calculated to elicit the information that it desires. *See, e.g.*, *Wolf*, 15 F.R.D. at 408-09.

6. Columbia's Response to Supplemental Interrogatory No. 20 Is Complete

Columbia answered this interrogatory unambiguously, summing up as follows: "NCRIC in fact owes Columbia $765,347.39 in Return Premium." Yet somehow NCRIC maintains that Columbia has not provided a calculation as to the damages that Columbia alleges under the Plan. In particular, NCRIC complains that Columbia did not use the numbers contained in certain quarterly updates that NCRIC sent to Columbia after September 2000. *See* NCRIC Mem. at 16.

NCRIC's objection is off the mark. Under the terms of the Retro Plan, the date for performing the calculations known as a "Reconciliation" is September 1 of each year. *See* Addendum B ¶ 5; Retro Plan ¶ 5 & Exh. A ¶ 5; Addendum ¶ 5. At that time, NCRIC must complete its Reconciliation and, within 60 days of the Reconciliation Date, notify Columbia in writing of any amount owed. *Id.*[5] "Any amounts due either to or from" Columbia are then "due and payable within thirty (30) days" after Columbia receives notice from NCRIC. *Id.* The Retro

[5] Columbia was not in a position to make the complicated calculations necessary to determine what it owed or was owed at the time of each September Reconciliation Date, particularly since NCRIC refused to provide Columbia with access to much of the information necessary to make the calculations (*e.g.*, information about Loss Reserves).

Plan thus required NCRIC to provide Columbia with Reconciliations within 60 days of September 1, 2001, and within 60 days of September 1, 2002, respectively.

During briefing of the parties' cross-motions for summary judgment, NCRIC sought to create a factual issue as to whether a September 2001 Reconciliation ever existed. *See* NCRIC SJ Opp. at 10.[6] If a September 2001 Reconciliation once existed, however, that is all the worse for NCRIC now because there is no evidence that it still exists. Plainly, it was not produced in discovery, despite Columbia's repeated requests for the document. *See, e.g.*, Decl. of Joseph K. Leahy In Support of Defendant's Motion for Summary Judgment (Exhibit 20 thereto) ¶ 2. In short, it is not part of the record: Columbia does not have it; NCRIC never produced it in discovery; NCRIC did not attach it to its summary-judgment papers; and NCRIC did not designate it as a trial exhibit. When Columbia again raised the issue during the parties' meet-and-confer, NCRIC remained unable to direct Columbia to a bates number for any such document, notwithstanding Columbia's request that NCRIC do so.

NCRIC has never produced the September *2002* Reconciliation, either (nor has it contended otherwise, except in the parties' meet-and-confer – though NCRIC failed to identify a bates number for that reconciliation, too).

In addition to obligating NCRIC to perform such annual Reconciliations, the Retro Plan also provides for NCRIC's performing quarterly updates. But those calculations are not controlling for the exchange of premium; they are updates for informational purposes only. *See* Addendum B at 1, ¶ 10 (describing interim calculations as updates regarding the "status of the . . . Plan"); *compare id.* Exh. A, at 5, ¶ 6 (making no mention of premium being due except at

[6] The testimony that a September 2001 Reconciliation ever existed is equivocal at best. *See* Fargis Dep. at 655-56 (equivocating on the issue).

each annual Reconciliation). It would be impossible to tell, for instance, how much premium was due in September 2001 on the basis of numbers reported in January 2002. New paid losses could have accrued, or any number of additional changes could have taken place affecting the Plan's calculations.

In other words, NCRIC is now seeking sanctions for Columbia's inability to provide NCRIC with information that NCRIC has withheld from Columbia. This is even more extraordinary because even NCRIC can't quite bring itself to assert that Columbia in fact has the information necessary to do what NCRIC asks. *See* NCRIC Mem. at 16 ("Because Columbia has received the information *arguably* necessary to calculate up to date damages figures, Columbia must be compelled [to do so].") (emphasis added). If NCRIC disagrees with Columbia, NCRIC is free to say so at trial, but that provides no basis for an order compelling Columbia to do more than it has done.

C. Columbia's Objections Are a Non-Issue

1. NCRIC's arguments concerning Columbia's objections do not help NCRIC, either. First, NCRIC's contesting *now*, for the first time, invocation of privileges that Columbia has made throughout this case is difficult to understand – unless, that is, it represents an attempt to manufacture a dispute where none properly exists. Regardless, though Columbia listed numerous privileges by way of reservation of rights, Columbia has not withheld any information in its Supplemental Interrogatory Responses on the basis of the privileges that NCRIC contests, *see* NCRIC Mem. at 17 (challenging invocation of peer review privilege, party-communication privilege, and investigative privilege), so the issue does not raise any genuine controversy for the Court.

16d-002127

2. Columbia's specific objection to NCRIC's impermissible broadening of a single, Court-approved defamation topic into three different interrogatories does not present a controversy for the Court, either. Columbia could have stood on its objection. As Columbia points out, the Court expressly emphasized that its Order authorizing NCRIC to serve these Supplemental Interrogatories was "not an opportunity for NCRIC to inquire more broadly than the subject matter stated in plaintiff's Notice of Deposition pursuant to Rule 30(b)(6)." *See* Response to Supp. Interrog. No. 15 (attached to NCRIC's Mem. as Exh. B) (quoting Order of 4/7/03, at 1-2 n.1). Topic No. 10 of NCRIC's Notice of Deposition pursuant to Rule 30(b)(6), which was at issue in the motion to compel, identified the topic of: "Defamatory actions or statements by plaintiff about defendant." Nevertheless, NCRIC broadened that topic into three distinct interrogatories: in addition to Supplemental Interrogatory No. 17 concerning the substance of the defamatory statements, Supplemental Interrogatory No. 15 asked who made the defamatory statements, and Supplemental Interrogatory No. 16 asked who heard the defamatory statements.

Even so, and contrary to the impression that NCRIC creates in its papers, Columbia answered these interrogatories despite its objection. Not surprisingly, NCRIC does not identify any issues that Columbia failed to address. *See* NCRIC Mem. at 18-19. Nor could it. Columbia specifies not only the substance of the defamatory statements, but also who made the statements (*e.g.*, Dr. Leonard Glassman), and who heard the statements (*e.g.*, Dr. Nabil Asterbadi, Dr. Safa Rifka, Elizabeth Jackson, and Francis Renee Perkins). Accordingly, NCRIC's complaints about Columbia's objections as to the defamation interrogatories are without merit.

3. NCRIC flippantly makes light of Columbia's objection to NCRIC's inquiry regarding how much Columbia is owed "to date." *See* NCRIC Mem. at 19-20. The matter is

hardly so simple, however. As is clear from above, however, NCRIC is assuming away a matter of dispute between the parties. Because the Plan provides that reconciliations performed in September control any amounts due between the parties, while updates performed quarterly are for informational purposes only, Columbia could only answer an interrogatory asking for amounts due on the basis of a September reconciliation. But NCRIC has failed to produce to Columbia either the September 2001 or September 2002 Reconciliations, forcing Columbia to calculate any amounts due on the basis of the September 2000 Reconciliation, the last one that NCRIC produced to Columbia.[7] Columbia can only wonder what amounts would be due under the September 2001 or September 2002 Reconciliations. Therefore, the amount owed "to date" is genuinely ambiguous. Columbia did not stand on this objection, however, but proceeded to answer the question the only way that it could – on the basis of the September 2000 numbers, the last figures that are certain. Therefore, it simply is not true that NCRIC does not know Columbia's contract damages. *See supra.*

In sum, Columbia has provided extensive detail concerning the factual bases for its claims. Columbia's interrogatory responses are complete, and NCRIC's contention that they are not hides behind labels and ignores the substance of the Responses. When NCRIC's conclusory allegations are pealed back, they are empty. NCRIC cannot point to a single Response that fails to provide information actually sought by the interrogatory. NCRIC's rush to seek the Court's intervention is an obvious attempt to prolong discovery and delay trial. The motion should be denied.

---

[7] NCRIC calls "false" the claim that it has not produced the September 2001 or September 2002 Reconciliations, but when Columbia asked NCRIC on June 3, 2003 to direct Columbia to the bates numbers of such documents, NCRIC was unable or unwilling to do so.

III. COLUMBIA'S RULE 30(b)(6) WITNESS GAVE COMPLETE RESPONSES

A. NCRIC Fails to Show that Dr. Rifka Did Not Respond to Any Question

Not satisfied in seeking to draw out discovery with interrogatories, NCRIC also throws in a couple of pages listing alleged topics that Columbia's Rule 30(b)(6) designee, Dr. Safa Rifka, allegedly did not answer. But NCRIC simply lists the topics and makes no effort to carry its burden of demonstrating that Columbia refused to answer the questions at issue (let alone that its questions were proper). *See* NCRIC Mem. at 20 (listing topics). It is NCRIC's burden to establish that Dr. Rifka refused to answer a question posed. Superior Court Rule 37(a) requires that a party moving to compel do so with particularity:

> Any motion to compel discovery must set forth verbatim the question propounded and the answer given, or a description of the other discovery requested and the response to this request. The motion must also set forth the reason or reasons the answer or response is inadequate.

SCR 37(a); *see also* SCR 37(a)(2) (providing for motion to compel "[i]f a deponent fails to answer a question propounded or submitted under Rule 30 or 31."); *see also generally* Wright & Miller, *supra*, § 2286 (treating it as axiomatic that motion to compel can be granted only where a party refuses to make a required disclosure).

NCRIC has not so much as attempted to make such a showing, which in and of itself is a sufficient basis for denying NCRIC's motion as to the Rule 30(b)(6) deposition. A party cannot simply re-read a deposition transcript, conclude that it wishes it had gotten more information, and then move to compel. Nor can it throw a list of topics at the Court – without citing a single specific question allegedly not answered and without offering any explanation as to how a particular answer is inadequate – and hope that the Court will do the work on its behalf or that it will come up with an explanation at some later date. NCRIC's failure even to attempt to demonstrate that Dr. Rifka's answers were inadequate is fatal to NCRIC's motion.

B. Dr. Rifka Adequately Answered NCRIC's Questions

Moreover, Dr. Rifka *did* provide satisfactory answers to NCRIC's questions on the topics at issue. The suggestion that Dr. Rifka failed to answer a question propounded on these topics cannot be squared with the record of the deposition.

1. Dr. Rifka Adequately Answered NCRIC's Questions on The Attending Faculty

Supplemental Deposition Topic No. 1 refers to any contract, business relationship, or business expectancy between Columbia and "each of the doctors identified in paragraphs 14-18 and 124 of Columbia's amended counterclaims." NCRIC Mem. Exh. C at 2. Contrary to the implication of the topic, paragraphs 14-18 and 124 do not identify any individual doctors but rather refer generally to Columbia's "Attending Faculty" as a group. Though NCRIC cites only selected deposition excerpts in an attempt to create the impression that Dr. Rifka was a recalcitrant witness, *see* NCRIC Mem. at 20, Dr. Rifka answered numerous questions in detail concerning any "contract, business relationship, or business expectancy" between Columbia and the Attending Faculty. *See, e.g.*, Exh. 11 (Deposition of Safa Rifka, M.D.) at 20 ("Columbia did not have a contract, these are a self-selecting group. . . . These are the physicians who refer the bulk of the hospital, of the patients and the work to the hospital, historically. And who intend to refer the bulk of their work to the hospital futuristically."); *id.* (There are no contracts."); *id.* at 36 ("Physicians had, who admit to Columbia had the history of admitting all of their patients there. And the expectancy is if somebody admitted all their patients there for the last 19 or 20 or 15 years that it would continue unabated."); *see generally id.* at 19-61.

When NCRIC pressed Dr. Rifka to list every member of the attending faculty, however, he pointed out that "there are tens if not hundreds of them." *Id.* at 29; *see also id.* ("you're asking me now to list the entire medical staff of Columbia Hospital for Women"). Dr. Rifka also

16d-002131

pointed out that Columbia had produced documents to NCRIC containing the names of individual members of the attending faculty. *Id.* at 30. When Columbia's counsel objected that Dr. Rifka "doesn't have to recall by memory the names of all the members of the attending faculty, *id.* at 33, NCRIC's counsel conceded that was right: "The point is not necessarily the names of the members of the attending faculty, it's going to be the business relationship that Columbia has with them." *Id.* at 33-34. But NCRIC promptly ignored that admission, insisting, and now filing a motion contending, that Columbia must produce a Rule 30(b)(6) witness who can list the names of all of the members of the Attending Faculty.

Depositions – even of 30(b)(6) witnesses – are not memory tests. *Alexander v. FBI*, 186 F.R.D. 137, 143 (D.D.C. 1998) ("Rule 30(b)(6) puts several duties on the designating party and on the deponent, but one of them is not omniscience"); *id.* ("Deponents under Rule 30(b)(6) must be prepared and knowledgeable, but they need not be subjected to a 'memory contest'") (citation omitted). This is all the more so when a witness points out that the answer to a question – and a list at that – has been produced in discovery. *See id.* (declining to award sanctions because witness "testified adequately in numerous respects," including his referencing alternate sources of information where the witness could not otherwise testify adequately). And the question is triply absurd here, where NCRIC itself produced documents listing the names of the Attending Faculty. Indeed, NCRIC provided insurance to each of these doctors under the Retro Plan, and of course had to know who its insureds were. NCRIC's insistence on a Columbia witness reciting this information is without basis.[8]

[8] NCRIC's single, general citation of dicta from *Alexander*, 186 F.R.D. at 141, purportedly in support of its position hardly justifies such a result. To the contrary, *Alexander* denied a motion for sanctions and insisted that a Rule 30(b)(6) deponent "need not be subjected to a 'memory contest.'" *Id.* at 143.

16d-002132

2. Dr. Rifka Adequately Answered NCRIC's Questions on NCRIC's Awareness of Columbia's Financial Situation

Next, NCRIC suggests that Dr. Rifka failed to explain the basis for Columbia's allegation that NCRIC was aware of Columbia's financial condition. *See* NCRIC Mem. at 20. NCRIC may not have liked Dr. Rifka's answer, but he certainly answered the question. First and foremost, Dr. Rifka testified that he knew that NCRIC was aware of Columbia's financial condition because NCRIC had told him so. *See, e.g.*, Exh. 11 (Rifka Tr.) at 65 ("NCRIC came and said they know about the tenuous financial position that the hospital is in, and that they demanded either a letter of credit or a CD or cash"); *id.* at 66 ("[Mr. Fargis of NCRIC] said that he knows our financial situation is bad and he knows that our, we are having difficulty with finances"); *id.* at 71 ("[they] came and told us, you are in a bad financial position and, hence, we want this, this, and this"); *id.* at 74 ("they told me that they knew"). Moreover, Dr. Rifka noted that because Columbia is a not-for-profit institution, certain information about its finances is public, *see, e.g., id.* at 70 ("Columbia Hospital for Women is a not-for-profit. It is, has audited statements and anybody can ask for it. And therefore it is a public knowledge and publicly accessible, to whatever our financial condition is."). Dr. Rifka added that NCRIC attended public hearings in connection with Columbia's bankruptcy ,and that NCRIC was a sophisticated corporate entity doing business with Columbia. *Id.* at 174-75 ("The hospital has told NCRIC about its financial position. Financial position of the hospital was public . . . . They attended the court's proceeding. . . . So there is no way like a sophisticated company as they are . . . that NCRIC did not have any knowledge. They sure did."). Thus, Dr. Rifka answered the question on multiple levels.

3. Dr. Rifka Adequately Answered NCRIC's Questions on Doctors Leaving Columbia

NCRIC contends that Dr. Rifka did not answer questions concerning "physicians who allegedly asked Columbia to stay with NCRIC." NCRIC Mem. at 20. But NCRIC conveniently fails to cite page after page in which Dr. Rifka testified in detail about specific doctors who did just that. *See id.*

For instance, Dr. Rifka testified that he set up two meetings with doctors from the Horwitz/Safran practice group at the office of Columbia's CEO Larry Wilson. Exh. 11 (Rifka Tr.) at 96. Those meetings were attended by Drs. Newman and Blank from that group. *Id.* Dr. Rifka explained that those doctors said flatly, "If you don't continue with NCRIC, we're going to leave." *Id.* Dr. Rifka described less formal conversations with a number of other doctors to the same effect. *See, e.g., id.* at 99-100 (describing personal conversations such as that with Dr. Heather Johnson in which "[s]he said, If we don't renew with NCRIC, their group is going to go. And their group left."). In addition to such formal and informal exchanges with individual doctors, Dr. Rifka referenced executive committee meetings and general staff meetings at which physicians made similar statements. *See id.* at 101-05. Dr Rifka added that "it was common knowledge." *Id.* at 103. Dr. Rifka also reference other submissions in the case that contain further detail on the topic. *Id.* at 101-02. NCRIC's suggestion that Dr. Rifka did not respond to questions on this topic is puzzling not just because he quite clearly did, but also because, as elsewhere, NCRIC has not pointed to anything suggesting that he did not.

4. Dr. Rifka Adequately Answered NCRIC's Questions on Preventing Performance

NCRIC similarly suggests that Dr. Rifka did not respond to questions concerning "Columbia's allegations that NCRIC somehow prevented Columbia's performance under the

Retro Plan."[9] *See* NCRIC Mem. at 20. But he quite clearly did answer such questions directly. *See* Exh. 11 (Rifka Tr.) at 155 ("Sitting here today, I cannot recall of anything that Columbia was supposed to do that it did not do."); *id.* at 157 (responding to the question whether NCRIC excused Columbia from performing any obligation, Dr. Rifka stated: "Other than the oral agreement which said that no money will change hands, I do not recall any."). NCRIC does not explain how it is that these are not responsive answers.

5. Dr. Rifka Properly Referred to Other Case Materials

Finally, NCRIC objects generally that Dr. Rifka referred to materials previously submitted in the case, such as Columbia's Statements of Material Facts. *See* NCRIC Mem. at 21. Dr. Rifka did so after exhausting his memory on certain topics. Regardless, it is entirely proper for a Rule 30(b)(6) witness to refer to existing pleadings in the case. *See supra.* NCRIC's failure to follow-up on such references is not a deficiency in Columbia's testimony. Ultimately, NCRIC does not identify any topic or fact on which it claims it cannot determine with clarity Columbia's position on the basis of such a reference by Columbia's witness.[10]

C. NCRIC's Unauthorized Document Requests Were Improper, and NCRIC Has Not Even Attempted To Justify Them

Finally, NCRIC also points out that Columbia's designee did not search for documents responsive to NCRIC's supplemental document request. *See* NCRIC Mem. at 20. NCRIC fails to mention, however, that NCRIC had no basis for lodging such requests well over a year after the close of discovery and without leave of Court. Indeed, when Columbia wrote to NCRIC

---

[9] NCRIC does not specify the allegations to which it refers, nor does it detail how Dr. Rifka failed to answer any such question.

[10] In the unlikely event that the Court determines NCRIC is somehow entitled to further answers, but that further oral examination would not serve a good purpose, the Court can order that specified outstanding questions be answered in writing. *See Alexander*, 186 F.R.D. at 143.

16d-002135

pointing that out, NCRIC did not bother to respond and appeared to have dropped the matter. *See* Exh. 12 (Letter from Schulman to Badami of 5/15/03). Columbia's correspondence to NCRIC explained that NCRIC's document requests contravened the Court's admonition that its Order authorizing further limited discovery was "not an opportunity for NCRIC to inquire more broadly than the subject matter" that was at issue in NCRIC's motion. *Id.* (quoting Order of 4/7/03 at 1-2 n.1). Moreover, Columbia added, it had already produced an extensive array of documents responsive to NCRIC's untimely requests.[11]

NCRIC never raised the issue again with Columbia, though its motion papers disingenuously note in passing that Columbia failed to search for such documents. Even so, NCRIC's motion still does not even attempt to justify these supplemental document requests.

Thus, NCRIC's efforts to identify deficiencies in the answers of Columbia's Rule 30(b)(6) designee are no more successful than NCRIC's efforts to identify deficiencies in Columbia's interrogatory responses. Discovery must end, and NCRIC's attempt to delay trial via this motion should be denied.

---

[11] Indeed, the Court's Order called for production of the following documents only: "financial accounts or statements as to [Columbia's] financial situation at the time Columbia authorized the $1 million check to be given to [NCRIC]." *Id.* at 2-3. Columbia informed NCRIC that Columbia had in fact produced to NCRIC such financial accounts or statements, and rather than re-producing those documents, Columbia directed NCRIC's attention to the relevant bates range. *See* Exh. 12.

16d-002136

CONCLUSION

For the foregoing reasons, *NCRIC's Motion To Compel and for Sanctions Pursuant to Rules 33(b) and 37(a)* should be denied.

DATED: June 19, 2003

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-002137

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion To Compel and for Sanctions Pursuant to Rules 33(b) and 37(a)*, it is hereby ORDERED, that the motion is DENIED.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

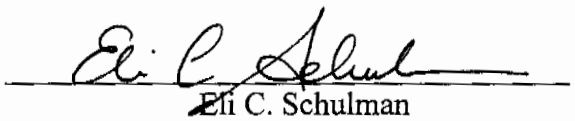
Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 19th day of June, 2003, a copy of the foregoing *Columbia's Opposition to NCRIC's Motion To Compel and for Sanctions Pursuant to Rules 33(b) and 37(a)* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on this 19th day of June, 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.



Eli C. Schulman

EXHIBIT 1

GENERAL ORDER
FOR CIVIL II CASES ON ALL CALENDARS

I. SCOPE AND PURPOSE. This General Order supplements the Superior Court Civil Rules (as of July 29, 1996), which apply to every Calendar and with which counsel and pro se parties should be familiar. In addition, a **Civil Actions Information Handbook** is available at Scheduling Conference for pro se parties and counsel who wish to share it with their clients. All counsel and parties are expected to treat each other and those involved in the case resolution process with dignity, respect and civility, both in court and in out-of-court conferences and discovery proceedings.

II. CHAMBERS, STAFF, AND SCHEDULE FOR CALENDAR 8.

Judge: Anna Blackburne-Rigsby
Chambers: 3540 Moultrie Building
Phone:(202)879-0055 **Fax:** (202)879-0041
Secretary: Ms. LaVerne Boone
Law Clerk: Ms. Beverly Blackwell
Courtroom Clerk: Mr. Derrick Monroe
Courtroom: A48 Building D (515 Fifth Street, NW)
Phone: (202) 879-2848

Unless otherwise directed, matters on Calendar 8, will take place as follows.
In-court proceedings: Courtroom A48, Building A, 515 Fifth Street, NW
Pretrial/Settlement Conferences: Jury Room for courtroom JM 13 (Judge Mott) Moultrie Building, unless otherwise notified.
Trials: Courtroom A48 Mondays through Thursdays, beginning at 9:30 a.m.
Scheduling Conferences, Oral examinations and **Ex Parte Proofs:** Fridays in Courtroom A48 from 9:30 a.m. to 11:30 a.m.

III. MOTIONS, OTHER FILINGS and COURT JACKETS. All requests must be by written motion (Rule 7(b)(1), 12-I(d)) filed in the Clerk's Office after payment of fee. The Court will not act on informal correspondence or telephone calls, but appreciates notice by phone that an emergency motion is being filed. Ex parte communications are inappropriate and will not be accepted.

The **caption** of all filings should include "Calendar 8 – Judge Blackburne-Rigsby" beneath the case number; and on the line below that "Next court event: [date and nature of event]" (e.g., Pretrial Conf: Dec. 4, 1997).

The original and one copy plainly marked "**Chambers Copy**" shall be filed in the Clerk's Office, JM 170 (Rule 5(e)); no motions should be faxed. The courtesy copy to chambers must be accompanied by (1) a **proposed order**, Rule 12-I(e); (2) a **copy of the scheduling order**, Rule 12-I(h); (3) a **mailing label** for each party entitled to receive a copy of the order, (4) a statement that an attempt was made to obtain **consent to the relief sought**, Rule 12-I(a), and (5) a **certificate of service** on all parties and on Chambers, Rule 5-I. Ordinarily, motions which do not comply with these requirements may be **summarily denied**. Memoranda which exceed ten pages in length and replies to oppositions are discouraged.

16d-002142

STIPULATIONS BETWEEN COUNSEL SHALL NOT BE EFFECTIVE TO CHANGE DEADLINES.

Except on Motions Day Calendars (5, 6, 15, and 16), motions will be decided on the papers alone, unless the Court determines the need for a hearing. Counsel and pro se parties must notify chambers if a pending motion is resolved or a case is settled.

Court jackets are maintained in the Clerk's Office (Room JM-170). They can be reviewed there and not in chambers.

IV. DISCOVERY. Motions to compel discovery and motions relating to discovery must comply with Rule 37(a)and Rule 26(i). The meeting required by these rules must be face to face, for a reasonable period of time (usually at least 60 minutes) in an effort to resolve the matter before filing a motion. Motions lacking this certification, including the date, time, and place at which a meeting was held, will be **summarily denied.**

V. SETTLEMENT. In order to reduce litigation expense and delay, to eliminate the anxiety of trial and the risk of an unsatisfactory outcome, it is desirable that settlements occur as early as possible in the litigation process. The Court is available to assist the parties in pursuing settlement early in the case. However, the Court will not delay trial to participate in settlement discussions on the day of trial. Counsel must sign **a certificate that all case preparation has been completed by the time of mediation.** Counsel unable to sign the certificate, and if necessary their clients, will be summoned to appear before the Presiding Judge for consideration of **further sanctions.**

VI. PRETRIAL/SETTLEMENT CONFERENCE. Violations of any provision of Rule 16 may result in sanctions. The attached form of **Joint** Pretrial Statement must be used and must include **joint** voir dire questions, jury instructions and verdict form -- with objections, if any.

Non-party principals with full settlement authority must attend in person or be available by telephone until notified by counsel that the conference has concluded (usually one hour after its scheduled beginning).

16d-002143

January 8, 2002

Civil II Calendar 8
Judge Anna Blackburne-Rigsby

ADDENDUM TO GENERAL ORDER AND GUIDELINES FOR TRIAL

1. Courtroom Location and Equipment

Trials will be conducted in Courtroom A-48, Building A, 515 5th Street, NW. The telephone number in the courtroom is 202-879-2848. A small easel is the only equipment available in the courtroom. Counsel requiring technical equipment during the trial must make their own arrangements outside the Court for such equipment. The U.S. Marshal may require a court order to bring such items into the courthouse. If so, counsel must prepare such an order for the Court's signature.

2. First Trial Day

On the day scheduled for trial, all counsel and parties must report to Courtroom A-48 at **9:30 a.m.** ready to begin trial. Unlike prior practice in Civil II cases, there will be no initial discussions on the day of trial. If the Court is unable to begin the trial on the date scheduled, all parties and counsel must remain ready on one (1) hour telephone alert to come to the courthouse and begin trial on either of the two following court days.

3. Hours of Trial

Trials will generally be held on Mondays through Thursdays from 9:30 a.m. to approximately 4:30 p.m. The luncheon recess will be from approximately 1:00 p.m. to 2:15 p.m.; there will be one brief mid-morning recess and one brief mid-afternoon recess.

4. Pretrial Order

At trial, the provisions of the Joint Pretrial Order will be enforced except in extraordinary circumstances. Therefore, claims and defenses not set forth in the Joint Pretrial Order will not be entertained.

5. Jury Voir Dire and Challenges for Cause

Upon the jury panel's arrival in the courtroom, the clerk will seat its members in the courtroom, in the order in which their names appear on the panel list. The Court will then explain the purpose and procedures for voir dire and will conduct the voir dire.

Each panel member will be provided a blank index card. Each panel member shall write their jury number on the card. As each question is asked, any panel member who has an affirmative response will write the number of that question on their index card. After all questions have been answered, the Court will individually call to the bench all panel members and will inquire with counsel into their affirmative responses and make any other inquiry that may be appropriate. Any challenges for cause must be presented immediately after each juror is interrogated. Upon the conclusion of voir dire, counsel will simultaneously exercise their peremptory challenges. See Rules 47-I and 48. Thereafter, the jury will be seated in the jury box in the order in which their names appear on the jury list.

6. Preliminary Instructions

After the jury is selected and sworn, the Court will give preliminary instructions to the jury. These instructions will generally include a description of the trial process, the responsibilities of the participants, the burden of proof, procedures governing juror note taking and juror questioning, and the duty not to discuss the case with anyone until deliberations begin. If counsel desire that any additional preliminary instructions be given, they should make that request of the Court before the jury panel arrives.

7. Note Taking and Questioning by Jurors

Jurors will be permitted to take notes in notebooks which the Court will provide. At the end of the trial, the jurors will be permitted to take their notebooks to the jury room for use during deliberation.

8. Opening Statement

Except for especially complex cases, opening statements shall be limited to twenty minutes per side. Opening statements should consist of a straightforward statement of what the evidence will show, not argument. Plaintiff's counsel shall make no reference to the ad damnum clause of the complaint, nor to any claim for punitive damages without prior approval of the Court.

9. The Rule on Witnesses

The rule on witnesses will be in effect throughout the trial until the time of closing arguments and instructions. Other than parties and their representatives, all witnesses must remain outside the courtroom except while testifying. If counsel desire a waiver of the rule with respect to a specific witness (for example, an expert), counsel shall first discuss the matter with opposing counsel and then present the request to the Court prior to the witness' s arrival in the courtroom. Counsel shall instruct witnesses not to discuss their testimony after they leave the stand.

10. Availability of Witnesses

Once the trial begins, witnesses will be put on call at the peril of the calling party. The trial will not be recessed because a witness is unavailable except in extraordinary circumstances. If alerted ahead of time, the Court will endeavor to accommodate witnesses with scheduling problems. In some instances, it may be wise for counsel to arrange a de bene esse deposition of a witness whose schedule makes his or her live appearance at trial problematic. Any objections to de bene esse depositions should be designated and delivered to chambers one week before trial so that the Court can review objections before trial. In the case of videotaped depositions, a transcript must be prepared in order for the Court to rule on objections. In the absence of any objections, the transcript or videotape will be admitted without interruption.

No retained expert (as distinct from a fact witness who is testifying to opinions reached during treatment) may testify during a party's case-in-chief or in rebuttal unless his or her Rule 26(b)(4) statement has been provided prior to the Pretrial.

16d-002145

11. Examination of Witnesses

Counsel may approach the witness stand while handling exhibits. Otherwise, they are requested to remain at the podium or counsel table.

12. Objections

"Speaking objections" from the podium will not be permitted. Counsel will limit objections to shorthand phrases such as "hearsay," "lack of foundation," "asked and answered," etc. If additional discussion is needed, counsel will be called to the bench. Frequent or protracted bench conferences will be discouraged.

13. Exhibits

Except where objections have been reserved in writing at the Pretrial or except in extraordinary circumstances, any exhibits which have been properly pre-marked and submitted will be admitted at trial. Counsel may refer to them in argument or in the testimony and need not lay a foundation for their admissibility. Where objections have been reserved, normally only the grounds of objection reserved will be considered at trial, and counsel should not spend time authenticating or otherwise proving admissibility. Impeachment exhibits (those whose sole purpose is to attack a witness's veracity) need not be disclosed at pretrial, but they should be pre-marked so that they will be immediately useable at trial without the necessity for labeling by the clerk.

Without leave of Court, per Rule 16(e)(5), no party may offer at trial any witness or exhibit not listed in the Pretrial Order, except for purposes of impeachment or rebuttal.

14. Closing Arguments

Closing arguments will generally be limited to thirty minutes per side. Plaintiff may reserve for rebuttal up to one-half of the time actually used during direct argument.

During closing arguments (and opening statements), it is expected that each counsel will treat all other counsel with the courtesy and civility with which he or she would wish to be treated. Counsel are reminded that it is improper to argue matters not in evidence or to express a personal opinion or belief about the case.

15. Jury Instructions

If any party is requesting any non-standard jury instructions, counsel must bring to court on the morning of trial a computer disk containing such instructions compatible with Microsoft Word 97, to facilitate their inclusion in the court's written instructions that go to the jury.

16. **Deliberations**

The Court will send to the jury at the beginning of deliberations all admitted exhibits, the written jury instructions, and any verdict form which the Court has determined to use. In addition, jurors will be able to take their notebooks with them. Throughout jury deliberations counsel must be available on ten minutes notice in the event that any jury notes are received. Counsel choosing not to remain in the vicinity of the courtroom should be sure the clerk has a telephone number where they can be reached. The jury will normally be brought into the courtroom to be excused at the end of the day, for resumption of deliberations the following day. The courtroom clerk will maintain exhibits, notebooks, and verdict forms until the jury reconvenes its deliberations when all are present the following morning.

EXHIBIT 2

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, Plaintiff	*	
	*	Civil Action: 00ca7308
	*	Judge A. Blackburne-Rigsby
v.	*	Calendar 8
	*	Next Event: Pretrial Conference,
	*	May 6, 2003
Columbia Hospital for Women Medical Center, Inc. Defendant	*	

ORDER GRANTING IN PART AND DENYING IN PART NCRIC's MOTION TO COMPEL DISCOVERY BY DESIGNATION UNDER SCR 30(b)(6) AND APPEARANCE AT DEPOSITION

On August 7, 2001, NCRIC filed this instant Motion to Compel Discovery By Designation Under SCR 30(b)(6) and Appearance at Deposition. Specifically, NCRIC asks the Court to compel Columbia to designate persons to appear at deposition and answer questions about subject matters described in plaintiff's Notice of 30(b)(6) Deposition pertaining to numbers 1-14, 28-29, 51-52, 56-57. On November 19, 2001, Columbia filed its Memorandum of Law in Opposition to Plaintiff's Motions to Compel. The Court has reviewed the motion and the particular objections. The Court's disposition on these issues is detailed below:

#1: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories[1] specific to this subject area. Such information should be obtained from interrogatories. The Court has considered Columbia's objections based on work product privilege. However, certain underlying facts must have been the basis for Columbia's eleven-count counterclaim. Thus, the Court does not recognize a work-product privilege as to this

[1] The Court will allow NCRIC to reopen discovery in the form of interrogatories only for the specified areas. This is not an opportunity for NCRIC to inquire more broadly than the subject matter stated in

specific area.

#2: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories to this subject area. (*See* #1 above).

#3: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories to this subject area. (*See* #1 above).

#4: Granted. Columbia is instructed to provide designees to be deposed on this specific subject area.

#5: Granted. Certain underlying facts as these must have been the basis for Columbia to file an eleven-count counterclaim. Columbia is instructed to provide designees to be deposed on this specific subject area.

#6: The Court will reserve ruling on these issues until this issue is addressed in the Court's ruling on NCRIC's Summary Judgment Motion.

#7: The Court will reserve ruling on these issues until this issue is addressed in the Court's ruling on NCRIC's Summary Judgment Motion.

#8: Denied: The Court agrees with Columbia that this subject area improperly asks the designees to speak to the law of fiduciary relationships.

#9: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories specific to this subject area. Such information should be obtained from interrogatories. The Court has considered Columbia's objections based on work product privilege. However, certain underlying facts must have been the basis of the eleven-count counterclaim. Thus, the Court does not recognize a work-product privilege as to this specific area. Moreover, the Court compels Columbia to provide financial accounts or

---

plaintiff's Notice of Deposition pursuant to Rule 30(b)(6), but only to allow such relevant and pertinent information to be obtained properly through limited interrogatories.

16d-002150

statements as to their financial situation at the time Columbia authorized the $1 million check to be given to Columbia.

#10: Granted in part. Certain underlying facts, such as these, must have the basis of Columbia's eleven-count counterclaim. The Court reserves ruling on the remaining issue until it issues a ruling on NCRIC's Summary Judgment Motion.

#11: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories specific to this subject area. Such information should be obtained from interrogatories. The Court has considered Columbia's objections based on work product privilege. However, certain underlying facts must have been the basis of Columbia's eleven-count counterclaim. Thus, the Court does not recognize a work-product privilege as to this specific area.

#12: Denied. NCRIC already has within its possession the allegations of errors by plaintiff from the pleadings.

#13: Granted. Columbia counter-claimed that NCRIC knew about Columbia's financial situation. Columbia should designate person(s) to speak to the underlying facts regarding the "bases for the allegations of plaintiff's knowledge about defendant's financial situation."

#14: Granted. The Court will permit NCRIC ten days leave to file limited interrogatories specific to this subject area. Such information should be obtained from interrogatories. The Court does not recognize a work-product privilege as to this specific area.

#28: The Court will permit NCRIC ten days leave to file limited interrogatories to this subject area. (*See* #1 above).

16d-002151

#29: Denied. The Court acknowledges Columbia's objection that this is a moot issue. However, the Court agrees with Columbia's objection that NCRIC will only be able to obtain information concerning the *results* of Columbia's insolvency, not the *cause.*

#51: Granted. Columbia is instructed to provide designees to be deposed on this specific subject area.

#52: Denied. Columbia can not be expected to testify as to the intent of NCRIC.

#56: Granted: Columbia is instructed to provide designees to be deposed on this specific subject area.

#57: Denied. The Court acknowledges that Columbia's prayer for attorney's fees was dismissed and therefore this subject area is moot.

So Ordered.

April 3, 2003
Date

A. Blackburne-Rigsby
Judge A. Blackburne-Rigsby

DOCKETED APR 7 2003

MAILED APR - 7 2003

Copies To:

Joseph K. Leahy, Esq.
Kellog, Huber, Hansen, Todd
& Evans, P.L.L.C
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Rodney Page, Esq.
Bryan Cave LLP
700 13th Street, N.W.
Washington, D.C. 20005-3960

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814

16d-002152

EXHIBIT 3

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

May 14, 2003

By FedEx

Scott M. Badami, Esq.
Jenifer Berger, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Scott and Jenifer:

Enclosed are Columbia's Responses to NCRIC's Supplemental Interrogatories. In order to facilitate prompt resolution of this matter, Columbia has furnished these responses a full week in advance of the time permitted under the local rules. In the same spirit, Columbia will be in touch with you shortly with proposed dates for the remaining Rule 30(b)(6) deposition.

We received today notice from the Court scheduling the pretrial conference for May 19, 2003 at 4:30 p.m. and accordingly renew our proposal to meet pursuant to Rule 16(c) in advance of the conference. We are available to meet any time before the conference other than Saturday, May 17, 2003.

Please let me know when you would be prepared to meet pursuant to Rule 16(c).

Sincerely,

Eli C. Schulman

Eli C. Schulman

Enclosure

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Hearing, May 6, 2003
	)	
Defendant/Counter-Plaintiff.	)	

DEFENDANT'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES

COMES NOW Defendant, Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by and through its attorneys, Mark C. Hansen, Esquire, David E. Ross, Esquire, Eli C. Schulman, Esquire, and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., and in response to Plaintiff's Supplemental Interrogatories ("Plaintiff's Interrogatories"), propounded by Plaintiff NCRIC, Inc. ("NCRIC"), states as follows:

GENERAL OBJECTIONS

The following General Objections apply to each and every interrogatory and form an integral part of Columbia's response to each interrogatory:

1. Columbia objects to Plaintiff's Interrogatories insofar as they seek information that Columbia already has provided to NCRIC in this litigation. The discovery at issue was sought by NCRIC at the outset of this case, some two and a half years ago. By the time that the parties completed discovery and undertook extensive briefing of cross-motions for summary judgment, Columbia had provided NCRIC with detailed discovery in the form of documents,

interrogatory responses, and depositions concerning the subject matter of these Supplemental Interrogatories and had necessarily gone on the record in Columbia's papers about the issues that NCRIC now raises in these Interrogatories. For instance, Columbia has explained in great detail the proper calculations under the Retro Plan, but this topic serves as the focus of several of NCRIC's Supplemental Interrogatories.

2. Columbia objects to Plaintiff's Interrogatories to the extent that they disregard the Court's express admonition that its Order authorizing NCRIC to serve these Supplemental Interrogatories "is not an opportunity for NCRIC to inquire more broadly than the subject matter stated in plaintiff's Notice of Deposition pursuant to Rule 30(b)(6)." Order of 4/7/03 at 1-2 n.1.

For instance, the Court authorized NCRIC to serve a supplemental interrogatory on the topic of "Defamatory actions or statements by plaintiff about defendant." But NCRIC has proceeded to lodge three separate interrogatories relating to NCRIC's defamation of Columbia, addressing not only the substance of the defamatory statements but also such matters as who heard the statements – matters plainly exceeding the scope of the Court's Order.

3. Columbia objects to Plaintiff's Interrogatories insofar as NCRIC has refused to provide Columbia with information sufficient to answer the Interrogatories. For instance, calculations under the Plan depend upon the proper calculation of Subject Premium – but NCRIC has refused to provide Columbia with data sufficient to verify NCRIC's calculation of Subject Premium.

4. Columbia objects to Plaintiff's Interrogatories to the extent that they are duplicative.

5. Columbia objects to Plaintiff's Interrogatories insofar as they seek information that is in NCRIC's possession.

6. Columbia objects to Plaintiff's Interrogatories insofar as they seek information not in Columbia's possession.

7. Columbia objects to Plaintiff's Interrogatories insofar as they seek disclosure of information protected by the peer review privilege, the attorney-client privilege, the work-product privilege, the party-communication privilege or the investigative privilege. Columbia further objects to Plaintiff's Interrogatories insofar as they call for information otherwise protected under the District of Columbia Superior Court Rules of Civil Procedure or any other applicable law. Columbia does not intend by these responses or objections, or by the inadvertent production of any privileged documents, to waive any protection to which it is entitled.

8. Columbia objects to Plaintiff's Interrogatories to the extent that they are vague, ambiguous, overly broad, burdensome, harassing, and/or not reasonably calculated to lead to the discovery of admissible evidence in this action.

9. Columbia reserves the right to modify or supplement its objections and responses based on such pertinent information as it may subsequently discover.

SPECIFIC OBJECTIONS AND RESPONSES

SUPPLEMENTAL INTERROGATORY NO. 1: Identify and describe all facts and reasons forming the basis for Columbia's claim that any of the calculations or numbers in Columns A-E, lines 1-20 of Exhibit A attached to Columbia's Answer to Interrogatories and Responses and Requests for Admissions are incorrect or fail to comply with the terms, provisions or formulas of the contract between the NCRIC and Columbia.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 1: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as it is vague and ambiguous and insofar as it is unduly burdensome. In particular, there is no pleading or pleadings denominated in whole or in part Columbia's Answer to Interrogatories and Responses and Requests for Admissions, and none of Columbia's responses to NCRIC's interrogatories or

NCRIC's requests for admissions has attached an Exhibit A. Columbia also objects to this Interrogatory insofar as it requests information not in Columbia's possession, but rather, in NCRIC's possession. For example, upon information and belief, the data necessary to calculate most of the amounts shown on Exhibit 1, *infra*, are in NCRIC's sole possession.

Subject to and without waiving the foregoing objections, Columbia responds as follows: Exhibit 1 to Defendant's Objections and Responses to Plaintiff's First Set of Interrogatories and Exhibit 1 to Defendant's Objections and Responses to Plaintiff's First Request for Admissions ("Exhibit 1") each includes a grid to set off each column and row of the exhibit. The columns are labeled 1 through 20; the rows are labeled A through F. Each of Columns A through E corresponds to a one-year period that the Plan was in operation (*e.g.*, Column A, which is labeled "Y94-95," corresponds to the period between September 1, 1994 to and August 31, 1995). Each row corresponds to a specific term defined in the Plan or concept contemplated by the Plan (*e.g.*, Row 2 corresponds to the term "Deposit Premium," as defined in the Plan; Row 5 corresponds to the concept of indemnity reserves contemplated by the Plan).

Columbia contends that, for Columns B through E of Row 2 ("Deposit"); for Columns C through E of Row 12 ("Development Factor"); for Columns C through E of Row 13 ("Retrospective Premium"); for Columns A through E of Row 14 ("Return Premium" or "Additional Premium" due); and for Column A of Rows 17 ("Maximum Premium"), 18 ("Minimum Premium"), 19 (Maximum Premium multiplier) and 20 (Minimum Premium multiplier), the amount shown on Exhibit 1 is not the correct amount set by the Plan, for the term or concept corresponding to that row and the period corresponding to that column.

Further, upon information and belief, for each column of Rows 1 (corresponding to the term "Subject Premium"), 5, 6 (corresponding to the concept of ALAE reserves), 7

(corresponding to the term "Loss Reserves") and 11 (Paid Losses plus Loss Reserves), Columbia cannot determine whether the numbers are incorrect or fail to comply with the terms, provisions, or formulas of the contract, because the information necessary for making such a determination is solely in the possession of NCRIC.

As to the basis for Columbia's conclusion that the foregoing calculations or numbers are incorrect or fail to comply with the terms, provisions, or formulas of the contract between NCRIC and Columbia, subject to and without waiving the foregoing objections Columbia responds as follows:

(a) The Plan dictates that the amount for the term corresponding to Row 2 must be calculated by applying a multiplier. The proper multiplier is .67 for the periods corresponding to Columns B through E. NCRIC applied an incorrect multiplier, approximately .62, when calculating all the amounts in Columns B through E of Row 2, thereby miscalculating each corresponding amount in Row 2.

(b) The Plan dictates that the amount for the term corresponding to Rows 13 and 14 must be calculated by applying a multiplier corresponding to Row 12. The multiplier shown in Columns C through E of Row 12 is incorrect. The correct amount, set by the Plan, for the term corresponding to Row 12 of Exhibit 1 is: "80%" for the period corresponding to Column C; "65%" for the period corresponding to Column D; and "55%" for the period corresponding to Column E, rather than: "105%" for the period corresponding to Column C; "80%" for the period corresponding to Column D; and "65%" for the period corresponding to Column E. NCRIC applied the incorrect multiplier in calculating each amount in Columns C through E of Rows 13 and 14, thereby miscalculating each such amount.

(c) The Plan dictates that the amounts for the term corresponding to Row 17 must be calculated by applying a multiplier corresponding to Row 19, and that the amounts for the term corresponding to Row 18 must be calculated by applying a multiplier corresponding to Row 20. The multiplier shown in Column A of Rows 19 and 20 is incorrect. Under the Plan, the correct amount for the term corresponding to Row 19, for the period corresponding to Column A, is "1.33," not "1.15"; for that same period, the correct amount for the term corresponding to Row 20 is ".60", not ".75". By applying the incorrect multiplier from Column A of Rows 19 and 20, NCRIC thereby miscalculated each amount in Column A of Rows 17 and 18.

(d) The Plan dictates that the amount for the term corresponding to Row 14 must be determined by a calculation that subtracts from the term corresponding to Row 2 another term corresponding either to Row 13 or Row 18, whichever is greater (subject to a further limitation not relevant here). By applying the incorrect multiplier in Column A of Row 20 and thereby miscalculating the amount in Column A of Row 18, NCRIC thereby miscalculated the amount in Column A of Row 18, *see supra* (c), which also led NCRIC to miscalculate the amount in Column A of Row 13 and, in turn, Column A of Row 14. And by miscalculating the amount in Column B of Row 2, *see supra* (a), NCRIC thereby miscalculated the amount in Column B of Row 14.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment at 13-17, Statement of Material Facts Not in Dispute & Exhs. 10, 14; and Reply in Support of Defendant's Motion for Summary Judgment Exh. 1. To the extent that this or any of these supplemental interrogatories seeks further facts and reasons forming the basis for these conclusions, Columbia hereby incorporates by reference Columbia's Answer and

Counterclaims; Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment ("SJ Mem."); Statement of Material Facts Not in Dispute ("SMF"); Reply in Support of Defendant's Motion for Summary Judgment ("SJ Reply"); Memorandum of Points and Authorities in Opposition to NCRIC's Motion for Summary Judgment ("SJ Opp."); Statement of Material Facts in Dispute ("SMF2"); and the exhibits to the foregoing papers (collectively, "Columbia's Previously Submitted Papers").

SUPPLEMENTAL INTERROGATORY NO. 2: Identify and describe the amounts Columbia believes to be the correct amounts in Columns A-E, lines 1-20 of Exhibit A attached to Columbia's Answer to Interrogatories and Responses and Requests for Admissions to comply with the terms, provisions or formulas of the Contract between the NCRIC and Columbia.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 2: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as it requests information not in Columbia's possession, but rather, in NCRIC's possession. For example, upon information and belief, the data necessary to calculate most of the amounts shown on Exhibit 1 – and particularly the amounts in Rows 1, 2, 4, 5 through 11, 13, and 14 – is in NCRIC's sole possession. Without this data, Columbia cannot determine how and in what manner the amounts referred to in its response to Supplemental Interrogatory No. 1 are incorrect. The amounts in Exhibit 1 (and therefore those in these Responses) necessarily reflect, *inter alia*, the assumption that NCRIC correctly and fairly calculated Subject Premium and Loss Reserves under the Plan – an assumption that Columbia is unable to verify because NCRIC has refused to provide Columbia with data sufficient to verify these amounts. Nonetheless, Columbia has been able to determine that NCRIC's miscalculations of some amounts shown on Exhibit 1 resulted in part from NCRIC's improper application of the retro formula under the Plan, and Columbia therefore responds accordingly.

Subject to and without waiving the foregoing objections, Columbia responds, based on the facts presently known to it, as follows:

(a) The correct amount, set by the Plan, for the term corresponding to Row 2 of Exhibit 1 is: "$2,203,073.90" for the period corresponding to Column B; "$2,341,855.02" for the period corresponding to Column C; "$2,238,195.30" for the period corresponding to Column D; and "$2,418,476.89" for the period corresponding to Column E.

(b) The correct amount, set by the Plan, for the term corresponding to Row 12 of Exhibit 1 is: "80%" for the period corresponding to Column C; "65%" for the period corresponding to Column D; and "55%" for the period corresponding to Column E.

(c) The correct amount, set by the Plan, for the term corresponding to Row 13 of Exhibit 1 is: "$3,063,904.73" for the period corresponding to Column C; "$1,706,188.72" for the period corresponding to Column D; and "$2,802,425.73" for the period corresponding to Column E.

(d) The correct amount, set by the Plan, for the term corresponding to Row 14 of Exhibit 1 is: "($350,593.73)" for the period corresponding to Column A; "$333,392.45" for the period corresponding to Column B; "$722,049.71" for the period corresponding to Column C; "($233,841.30)" for the period corresponding to Column D; and "$383,948.84" for the period corresponding to Column E.

(e) The correct amount, set by the Plan, for the term corresponding to Row 17 of Exhibit 1 is: "$3,783,734.29" for the period corresponding to Column A.

(f) The correct amount, set by the Plan, for the term corresponding to Row 18 of Exhibit 1 is: "$1,706,947.80" for the period corresponding to Column A.

(g) The correct amount, set by the Plan, for the term corresponding to Row 19 of Exhibit 1 is: "1.33" for the period corresponding to Column A.

(h) The correct amount, set by the Plan, for the term corresponding to Row 20 of Exhibit 1 is: ".60" for the period corresponding to Column A.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; and SJ Reply Exh. 1. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 3: Describe and identify the facts and reasons why Columbia believes the amounts contained in your response to Supplemental Interrogatory No. 2 to be the proper amounts and calculations to be used in calculating the amount of premium due Columbia under the Contract.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 3: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds, based on the facts presently known to it, as follows: Columbia incorporates by reference its Responses to Supplemental Interrogatories Nos. 1 & 2.

SUPPLEMENTAL INTERROGATORY NO. 4: Identify and describe the amount of premium that should have been charged to Columbia in each year of the Contract and the method of calculation of any refund premium Columbia claims it is owed.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 4: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as it is vague and ambiguous. In particular, Columbia is unable to determine the meaning of the phrase "the amount of premium that should have been charged to Columbia." For instance, this Interrogatory speaks generically of "premium," but the Plan refers to numerous types of premium, including "Subject Premium," "Deposit Premium," "Retro Premium," "Minimum Premium," and

"Additional Premium." This Interrogatory also speaks of "refund premium," a term not defined in the Plan. The term "charged to Columbia" is vague, as well.

Columbia also objects to the extent that this Interrogatory asks for "the amount of premium that should have been charged to Columbia" insofar as any such amount depends on the fair and correct calculation of Subject Premium under the Plan – but NCRIC has refused to provide Columbia with data sufficient to verify NCRIC's calculation of Subject Premium.

Subject to and without waiving the foregoing objections, Columbia responds as follows: Columbia believes that this Interrogatory is most coherently understood to be asking about any "Additional Premium" or "Return Premium" due after performance of a Reconciliation. Therefore, for each year, or Experience Period, a Reconciliation should be performed (correctly, per Interrogatories Nos. 1-3) to determine whether Columbia owes Additional Premium or is due Return Premium. Additional Premium is any positive balance (*i.e.*, in NCRIC's favor); Additional Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is greater than the Deposit Premium. Return Premium is any negative balance (*i.e.*, in Columbia's favor); Return Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is less than the Deposit Premium.

According to the September 2000 Reconciliation, NCRIC owed Columbia Return Premium of "$587,568.66" for the Experience Period 1993-94; NCRIC owed Columbia Return Premium of "$350,593.73" for the Experience Period 1994-95; Columbia owed NCRIC Additional Premium of "$333,392.45" for the Experience Period 1995-96; Columbia owed NCRIC Additional Premium of "$722,049.71" for the Experience Period 1996-97; NCRIC owed Columbia Return Premium of "$233,841.30" for the Experience Period 1997-98; and Columbia owed NCRIC Additional Premium of "$383,948.84" for the Experience Period 1998-99. This

totals $267,387.31 in Additional Premium that Columbia owed NCRIC. Taking into account the $172,815.00 that NCRIC paid Columbia for the first Experience Period and the $1,000,000.00 that Columbia deposited with NCRIC leaves NCRIC owing Columbia Return Premium of $559,797.69.

The parties, however, agreed orally that they would exchange Additional or Return Premium only for those Experience Periods for which all claims were closed. The amounts calculated under the September 2000 Reconciliation therefore are not the actual amounts owed, for as of September 2000, only the Experience Periods 1993-94 and 1994-95 had closed. According to the September 2000 Reconciliation, NCRIC owed Columbia Return Premium of "$587,568.66" for the Experience Period 1993-94; NCRIC owed Columbia Return Premium of "$350,593.73" for the Experience Period 1994-95. NCRIC paid Columbia $172,815.00 for the 1993-94 Experience Period. Therefore, NCRIC in fact owes Columbia $765,347.39 in Return Premium (in addition to owing Columbia its $1 million deposit back, plus interest).

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; and SJ Reply Exh. 1. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 5: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 1 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 5: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC breached the Plan by failing in performing its Reconciliations to apply the proper Minimum Premium factor, the proper Deposit Premium factor, and/or the proper Development

16d-002165

Factors. NCRIC further breached the parties' agreement by seeking payment for Experience Periods for which not all of the claims had closed, in violation of the parties' oral agreement.

Through NCRIC's failure to perform its obligations under the Plan, NCRIC caused Columbia damages. According to NCRIC's own calculations, NCRIC owes Columbia Return Premium for the two Experience Periods that are closed. NCRIC has paid Columbia $172,815 for the first Experience Period, but it has paid Columbia nothing for the second Experience Period. Accordingly, even under NCRIC's own interpretation of the terms in the Retro Plan, NCRIC owes Columbia $177,806.

But even that amount understates NCRIC's liability to Columbia. As explained, in its Reconciliations, NCRIC employs the wrong Minimum Premium factor for the 1993-94 and 1994-95 Experience Periods. When the correct Minimum Premium factor is applied (assuming all of NCRIC's other calculations are correct), NCRIC owes Columbia $587,568.66 (less $172,815 it already paid) for the 1993-94 Experience Period and $350,593.73 for the 1994-95 Experience Period, for a total of $765,347.49, plus interest.

In addition, NCRIC's miscalculations, including but not limited to those in the 1997 Reconciliation, caused Columbia to overpay Additional Premium and to make an unwarranted $1 million deposit, thereby causing Columbia to become insolvent and to file for bankruptcy. Columbia incurred expenses of over $1.5 million in connection with its bankruptcy.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; SJ Reply Exh. 1; and SMF2 ¶¶ 29, 35-36, 157-59. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 6: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 2 of its counterclaim and describe how that amount has been calculated.

16d-002166

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 6: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC willfully rendered imperfect performance by performing Reconciliations inaccurately. Columbia's damages include the amount due according to the September 1, 2000 Reconciliation – $765,347.39, plus interest, *see* Response to Supplemental Interrogatory No. 5. That is, NCRIC was required to inform Columbia by November 1, 2000 of the correct amount due and pay that amount by December 1, 2000. NCRIC did neither.

In addition, Columbia was damaged by the $1 million that it deposited with NCRIC in installments between January 1998 and March 1998, plus interest. Had NCRIC performed the September 1, 1997 Reconciliation correctly, the spreadsheet would have shown that (absent the oral agreement) Columbia was owed $78,000 in Return Premium, not that Columbia owed approximately $1.77 million in Additional Premium. NCRIC thus had no basis for seeking a $1 million deposit as a condition for renewing the Plan. NCRIC's demand for this payment also violated the parties' oral agreement. NCRIC should have returned the $1 million, plus interest, when Columbia demanded that it be returned.

In addition, NCRIC's miscalculations, including but not limited to those in the 1997 Reconciliation, caused Columbia to overpay Additional Premium and to make an unwarranted $1 million deposit, thereby causing Columbia to become insolvent and to file for bankruptcy. Columbia incurred expenses of over $1.5 million in connection with its bankruptcy.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; SJ Reply Exh. 1; and SMF2 ¶¶ 29, 35-36, 157-59. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 7: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 3 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 7: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC breached its fiduciary duty to Columbia by failing to perform Reconciliations honestly and accurately. NCRIC failed to alert Columbia that under the September 2000 Reconciliation, Columbia was owed $765,347.39 in Return Premium, plus interest.

NCRIC also breached its fiduciary duty to Columbia by demanding the $1 million deposit when it was not due and by refusing to return the $1 million.

NCRIC further damaged Columbia by refusing to allow Columbia to audit NCRIC's calculations – in particular, by refusing to give Columbia access to information concerning the premiums of individual members of the Attending Faculty used to calculate Subject Premium and concerning indemnity and expense reserves for individual malpractice claims that comprise the Loss Reserves.

In addition, NCRIC's miscalculations, including but not limited to those in the 1997 Reconciliation, caused Columbia to overpay Additional Premium and to make an unwarranted $1 million deposit, thereby causing Columbia to become insolvent and to file for bankruptcy. Columbia incurred expenses of over $1.5 million in connection with its bankruptcy.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; SJ Reply Exh. 1; and SMF2 ¶¶ 29, 35-36, 157-59. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 8: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 4 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 8: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

As a direct and proximate result of NCRIC's wrongful conduct, about 30 Attending Faculty members terminated their association with Columbia and moved (the bulk of) their practices to Sibley and/or GW hospitals. These physicians ceased or cut back referring patients to Columbia. The steep drop in patient referrals cost Columbia substantial revenues each year for the foreseeable future.

Mr. Peter Ben Ezra applied a generally accepted "lost cash flow" model to calculate Columbia's lost revenue damages resulting from the departure of the Attending Faculty. *See generally* Report of Peter Ben Ezra, Expert Witness; Deposition of Peter Ben Ezra; Declaration of Peter Ben Ezra in Support of Defendant's Memorandum of Points and Authorities in Opposition to NCRIC's Motion for Summary Judgment. For his analysis, Mr. Ben Ezra obtained a breakdown of Columbia's actual revenue from patient referrals, sorted by physician. He then compared the revenue streams attributable to the physicians who left the hospital for the year before October 1, 2000, and the year after October 1, 2000, and compared the two numbers. Then, Mr. Ben Ezra used a textbook "lost cash flow" model to calculate the lost cash flows over time until an estimated year when each physician would have retired, had they stayed at

Columbia. He excluded from consideration any physician who left the hospital for non-NCRIC-related reasons. This is a well-accepted means of calculating lost cash flow. Mr. Ben Ezra concluded that the present value of Columbia's damages under this analysis total $21.5 million.

Columbia also suffered other damages about which lay witnesses testified. First, due to NCRIC's wrongful conduct Columbia lost the opportunity to hold a gala fundraiser, reasonably expected to garner more than $1.5 million in contributions. This gala, scheduled for May 2001, was canceled abruptly in late 2000 by Columbia's volunteer fundraising board, because the pervasive rumors that the hospital was going to close made it essentially impossible to raise contributions.

Second, Columbia was eligible for a $35 million, low-interest HUD loan, which it was reasonably assured of obtaining in light of HUD's support for its candidacy. But after the Attending Faculty left in Summer/Fall 2000, Columbia's volume and revenues dropped sharply. As a result, HUD advised Columbia that it no longer qualified for the loan. Denial of this loan meant losing the opportunity to reduce the hospital's cost of capital from 10.5% to 4.5% per month.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SMF2 ¶¶ 193-238 and SJ Opp. at 53-60, in addition to Mr. Ben Ezra's Report, Deposition, and Declaration. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 9: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 5 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 9: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC's tortious interference with prospective business advantage caused doctors to terminate their association with Columbia and move their practices to Sibley and/or GW hospitals. These physicians ceased or cut back referring patients to Columbia, causing Columbia $21.5 million in lost cash flow and other damages, including the lost opportunity to hold a gala fundraiser reasonably expected to garner more than $1.5 million in contributions, and the lost opportunity to obtain a $35 million, low-interest HUD loan that would have reduced the hospital's cost of capital form 10.5% to 4.5% per month. Columbia incorporates by reference its Response to Supplemental Interrogatory No. 8.

SUPPLEMENTAL INTERROGATORY NO. 10: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 7 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 10: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC and/or its agents made false representations to Columbia, including NCRIC's improper Retro Plan calculations. NCRIC also concealed from Columbia material facts which amounted to a misrepresentation by refusing to provide information concerning Loss Reserves as provided for by the Plan, among other things. NCRIC refused to provide Columbia access to data necessary to independently verify NCRIC's bookkeeping.

Columbia has been directly and proximately damaged by NCRIC's false representations and concealments. Columbia's damages include the amount due according to the September 1, 2000 Reconciliation – $765,347.39, plus interest, *see* Response to Supplemental Interrogatory No. 5. That is, NCRIC was required to inform Columbia by November 1, 2000 of the correct amount due and pay that amount by December 1, 2000. NCRIC did neither.

In addition, Columbia was damaged by the $1 million that it deposited with NCRIC in installments between January 1998 and March 1998, plus interest. Had NCRIC performed the September 1, 1997 Reconciliation correctly, the spreadsheet would have shown that (absent the oral agreement) Columbia was owed $78,000 in Return Premium, not that Columbia owed approximately $1.77 million in Additional Premium. NCRIC thus had no basis for seeking a $1 million deposit as a condition for renewing the Plan.

In addition, NCRIC's miscalculations, including but not limited to those in the 1997 Reconciliation, caused Columbia to overpay Additional Premium and to make an unwarranted $1 million deposit, thereby causing Columbia to become insolvent and to file for bankruptcy. Columbia incurred expenses of over $1.5 million in connection with its bankruptcy.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. at 13-17; SMF & Exhs. 10, 14; SJ Reply Exh. 1; and SMF2 ¶¶ 29, 35-36, 157-59. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 11: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 8 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 11: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC negligently made false representations because, among other things, it miscalculated in performing Reconciliations. NCRIC also failed to ensure that it maintain Loss Reserves in accord with the industry standards and refused to provide information regarding Loss Reserves as provided for by the Plan, among other things. Columbia has been directly and

proximately damaged by NCRIC's negligent actions. Columbia incorporates by reference its Response to Supplemental Interrogatory No. 10.

SUPPLEMENTAL INTERROGATORY NO. 12: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 9 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 12: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

As a result of its false and defamatory statements, NCRIC directly and proximately caused Columbia damages in the form of harm to its reputation and substantial economic loss. NCRIC's defamatory statements caused doctors to terminate their association with Columbia and move their practices to Sibley and/or GW hospitals. These physicians ceased or cut back referring patients to Columbia, causing Columbia $21.5 million in lost cash flow and other damages, including the lost opportunity to hold a gala fundraiser reasonably expected to garner more than $1.5 million in contributions, and the lost opportunity to obtain a $35 million, low-interest HUD loan that would have reduced the hospital's cost of capital form 10.5% to 4.5% per month. Columbia incorporates by reference its Response to Supplemental Interrogatory No. 8.

SUPPLEMENTAL INTERROGATORY NO. 13: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 10 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 13: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC made and false and misleading representations of fact that disparaged the quality of Columbia's services as a health care facility. NCRIC made the false representations

intentionally and with full knowledge that these statements would cast doubt upon the quality of Columbia's services as a health care facility. As a result of these false representations, NCRIC proximately caused Columbia damages in the form of harm to its reputation and substantial economic loss. NCRIC's defamatory statements caused doctors to terminate their association with Columbia and move their practices to Sibley and/or GW hospitals. These physicians ceased or cut back referring patients to Columbia, causing Columbia $21.5 million in lost cash flow and other damages, including the lost opportunity to hold a gala fundraiser reasonably expected to garner more than $1.5 million in contributions, and the lost opportunity to obtain a $35 million, low-interest HUD loan that would have reduced the hospital's cost of capital form 10.5% to 4.5% per month. Columbia incorporates by reference its Response to Supplemental Interrogatory No. 8.

SUPPLEMENTAL INTERROGATORY NO. 14: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 11 of its counterclaim and describe how that amount has been calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 14: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

NCRIC unlawfully exercised ownership, dominion, and control over Columbia's $1 million deposit, in denial or repudiation of Columbia's rights thereto. The parties agreed in 1998 to treat Columbia's $1 million as a deposit, and once it was realized that NCRIC was performing Reconciliations inaccurately, Columbia demanded in vain that its money be returned. Columbia is owed the $1 million deposit, plus interest.

16d-002174

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SMF2 ¶¶ 35-36, 157-59; SJ Opp. at 51-53. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 15: Identify each and every individual who made any of the statements alleged to be defamatory that remain in Columbia's counterclaim and provide the statement or statements each individual is alleged to have made.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 15: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as it blatantly disregards the Court's express admonition that its Order authorizing NCRIC to serve these Supplemental Interrogatories "is not an opportunity for NCRIC to inquire more broadly than the subject matter stated in plaintiff's Notice of Deposition pursuant to Rule 30(b)(6)." Order of 4/7/03 at 1-2 n.1. That Notice identified the following topic (No. 10): "Defamatory actions or statements by plaintiff about defendant." That topic arguably encompasses Supplemental Interrogatory No. 17, which concerns the *substance* of the defamatory statements. But the subject matter of this Interrogatory – *who made* the defamatory statements – and the subject matter of Supplemental Interrogatory No. 16 – *who heard* the defamatory statements – is not fairly encompassed in Topic No. 10 of NCRIC's Notice of Deposition pursuant to Rule 30(b)(6) that was at issue in the motion to compel. Supplemental Interrogatory Nos. 15 & 16 thus plainly exceed the scope of the discovery authorized by the Court's Order.

Subject to and without waiving the foregoing objections, Columbia responds as follows:

(a) Dr. Leonard Glassman, Chairman of the Board of NCRIC, Inc., announced in Columbia's cafeteria on September 1, 2000 that (1) the Entity Policy covering Columbia's Clinic and the physicians working there (the Columbia Physicians Group ("CPG")) had expired; (2) CPG physicians with NCRIC individual medical malpractice insurance policies were not covered

16d-002175

under those policies when practicing at the Clinic; (3) Columbia's self-insurance trust fund was insufficiently funded to insure the Clinic; and (4) Columbia was planning to cease operations.

Many physicians overheard Dr. Glassman make these statements, including Dr. Nabil Asterbadi and Dr. Safa Rifka.

Also in about September 2000, staff members in the Radiology Department at Columbia, where Dr. Glassman worked, repeatedly overheard him telling patients to pick up their films and bring them to his office in the suburbs because Columbia was planning to close, and telling physicians employed by the Hospital to start looking for jobs elsewhere for the same reason. Those who heard these statements include Elizabeth Jackson and Francis Renee Perkins. Because Dr. Glassman's door was open, other radiology patients in the office also could hear his statements.

Around that same time, Dr. Glassman told another physician, Dr. Gideon Kioko, to move his group to Sibley, because (Dr. Glassman urged) Columbia was about to close. Other physicians who were eating in the cafeteria at the time heard these remarks – including Dr. Richard Newman, who shortly thereafter moved to Sibley, and Dr. Jerome O'Connell.

Later, Dr. Glassman told Dr. O'Connell in the hallway at Columbia that, because the hospital was closing, another physician, Dr. Evelyn Karson, was leaving.

(b) Dr. Morton Roberts, a physician who often passed along information from NCRIC purporting to speak on its behalf, informed a nurse anesthetist, David Young, in early July 2000 that Young should start looking for a job elsewhere because Columbia was closing. Dr. Roberts also made this statement to other staff members at about the same time. Dr. Asterbadi sent Dr. Roberts a cease-and-desist letter, in an effort to get him to cease disparaging Columbia.

(c) On or about September 1, 2000, a representative of NCRIC's Policyholder

16d-002176

Services Department (*i.e.*, either David Osborn, Eric Hempelman or Grant Sohm – the identity of the individual that made these statements is solely in NCRIC's possession, and NCRIC has not provided that information to Columbia) informed Attending Faculty member Dr. Heather Johnson that (1) the Entity Policy covering CPG physicians had expired; (2) CPG physicians with NCRIC medical malpractice insurance were not covered under their individual policies when practicing at the Clinic; (3) Columbia's self-insurance trust fund was insufficiently funded to insure the CPG and its physicians; and (4) due to the Retro Plan's termination, Columbia was ceasing operations.

A representative of NCRIC's Policyholder Services Department also made these statements to other physicians, including Dr. Edward Koch, who also is a member of NCRIC's Board of Directors.

Dr. Koch and Dr. Johnson informed Columbia's management and other physicians at Columbia what they had been told.

Other unnamed individuals heard and repeated the defamatory statements, as well.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SMF2 ¶¶ 160-75 and SJ Opp. at 30-44. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 16: Identify each and every individual who heard any of the statements alleged to be defamatory that remain in Columbia's counterclaim and indicate what statement was allegedly heard.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 16: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia further responds as follows: Columbia incorporates by reference its Objections and Response to Interrogatory No. 15.

SUPPLEMENTAL INTERROGATORY NO. 17: Identify and describe the substance of each and every statement made by anyone identified in the answer to Supplemental Interrogatory No. 15 that Columbia claims to be defamatory.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 17: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia further responds as follows: Columbia incorporates by reference its Objections and Response to Interrogatory No. 15.

SUPPLEMENTAL INTERROGATORY NO. 18: Describe how Columbia claims NCRIC should have calculated: (a) its loss reserves; (b) adjustment of loss reserves; (c) positive loss experiences of Columbia under the Contract; (d) use of additional years in calculating premiums, and (e) each element of the formula or other requirements for reconciliation of premiums due under the Retro Plan.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 18: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as NCRIC has refused to provide Columbia with data sufficient to audit NCRIC's calculation of Loss Reserves. Columbia also specifically objects to this Interrogatory insofar as it is vague and ambiguous. In particular, it is unclear what is meant by the phrase, "how Columbia claims NCRIC should have calculated." The terms "additional years" and "formula" are vague, as well. Subject to and without waiving the foregoing objections, Columbia responds as follows:

(a) NCRIC should have calculated its Loss Reserves in accordance with generally accepted standards in the insurance industry.

(b) NCRIC either knowingly or due to lack of reasonable care failed adequately to adjust its loss reserves downward in response to Columbia's positive loss experience under the Plan. As a result, for some claims NCRIC maintained higher Loss Reserves than were reasonably necessary to cover malpractice claims under the Retro Plan, and improperly raised the incurred cost of the Plan.

Further, NCRIC either knowingly or due to lack of reasonable care used incorrect Development Factors when calculating the Retro Premium, and thereby considered a greater percentage of its Loss Reserves than it was allowed to consider under the Retro Plan. As a result, NCRIC improperly raised the incurred cost of the Plan.

Moreover, for each quarterly reconciliation that NCRIC sent to Columbia, NCRIC either knowingly or due to lack of reasonable care adjusted its Loss Reserves upwards based on increases in its Loss Reserves during that quarter. But NCRIC knew or should have known that under the Plan it was proper to bill Columbia for Loss Reserves based only on yearly Reconciliations.

(c) NCRIC either knowingly or due to lack of reasonable care failed adequately to adjust its loss reserves downward in response to Columbia's positive loss experience under the Plan. As a result, for some claims NCRIC maintained higher Loss Reserves than were reasonably necessary to cover malpractice claims under the Retro Plan, and improperly raised the incurred cost of the Plan.

Further, NCRIC either knowingly or due to lack of reasonable care used incorrect Development Factors when calculating the Retro Premium, and thereby considered a greater percentage of its Loss Reserves than it was allowed to consider under the Retro Plan. As a result, NCRIC improperly raised the incurred cost of the Plan.

(d) NCRIC either knowingly or due to lack of reasonable care reconciled too many Experience Periods. NCRIC thereby improperly raised the incurred cost of the Plan.

For instance, in performing the September 1997 Reconciliation, NCRIC included the 1995-96 Experience Period in its calculations. Proper operation of the Plan at that time, however, dictated that a Reconciliation should not include calculations for either of the prior *two*

Experience Periods. Accordingly, the September 1997 Reconciliation should not have included calculations for either the 1995-96 or 1996-97 Experience Periods. As a result of this error by NCRIC in performing the September 1997 Reconciliation, NCRIC informed Columbia that Columbia would owe approximately $1.77 million in Additional Premium. Had NCRIC performed the 1997 Reconciliation correctly and not included in its calculations the 1995-96 or 1996-97 Experience Periods, that Reconciliation would have shown that Columbia was owed $78,000 in Return Premium.

(e) Proper Reconciliations under the Retro Plan should have been performed as follows:

1. Calculate the Retro Premium for each Experience Period by using the Retro Formula.

2. Limit the Retro Premium for each Experience Period by applying the Minimum Premium or Maximum Premium, if applicable.

3. Calculate the Additional Premium or Return Premium due for each Experience Period by subtracting the Retro Premium (as limited by any applicable minimum or maximum) from the Deposit Premium for each Experience Period.

4. Calculate the total Additional Premium or Return Premium for all Experience Periods that are properly subject to Reconciliation.

5. Apply a credit for Columbia's deposit and/or for NCRIC's payment to obtain the current total premium due.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Reply Exh. 1. *See also* Responses to Supplemental Interrogatory Nos. 1-4; SMF2 ¶¶ 86-88, 106-07; Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 19: Identify the specific errors, miscalculations and overstatements in the statement(s) from NCRIC referenced in paragraphs 72 and 101 of the counterclaim including the reasons and bases for the errors and the corrections required to make the bill accurate.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 19: *See* General Objections. Subject to and without waiving the foregoing objections, Columbia responds as follows:

Paragraph 72 of the counterclaim concerns the September 1998 reconciliation. In performing that Reconciliation, NCRIC applied an incorrect Minimum Premium factor, an incorrect Deposit Premium factor, and incorrect Development Factors. NCRIC also disregarded the oral agreement between NCRIC and Columbia that the parties would exchange Additional or Return Premium only for those Experience Periods for which all claims were closed. NCRIC failed to pay Columbia interest on Columbia's $1 million deposit, and NCRIC ignored Columbia's demand that the deposit be returned.

Had NCRIC applied the proper Minimum Premium factor, the proper Deposit Premium factor, and the proper Development Factors, and had NCRIC complied with the parties' oral agreement, NCRIC would have concluded that it owed Columbia $670,000 in Return Premium (rather than the $172,000 that NCRIC paid Columbia after performing that Reconciliation). NCRIC also should have paid Columbia interest on the $1 million deposit and, in fact, should have returned the $1 million to Columbia.

Paragraph 101 of the counterclaim concerns the September 2000 Reconciliation. In performing that Reconciliation, NCRIC applied an incorrect Minimum Premium factor, an incorrect Deposit Premium factor, and incorrect Development Factors. NCRIC also disregarded the oral agreement between NCRIC and Columbia that the parties would exchange Additional or

Return Premium only for those Experience Periods for which all claims were closed. NCRIC failed to pay Columbia interest on Columbia's $1 million deposit, and NCRIC ignored Columbia's demand that the deposit be returned.

Had NCRIC applied the proper Minimum Premium factor, the proper Deposit Premium factor, and the proper Development Factors, and had NCRIC complied with the parties' oral agreement, NCRIC would have concluded that it owed Columbia $765,347.39 in Return Premium. NCRIC also should have paid Columbia interest on the $1 million deposit and, in fact, should have returned the $1 million to Columbia, plus interest.

Columbia incorporates by reference the Responses to Supplemental Interrogatory Nos. 1-4, which describe in further detail the specific errors, miscalculations, and overstatements in NCRIC's Reconciliations generally and the September 2000 Reconciliation in particular, as well as the reasons and bases for the errors, and the corrections required to make the Reconciliation accurate.

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. & SMF; SMF Exhs. 10, 14; SMF2 ¶¶ 115-33, 239-42; SJ Reply Exh. 1. *See also* Columbia's Previously Submitted Papers.

SUPPLEMENTAL INTERROGATORY NO. 20: Identify the amount of Return Premium Columbia claims it is owed from 1993 to date and describe how each amount was calculated.

RESPONSE TO SUPPLEMENTAL INTERROGATORY NO. 20: *See* General Objections. Columbia specifically objects to this Interrogatory insofar as the term "to date" is vague and ambiguous. Columbia also objects to this Interrogatory insofar as it requests information not in Columbia's possession, but rather, in NCRIC's possession. In particular, the amount that Columbia is owed "to date" is in NCRIC's sole possession. Columbia cannot know

how much it is owed because NCRIC has not furnished Columbia with the 2001 or 2002 Reconciliations. Columbia's Responses therefore utilize the numbers from the September 2000 Reconciliation. Columbia further objects insofar as any accurate calculation of Return Premium depends on the fair and correct calculation of Subject Premium under the Plan – but NCRIC has refused to provide Columbia with data sufficient to verify NCRIC's calculation of Subject Premium.

Subject to and without waiving the foregoing objections, Columbia responds as follows: For each year, or Experience Period, a Reconciliation should be performed (correctly, per Interrogatories Nos. 1-4) to determine whether Columbia owes Additional Premium or is due Return Premium. Additional Premium is any positive balance (*i.e.*, in NCRIC's favor); Additional Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is greater than the Deposit Premium. Return Premium is any negative balance (*i.e.*, in Columbia's favor); Return Premium exists when the Retro Premium (as limited by the Minimum Premium and Maximum Premium) is less than the Deposit Premium.

According to the September 2000 Reconciliation, NCRIC owed Columbia Return Premium of "$587,568.66" for the Experience Period 1993-94; NCRIC owed Columbia Return Premium of "$350,593.73" for the Experience Period 1994-95; Columbia owed NCRIC Additional Premium of "$333,392.45" for the Experience Period 1995-96; Columbia owed NCRIC Additional Premium of "$722,049.71" for the Experience Period 1996-97; NCRIC owed Columbia Return Premium of "$233,841.30" for the Experience Period 1997-98; and Columbia owed NCRIC Additional Premium of "$383,948.84" for the Experience Period 1998-99. This totals $267,387.31 in Additional Premium that Columbia owed NCRIC. Taking into account the $172,815.00 that NCRIC paid Columbia for the first Experience Period and the $1,000,000.00

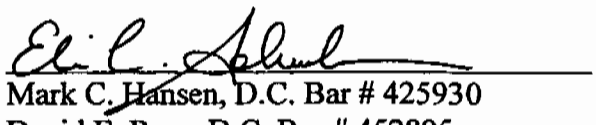
that Columbia deposited with NCRIC leaves NCRIC owing Columbia Return Premium of $559,797.69.

The parties, however, agreed orally that they would exchange Additional or Return Premium only for those Experience Periods for which all claims were closed. The amounts calculated under the September 2000 Reconciliation therefore are not the actual amounts owed, for as of September 2000, only the Experience Periods 1993-94 and 1994-95 had closed. According to the September 2000 Reconciliation, NCRIC owed Columbia Return Premium of "$587,568.66" for the Experience Period 1993-94; NCRIC owed Columbia Return Premium of "$350,593.73" for the Experience Period 1994-95. NCRIC paid Columbia $172,815.00 for the 1993-94 Experience Period. Therefore, NCRIC in fact owes Columbia $765,347.39 in Return Premium (in addition to owing Columbia its $1 million deposit back, plus interest).

The issues raised in this Interrogatory are addressed with particular detail in, *e.g.*, Columbia's SJ Mem. & SMF; SJ Reply Exh. 1. *See also* Columbia's Previously Submitted Papers.

DATED: May 14, 2003

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
David E. Ross, D.C. Bar # 452895
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 14th day of May, 2003, a copy of the foregoing *Defendant's Objections and Responses to Plaintiff's Supplemental Interrogatories* was served upon the following by FedEx:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Eli C. Schulman

16d-002186

EXHIBIT 4

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

May 23, 2003

By Facsimile and U.S. Mail

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Scott:

I see no point in engaging in letter-writing wars, so it will suffice to say that we cannot agree with many of the characterizations and much of the rhetoric in your letter of May 16, 2003.

Moving to the substance, I am pleased that NCRIC is now apparently prepared to proceed with the 30(b)(6) deposition and the conference required by Rule 16(c). I wish to confirm that we are able to accommodate your request to hold the 30(b)(6) deposition on Thursday, May 29, 2003 at 2:00 p.m., as well as to accommodate your request that we hold the Rule 16(c) conference following the deposition.

Sincerely,

Eli C. Schulman

Eli C. Schulman

EXHIBIT 5

BRYAN CAVE

Scott M. Badami
Direct Dial: (202) 508-6116
smbadami@bryancave.com

April 18, 2003

Bryan Cave LLP
700 Thirteenth Street NW
Washington, DC 20005-3960
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

Associated Offices
Chicago
Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
Leawood
London
Los Angeles
New York
Phoenix
Riyadh
St. Louis
Shanghai
United Arab Emirates
Abu Dhabi
Dubai
Washington, DC

VIA FACSIMILE AND FIRST CLASS MAIL

Eli Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington D.C. 20036

Re: NCRIC v. Columbia Hospital, C.A. No. 00-0007308

Dear Eli:

Pursuant to Judge Blackburne-Rigsby's order docketed April 7, 2003, please find attached NCRIC's Supplemental Interrogatories and Supplemental Rule 30(b)(6) deposition notice for the above-captioned case.

For purposes of the deposition notice, I have selected a date which we can certainly negotiate once the interrogatories are answered and the documents are produced.

With the pending motions now resolved by the Court, we might want to discuss the schedule for preparing this case for trial.

Sincerely yours,

Scott Badami

Scott M. Badami

Attachments

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Consent Motion to Continue Pretrial Conference Filed April 11, 2003.**
Defendant.	

SUPPLEMENTAL NOTICE OF DEPOSITION

Please take notice that pursuant to the Court's Order docketed April 7, 2003 and Rule 30(b)(6) of the District of Columbia Superior Court Rules of Civil Procedure, plaintiff/counter-defendant NCRIC, Inc. ("NCRIC") will take the supplemental deposition upon oral examination of defendant, counter-claimant Columbia Hospital for Women Medical Center, Inc. ("Columbia") before a notary public or duly authorized officer authorized to administer oaths. The deposition will begin on Monday, June 16, 2003 at 10:00 a.m., or at another mutually agreed upon day after the documents identified in Attachment A are produced, at the offices of Bryan Cave LLP, 700 Thirteenth St., N.W., Suite 700, Washington, D.C. 20005.

Pursuant to the Court's order, Columbia shall designate one or more officers, agents, or other persons who can testify on its behalf with respect to the following matters and produce the documents referred to in Attachment A.

1. The identity, terms, and facts concerning any contract, business relationship, or business expectancy between Columbia and each of the doctors identified in paragraphs 14-18 and 124 of Columbia's amended counterclaims.

2. The specific actions and acts of NCRIC constituting the interference with the contract between Columbia and the doctors identified in paragraph 14-18 and 124 of Columbia's counterclaims.

3. The bases for the allegations regarding NCRIC's knowledge about Columbia's financial condition as alleged in paragraph 43 of the amended counterclaims.

4. Performances under the Retrospective Rating Plan prevented, excused or waived by NCRIC.

5. Concealment of facts by NCRIC from Columbia including the identity and substance of the facts concealed, method/means/acts of concealment, persons concealing, and reasons for concealment.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435175
Jenifer Berger, D.C. Bar No. 471722
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 1[illegible]0380
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: April 21, 2003.

ATTACHMENT A

1. All documents evidencing or concerning the contracts or business relationships Columbia claims to have existed with each of the doctors identified in paragraphs 14-18 and 124 of Columbia's amended counterclaims.

2. Any documents evidencing the specific acts Columbia claims to form the basis of its claims in paragraphs 123 through 134 of the amended counterclaims.

3. Any documents evidencing that NCRIC had knowledge about Columbia's financial condition as alleged in paragraph 43 of the amended counterclaims.

4. Any documents evidencing that NCRIC excused, waived or prevented performance under the Retrospective Rating Plan.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NCRIC 's Notice of Deposition was served this 21st day of April 2003, via facsimile and first class ma l, postage prepaid, to:

Eli Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Consent Motion to Continue Pretrial Conference Filed April 11, 2003**
Defendant.	

NCRIC'S SUPPLEMENTAL INTERROGATORIES TO COLUMBIA SERVED PURSUANT TO THE COURT'S ORDER DOCKETED APRIL 7, 2003

Pursuant to the Court's Order docketed April 7, 2003 and Rule 33 of the District of Columbia Superior Court Rules of Civil Procedure, plaintiff, counter-defendant NCRIC, Inc. ("NCRIC") requests that defendant, counter-plaintiff Columbia Hospital for Women Medical Center, Inc. ("Columbia") answer separately and fully in writing, under oath, each of the following interrogatories and serve the answers on the undersigned within 30 days after service.

DEFINITIONS

1. "NCRIC" means plaintiff, counter-defendant NCRIC, Inc. and its owner(s), agent(s), subcontractor(s), employees, affiliate(s), predecessor(s), officer(s), director(s) and persons acting on its behalf.

2. "You" or "your" or "Columbia" means defendant, counter-plaintiff Columbia Hospital for Women Medical Center and your agent(s), attorney(s), employee(s) and persons acting on your behalf.

3. The "Complaint" means the complaint filed by NCRIC in this action. The "Counterclaim(s)" means the counterclaim(s) filed by Columbia in this action.

4. "Contract" refers to the Retrospective Rating Plan entered into between Columbia and NCRIC in 1993.

5. "Person" means a natural person, and a corporation, partnership, joint venture, unincorporated association, estate, trust, or other entity recognized in law, and shall include the owners, directors, employees, agents, trustees, parents, subsidiaries, affiliates, assigns, predecessors and successors of such "person."

6. "Document" is used in the broadest sense of that term and includes, but is not limited to, the complete original and each non-identical copy (whether different from the original because of notes made on the copy or otherwise) of any writings or recordings of any kind and description in any language including, but not limited to, all notes, correspondence, memoranda, drawings, graphs, books, charts, maps, pamphlets, periodicals, telegrams, studies, reports, records, books of account, ledgers, vouchers, checks, drafts, bankbooks, plant logs, telephone logs, worksheets, diaries, calendars, invoices, notebooks, films, photographs, audio tapes, video tapes, digital tapes, analog tapes, computer print-outs, computer disks, or any other information whether inscribed by hand or by mechanical, digital, electronic, computer, photographic or other means.

7. The term "communication(s)" means, without limitation of its generality, letters, notes, memoranda, telefaxes, statements, discussions, meetings, face to face conversations, telephone conversations, speeches, remarks, questions, answers, panel discussions, symposiums or any other kind of transmittal of information, whether written or oral.

8. "Relates" or "relating to" means constituting, defining, containing, embodying, discussing, referencing, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

9. "And" shall include "or" and vice versa; the singular shall include the plural and vice versa.

10. The term "describe" means to set forth in detail all known facts and circumstances related to the subject of the interrogatory, including, but not limited to, the date,

time and place of any oral or written statement, conversation, report, study or meeting, the identify of the participants, and the substance and purpose of the events or communications so described.

11. "Identify" or "identity" when used in reference to a natural person, means to state the following:

(a) the person's full name;

(b) the person's present or last known home address and telephone number;

(c) the person's present or last known employer, title, business address and telephone number;

(d) the person's employer at the time to which the interrogatory relates.

12. "Identify" or "identity" when used in reference to an entity other than a natural person, means to state the following:

(a) the full name of the entity;

(b) the legal form of the entity (e.g., corporation, partnership, committee);

(c) a brief description of the nature and business purpose of the entity;

(d) the present or last known address of the entity's principal office, principal place of business, and other places of business.

13. "Identify," when used in reference to a document means to state the following:

(a) the date the document was prepared;

(b) the author(s) of the document;

(c) the identity of the addressees of the document;

(d) the identity of the persons or entities that received copies of the document;

(e) the subject matter and substance of the document;

(f) a description of the document (i.e. memorandum, letter, etc.);

(g) the name and address of the custodian of the document.

14. In lieu of providing a full description of a document in accordance with paragraph 13 you may attach a copy of the document for which a description is requested, and in your answer to the interrogatory only provide those items of description requested which do not appear on the face of the document.

INSTRUCTIONS

A. Each interrogatory is to be answered separately and as completely as possible. The omission of any name, fact, or other item of information from the answers shall be deemed a representation that such name, fact or item is not known to you or counsel at the time of the service of your answer to the interrogatory.

B. To the extent that you believe that an interrogatory is objectionable, answer so much of the interrogatory as is, in your view, not objectionable and separately state the portion of each interrogatory to which you object and the grounds for your objection.

C. To the extent that you believe that an interrogatory calls for information subject to a privilege, answer so much of each interrogatory that is, in your view, not privileged and separately set forth the basis of your claim of privilege with respect to the specific information you refuse to give and set forth the nature of the material claimed to be privileged (e.g., documents, conversations, etc.).

D. Words used in the plural shall include the singular; words used in the singular shall include the plural; and the words "and" and "or" shall be construed liberally, in the conjunctive and disjunctive, depending on the context, to bring within the scope of

these interrogatories any information that might otherwise be construed to be outside their scope.

E. These interrogatories are continuing in nature and must be supplemented promptly if the plaintiff obtains additional or different information related to any response at any time before the termination of this action.

INTERROGATORIES

Supplemental Interrogatory No. 1: Identify and describe all facts and reasons forming the basis for Columbia's claim that any of the calculations or numbers in Columns A-E, lines 1-20 of Exhibit A attached to Columbia's Answer to Interrogatories and Responses and Requests for Admissions are incorrect or fail to comply with the terms, provisions or formulas of the contract between the NCRIC and Columbia.

Answer:

Supplemental Interrogatory No. 2: Identify and describe the amounts Columbia believes to be the correct amounts in Columns A-E, lines 1-20 of Exhibit A attached to Columbia's Answer to Interrogatories and Responses and Requests for Admissions to comply with the terms, provisions or formulas of the Contract between the NCRIC and Columbia.

Answer:

Supplemental Interrogatory No. 3: Describe and identify the facts and reasons why Columbia believes the amounts contained in your response to Supplemental Interrogatory No. 2 to be the proper amounts and calculations to be used in calculating the amount of premium due Columbia under the Contract.

Answer:

Supplemental Interrogatory No. 4: Identify and describe the amount of premiu n that should have been charged to Columbia in each year of the Contract and the method of ca lculation of any refund premium Columbia claims it is owed.

Answer:

Supplemental Interrogatory No. 5: Identify the amount of damages Columbia c aims it suffered based on the acts alleged as the basis in count 1 of its counterclaim and d escribe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 6: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 2 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 7: Identify the amount of damages Columbia c aims it suffered based on the acts alleged as the basis in count 3 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 8: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 4 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 9: Identify the amount of damages Columbia c aims it suffered based on the acts alleged as the basis in count 5 of its counterclaim and d escribe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 10: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 7 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 11: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 8 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 12: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 9 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 13: Identify the amount of damages Columbia c aims it suffered based on the acts alleged as the basis in count 10 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 14: Identify the amount of damages Columbia claims it suffered based on the acts alleged as the basis in count 11 of its counterclaim and describe how that amount has been calculated.

Answer:

Supplemental Interrogatory No. 15: Identify each and every individual who made any of the statements alleged to be defamatory that remain in Columbia's counterclaim and provide the statement or statements each individual is alleged to have made.

Answer:

Supplemental Interrogatory No. 16: Identify each and every individual who heard any of the statements alleged to be defamatory that remain in Columbia's counterclaim and indicate what statement was allegedly heard.

Answer:

Supplemental Interrogatory No. 17: Identify and describe the substance of each and every statement made by anyone identified in the answer to Supplemental Interrogatory No. 15 that Columbia claims to be defamatory.

Answer:

Supplemental Interrogatory No. 18: Describe how Columbia claims NCRIC should have calculated: (a) its loss reserves; (b) adjustment of loss reserves; (c) positive loss experiences of Columbia under the Contract; (d) use of additional years in calculating premiums, and (e) each element of the formula or other requirements for reconciliation of premiums due under the Retro Plan.

Answer:

Supplemental Interrogatory No. 19: Identify the specific errors, miscalculations and overstatements in the statement(s) from NCRIC referenced in paragraphs 72 and 101 of the counterclaim including the reasons and bases for the errors and the corrections required to make the bill accurate.

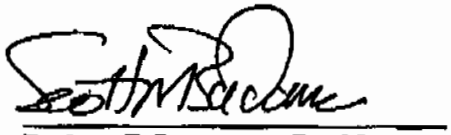
Answer:

Supplemental Interrogatory No. 20: Identify the amount of Return Premium Colu mbia claims it is owed from 1993 to date and describe how each amount was calculated.

Answer:

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Jenifer Berger, D.C. Bar No. 471722
700 Thirteenth Street, N.W., Suite 60(
Washington, D.C. 20005
(202) 508-6116

Roy L. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: April 21, 2003.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NCRI("s Supplemental Interrogatories to Columbia Served drafted pursuant to the Court's Order docketed April 7, 2003 was served this 21st day of April 2003, via facsimile and first class mail, postage prepaid, to:

Eli Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

EXHIBIT 6

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

May 13, 2003

By Facsimile and U.S. Mail

Jenifer Berger, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Jenifer:

I write in response to your letter of May 9, 2003. Though Columbia had expected to complete the recently propounded written discovery and identify its corporate designees last week, intervening events prevented Columbia from doing so. This discovery is not due until at least May 21, 2003. I expect that Columbia will have this discovery completed well before that deadline, and we will serve it upon NCRIC at such time as it is complete.

I disagree, however, with your conclusory assertion that "these responses and depositions are prerequisites to NCRIC's obligations under Rule 16." There is no reason that the parties cannot proceed with their obligations under Rule 16 while completing the limited supplemental discovery that remains. Accordingly, Columbia again proposes that the parties meet as soon as possible pursuant to Rule 16(c). This is all the more imperative given the Court's notice that the Clerk's Office will be rescheduling the pretrial conference for a date in May. Please let me know as soon as possible when you are available to meet pursuant to Rule 16(c).

Sincerely,

Eli C. Schulman

Eli C. Schulman

cc: Mark C. Hansen, Esq.

EXHIBIT 7

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

June 4, 2003

By Facsimile and U.S. Mail

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Scott:

I was surprised that, during the course of yesterday's meet-and-confer concerning motions *in limine*, you indicated that you also intended to move to compel with respect to Columbia's responses to NCRIC's supplemental interrogatories. In the several weeks that have passed since we supplied those interrogatory responses, NCRIC has never so much as hinted that it had any concerns with these responses, let alone sought any informal redress from us. The fact that you've waited so long to raise objections seems to suggest that, once again, NCRIC is searching for any means possible to continue discovery – and delay trial – indefinitely.

You also spoke generally of NCRIC's objecting to any reference to previously submitted materials. Rather than giving us a chance to address any legitimate concerns, however, you declined to identify any specific answer that you felt was incomplete or regarding which you required additional information and rested instead only on the general objection that interrogatory answers should not reference any materials outside the answers themselves.

As you know, our interrogatory responses do not just refer to previously supplied discovery, but provide some 30 pages of detail. Referencing prior discovery is, moreover, entirely proper. NCRIC initially identified these topics two years ago. Since that time, much discovery has taken place and the parties filed detailed cross-motions for summary judgment in which Columbia fleshed out in considerable detail its position on many of the very issues that were addressed in NCRIC's supplemental interrogatories. For the sake of efficiency, Columbia directed you to those materials where appropriate and made clear that it stood by those accounts.

Nor have you remotely suggested that NCRIC is unable to understand Columbia's position on any relevant matter.

During our call, you also indicated that you wished a verified signature for the interrogatory answers; we will be happy to supply one.

If you would like to discuss these matters further to avoid potentially needless dispute, please feel free to call me at (202) 326-7936.

Sincerely,

Eli C. Schulman

Eli C. Schulman

EXHIBIT 8

BRYAN CAVE

Scott M. Badami
Direct Dial: (202) 508-6116
smbadami@bryancave.com

June 4, 2003

Bryan Cave LLP
700 Thirteenth Street NW
Washington, DC 20005-3960
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

Associated Offices
Chicago
Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
Leawood
London
Los Angeles
New York
Phoenix
Riyadh
St. Louis
Shanghai
United Arab Emirates
Abu Dhabi
Dubai
Washington, DC

VIA FACSIMILE

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington D.C. 20036

Re: NCRIC v. Columbia Hospital, C.A. No. 00-0007308

Dear Eli:

This responds to your letter dated earlier today concerning Columbia's responses to the discovery requests compelled by the Court. At the outset, I reject your assertion that NCRIC has "waited so long to raise objections" and is "looking for any possible means to continue discovery – and delay trial – indefinitely." The resumption of the Rule 30(b)(6) deposition took place just last week. The written discovery responses were received less than three weeks ago. Under any reasonable standard, raising the deficient issues in Columbia's responses yesterday – during a call to discuss efforts to resolve possible motions – was appropriate and timely. Indeed, the transcript of the deposition from last week will note in a number of places where Columbia refused to substantively respond to questions covered within the scope of the deposition notice and where you and I discussed the filing of another Motion to Compel. Please note that the only reason NCRIC was forced to file the Motion to Compel was because Columbia failed to comply with the simple rules of discovery.

As we discussed approximately 13 motions yesterday, I am happy to provide additional details concerning why Columbia's discovery responses were inadequate and why yet another Motion to Compel is required. To the extent Columbia submits the additional materials the Court previously required you to provide, NCRIC will certainly withdraw portions (or even all) of the Motion to Compel. Indeed, NCRIC would argue that it is Columbia which is unnecessarily delaying this matter because you and your client have failed to respond to NCRIC's discovery requests – even after the Court issued an order to compel.

Simply because Columbia submitted close to 30 pages of written materials does not comply with the rules and end Columbia's responsibilities. NCRIC is entitled to factual statements made by Columbia regarding the basis of

Columbia's claims which may be used as prior sworn statements of fact at trial. This requirement cannot be met by referring to self-serving advocacy pieces written by counsel during briefing.

As an initial matter, NCRIC asserts that Columbia put forward any number of meritless objections, including a peer review privilege, the party communication privilege, and the investigative privilege. NCRIC does not believe the "peer review privilege," the "party-communication privilege" and the "investigative privilege" apply to the interrogatories posed to Columbia. Although the "peer review privilege" is recognized in D.C. courts, it applies solely to information obtained or submitted to a hospital peer review body and is relevant to medical malpractice cases. None of the Supplemental Interrogatories sought information regarding Columbia's medical faculty and the medical decisions made in the treatment of patients.

NCRIC is at a loss to determine how Columbia can assert in good faith the "party-communication privilege" and the "investigative privilege" here. Not only is the "party-communication privilege" not recognized by D.C. courts, but this privilege appears to have only been recognized by the State of Texas for a limited time. The only "investigative privilege" which appears to be recognized by D.C. courts applies to law enforcement officials in order to protect law enforcement investigations. Columbia's objections based upon these privileges serve no purpose but to illustrate Columbia's attempt to avoid disclosure of any factual basis underlying its allegations by any means available.

You have also asserted specific objections to a number of the Supplemental Interrogatories which are improper and seek to limit the information provided to NCRIC. First, you unilaterally narrowed the requirement in the Court's April 3, 2003 Order mandating that Columbia provide information regarding "Defamatory actions or statements by plaintiff about defendant" by arguing that this topic should be limited only to information about the substance of the allegedly defamatory statements. The topic cannot be so drastically narrowed or else NCRIC will be denied factual information about Columbia's evidence on two key elements of the defamation claims: that NCRIC, or NCRIC's agents, made the alleged statements, and that the alleged statements were published.

In your objection to Supplemental Interrogatory 20, Columbia "specifically objects to this Interrogatory insofar as the term 'to date' is vague and ambiguous." This question simply seeks the amount of Return Premium that Columbia claims it is owed "to date," *i.e.*, at this time, that ostensibly forms the basis of its damages claims to be presented at trial.

NCRIC is forced to conclude that Columbia's frivolous objections represent an unwillingness to comply with the April 3, 2003 Order and provide NCRIC with the factual information to which it is entitled.

In response to Supplemental Interrogatory Number 1, Columbia states that the issue of allegedly improper Retro Plan calculations is "addressed with particular detail" in Columbia's briefs submitted to the court in support of Columbia's Motion for Summary Judgment, and therefore

Columbia incorporates all of these "Previously Submitted Papers" as responsive to the Supplemental Interrogatory. Additionally, you continue to incorporate by reference summary judgment briefs in the responses to Supplemental Interrogatories 2-8, 10, 14-15, and 18–20. Columbia should have provided sworn factual answers to NCRIC free of any argumentative briefing.

Supplemental Interrogatory 3 requested the facts which explain "why Columbia believes the amounts contained in your response to Supplemental Interrogatory 2 to be the proper amounts and calculations." Your response merely incorporated by reference your answers to interrogatories 1 and 2 without further detail. This interrogatory asked Columbia to provide facts which explained and/or supported Columbia's interpretation of the Retro Plan and the use of the specific factors in dispute – the Deposit Premium, the Development Factor, Minimum Premium multiplier and Maximum Premium multiplier. Incorporation by reference of Columbia's Responses to interrogatories 1 and 2 is simply not adequate.

In response to Supplemental Interrogatories 5-7 and 10-11, requesting the amount of damages Columbia claims based on acts alleged in counts 1-3 and 7-8 of the counterclaim, Columbia has apparently attempted to add a $1.5 million claim related to the hospital's bankruptcy. These damages were not previously identified in the pleadings and it is improper to raise such a claim at this time. More importantly, your response did not provide any more detail than this general statement of "over $1.5 million" for this item. Columbia has not referred to documents or testimonial evidence to support this figure and NCRIC has no way of knowing if this claim is anywhere near accurate. Finally, your response is incomplete in that it does not provide any factual evidence showing that NCRIC's alleged actions caused Columbia's bankruptcy.

Similar to the vague and incomplete information given regarding Columbia's claim for bankruptcy expenses as damages, your responses provide almost no useful information supporting Columbia's claims for damages stemming from an allegedly cancelled "gala" and a HUD loan. In response to Supplemental Interrogatories 8-9 and 12-13, requesting information regarding the damages claimed under counts 4-5 and 9-10 of the counterclaim, Columbia provided only general statements which NCRIC contends are inadequate. Columbia also failed to provide any facts which provide a causal link between alleged actions by NCRIC and the cancellation of the gala or the denial of the HUD loan. NCRIC is entitled to specific details of the gala and HUD loan in order to defend against Columbia's accusations that NCRIC caused these events.

Supplemental interrogatories 15-17 requested information about the alleged defamatory statements made by NCRIC: who made the alleged statements, who heard the alleged statements, and the substance of the alleged defamatory statements. It is imperative that Columbia reveal the "who said what to whom" details of its defamation claim in order for NCRIC to defend against these claims at trial.

As you know, Columbia's responses included but a series of vague statements which do not properly identify the individuals who either spoke or heard the alleged defamatory statements. Some examples of these incomplete responses are:

- "*Many physicians* overheard Dr. Glassman make these statements, including Dr. Nabil Asterbadi and Dr. Safa Rifka." (emphasis added);
- "Dr. Roberts also made this statement to *other staff members* at about the same time." (emphasis added);
- "A representative of NCRIC's Policyholder Services Department also made these statements to other physicians, including Dr. Edward Koch, who is also a member of NCRIC's Board of Directors." (emphasis added);
- "Other unnamed individuals heard and repeated the defamatory statements, as well." (emphasis added).

While I note that you did include some named individuals identified as either speaking or hearing the alleged defamatory statements, Columbia's response remains inadequate.

Finally, as you well know, Dr. Rifka could not (or would not) respond to any number of questions asked of him during the Rule 30(b)(6) deposition held last week concerning: (1) the specific doctors who made up the Attending Faculty at Columbia referred to in Columbia's Counterclaim; (2) Columbia's allegation that NCRIC was aware of Columbia's financial situation; (3) the names of the Columbia physicians who allegedly asked Columbia to stay with NCRIC; and (4) Columbia's allegations that NCRIC somehow prevented Columbia's performance under the Retro Plan. As you and I discussed on the record, this lack of knowledge of the specifically identified topics which were directed for further factual testimony in the April 3, 2003 Order renders Dr. Rifka's deposition wholly inadequate.

Additionally, Dr. Rifka regularly referred only to the pleadings and motions previously submitted in this case in lieu of responding to the factual questions as this Court ordered Columbia to respond to when this Court compelled the resumption of the Rule 30(b)(6) deposition. For example, when questioned about Columbia's contentions that NCRIC breached the Retro Plan by not providing reconciliations to Columbia as required, Dr. Rifka, as the designated corporate representative, could not provide any answer except a general reference to counsel's advocacy briefs from the summary judgment materials. This does not provide an adequate substitute for sworn factual testimony by the Columbia corporate representative which may be used at trial.

Finally, I do appreciate your offer to provide a signature for the interrogatories. I note you failed to include that signature page with your letter sent earlier today.

I trust this letter provides the additional detail you sought. Let me make clear that NCRIC has no desire to file yet another Motion to Compel. Unfortunately, given Columbia's inadequate responses and the fact that Motions in Limine are due tomorrow, NCRIC has no choice

but to file yet again. NCRIC offers to meet and confer in good faith should Columbia voluntarily decide to respond to these issues.

Sincerely yours,

Scott M. Badami

BRYAN CAVE

Facsimile Cover

Bryan Cave LLP
700 Thirteenth Street N.W.
Washington, D.C. 20005-3960
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

This facsimile contains information which (a) may be LEGALLY PRIVILEGED, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE and (b) is intended for the use of the Addressee(s) named below. If you are not the Addressee, or the person responsible for delivering this to the Addressee(s), you are hereby notified that reading, copying or distributing this facsimile is prohibited. If you have received this facsimile in error, please telephone us immediately and mail the facsimile back to us at the address to the right. Thank you.

Date:	June 4, 2003		
From:	Scott M. Badami	Matter:	127953
Tel:	(202) 508-6116		
To:	**Eli C. Schulman**	Phone Number:	(202) 326-7900
Company:	Kellogg, Huber, Hansen, Todd & Evans	Fax Number:	(202) 326-7999

Message:

To Sender:

Do you wish to be contacted when fax is sent? ☐ Yes ☒ No

Do you wish to be contacted at your home/office if fax cannot be sent within one hour? Tel: ☐ Yes ☒ No

Number of Pages Including Cover: 6

If all pages are not received, please call (202) 508-6088.

EXHIBIT 9

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

June 19, 2003

By Hand

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Scott:

Enclosed, per your request, is the verified signature for Columbia's responses to NCRIC's supplemental interrogatories.

Sincerely,

Eli C. Schulman

Eli C. Schulman

DISTRICT OF COLUMBIA) ss.

I, Larry Wilson, Jr., of Columbia Hospital for Women Medical Center, Inc. ("Columbia"), being duly sworn on behalf of Columbia, Defendant in the above-entitled action, depose and say that I am authorized to respond to Plaintiff's Supplemental Interrogatories on behalf of Columbia; that I have read Defendant's Objections and Responses to Plaintiff's Supplemental Interrogatories, and know the contents thereof; and that the same is true of my own knowledge, except as to the matters that are stated on information and belief, and, as to those matters, that I believe them to be true.

Larry Wilson Jr.
Larry Wilson, Jr.

Subscribed and sworn to before me
this 5th day of June 2003.

Notary Public

My commission expires: My Commission Expires 1/5/2004

EXHIBIT 10

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, Inc.,	*	
	*	
Plaintiff	*	Civil Action: 00ca7308
	*	Judge A. Blackburne-Rigsby
v.	*	Calendar 8
	*	Next Event: Pretrial May 6, 2003
	*	
Columbia Hospital for Women	*	
Medical Center, Inc.	*	
Defendant	*	

ORDER DENYING COLUMBIA'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on defendant, Columbia Hospital for Women's ("Columbia") Motion for Summary Judgment. A motions hearing on the cross summary judgment motions in this case was held on December 12, 2002. Columbia argues that there are no genuine issues of material fact concerning NCRIC, Inc.'s ("NCRIC") breach of contract claim or Columbia's counter-claim for breach of contract against NCRIC. Specifically, Columbia argues that based on the November 1996 oral agreement between Columbia and NCRIC, and alleged miscalculations performed by NCRIC, Columbia is entitled to judgment as a matter of law on NCRIC's breach of contract claim. Many material facts are disputed in this case and the Court therefore **denies** Columbia's Motion for Summary Judgment.

Background

In October of 1993, Columbia, a non-profit hospital specializing in care for women and NCRIC, a provider of malpractice liability insurance to physicians in the District of Columbia, established the Retrospective Rating Plan ("Retro Plan"). The purpose of the plan was to establish a malpractice liability program for the physicians at

16d-002237

Columbia (the "Attending Faculty") to help reduce the costs to physicians through a sharing of malpractice risk between the hospital and physicians. The Attending Faculty benefited by receiving a *Retrospective Rating Plan Endorsement* from NCRIC, which entitled the holder to a discount off the premiums up to $500,000. Physicians not participating in the Retro Plan would have to pay Subject Premiums, a total of undiscounted premiums that would be charged to physicians for coverage limits of $500,000 for each claim.

September 1996 Amendment

The Retro Plan was devised of three one–year periods, called *Experience Periods*. Originally, the Retro Plan was to be effective from September 1, 1993 to September 1, 1996. Subsequently, the parties agreed to amend and renew the Retro Plan in September1996. The Retro Plan amended the *Deposit Premium* (subject premium multipled by Deposit Premium Multiplier) and increased the physician's discount that was origionally 19% to 30%. The parties also agreed to renew the Retro Plan for one year, effective September 1, 1996.

The Reconciliation Process

The Retro Plan is retrospective in that it required NCRIC to perform calculations or Reconciliations at the end of each Experience Period and compare the cost to the amount of premium NCRIC received from the Attending Faculty. If the cost of providing the malpractice insurance to the Attending Faculty exceeded the total amount of premium NCRIC received, Columbia was required to pay the difference, up to a set maximum. The difference was called *Additional Premium*. If the Attending Faculty paid NCRIC more than it cost to provide them with the malpractice coverage, under the Retro

16d-002238

Plan, NCRIC was required to pay Columbia a refund or Return Premium, as limited by a set minimum.

Included in the Retro Plan was a measure to self-check the correctness of the calculations. To determine if the appropriate amount of premium was collected to pay losses under the Retro Plan, the Retro Premium was compared to the Deposit Premium. The Retro Premium represents for each Experience Period the total cost of providing $500,000 in malpractice insurance coverage to all of the Attending Faculty. The Deposit Premium was the Subject Premium multiplied by the *Deposit Premium Multiplier* (Columbia claims that the Deposit Premium Multiplier should be 67% and NCRIC claims it should be 62% in the Reconciliations over the disputed Experience Periods). If the Retro Premium is less than the Deposit Premium, the Return Premium is due to Columbia. If the Retro Premium is more than the Deposit Premium, Columbia owes NCRIC Additional Premium to pay against the losses.

According to the original plan, an exchange of cumulative premium or return premium was to be reconciled for each experience period. According to Columbia, NCRIC typically would provide them with a spreadsheet listing all the individual Experience Periods, with the corresponding cumulative total. Additionally, Columbia argues that NCRIC is obligated as a condition precedent to provide Columbia with this spreadsheet or similar notice within sixty days of the end of each Experience Period before Columbia is required to pay any premium due within thirty days. NCRIC asserts that Columbia was provided all quarterly and annual reconciliation calculations required by the Retro Plan and such reports or notice was not a condition precedent that needed to be performed before Columbia would be obligated to pay NCRIC any premium owed.

16d-002239

November 1996 Oral Agreement

In November 1996, NCRIC and Columbia agreed orally that neither party would pay premium for any Experience Period until it was "closed" regardless of whether the Reconciliation for any given Experience Period, indicated that Additional or Return Premium was due. In September 1997, the parties negotiated a partial payment towards Additional Premium due as financial security. According to Columbia, this $1 million dollars was a deposit to renew the Retro Plan and to NCRIC it was premium owed by Columbia. On June 28, 2000, NCRIC informed Columbia that the Retro Plan would end as of its expiration date of September 1, 2000.

However, based on the parties oral agreement, Columbia argues that they do not owe NCRIC any money because no additional Experience Periods have closed since the September 1, 2000 Reconciliation. Instead, Columbia argues that NCRIC owes Columbia for the closed Experience Period of the 1994-1995 term. Columbia argues that pursuant to the oral agreement, NCRIC has paid Columbia $172,815 for the first Experience Period, but it has paid Columbia nothing for the second Experience Period.

NCRIC interpreted the oral agreement differently. According to NCRIC, there was an oral agreement that premium was not to be paid by either party until the close of an Experience Period *unless* the Retro Plan ended. Because of this difference in interpretation, Columbia has not paid any premium to NCRIC since September 1, 2002. NCRIC then responded with this instant lawsuit for breach of contract against Columbia for premium due now that the Retro Plan has been terminated and while expectancy periods are still open.

Columbia also argues that absent the parties' oral agreement, Columbia still does

16d-002240

not owe NCRIC the amount of Additional Premium that NCRIC demands at this time, because NCRIC failed to provide within sixty days of the Reconciliation date, notice of any Additional Premium due following the September 1, 2001 Reconciliation. This, Columbia argues is a condition precedent to Columbia's obligation to pay, which is due and payable within thirty days after it receives NCRIC's notice. Thus, Columbia argues that the 2001 payment is not due.

In opposition NCRIC argues that Columbia's arguments are based on factual questions rather than the amendment and administration of the Retro Plan. NCRIC argues that notice was not a condition precedent and that it should be stricken from Columbia's pleadings as a factual conclusion. Despite this contradiction, NCRIC declares that even if notice was not produced in discovery that this is not conclusive evidence that such notice was never given.

Miscalculations

Columbia also moves the Court to grant summary judgment on its breach of contract claim against NCRIC, alleging that NCRIC misapplied the Minimum Premium Factor, the Deposit Premium Factor and the Development Factors. Columbia argues that NCRIC misapplied the original 75% Minimum Premium factor to the first two years of the Plan after the 1996 amendment reduced the Minimum Premium to 60%. NCRIC argues that the 1996 change was to be interpreted prospectively from the amendment made in 1996 forward—not retrospectively. NCRIC claims that Columbia wrongfully relies upon its counsel's unsupported argument that the amendment does not expressly prohibit the Minimum Premium Factor from being applied to all Experience Periods. However, NCRIC argues that the whole purpose for amending certain figures was the

16d-002241

mathematical consequence of the increased premium discount effective from 1996 forward.

Next, Columbia argues that NCRIC uses a Deposit Premium multiplier of approximately 62% for all Experience Periods beginning after 1995-1996 when the Retro Plan states that the multiplier should be 67%. By employing the wrong Deposit Premium factor, Columbia claims that NCRIC credits Columbia with five percent less Deposit Premium than it should for each of the five most recent Experience Periods. As a result, when the Deposit Premium is subtracted from the Retro Premium for each Experience Period, Columbia is billed substantially more than required by the Plan. Columbia demonstrated that when NCRIC's September 1, 2000 Reconciliation applies the correct deposit premium factor, the cumulative amount due drops from $1,286,524 to $627,304.

NCRIC argues that Columbia relies only on its counsel's interpretation instead of expert testimony regarding the complex analysis of retrospective insurance. Columbia argues that the Deposit Premium must be the inverse of the 19% discount originally provided to physicians under the Retro Plan. Thus, when the discount increased to 33%, the Deposit Premium must be 67%. NCRIC argues that this interpretation comes from a "simple" reading of the Retro Plan, but that this evidence cannot counter NCRIC's testimony by "individuals knowledgeable about retrospective insurance plan calculations, as to why 62% is the proper Deposit Premium to properly arrive a the reduced premium for physicians affected by the 1996 Amendment to the Retro Plan."

Finally, Columbia claims that NCRIC applies each Development Factor to the relevant number of months after an Experience Period begins, rather than after it ends. Columbia bases this opinion on the comparison of Exhibit E of the 1993 Retro Plan to

16d-002242

NCRIC's reconciliation calculations. Columbia argues that the effect of this is a substantial decrease in the cumulative additional premium that drops from $1, 286,524 to $686,961. In response, NCRIC argues that even if Exhibit E of the Retro Plan, a tabbed example of the Retro Plan operation, shows the Development Factor being applied at the end of the years, NCRIC is not in breach of contract by not following the calculation examples in Exhibit E. NCRIC argues that the Retro Plan states that Exhibit E is "not to vary alter or amend the terms hereof or of the Plan." Moreover, NCRIC asserts that Columbia is using exhibit E to impose additional obligations and not merely to clarify the application of the Development Factors. Further, NCRIC highlights again that Columbia has no lay or expert testimony in support of its interpretation that the Development Factors are correct.

Summary Judgment Standard

Summary judgment is proper under Rule 56(b) where the record shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Big Builders, Inc. v. Israel*, 709 A.2d 74 (D.C. 1998). The court must view all facts and inferences in the light most favorable to the non-movant, and summary judgment should not be granted unless the moving party can show that no reasonable juror could find for the non-moving party. *Big Builders*, 709 A.2d 74, 76 (D.C. 1998). Once the movant has met the burden of demonstrating the absence of material disputed issues and the right to judgment as a matter of law, the nonmovant has the burden of producing adequate evidence to support a factual dispute requiring the trier of fact to resolve the dispute. *Graff, v. Malawer*, 592 A.2d 1038, 1040 (D.C. App. 1991).

The party opposing summary judgment may not rest upon the mere allegations or

16d-002243

denials of his pleading but must come forward with affidavits or other evidence to controvert the movant's showing that there is a genuine issue of material fact for trial. *Graff*, 592 A.2d 1038, 040 (D.C. App. 1991). It is therefore imperative upon the non-movant to disclose credible evidence of it position because summary judgment cannot be defeated by conclusive allegations. *Id.* A motion for summary judgment is therefore properly granted if taking all reasonable inferences in the light most favorable to the nonmoving party, a reasonable juror, acting reasonably could not find for the nonmoving party, under the appropriate burden of proof. *Id.*

Analysis

There are material issues of fact in dispute, and therefore the Court denies Columbia's Motion for Summary Judgment. First, there is a factual dispute whether NCRIC gave notice to Columbia that premium was due, and whether such notice was a condition precedent to NCRIC's ability to receive the owed premium. Columbia says it did not get notice and NCRIC claims that notice was not a condition precedent but that they complied with all the requirements under the Retro Plan. Both parties rely on their interpretation of the oral agreement in support to their argument that there was or was not a condition precedent.

Under D.C. law, for a contract to exist, there must be both agreement to all material terms and the intention of the parties to be bound. "Absent any contrary requirement under the statute of frauds, parties may enter into enforceable oral contracts, as long as the parties agree to all material terms and intend to be bound by their oral agreement." *Baker v. Office Space Dev. Corp.*, 664 A. 2d 1236, 1238 (D.C. 1995).

Here, both parties agree that an oral contract exists and have made such in-court

16d-002244

representations before the Court at the December 12, 2002 motions hearing on the cross summary judgment motions in this case. Thus, the statute of frauds is satisfied. *Wemhoff v. Investors Management Corporation of America, et al.*, 528 A.2d 1205, 1208 (DC 1987). The determination therefore, is whether the parties agreed to all of the material terms and intended to be bound by their agreement. The jury should make this determination.

Here, the contract is ambiguous. The parties did not appear to consider the ramifications of their oral contract if the Retro Plan was terminated. The parties agree that no premium would be due by either party until all Experience Periods had closed. This agreement seems to have been made in light of the Retro Plan being in existence. However, the parties have different interpretations as to what would happen if the Retro Plan ended and open Experience Periods still existed.

Issues of fact regarding oral contract ambiguity are for the jury to resolve. The use of extrinsic evidence is permitted "to determine the circumstances surrounding the making of the agreement, so that it may be ascertained what a reasonable person in the position of the parties would have thought the words meant." *Noonan v. Williams*, 688 A.2d 237 (DC 1996) (citing *Lamphier v. Washington Hospital Center*, 524 A.2d 729 (D.C. 1987).

The different interpretations by the parties are an ambiguity in the contract, as opposed to a failure to agree to all material terms of the contract. "The policy favoring freedom of contract requires that within broad limits, the agreement of the parties should be honored even though forfeiture results. When, however, it is doubtful whether or not the agreement makes an event a condition of an obligor's duty, an interpretation is

16d-002245

preferred that will reduce the risk of forfeiture." RESTATEMENT (SECOND) OF CONTRACTS § 227(1) (1971).

Here, Columbia argues that the closing of an Experience Period, is the event that must occur before Columbia must pay NCRIC any owed premium. On the other hand, NCRIC argues that whether an Experience Period is closed or open, Columbia owes NCRIC now because the Retro Plan has been terminated. Because of this factual dispute, the Court will not decide the harsher alternative that no contract was formed. The intent of the parties is a factual issue for the jury to decide.

There are additional factual disputes for a jury to resolve such as whether notice was ever given. There is also a factual dispute regarding the mechanics of the calculations. Specifically, there is a dispute regarding whether the 1996 Amendment decreasing the Minimum Premium to 60% should be applied prospectively or retrospectively and whether the Deposit Premium Multiplier was properly adjusted from 67% to 62% to comply with the 1986 amendment, reducing the premium for the Attending Faculty. Finally, there is a factual dispute as to the whether Exhibit E is a controlling example of how the Reconciliations should be performed.

16d-002246

Accordingly, for the foregoing reasons and upon consideration of Plaintiffs' Motion for Summary Judgment[1], and Opposition thereto, it is by the Court this 2nd day of April, 2003

ORDERED, that the Motion is **DENIED**.

A. Blackburne-Rigsby

JUDGE A. BLACKBURNE-RIGSBY
Signed in Chambers

Copies To:

DOCKETED APR 0 3 2003

MAILED APR 3 2003

Marc C. Hansen
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Eli C. Shulman
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Scott M. Badami
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Roy I. Niedermayer
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

[1] The Court will issue a separate order on NCRIC's Motion for Summary Judgment.

16d-002247

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,

Plaintiff,

v.

COLUMBIA HOSPITAL FOR WOMEN CENTER, INC.,

Defendant.

Civil Action No. 00-0007308

COPY

Washington, D.C.
Thursday, May 29, 2003

Deposition of SAFA RIFKA, M.D., Witness, called for examination by counsel for the Plaintiff, at the Offices of Bryan Cave, 700 Thirteenth Street, Northwest, Washington, D.C., before Diana L. Cox, a stenographic reporter and notary public in and for the District of Columbia, commencing at 2:10 p.m., when were present on behalf of the respective parties:

49b37162-b0b6-4492-8460-df74f0b3bcde
16d-002248

APPEARANCE:

On Behalf of the Plaintiff:
ELI C. SCHULMAN, ESQ.
Kellogg, Huber, Hansen, Todd & Evans
Summer Square
1615 M Street, Northwest
Suite 400
Washington, D.C. 20036
202-326-7936

On Behalf of Defendant:
SCOTT M. BADAMI, ESQ.
Bryan Cave
700 Thirteenth Street, Northwest
Washington, D.C. 20005-6200
202-508-6200

I-N-D-E-X

WITNESS:	PAGE:
Safa Rifka, M.D.	
Examination by Mr. Badami	4
Examination by Mr. Schulman	188

RIFKA DEPOSITION EXHIBIT:	PAGE:
No. A	9
No. B	24
No. C	158

(Whereupon, Rifka Deposition Exhibits A through C were included in original transcript.)

P-R-O-C-E-E-D-I-N-G-S

Whereupon,

SAFA RIFKA, M.D.,

called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. BADAMI:

Q Good afternoon, Dr. Rifka. My name is Scott Badami. I'm an attorney here with the law office of Bryan Cave. As you may know, my law firm represents NCRIC in the lawsuit that is currently pending between NCRIC and Columbia Hospital.

A Pleased to meet you.

Q I know you have been deposed before. I would like just to briefly go over some of the ground rules and see if you have any questions before we get started. I would ask that you respond orally to my questions, as you know the court reporter is going to be taking down everything we say.

If you don't understand any of my questions,

please let me know and I will try to rephrase it. Similarly, if you would like to take a break, if you want a drink, please let me know and we will be certain to accommodate you.

Do you have any questions before we get underway?

A No, sir.

Q Can I ask you, Dr. Rifka, did you do any preparation for this deposition this afternoon?

A I did.

Q Can you tell me what that preparation was?

A I met with my lawyer, Eli Schulman.

Q When did you meet with Mr. Schulman?

A A couple of times.

Q Can you say when the first time was?

A About two weeks ago.

Q About how long did you meet with him?

A Two to three hours.

Q And you said a couple of times, did you meet with him again?

A Yes. About a week ago.
Q And about how long did you meet with him then?
A Two to three hours.
Q Did you review any documents in preparation for this deposition?
A I reviewed the statement of facts, material facts.
Q Okay. The statement of material facts that Columbia provided?
A I saw only one copy that was provided through my attorney.
Q Okay. That's fine. Did you review any other documents?
A No, sir.
Q I want to make clear, I'm not asking you any substance that you talked about with your counsel. That's not the point of my questions here. Other than Mr. Schulman, did you meet with anyone else in preparation for this deposition today?
A No.

Q You didn't meet with Michael Barsh (ph)?
A No.
Q Larry Wilson?
A No.
Q Peter Benezer (ph)?
A No.
Q In your preparations, you did not, then, review what we call the retro plan? Do you understand what I mean when I say the retro plan, with respect to this case?
A I did not --
MR. SCHULMAN: Objection, confidential. You may go ahead.
THE WITNESS: I did not review the retro plan.
BY MR. BADAMI:
Q When I use the term retro plan, do you understand what I mean?
A I never reviewed the retro plan. It has been explained to me so I have a vague understanding of it.

Q Okay. Did you review any of Columbia's counterclaims when you were preparing for this deposition today?
A I reviewed the statement of material facts, the disputed and the undisputed.
Q Other than Mr. Schulman, does anybody else know that you're testifying on behalf of Columbia here today?
A My office knows that I have a deposition.
Q I'm sorry. I should have been more clear. Anybody related currently or formerly with Columbia Hospital?
A No.
Q Dr. Rifka, do you understand today that you are testifying as a representative, or a designee of Columbia Hospital?
A It has -- I think I do.
Q And under the rules, it's called a Rule 30(b)(6) deposition, your testimony is that essentially of the hospital. Do you understand that?

A If you say so.
MR. SCHULMAN: Objection.
BY MR. BADAMI:
Q I would like to mark this as exhibit -- since, Dr. Rifka, you have been deposed before, with Mr. Schulman's consent, I would like to mark these exhibits as Rifka A. Because the previous depositions, I think, went numbers.
MR. SCHULMAN: Sure.
MR. BADAMI: If that's okay? Ask the reporter to mark as Exhibit Rifka A, if that's all right?
(Rifka Exhibit A was marked for identification.)
BY MR. BADAMI:
Q Dr. Rifka, I'm showing you what's been marked Rifka Exhibit A. I would ask you, sir, if you have ever seen this document before?
For purposes of the record, I'll state that it's the supplemental notice of deposition that was served in this case for this deposition today.
A I saw Page 2 before.

Q And when did you see that?
A My lawyer showed it to me.
Q Did he show that to you during the one or two preparations sessions that you mentioned?
A Yes, sir.
Q But only Page 2?
A Only Page 2.
Q When I asked you before, you only mentioned that you saw a statement of material facts. You have now mentioned that you have seen the supplemental notice of deposition. Were there any other documents that you were shown during the preparation, that you can tell me about?
A Okay. As I can recall now, that's the ones.
Q The statement of material facts and this Page 2 of the supplemental notice of deposition?
A And that was in the statement of material facts, in the book itself, in the detached --

Q Okay. Could I ask you to turn to Page 3, or excuse me, Page 4? It's labeled, Attachment A. Have you ever seen this Attachment A before?
A No, sir.
Q Would it be accurate, then, Dr. Rifka, that you never searched for any of the documents that are listed in Numbers 1, 2, 3 and 4 in Attachment A?
MR. SCHULMAN: I just want to object to that, to the extent that it calls for anything that counsel advised.
MR. BADAMI: I'm not seeking counsel's -- fine.
BY MR. BADAMI:
Q Can you just respond to my question? Did you search for any of the documents that are requested here in Numbers 1, 2, 3 or 4?
MR. SCHULMAN: I would also like to object to the extent that the question is vague as to time frame.
THE WITNESS: I do not specifically recall

any specific research to these points.
BY MR. BADAMI:
Q Okay. Dr. Rifka, do you understand that you're here today because the court ordered that this additional discovery be undertaken?
A I think so.
Q You think so or do you understand that?
A I think I understand.
Q Okay. Do you understand you have an obligation to respond on behalf of Columbia to certain areas of inquiry which the court permitted me to ask you about today?
A Yes, sir.
Q And that you are the designated representative for Columbia Hospital on these matters?
A I guess so.
Q You guess so or yes?
A I guess so, yes.
Q Okay. Can you, Dr. Rifka, I know you have been deposed before, just briefly tell me your history with Columbia Hospital, specifically

any elected or appointed positions you might have held at the hospital?
MR. SCHULMAN: I would like to object. Dr. Rifka has been deposed twice before in this case. All of his, those depositions go into detail about his relationship with the hospital. And it seems that would certainly go beyond the scope of the notice.
MR. BADAMI: Are you directing him not to answer or are you just lodging an objection?
MR. SCHULMAN: I'm lodging an objection.
BY MR. BADAMI:
Q I recognize that you have been deposed before, and I would just like to briefly go over, if you could say, the elected or appointed positions that you have held at Columbia and when you held them?
A I was elected the vice chief of medical staff in '95, '96, as I recall. And I was elected president of medical staff in '90, around 1997. And the vice chair of the board in late '97 and then acting chair of the board from there

on.
Q At any time were you president of the medical staff of Columbia?
A Yes.
MR. SCHULMAN: Objection, asked and answered.
BY MR. BADAMI:
Q Let me try it this way. When did Columbia close? Let me try it this way.
MR. SCHULMAN: Objection. The closing of the hospital is not a relevant topic for this deposition, Scott.
BY MR. BADAMI:
Q When did Columbia close, Doctor?
MR. SCHULMAN: I renew the objection. Is there any reason you can tell me that it is relevant to the topic of the deposition?
MR. BADAMI: Can we go off the record for a second?
(Thereupon, an off-the-record discussion was held.)
MR. SCHULMAN: I'm going to object to the

extent that this calls for information dealing with the closing of the hospital. We have litigated this issue, Scott. You asked the judge expressly for an opportunity to have discovery about the closing of the hospital. We objected. We briefed, the parties briefed the issue and the judge ruled that that is not an appropriate topic of discovery in this case.
So I am going to allow Dr. Rifka to answer a base question like his status with respect to the hospital. But there has to be a very short leash on this topic, because we're not going to open the door to further inquiry relating to the closing of the hospital.
MR. BADAMI: I recognize what the court ruled and permitted me to depose Dr. Rifka on today. Those are the areas that I'm going to ask of him.
MR. SCHULMAN: Why don't you go ahead and ask?
MR. BADAMI: I'm trying to do that.
MR. SCHULMAN: Okay.

MR. BADAMI: The closing of the hospital, I'm asking him what his position was at the time of the close. And I believe that is perfectly appropriate for a 30(b)(6) witness to respond to.
BY MR. BADAMI:
Q I'm going to try it again, Dr. Rifka. When did the hospital close?
MR. SCHULMAN: Objection. You can go ahead and answer, but we renew our objection. And, you know, he'll be able to answer only the most basic issues relating to that topic. We're not going to delve into the closing of the hospital here today.
MR. BADAMI: If you would like to continue the banter between you and I, I'm happy to do that. I'm here to depose Dr. Rifka and I would really like to get on with it, if that's all right?
MR. SCHULMAN: Please do.
BY MR. BADAMI:
Q Dr. Rifka, when did the hospital close?
MR. SCHULMAN: You may answer his question,

if you recall.
THE WITNESS: May, I recall somewhere in May of 2002.
BY MR. BADAMI:
Q And can you tell me what your positions were at the hospital at the time of the close?
A Chairman of the board.
Q Since the time that the hospital closed, do you, have you maintained that position or has it changed? Or what is the current status of that?
MR. SCHULMAN: I'm going to object and direct the witness not to answer that question.
MR. BADAMI: I'm going to ask that the question be answered. I believe that it is perfectly appropriate for a 30(b)(6) witness to respond to these very basic, very limited questions.
We've already gone through one motion to compel, the motion to compel was granted. That's why we're here today. We're going to have to file another one.

MR. SCHULMAN: Absolutely. If you would like to discuss the topics that are in the motion to compel, I would welcome that. That's what we're here for today. We're not here to discuss any events relating to the closing of the hospital or subsequent events to the closing.

And that issue has been addressed by the court and the court has expressly held that that is not a proper topic for discovery.

MR. BADAMI: The court did not hold anything with respect to the status of your 30(b)(6) deponent, who is the corporate designee that you have stated that is supposed to respond on behalf of the hospital. The court did not address with respect to whether or not I could ask him that type of question. I'm sorry.

MR. SCHULMAN: Well, it's simply not relevant to the issues that are, that the court has allowed you to proceed on.

MR. BADAMI: Again, we're going to have to disagree on that point. You know, I've asked the question and we will have to press it in another

motion.

MR. SCHULMAN: Okay.

BY MR. BADAMI:

Q Dr. Rifka, if I use the term attending faculty at Columbia, do you understand the definition of the attending faculty at Columbia?

A Yes, sir.

Q Can you define for me the attending faculty at Columbia?

A The attending faculty of Columbia, a self-selected group who together, because they historically refer most of the patients to Columbia, and who intend to refer the bulk of the work to Columbia Hospital in the future.

Q From the time of approximately 1993 through 2000, were you a member of the attending faculty at Columbia?

A I was.

Q With respect to the physicians who made up the attending faculty at Columbia from 1993 to 2000, did Columbia have a contract in place with any of those members of the attending faculty?

A Columbia did not have a contract, these are a self-selecting group. They banded together clectively, willingly, with the common bondage between them. These are the physicians who refer the bulk of the hospital, of the patients and the work to the hospital, historically. And who intend to refer the bulk of their work to the hospital futuristically.

So this is self-selected, it's a willing, it's a willful thing. It is something that they have instigated, generated, formulated and banded together.

Q But there is no contract?

A There are no contracts.

MR. SCHULMAN: Objection, asked and answered.

THE WITNESS: There are no contracts.

BY MR. BADAMI:

Q Did certain members of the attending faculty from 1993 until 2000, did it change over time?

A It changes with attritions and

recruitment. People will get old and retire or, and other new ones would come. So really there hasn't been a tremendous change. The influx and the out-flux were something within reach of each other.

Q Did many of the attending faculty have privileges at more than one hospital here in the District of Columbia metropolitan area?

MR. SCHULMAN: Objection, vague and ambiguous.

THE WITNESS: I don't know if many. But physicians who voluntarily go to hospitals, sometimes they can have admissions to other hospitals.

BY MR. BADAMI:

Q Is a member of the attending faculty of Columbia under an obligation to admit all of his or her patients to Columbia?

A I would have to impress on you that the attending faculty of Columbia is not generated by Columbia Hospital for Women, it's generated by the attending faculty themselves who bonded

together for support systems.
And who electively, and I underline electively, and voluntarily banded together because they historically admit all their patients to Columbia. And for futuristically, which is more important, they intend to admit the bulk of their patients to Columbia.
Q But a doctor can change his or her mind with respect to which hospital they wish to admit patients, as long as he or she has privileges at the other hospitals?
A Doctors who are private practitioners have the right to admit their patients anywhere they elect to do so. For example, I am on the faculty of Sibley but I admit all my patients to Columbia.
Q But if you wanted to, you could elect to admit patients to Sibley?
A You can elect --
MR. SCHULMAN: Objection, asked and answered.
You can go ahead.

THE WITNESS: You can elect, Mr. Badami.
BY MR. BADAMI:
Q You stated, Dr. Rifka, that there is no contract between the members of the attending faculty and Columbia Hospital. I'm asking you now, if you could describe the business relationship between the attending faculty and Columbia Hospital?
A The attending faculty would admit their patients to Columbia Hospital, and by admitting their patients to Columbia Hospital there is a business relationship because patients are admitted to the hospital.
They refer their patients to do procedures in the hospital, X-ray, blood test and certain other things, too. So they utilize the hospital as, for all services for their patients.
Q Let me try it this way. Is the business relationship between an attending faculty member and Columbia Hospital, is any of that in writing?
A There is no writing of a business

contract between the hospital and the attending faculty. The attending faculty selectively, electively, voluntarily takes their patients to the hospital. And I guess that that's the extent of it.
Q Is a physician free to change the business relationship between him or herself and Columbia Hospital at any time?
MR. SCHULMAN: Objection, asked and answered.
THE WITNESS: Yes.
MR. BADAMI: I would like to mark the next exhibit.
If you can mark it Rifka B for me?
(Rifka Exhibit B was marked for identification.)
BY MR. BADAMI:
Q Dr. Rifka, I'm showing you what has been marked as Rifka Exhibit B. And ask if you recognize this document?
A Do you want me to read all of it now?
Q I'm just asking you if you recognize

it?
A To recognize it, I have to read through it. And if you bear with me, I will give you an answer.
Q Sure.
A Okay.
MR. SCHULMAN: Scott, if we can go off the record, I might be able to short-circuit this a little bit.
MR. BADAMI: Sure.
(Thereupon, a brief recess was taken.)
MR. BADAMI: We're back on the record.
BY MR. BADAMI:
Q Dr. Rifka, do you recognize what I've handed you as Rifka Exhibit B?
A I'm reviewing it, Mr. Badami, if you don't mind.
Q Okay. Sure.
A I guess I have seen some paragraphs of it, yes. Sitting here today I think I, my recollection, I have seen some parts of it.

Q Do you recognize the parts of it as Columbia's, I guess, amended answer and counterclaims in this matter?
A I can refer you to certain topics that I recognize, sir, in it. The January '98 renewal, the September '98 renewal. So I am familiar with certain, with certain parts of it, yes.
Q Okay.
A My recollection, I remember certain parts of it, yes.
Q Okay. Let me ask you some questions about it and see if you have some knowledge of these areas. Could you please turn to Page 25, specifically Paragraph 124?
A Yes, sir.
Q And for purposes of the record, I will read Paragraph 124. States, "During the period up to and including August of 2000, Medical Center" -- and it's referring to Columbia -- "had valid business relationships with certain physicians who were associated with Medical

Center and an expectancy that such physicians would refer patients to Medical Center."
Did I read that paragraph accurately, Dr. Rifka?
A Yes, sir, you did.
Q Can you please, for me, list the certain physicians who had business relationships with Columbia as outlined in Paragraph 124?
A These would be the entire staff of Columbia and attending faculty in its entirety.
Q Can you list the names of those physicians?
A These are tens of names. It would be, these are the medical staff of Columbia and the attending faculty of Columbia. And they number a lot.
Q I am not unsympathetic to that point of view. In your counterclaims you have alleged certain physicians, and I'm trying to figure out which certain physicians you all are referring to.
MR. SCHULMAN: Objection. I mean, this

isn't a memory test. We have produced in discovery, documents that list the names of the physicians.
MR. BADAMI: This is a 30(b)(6) deposition that was specifically authorized by the court.
MR. SCHULMAN: Yes.
MR. BADAMI: He is the representative. I am asking him which physicians he is referring to, as a purely factual question. If he would have had documents that could have talked about this, that's fine. If he's saying he doesn't know and if you're objecting, you know, that's fine. But, you know, I have a right to ask this question. It's certainly within the realm of what the court granted.
MR. SCHULMAN: I object to the extent that you're asking him to, you know, by memory recite all the names of the members of the attending faculty beyond that which we have produced in documents in this case.
MR. BADAMI: The reason this deposition was permitted to go forward is because the court

found your responses have been inadequate in this area. And so that's why the question is valid. And I'm asking for the list of the certain physicians.
MR. SCHULMAN: You can go ahead and answer it to the extent that you recall or --
THE WITNESS: Yes. I would list to you the -- I mean, this is the -- what you're asking me is to list the physicians who admit to Columbia Hospital for Women up till August 2000. And I would have to say that my listing would not be totally encompassing because there are tens if not hundreds of them.
And hence, I would refer you to the materials that we have presented and to the names that are included in all of the briefs, papers, statements of facts, interrogatories or whatever. But this is -- you're asking me now to list the entire medical staff of Columbia Hospital for Women.
MR. BADAMI: I'm trying to get you to list as many factual names as you can remember. Your

counterclaim seeks a significant amount of damages based on an allegation that my client did something to this group of certain physicians. And I want to make sure I understand the group of physicians we are referring to.

THE WITNESS: And the group of physicians that you are referring to, the names are listed in our numerous papers, facts.

BY MR. BADAMI:

Q Dr. Rifka, which paper is it listed in? Let me try it that way.

A In the documents that we have presented to you there are adequate number of physicians who admit, those physicians who are expected to admit. And I think that if you, other depositions of other people can point to that, too. If you review the documents you will find them.

But it is for me impossible as a human brain, to recite in front of you hundreds of physicians who admit to the hospital, and call this an entire knowledge.

Q Again, I didn't prevent you from bringing any piece of paper here that, you know, that could have listed the names. Again, the reason we're here is because the court has found Columbia's response to this question inadequate up to this point, and I'm trying to just pin it down.

If you are unable to respond with any more specificity, you know, we can take that up again with the court. And, you know, I was successful with respect to this motion to compel and, you know, I may have to do it again. I mean, I don't know what else to tell you.

MR. SCHULMAN: Is there a question pending?

MR. BADAMI: Yes.

BY MR. BADAMI:

Q I mean, are you declining to name the certain physicians that are listed in, that are encompassed in Paragraph 124 of your counterclaim?

A I --

MR. SCHULMAN: Objection. Dr. Rifka has

told you that he, that this is not a memory test. He can't recall names of every physician. He's referred you to documents, he's referred you to our statement of material facts.

MR. BADAMI: He's referred me to no specific document. He's referred me to no statement of material facts. You have an obligation to prepare your witness.

MR. SCHULMAN: I think I was not finished, Scott. He's referred you to the whole record in this case. The court did not find that we had not adequately presented the names of doctors that are members of the attending faculty.

MR. BADAMI: The court found that you had responded to this insufficiently, and provided me this opportunity to do so. You had an obligation to prepare your witness to respond to these questions. There's only four or five areas that the court permitted this deposition to go forward on, this is one of them.

MR. SCHULMAN: Dr. Rifka is well prepared for the deposition. I'm confident that the court

did not have in mind that he would have to be able to recall by memory the name of every doctor that's a member of the attending faculty.

MR. BADAMI: There is no requirement in the rules, that I'm aware, that he has to do it by memory. He could certainly have --

MR. SCHULMAN: That's correct.

MR. BADAMI: -- a piece of paper with him that you could have provided him, that would have listed this.

MR. SCHULMAN: And he's referred you to things that are in the case. If you would like to show him the statement of material facts and ask him to show you where in the statement of material facts there are listings of doctors, there's information about the attending faculty, you're welcome to do so. But he doesn't have to recall by memory the names of all the members of the attending faculty.

MR. BADAMI: The point is not necessarily the names of the members of the attending faculty, it's going to be the business

relationship that Columbia alleges it had with them. And we're going to continue on from that.

MR. SCHULMAN: Well, why didn't you ask him about the business relationship, then, rather than the names of all the members of the attending faculty?

MR. BADAMI: I'm starting with the names and then we're going to get to the business relationship.

MR. SCHULMAN: Okay.

MR. BADAMI: But, you know --

MR. SCHULMAN: Well, he's answered to the best of his ability with respect to the names, and has referred you to numerous places in the record in the case where there are such names. And I would encourage you to move along and ask him about the business relationship.

MR. BADAMI: And I, for the record, will state that I believe that that is an insufficient response. And again, you know, for the second time, we're probably going to have to go back to the court on a motion to compel for this.

But for purposes of this deposition for right now I'll move on without waiving my rights to this information.

BY MR. BADAMI:

Q What I would like to do, Dr. Rifka, and it may be a bit of a challenge here. Is I'm trying to find out when the business relationships with each of these physicians began, when the business relationship with each of these physicians ended? And if it ended, why it ended?

A Okay. Proceed.

MR. SCHULMAN: Is there a question pending?

BY MR. BADAMI:

Q Let me try it this way. Can I ask you to look back at Paragraph 124?

A Yes.

Q You'll see at the end it talks about, Columbia had an expectancy that such physicians would refer patients to the medical center. Do you see that?

A Yes, sir.

Q Can you describe for me the expectancy that Columbia had that the physicians would refer patients to the hospital?

A Physicians had, who admit to Columbia had the history of admitting all of their patients there. And the expectancy is if somebody admitted all their patients there for the last 19 or 20 or 15 years that it would continue unabated.

Q Was that expectancy ever in writing, between the hospital and Columbia -- excuse me, between the hospital and the physician?

A The hospital and the physician do not have a writing to that effect. The physicians themselves have selectively and electively, willingly for the last decades admitted patients, in their totality, to Columbia Hospital for Women. And there was no reason for things to change.

Q Could a physician change his or her mind with the respect to that expectancy, at any time?

A If there is something major that has happened, maybe.

Q Only maybe?

A To my best of my knowledge, sitting here today, yes.

Q So a physician could have changed his or her mind with respect to that expectancy? He or she could do --

MR. SCHULMAN: Objection, asked and answered.

THE WITNESS: I guess they can.

BY MR. BADAMI:

Q Was Dr. Arthur Becker a member of the medical staff at Columbia?

A Yes.

Q Did Columbia have a business relationship with him?

A He admits his patients to Columbia Hospital for Women.

Q Do you know when he began admitting patients to Columbia?

A A long time ago.

Q Can you be more specific?
A No.
Q Do you know if Dr. Becker changed his business relationship with the hospital at any time?
A You have to ask him. I guess he did. From my knowledge, sitting here today, I guess he did.
Q Do you know when he did that?
A You would have to ask him that question. But I think around the, around that time of, I would think around that time of September 2000.
Q Around that time he changed his business relationship with Columbia?
A I would have to guess. I'm not sure about it, what time did he really change. You would have to ask him.
Q I'm asking you for Columbia's knowledge, that's all.
A I guess. I do not, I'm not sure about when did he change.

Q Do you know why Dr. Becker may have changed his business relationship with Columbia?
A I have no, I have not -- I don't have any knowledge at the present time. And I don't recall why would he, if he did.
Q Did you have knowledge at a prior time why he might have done that?
A You would have to ask him. I have no recollection about Dr. Becker's practices.
Q How about, did Columbia have a business relation with Dr. John Berryman?
A He used to admit patients to Columbia Hospital for Women. And the bulk of his work was at hospital, at the Columbia hospital.
Q Would Dr. Berryman be one of the certain physicians that are referred to in Paragraph 124 of your counterclaim?
A I guess so.
Q Do you know if Dr. Berryman made a decision to change his business relationship with Columbia?
A I know that after September of 2000

that his admissions to Columbia were severely down.
Q And why was that?
A You probably have to ask him why was that. But that is, he was part of the NCRIC insured physicians.
Q And when you say part of the NCRIC insured physicians, what do you mean?
A He went with NCRIC discount and moved the bulk of his patients to other hospital.
MR. SCHULMAN: Can we go off the record for a second?
MR. BADAMI: Sure.
MR. SCHULMAN: Thank you.
(Thereupon, an off-the-record discussion was held.)
MR. BADAMI: We're back on the record.
BY MR. BADAMI:
Q Dr. Rifka, I'm going to give you a list of names, and I guess I'm going to ask you if you had a business relationship with these physicians? And we'll see where that goes, if

that's all right with you?
A That's fine, sir.
MR. SCHULMAN: By you there, you mean Columbia Hospital?
MR. BADAMI: Columbia Hospital.
THE WITNESS: Okay. Yes, sir.
MR. BADAMI: And Dr. Rifka as the specific designee?
MR. SCHULMAN: Yes.
BY MR. BADAMI:
Q How about Dr. Allen Birnkrant, B-I-R-N-K-R-A-N-T?
A Allen Birnkrant, yes.
Q Did Columbia have a business relationship with him?
A Yes.
Q Do you know when that business relationship began?
A Years ago.
Q Can you be more specific?
A Probably in the mid '80s.
Q Do you know when that business

relationship ended?
A Around the time of September 2000.
Q Could Dr. Birnkrant have made his decision to -- do you know why he changed his business relationship with Columbia?
A He was part of the NCRIC group that stayed with NCRIC and they moved him to George Washington University, or he moved to George Washington University.
Q You said NCRIC moved him to George Washington, I would like you to -- who at NCRIC moved him to George Washington?
A Well, who, I -- if you read me the names I can help you. But Dr. Birnkrant's, around September of 2000, his admissions to Columbia were severely down to nil. And he is part of the group that stayed with NCRIC when the plan, when the, was not renewed by writing.
Q And plan, you mean the retro plan?
A The retro plan was not renewed. And he moved. It was at that time, just shortly before, that NCRIC structured a retro plan with George

Washington. And he was one of the physicians who left Columbia, stayed with NCRIC and went to GW.
Q I'm sorry. Dr. Rifka, I thought you said, though, that Columbia didn't have a contract with Dr. Birnkrant or with any of the attending faculty?
A Nor does GW have any contract.
Q Right.
A But he admitted all of his patients for 15 years to Columbia Hospital. All of a sudden, September of 2000, he admits all of his patients to George Washington.
Q But he had no contract with Columbia; is that correct?
MR. SCHULMAN: Objection, asked and answered.
THE WITNESS: He has no contract with Columbia.
BY MR. BADAMI:
Q And I believe you testified that the members of the attending faculty were free to change their business relationship as they saw

fit?
A I said that.
Q And so how, you know, if he chose to -- isn't it true he chose to do that?
A You asked me about the expectancy. If an organization has a physician admitting to it for 15 years uninterrupted, unabated, and suddenly something happens with NCRIC and all of a sudden that person goes to another hospital. All of this happened around a miraculous September 2000 when a bunch of physicians left Columbia to Sibley or to GW, because of the NCRIC had no deals with Columbia Hospital for Women going forward.
So these physicians, their leaving came synchronous and at the same time that the contract has not been renewed with NCRIC. All the years prior to that, for decades they have admitted patients electively, willingly, happily, satisfactorily to Columbia Hospital. So that's what the expectancy is.
Q But you had no contract with respect to

that expectancy, that was never reduced to writing?
MR. SCHULMAN: Objection, asked and answered numerous times now.
THE WITNESS: Medicine is not practiced by contracts, Mr. Badami, they are practiced by physicians admitting patients to a hospital. And the business relationship is the continuity of that.
And when all of them come in bulks at the certain day, in a certain month, interrupting decades of day and night, day and night and day and night, and week after week, month after month, year after year, the miraculous happening is that it was the same time with the NCRIC not signing a deal with Columbia going future, of going to the future.
BY MR. BADAMI:
Q And do you know that Dr. Birnkrant left because there was no deal as you call it, between NCRIC and Columbia?
A That is correct.

Q How do you know that, did you talk with him?
A The leavings of everybody that have left in September of 2000 has been preceded by a lot of events and has been precipitated by not signing the contract going forward with NCRIC.
So there's, in my mind and in the institution's mind, there is no way we think it's otherwise other than us not being able to sign a deal with NCRIC going for the future.
Q Let me repeat my question. Did you ever speak with Dr. Birnkrant about why he left Columbia?
A Dr. Birnkrant --
MR. SCHULMAN: Objection. Go ahead.
THE WITNESS: Dr. Birnkrant and others spoke about Columbia, if it doesn't have a deal with NCRIC that they are going to leave somewhere else.
BY MR. BADAMI:
Q When did you speak to Dr. Birnkrant about that?

A I did not have any direct conversation about it, but in executive committee meetings of the medical staff this was brought up.
Q Was it brought up by Dr. Birnkrant?
A It's brought by everybody, and he's a member of the executive committee.
Q Did you hear him say that?
A I haven't heard him saying that.
Q So you're speculating?
MR. SCHULMAN: Objection.
THE WITNESS: It's barely a speculation if everybody left at the time when NCRIC did not have a deal with Columbia. If they were admitting patients for 15 years to a place and then all of a sudden September 1st certain percentage of the faculty just goes some to Sibley and some to GW, there is no, nothing to say about other than the NCRIC deal.
BY MR. BADAMI:
Q Again, but didn't you testify, Dr. Rifka, that a physician could change his or her view at any time?

MR. SCHULMAN: Objection, mischaracterizes prior testimony. Asked and answered for multiple times.
MR. BADAMI: Dr. Rifka gives the same answer, Eli. I'm trying to get a different question asked.
MR. SCHULMAN: Okay. You're asking the same question, though.
MR. BADAMI: The record will speak for itself.
MR. SCHULMAN: Indeed it will.
MR. BADAMI: Indeed it will.
BY MR. BADAMI:
Q You have mentioned, Dr. Rifka, this September 2000 date, and that's probably a good time to go here. I would like you to testify as to, or let me try it this way. Does Columbia claim that NCRIC interfered with the business relationship it had with, that Columbia had with any of the attending faculty members?
A Yes.
MR. SCHULMAN: I just want to object to the

extent that it calls for a legal conclusion. But go ahead.
BY MR. BADAMI:
Q Dr. Rifka, I would like you to tell me the specific actions or acts that Columbia claims NCRIC did that constituted this interference?
MR. SCHULMAN: Same objection.
THE WITNESS: Okay. In 1998 there was, while Columbia was in Chapter 11, we were having problems renewing our relationship with NCRIC, because NCRIC was asking for a huge amount of money from Columbia, money that we didn't have.
And so Columbia had to try to get another insurance company that will insure the physicians at a very competitive rate without any retro plan and risk by Columbia Hospital for Women. We thought this is wise to do, it's fiduciary.
And we were under Chapter 11 so we wanted to make sure that we showed the creditors and the court that we were diligent about that. At that time, NCRIC interfered with that decision.
Q How did NCRIC interfere with that

decision?
A NCRIC structured meetings for the attending faculties, first telling them that, putting disparaging remarks about MIIX.
Q Okay, I'm sorry. May I --
MR. SCHULMAN: Objection. Are you finished, Dr. Rifka?
THE WITNESS: Yes.
MR. SCHULMAN: Have you finished your answer?
THE WITNESS: Yes.
MR. SCHULMAN: Okay.
BY MR. BADAMI:
Q You said NCRIC structured meetings for the faculty. Who at NCRIC structured these meetings for the faculty?
A With the attending faculty.
Q Who at NCRIC did this?
A I do not know who structured the meeting, I know who attended them.
Q You were -- I'm sorry, Doctor, you testified that NCRIC, I believe it was,

structured the meetings? And I was trying to use your words.
A Correct.
Q And I'm asking you, who at NCRIC structured these meetings?
A Who at NCRIC structured that meeting?
Q That's correct.
A NCRIC. I do not know who structured that meeting.
Q I'm asking you for the name of an individual or individuals at NCRIC?
A I know who attended the meeting, who called for it, I don't know. But from the NCRIC, the ones who attended the meeting was Steve Fargis, Ray Pate, Nelson Trujillo. And the fourth person, which I will see if I remember -- Burgess, a guy by the name Burgess, I think.
Q When did these meetings take place?
A In '98.
Q Can you be more specific?
A August, September '98.
MR. BADAMI: Can we go off the record for a

second?
MR. SCHULMAN: Sure.
(Thereupon, a brief recess was taken.)
THE WITNESS: Mr. Badami, at 3:30 I would like a break to call my office to see if there's an update. So if you don't mind?
MR. BADAMI: Sure. As I mentioned at the beginning, if you would ever like to take a break, please let me know.
THE WITNESS: Thank you, sir. Just at 3:30.
MR. BADAMI: Go ahead. If you can point it out, when it hits 3:30, let me know, and we will certainly accommodate.
THE WITNESS: Thank you, sir. You're very kind.
BY MR. BADAMI:
Q You mentioned that, I think, in August or September of 1998?
A Yes.
Q And what took place at this meeting?
A As I sit here today, for example, there

was a slide show in one meeting at the NCRIC headquarters that was, for example, they were trying to tell the physicians that if, to go to another hospital who had similar programs. In one of the slides, I will refer you actually for more details to the, to the exhibits that is related to the case where this is shown.
Q I don't really want to go there, Dr. Rifka, because then Mr. Schulman and I are going to go back and forth on what is the purpose of this deposition here this afternoon.
I guess I really would like to ask you to focus on how NCRIC interfered with the business relationship that Columbia had with its attending faculty?
A Okay. After the board of directors had agreed to bring MIIX to the picture, which is a larger insurance company rated by the best's as A plus, the, NCRIC started saying bad things about MIIX, scaring the physicians from going with it.
Q What bad things did NCRIC say about MIIX? And then I'm going to ask which specific

individuals said something bad about MIIX?
A They said, as I can recall today and I will refer you for greater details to the numerous filings and statements in the case, they said that MIIX is not here to stay, it's a foreign company. MIIX's guarantee of not raising the premium for two years is not true. MIIX is a bad company.
The lawyers that are defending you currently with NCRIC are very good. The lawyers that MIIX will bring will not be available for you for your defense. For example, they said that, they attacked the board on cronyism and they alleged that the board stands to benefit financially from this deal.
And three, they told the physicians that if the deal does not work with Columbia that they can move to another hospital. I think they said, too, that our self-insurance trust has no money in it, spreading panic in front, with all the physicians. And that's for examples. I -- this is by no means an entire picture. So for more

details I will refer you to -- but that's what I remember sitting here today.
Q Okay. We're going to have to go over these one by one. Again, Dr. Rifka, with respect to more details, Mr. Schulman and I are going to end up disagreeing. The purpose of this deposition is for me to get all those details.
I'm going to ask you again if there is anything else that you remember. I'm trying to get every fact that Columbia claims that NCRIC interfered with these business relationships. And saying you're relying on other pleadings and things is not going to do it. But, in any event.
MR. SCHULMAN: I'm just want to object there. A 30(b)(6) witness is absolutely entitled to refer you to other submissions in the case. In this particular instance he's referred to the statement of material facts which lays out in detail the very specific statements that Columbia alleges were made at that meeting and at other occasions.
We've briefed this, you know, fully before

the court. Columbia stands by those statements, and Dr. Rifka is entitled as a 30(b)(6) witness not to have to recreate the wheel on every detail.
But if you would like to walk him through the statement of material facts and ask him whether or not that's Columbia's position as opposed to a particular individual that may be cited in the statement as a basis for that comment? That might be more productive if you're interested in making sure that you've pinned down Dr. Rifka as the 30(b)(6) witness on all the facts, and he's absolutely prepared to do that.
But to make this into a memory test of the whole case is not appropriate. And the 30(b)(6) witness is absolutely entitled to refer you to other submissions in the case.
MR. BADAMI: A 30(b)(6) witness is not a permitted -- you know, you have an obligation to prepare the 30(b)(6) witness. This deposition is being taken because your previous responses have been found by the court to be inadequate. I'm

asking for purely factual questions about how the business relationship was alleged to be interfered with. And I'm asking for every fact and --
MR. SCHULMAN: And he's telling you that if you want every fact he's directing you to where to look. The court didn't find the prior answers to be inadequate after all of the things that have been laid out and the statement of material facts had been laid out.
That pleading didn't exist at the time the court evaluated, at the time the motion was filed. At the time the record was set, in terms of what was provided at the prior circumstances that the court was ruling on.
MR. BADAMI: Eli, the ruling on the motion to compel came in March of -- excuse me, in April of 2003, a year after the statement of material facts had been filed.
MR. SCHULMAN: Yes, but there was no suggestion in the record that the statement of material facts answered the questions that, that

NCRIC was seeking. NCRIC was seeking, at the time two and a half years earlier, particular questions well before the statement of material facts had been put together.

So if he's able to make it easier for you and to, and to make it clearer as to what Columbia's position is by referring to the statement of material facts, that's a helpful thing. It should facilitate this deposition for everybody. And a 30(b)(6) witness is entitled to do that.

MR. BADAMI: Well, I'm going to ask my questions and we're going to keep going.

BY MR. BADAMI:

Q Dr. Rifka, you said the first statement that NCRIC made was that, I believe it was, MIIX is not here to stay. Who said that?

A I do not recall exactly who said that, but I mentioned who was there in the meeting. And I do not recall who is the person exactly from NCRIC who said it. But I would refer you to the slide show which speaks for itself.

And the slide show, I remember numerous slides that what I said is incorporated in the slides themselves. And the slides are made by NCRIC, projected by NCRIC in the NCRIC headquarters.

Q But you don't know who at NCRIC said this? I'm asking you for a name. I'm asking you to tell me who the person was?

MR. SCHULMAN: Objection, asked and answered.

THE WITNESS: I do not know the specific person.

BY MR. BADAMI:

Q You stated that MIIX was a foreign company. Do you know who made that statement?

A Was the NCRIC presenter at the time.

Q But you don't remember who that is, who that was, excuse me.

A Not specifically.

Q Your next issue was that MIIX was going to guarantee not to raise its rates. Do you know who made that statement?

A One of the four NCRIC bosses who attended.

Q Object to the characterization of bosses. But --

A All of them, the four persons who attended there, or the executives.

Q Your next statement, Dr. Rifka, was that MIIX was a bad company. Who made that statement?

A One of the four bosses of NCRIC that were there.

Q Again, I object to the term bosses. But you can't be more specific than that?

A No, sir.

Q Can you be more specific with respect to any of the remaining alleged statements that interfered with your business relationships?

A I think they are on a slide show that was manufactured by NCRIC.

Q I'm just asking if you can tell me who made the statements?

A The statements was made by a slide and

one of the NCRIC bosses was reading the slides to the public.

Q Again, I would object to the characterization of bosses.

MR. SCHULMAN: You're objecting to the witness's testimony?

MR. BADAMI: I'm objecting to the characterization.

MR. SCHULMAN: Okay.

BY MR. BADAMI:

Q In addition to the statements that you have said that took place at the meetings in either August or September of 1998, is there any other event or statement that Columbia claims NCRIC interfered with the relationships between the hospital and its attending faculty?

A As I sit here today these are the ones that I recall.

Q But you can't recall any others?

A What I've enumerated prior to that is, to you, is whatever I recall.

Q Okay.

MR. SCHULMAN: Can we take a break?
MR. BADAMI: Sure.
(Thereupon, a brief recess was taken.)
MR. BADAMI: Back on the record.
BY MR. BADAMI:
Q Dr. Rifka, I would like you to turn now back to Exhibit B.
A I just want to tell you something about the, to conclude on the 1998.
Q Okay. The statements?
A The statements.
Q Right.
A That, that slide shows that were made by the people at, of authority at NCRIC really hurt us during our bankruptcy situation. Here we are, the hospital is in bankruptcy, trying to reorganize, to increase its business. And we have NCRIC at the other end trying to show our physicians out the door and take them to another institution.
Floating about us that we are, our

self-insurance trust has no money and telling them that the hospital is in a tenuous position. And that, encouraging them to leave and decreasing our business.
That has put stress on the hospital board, on the way that we manage ourself out of bankruptcy. Has stressed our relationship with our creditors at that time, or the bankruptcy state guys. And has made it a little bit more difficult to do a quick reorganization plan.
And let me mention, too, that prior to that, in 1997, they came and took a million dollars away from the self-insurance trust. So, something that NCRIC was not entitled to, and they demanded that.
So the relationship really has been nerve-wracking for the hospital. And we were, felt like we were being jerked by them at every single angle at the time when we were trying to reorganize and get out of bankruptcy.
Q Dr. Rifka, your response that you just testified to?

A Yes.
Q You know, it wasn't to a question that I asked. It came after a break. Did you just remember all that on your own during the break?
A Well, I didn't think I concluded the answers to my questions, actually. Did not think that I, the answer to your questions had been concluded, in 1998.
Q Okay. And did you come up with all of these items on your own during the break?
A Mr. Badami, I will -- whatever I say is what my brain cells tell me.
Q I'm just asking if you came up with them on your own?
A That's exactly what I told you.
Q Okay.
MR. SCHULMAN: I would like to object to the asked and answered and the implication of the question.
BY MR. BADAMI:
Q Let's talk about some of that since you have raised it now?

A Yeah.
Q You said that NCRIC said the self-insurance trust fund was, I think it was underfunded, I want to make sure I get your word?
A Something to that effect, whether underfunded or it is way below, running on empty.
Q Was it way below or running on empty?
A Actually it shouldn't have been weren't it for them taking a million dollars off it.
Q I appreciate that. That wasn't my question.
MR. SCHULMAN: Did you finish your answer, Dr. Rifka?
THE WITNESS: I didn't.
MR. SCHULMAN: Okay. Go ahead and finish.
THE WITNESS: The NCRIC self, our, the, Columbia's Hospital self-insurance trust, in 1997 NCRIC came and said they know about the tenuous financial position that the hospital is in, and that they demanded either a letter of credit or a CD or cash in a certain amount of money. And we knew this was not really due them, that money.

And they explained that this money would stay on Columbia's books, it will accrue interest that Columbia will have. But that they want to keep it with them or else they will not renew the plan.

BY MR. BADAMI:

Q Who said that, Dr. Rifka?

A The meeting was called actually by Fargis and Burgess, they came to the hospital and met with Jerry Bollier. And I was there, too, and Dr. Asterbadi. And they came to us in order to finalize certain things about the plan.

And the second item of business was that the plan cannot go forward unless Columbia pays a certain amount of money, which exceeded, at that time, a million dollars.

Q And at that meeting, what did Mr. Fargis say?

A He said that he knows our financial position is bad and he knows that our, we are having difficulty with finances. And hence, NCRIC does not feel comfortable going ahead with

the plan unless NCRIC has with it a certain amount of money, that will be on Columbia's books and Columbia will accrue interest. But it will be with NCRIC, the money, just in case.

Q And Mr. Fargis said that to you?

A And Burgess, both of them.

Q Well, that was my, my next question was, what did Mr. Burgess say at that meeting?

A Both of them said the same thing.

Q Both of them said the same thing. Did they say anything else at that meeting?

A They called the meeting and they came to Columbia, so we were receiving them as, at Columbia Hospital. So they came to the office of the CEO and broke the news to us. No renewing or going forward with the plan unless Columbia can come with the certain amount of money, or a letter of credit or a CD or something, that would put with them.

It will remain on our books, we will accrue interest on it. But they will have it with them in case something happens to us.

Q You mentioned Columbia's financial condition. Let me ask you, Dr. Rifka, can you describe Columbia's financial condition and start with 1993 for me?

A I can probably start from the time when I really know the financial condition which is probably '96. '97. I was not part of the leadership in '93. I was an attending physician from the attending faculty, therefore I was not privy to all of this information.

Q I appreciate that. But you're here as the designated representative, again, from Columbia. And I would like to start with 1993 because that was the first year of the retro plan. So, you know, if we could just start with '93 to the extent you have knowledge, I would sure appreciate it.

A I'm not sure about exactly '93 but I know from the mid '90s, maybe '94, '95 that the hospital started to lose money at that time.

Q Do you know if it was profitable in 1993, the hospital?

A I know that the hospital was profitable in late '80s early '90s. I do not know exactly when the hospital turned from profit to loss actually.

Q Okay.

A But I know that in the mid '90s it experienced financial difficulties, and I know in 1997 the board put the hospital into receivership.

Q We'll get to there. I apologize. Let's try to take it one year at a time.

A Yes.

Q With respect to 1993, then, your testimony is the hospital might have made a profit? Is that --

A I'm not sure whether, in '93, the hospital has made a profit or not. But I am confident that in '95 the hospital was not making money, was losing money.

Q Let me stay with '93 just for a second. Do you know -- how was NCRIC aware of the financial condition of the hospital in 1993?

A You will have to ask NCRIC how they know. But I will remind you that Columbia Hospital for Women is a not-for-profit. It is, has audited statements and anybody can ask for it. And therefore it is a public knowledge and publicly accessible, to whatever our financial condition is.

Q I appreciate that. I guess I would like to refer you back to Exhibit B, or the amended counterclaims, and ask you to turn to Page 11, specifically Paragraph 43. You see Paragraph 43 on Page 11, Dr. Rifka?

A Yes, sir, I see 43.

Q For purposes of the record, I'll read it in. "Upon information and belief, at all times relevant to this action, NCRIC knew of Medical Center's financial situation and reasonably should have known that Medical Center would have demanded payment of any Returned Premium due under the Plan."

Did I read that paragraph correctly, Dr. Rifka?

A You did.

Q And that's a part of Columbia's counterclaim in this action; is that correct?

A Yes, sir.

Q I would like to -- Columbia has alleged that NCRIC knew of Columbia's financial situation, and I'm trying to find out how NCRIC would have known that.

A NCRIC --

MR. SCHULMAN: Objection. Is there a question?

MR. BADAMI: There is.

BY MR. BADAMI:

Q How was NCRIC, how was NCRIC aware of Columbia's financial condition?

MR. SCHULMAN: Go ahead.

THE WITNESS: Well, they came to us and told us. I do not know how they came aware. The meeting that I attended was a meeting called for by NCRIC, and came and told us, you are in a bad financial situation and, hence, we want this, this, this and that. So whatever I knew, I learned from them.

BY MR. BADAMI:

Q I appreciate that. But again, I need to remind you that you're here as the 30(b)(6) witness representative of Columbia Hospital to discuss the allegations raised in the counterclaim. And in Paragraph 43 you alleged that NCRIC knew of Columbia's financial situation and, starting in 1993, because that's the first year of the retro plan.

I'm just trying to find out how NCRIC was aware, as Columbia has alleged, of the hospital's financial condition at that time?

MR. SCHULMAN: Objection, asked and answered. Dr. Rifka just told you that he, that NCRIC called a meeting at which it told Columbia what it's financial --

MR. BADAMI: That was in 1997, Mr. Schulman.

MR. SCHULMAN: Okay.

MR. BADAMI: I'm asking about 1993.

MR. SCHULMAN: Well, why don't -- okay. Go ahead and answer if you can.

MR. BADAMI: I've made it perfectly clear

that I'm asking, I'm going year by year.

MR. SCHULMAN: Okay.

THE WITNESS: I guess the finances of Columbia Hospital for Women is public, and NCRIC would have accessibility as an insurance company to the finances of the hospital.

BY MR. BADAMI:

Q Do you know that or are you speculating?

A I do not know if, how did they know but I know that they know.

Q How was the information relayed to NCRIC?

MR. SCHULMAN: Objection.

THE WITNESS: NCRIC knew --

MR. SCHULMAN: Objection.

THE WITNESS: NCRIC knew, and you have to ask them how did they get it.

BY MR. BADAMI:

Q Dr. Rifka --

A Reminding you that the financial statement of Columbia Hospital for Women is a

public affair. How does an insurance company know of a public affair, they know and they always knew. And they told me that they knew.

Q Doctor, I believe that answer is nonresponsive. But --

MR. SCHULMAN: Scott, can you explain to me how you think the topic calls for Columbia understanding how NCRIC knew rather than calling for Columbia's explaining that NCRIC knew? In other words, Dr. Rifka has testified that he's aware that NCRIC, that NCRIC conveyed to Columbia that it was aware of Columbia's financial situation.

I don't see anywhere in Paragraph 43 or in Topic 3, anything that calls for an explanation of how Columbia knew that NCRIC came to that information.

MR. BADAMI: I'm sorry. The allegation is --

MR. SCHULMAN: Yes.

MR. BADAMI: -- that, Columbia is stating NCRIC knew of the hospital's financial situation.

MR. SCHULMAN: Right.

MR. BADAMI: And I'm trying to find out the facts behind how Columbia is alleging that NCRIC knew of its financial situation.

MR. SCHULMAN: And Dr. Rifka is answering, that NCRIC conveyed to Columbia that NCRIC was aware of Columbia's financial situation. They called a meeting saying it was aware.

MR. BADAMI: In 1997.

MR. SCHULMAN: Okay.

MR. BADAMI: And I'm trying to go year by year, and I'm still at 1993.

MR. SCHULMAN: Okay. And he's now told you that the finances are public and that NCRIC conveyed to Columbia that it had awareness of that information.

MR. BADAMI: Again, the record will speak for itself. If you would like to testify you can. But I'm trying to go year by year, and the meeting he referred to was 1997.

THE WITNESS: Yes.

BY MR. BADAMI:

Q You know. Dr. Rifka, let me try it this way. Can you describe Columbia's financial condition in 1994?

A Probably.

MR. SCHULMAN: Just one second. I want to object. I want to understand, Scott, what the basis is for, for asking about Columbia's financial condition, per se, rather than Columbia's understanding of the fact that NCRIC knew of Columbia's financial situation.

MR. BADAMI: With due respect, Eli, I don't think it's appropriate on the record for this deposition, for you and I to get into that debate. The court permitted me to ask these questions and I'm doing what the court permitted -- if you're going do direct your witness not to answer, that's fine. And we can add it to our list of things to take up with the court.

But the court permitted us to find out the facts, the basis for the allegations regarding NCRIC's knowledge about Columbia's financial

condition. And I'm trying to find out what Columbia knew when it made these allegations that we were aware of the hospital's financial situation.

MR. SCHULMAN: Okay. I'm really at a loss to understand how his answers thus far have not addressed that. But you can ago ahead and answer, Dr. Rifka, if you know more than what you have testified to thus far.

BY MR. BADAMI:

Q Can you describe, Dr. Rifka, Columbia's financial condition in 1994?

MR. SCHULMAN: Same objection.

THE WITNESS: Probably losing money, I would think.

BY MR. BADAMI:

Q Do you have any other details?

A No.

Q Do you have any knowledge how NCRIC may have been aware of financial condition of Columbia in 1994?

A I have knowledge that in '97 they have

told me and others that they know of our financial condition. And that's all what has been relayed to me from their side is that they know our financial condition. And that was in 1997.

Q Do you know how much money Columbia lost in 1994?

A I am not aware. I do not recall exactly the amount.

Q Do you have an estimate for me?

A I do not have any estimate for you.

Q Do you know if that material, that amount would be contained in any of the documents that have been produced to NCRIC by Columbia in this case?

A I am not sure of that.

Q Dr. Rifka, can you describe for me Columbia's financial condition in 1995?

A Probably not, probably losing money, too.

Q Do you know how much money Columbia lost in 1995?

A I am -- I cannot give you a specific number.

Q Can you give me a ballpark number?

A I cannot give you a ballpark number.

Q Do you have any knowledge of how Columbia might be -- excuse me -- how NCRIC might have been aware of Columbia's financial condition in 1995?

A Columbia's financial condition is public. Anybody can know it.

Q But you don't have any specific knowledge how NCRIC might have obtained that information?

A I do not have any specific knowledge, no.

Q Dr. Rifka, can you please describe for me Columbia's financial condition in 1996?

A Losing money.

Q How much?

A I do not know.

Q Not even a ballpark?

A Not even a ballpark.

Q Do you know if NCRIC was aware of Columbia's financial condition in 1996?

A Columbia's financial condition is public and NCRIC knew about the, Columbia's financial condition. That was relayed to me in 1997.

Q But you don't know about 1996?

A You have to ask them this as a cumulative knowledge or an instantaneous knowledge. But that's what they relayed to me.

Q I appreciate that. Again, it's Columbia's allegation that NCRIC knew and I'm trying to find out the facts behind how you made the allegation?

A The facts is, they informed me that they knew that. It was their words and their information relayed to me, and I am relaying to you what I heard from them.

Q Dr. Rifka, can you please describe for me Columbia's financial condition in 1997?

A Losing money.

Q About how much?

A I don't have an accurate figure. Around maybe $10 million, I would say.

Q Can you describe for me Columbia's financial condition in 1998?

A It was in bankruptcy.

Q Did Columbia lose money in 1998?

A I think the way the bankruptcy is calculated it's a little bit different. Because there is a bankruptcy estate and certain things that you can do, certain things that you cannot do. But I do not have accurate figures during bankruptcy, no.

Q Let me try it this way. Do you know if Columbia was profitable in 1998?

A It was not profitable in 1998.

Q How about Columbia's financial condition in 1999?

A 1999, losing less.

Q Do you know about how much?

A No, but losing less.

Q Do you know if it was in the millions?

A In the millions.

Q Five million?
A Can't give you an accurate figure.
Q Can you describe for me Columbia's financial condition in 2000?
A Columbia runs fiscal years June to June, and therefore would have to remind you that the years that you're asking me is June from one year to the other June of one year.
Q I appreciate that.
A And the fiscal year June to, June '99 to June 2000, we were doing well. And I think there were two months which we were profitable.
Q For the entire year, was the hospital profitable?
A Lost money for the entire year.
Q Do you remember about how much?
A I cannot remember accurately but it is a very low amount. Less losses, remarkable, markedly less losses.
Q How about Columbia's financial condition for 2001?
MR. SCHULMAN: Objection. Can you -- the

counterclaim states that all relevant times to this action, the counterclaim, was filed. If you look at Page 32 on January 5, 2001.
BY MR. BADAMI:
MR. BADAMI: And the fiscal year would be June of 2000 to June of 2001?
MR. SCHULMAN: So you're asking about fiscal year 2000 now?
MR. BADAMI: I thought I was asking -- but the record will reflect, if I misspoke, I was trying to go year by year.
MR. SCHULMAN: Okay. And I'm asking how that is relevant to Paragraph 43 or Topic 3?
MR. BADAMI: I believe it's reasonably calculated to lead to the discovery of admissible evidence. Are you directing him not to respond?
MR. SCHULMAN: How is it we -- I mean, I know the standards, Scott.
MR. BADAMI: Eli, are you directing him not to respond or not?
MR. SCHULMAN: I would like to know how it's relevant to the -- he, Dr. Rifka, can answer

until January 5, 2001.
MR. BADAMI: And after that you're directing him not to respond?
MR. SCHULMAN: Yes.
MR. BADAMI: I don't believe that objection is well taken and we can take that up with the court, as well.
BY MR. BADAMI:
Q Okay. Dr. Rifka, your counsel has only permitted you to respond up until January of 2001. So I guess for that last 6-month period, can you describe the financial condition of Columbia, from I guess the beginning of the fiscal year until January of 2001, for me?
A From June until about August of 2000 we were doing well.
Q Were you profitable?
A We increased our admissions and there was one month that we were profitable. One month only. And it was by a miniscule amount, like 50,000 or so. And then from September 2000 onwards we had the severe drop of income and

admissions and we started to hemorrhage quite a bit.
Q Do you recall how much Columbia started, your word was hemorrhage, do you remember about how much you would have lost during that time?
A On a monthly basis, hundreds of thousands of dollars.
Q Do you know if it's 100,000, 900,000?
A I cannot put a finger on exactly how much month, every month we hemorrhage but we hemorrhaged quite a bit.
Q And so the record is clear, you know, I want to ask about the rest of 2001 and 2002 up until the time the hospital closed.
If you want to object and instruct him not to answer, that's fine. But I want the record to be clear that I'm going to, I would like, I'm asking those questions.
MR. SCHULMAN: Okay. Can you just clarify for me, again, how they would be encompassed by the topics of the deposition?

MR. BADAMI: Sure. Well, this is one of the topics that was given to us, the Medical Center's financial situation throughout the time of the retro plan.
MR. SCHULMAN: Where does it say throughout the time of the retro plan, Scott?
MR. BADAMI: "Upon information and belief" --
MR. SCHULMAN: Yes.
MR. BADAMI: -- "at all times relevant to this action."
MR. SCHULMAN: Yes.
MR. BADAMI: And I believe this time frame, you know, encompasses relevant to this action. If you disagree, Eli, that's fine. It's not worth --
MR. SCHULMAN: No. Scott, I would like to understand, in good faith, your basis. And I'm willing --
MR. BADAMI: The financial condition of the hospital, in my estimation and in Dr. Rifka's testimony, has been losing millions and millions

of dollars. I believe that that testimony for the rest of the time is relevant to this case. I think it's perfectly appropriate. Question is on the table.
MR. SCHULMAN: Can you explain to me how a paragraph that states that all times relevant to this action would be relevant beyond the time of the, the date of that filing of that paragraph?
MR. BADAMI: I'm not testifying, I don't believe that's appropriate right now. This is my deposition. If you wish to object and not, instruct him not to answer a question, that is certainly within your right.
MR. SCHULMAN: I'm happy to allow him to answer the question if I can understand what the good faith reading of that paragraph is that would make that a permissible subject for inquiry.
MR. BADAMI: I read it. I think it's clear that the financial condition of the hospital from the time of the retro plan until the hospital closed is relevant to what the court permitted

this deposition to encompass. I just think it is.
MR. SCHULMAN: The court permitted, on this topic, the basis, the bases for the allegations regarding NCRIC's knowledge about Columbia's financial condition.
MR. BADAMI: And I'm trying to find out what Columbia's financial condition is so I can find out about NCRIC's knowledge of it.
MR. SCHULMAN: And how would NCRIC's knowledge post the time of the filing of the counterclaim be relevant to the action?
MR. BADAMI: Again, it's reasonably calculated to lead to the discovery of admissible evidence. I believe that up until the time of the hospital's closing is relevant to this action and I'm entitled to inquire as to it. That's all.
MR. SCHULMAN: Well, I'll let Dr. Rifka answer.
MR. BADAMI: For -- okay.
MR. SCHULMAN: Just to be clear, though, he

can answer up until the time of the closing and not discuss any of the finances of the closing itself or post closing.
MR. BADAMI: Okay.
MR. SCHULMAN: We have gone before the court and the court has ruled that that's not a permissible topic for discovery.
MR. BADAMI: I haven't even gotten there yet. I'm still --
MR. SCHULMAN: Okay. I just wanted to be clear.
MR. BADAMI: I'm still at fiscal year 2001.
MR. SCHULMAN: Okay.
BY MR. BADAMI:
Q Doctor, can you respond to my question about the financial condition of Columbia for the fiscal year 2001?
A Okay. And let's be clear that we're talking about fiscal year, at that time June to June.
Q Correct.
A And just want to say that, that there

was, the hospital went into bankruptcy. So that you would know the relevance of these times.

Q And went into bankruptcy in, I believe, 1998?

A 1998. And we went out, we reorganized in February of '99. As we reorganized, we had revitalized the hospital. Because the reorganization plan was based on decreasing expenses, becoming more efficient, expanding services and doing things in the right way.

Q Did that included selling assets, the reorganization plan?

A Yes. It include selling the professional building, too. And so when we exited we had the strategy that worked, where we have introduced new services to the hospital, we opened new suites for the hospital, we increased our prices.

We successfully negotiated contracts with insurance companies with an increase in 20 to 30 percent of reimbursement. We have cut down on a lot of overtime by structuring a good deal with

the nursing union. We outsourced some services. We established plastic surgery unit. And we were on our road to recovery, and we were encouraged by that.

Because physicians stayed admitting to the hospital during the receivership of 1997 and during an entire year of bankruptcy. Hence, our expectancy was, if physicians were admitting patients to the hospital during receivership and during bankruptcy, that they are going to continue admitting patients to the hospital.

Point of fact, that we increased our admissions per day by a substantial percentage. So we had more people coming to the hospital, we had better insurance contract, we had less expenses, and we were sporadically making a little bit of money every month. And we were on our way to recovery. So the financial future of the hospital looked much brighter, that's after the bankruptcy, after 1999.

Now that you have asked about the financial condition. And during that time of improving

finances we have structured a board of director, we call it the development board, the board that's going to go and solicit donations and do something to support the hospital financially. Which would be like the fundraising arm of the hospital.

And we were structuring concomitantly with that, HUD financing that will take the hospital out of segmental financing and expensive financing into long-term easy financing.

So between '99, I would say February of, or March of '99 when we exited, up till mid 2000, up till July and August of 2000, the hospital was doing very well and we were becoming cost effective and efficient. Losing less and sporadically making money in certain months.

And we were thinking of all of these good things to happen. A gala that will give money to the hospital, HUD financing, long-term financing, specific donations from the community. A development board, a lawyer medical staff, excellent clinical care that we deliver, which is

the Hallmark of the place. That's why patients come to the hospital.

And we were priding ourselves, too, that we were the only hospital in town that does not only cater to a delivering woman, it caters to the whole woman. It has general surgery, it has medical, it has, that's internal medicine. Obesity surgery and breast surgery.

OB/GYN and the three subspecialties of the specialty; cancer, surgery and fertility and high-risk pregnancy. Things that our competitors do not have and do not possess. Plus, our experience of focusing on the woman and the children of the District for a hundred years and all the experience that we have in it. So we were moving forward.

Mrs. Clinton came and dedicated the nursery as Hillary Rodham Clinton's nursery. We had other dignitaries, Mrs. Lott and Mrs. Daschle opened a suite in their name, on the fourth floor, to treat patients.

We opened our clinic to treat free people to

gain the goodwill of the community, we continue doing that even during the time when we didn't have a lot of money. We fund raised. So we were own our way to organize and recover and getting out of the bankruptcy.

But I want to stress the fact, too, that during all these upheavals, the medical staff of Columbia Hospital continued to admit patients to a hospital that is in receivership and to a hospital that is in bankruptcy. Hence, our expectancy of our medical staff was tremendous. And that was our basis for our recovery.

All this had came to a stop miraculously in September of 2000, when 30 to 40 percent of our physicians and maybe more, at least, gone somewhere else and started admitting patients somewhere else. And that is at the same time when the NCRIC contract fell through.

So I hope you understand the totality of the picture, of how the hospital was and what we were trying to do. All of this, we're trying to serve the community, actually. We're trying to serve

people like you and me and like her, and in many cases people who have no money, to try to bring smiles on their face. And we were hit by a huge rock, and this rock called NCRIC insurance company.

Q I appreciate that response. You indicated the hospital was doing very well and you went through a number of other items. Is it true, though, Dr. Rifka, that during that time the hospital still lost money?

A That the hospital started losing less money and there were certain months that we were profitable, miniscule profitable. I remember one month was 50,000, the other month was 150,000.

So we were turning around, we were turning the corner and we were reaching where we wanted to reach, is to keep the hospital in good financial shape for this, and to keep delivering the best medical care that it does.

Q And it's the hospital's testimony through you today, that when the NCRIC plan was not renewed that that's what caused all the

doctors to leave?

A Absolutely.

Q And again, have you talked to any of these doctors?

A I would have to say that some of them -- yes, of course I've talked to some of these doctors.

Q Who did you talk to?

A I had a meeting with the following group, the Horwitz Safran Group, structured two meetings in the CEO's office in the hospital.

Q And when did you have that meeting?

A Had that meeting before the plan expired, somewhere around June, July of 2000. And they forwarned us. And it was attended by Dickey Newman and Kenny Blank. And --

Q What did they say?

A Excuse me?

Q What did they say at that meeting?

A And they said blankly, You, if we don't, If you don't continue with NCRIC, we're going to leave.

Q Do you remember specifically who said that?

A This is the two persons. One of them said it or, and I think both said it.

Q Was anybody from NCRIC at that meeting?

A No, that was a meeting between us and the physicians.

Q I'm just asking if anybody from NCRIC was there?

A And I'm just answering, Mr. Badami.

Q Okay, that's fine.

A Yes.

Q Okay. You had a meeting with this, the Horwitz Safran Group?

A With a representative of the Horwitz Safran Group. It was Richard Newman and it was Kenny Blank. And we met in the CEO's office, Larry Wilson, and we were trying to make sure that, you know, they continued to admit patients. And they said point blank, If you don't renew, we're gone.

Q There was nobody from NCRIC? That was

members of the Columbia attending faculty who told you that?
A At that specific --
Q In the meeting?
A That specific event?
Q That's correct.
A Correct.
Q There was nobody from, there was no --
A That is correct.
Q How about any other meetings with doctors?
A We had a personal conversation with Dr. Art Becker who told me that --
Q When was this meeting, I'm sorry?
A In the summer of 2000, it was an encounter in one of the operating room lounges. And he told me, Renew it or else all of us are going to go.
Q And all of us, who is he referring to?
A Maybe his group, because he has a group.
Q When you say renew, renew the retro

plan?
A Renew with NCRIC, yes.
Q And was anybody from NCRIC there? I'm sorry, I don't mean to interrupt.
A No, sir.
Q It's just you're --
A Is your question, did I have a meeting with physicians only or with physicians and NCRIC, so that I will know how to answer you?
Q I'm asking if you had meetings with physicians. And I'm just trying to find out if anybody else was there?
A Okay. I'm answering now, meeting between me and physicians only.
Q Okay. Great.
A And then I will include the NCRIC encounters when you ask me for it. Okay?
Q All right. I appreciate that.
A Okay.
Q In addition to Dr. Becker, who else?
A Dr. Heather Johnson.
Q And when did you meet with Dr. Johnson?

A She told me personally in the hospital's corridor.
Q I'm sorry, when was that?
A In this, in that period of time.
Q So in the summer of 2000?
A Yes.
Q And you met her, or you saw her in the hospital corridor?
A I mean in the hospital, maybe in the corridor or around the corner. It was an encounter. And I was --
Q What did Dr. Johnson tell you?
A She said, If we don't renew with NCRIC, their group is going to go. And their group left. Then Dr. Norman Neches, he personally told me that. And Wayne Cooper.
Q I'm sorry, let's go back to Dr. Neches. When did you meet with him?
A Around that time. And he told me that he would love to stay at Columbia but if Columbia does not renew the NCRIC plan he's apt to go somewhere else. Wayne Cooper.

Q When did you meet with Dr. Cooper?
A Now, the meeting with Cooper was, again, in the hospital in a diffuse location. I can't tell you whether it's in the cafeteria or somewhere. But he told me that.
Q What did he tell you?
A Again, the same thing. All of this is the same story, Mr. Badami. You either renew with NCRIC or we're gone. And of course other meetings that happened within the context of the executive committee of the medical staff, general staff meetings. Where people were saying to the administration and to the board, physicians saying, if you don't renew with NCRIC, I might have to go.
Q You know I'm going to ask you to name all those physicians for me.
A This is -- I gave you examples of them.
Q I appreciate that. But --
A But there are a lot more, and I think that this is included in the statements and in the exhibits and in the briefs and in all of the

49b37162-b0b6-4492-8460-df74f0b3bcde
16d-002273

interrogatories about all the case. But I gave you examples, and I will probe my memory. As I remember, I will tell you.

Q I'm asking you to probe your memory to see if you've got any other names for me.

A As I am present now, this is what I remember. I will remember further. These are events that took out three years ago. But I can tell you that this was the numerous, it was the general atmosphere. It was the prevailing knowledge.

There was no hidden stories about it. There is no fact finding that you have to undergo to dig into look at it. It was all over. In meetings of the faculty, in meetings at the medical staff, in meetings of the executive committee. To the extent that the administration had to appoint an insurance committee a year, you know, some time to look at that specific thing. So this was on the forefront of all of the physicians.

And there, there are the physicians that

have come up and said that. There are physicians who have pleaded to the president of the medical staff. There are physicians who went to the CEO and talked about it. And, so it was a common knowledge.

Q I just want to make sure I understand you. These are all members of the attending faculty at Columbia who are asking, or telling you to stay with NCRIC?

A Correct. Asking me.

Q In your role as, I guess you were president of the medical staff and chairman of the board?

A They were not, they were asking me, if we do not renew the retro plan and sign with NCRIC for another retro plan, that they are going to go to some other hospital.

Q I just --

A Because NCRIC has structured a similar plan with other hospitals.

Q I just want to make sure I understand you. That these physicians wanted to stay with

NCRIC?

A These physicians wanted to stay with Columbia and they were asking Columbia to try to structure a plan with NCRIC to get the discount.

Q I'm sorry. Dr. Rifka, I don't mean to quibble with you but when you told me about Dr. Becker, Dr. Johnson, Dr. Neches, it was, I thought you were saying these doctors wanted Columbia to renew with NCRIC?

MR. SCHULMAN: Objection, mischaracterizes the prior testimony.

THE WITNESS: These --

MR. SCHULMAN: Go ahead.

THE WITNESS: These physicians wanted to practice in Columbia Hospital for Women, as they have done for the last many years. Physicians do not practice with insurance company, Mr. Badami. Physicians practice in hospitals. And serve patients and serve the population and serve the oath that they took, which is not loyalty to the insurance company, which is loyalty to their patients.

Hence, physicians wanted to come to Columbia Hospital for Women because this is the best medical atmosphere that is offered to their patients. Physicians, too, wanted to look after the finances of the exorbitant MUDD (ph) practice fees.

And hence, they were pleading with us, saying try your best to reach a deal with NCRIC because I really want to practice in Columbia. And if NCRIC pulls out I would, probably would have to go wherever they steer me to and then I would have to stop practicing at Columbia.

And we took that so seriously that we negotiated in very good faith with NCRIC till the zero hour just to turn around and see that NCRIC was, while we were negotiating in good faith with them, they were trying every single means to put a dagger in our heart.

BY MR. BADAMI:

Q Who at NCRIC was trying to put a dagger in your heart, Dr. Rifka?

A The people who are in authority, who

are the people who have authority from NCRIC.
Q Can you please give me their names?
A The NCRIC management who were looking after the relationship between the retro plan of Columbia and them.
Q I'm sorry, Dr. Rifka. Can you please give me the names of the NCRIC people who, in your words I believe the quote is, to try to put a dagger in your heart?
A The people who are --
MR. SCHULMAN: Objection.
THE WITNESS: -- authorized on behalf of NCRIC to deal with us on the retro plan.
BY MR. BADAMI:
Q But you don't remember anybody's name?
A I can suggest names for example but this does not mean this is all. There may be others behind the curtain.
Q I'm asking you for your --
A There is Mr. Pate. There is Mr. Fargis. There's Mr. Burgess. There's Mr. Osborne. There's Mr. Song. And there is

Dr. Trujillo.
Q And can you please explain to me how Mr. Pate --
A But these are only examples, more are there, as well. And this is only, the record will show you the entire names.
Q Can you please explain to me how Mr. Pate was, "trying to put a dagger in your heart?"
A I will start with 1997, siphoning a million dollars from the self-insurance trust, threatening us that if we don't renew and give them a million dollars they will not renew. And if they don't renew we lose our doctors and then we lose our patients.
I thought this is a million dollars that they took, which they demanded more actually. They took, which is, that was undue for them, uncalled for. This is when they came to us and they broke the news that they know about our financial condition. And we said, okay, so what do you know? And they said, you're not doing

well and therefore we would need this amount of money to go forward with a plan.
The plan had expired, I think, in September of '97. And they came to us, like, November or December of '97, if I remember. Or something. And they said, we're not going to sign on unless you give us the money. And we said, but this is not due, the money under the plan.
Well, the money is really yours. We keep it on our books as your money, you will accrue interest on it. But we're going to keep it with us. At that time, we didn't have no choice. They left us no choice. You pay a million dollars or I will take half of your physicians to another hospital. At that stage we were not --
Q Who said that, Dr. Rifka, that if you don't renew I'll take half of your physicians to another hospital?
A Well, they say, if you don't renew, if -- no, they said --
Q I'm sorry, who said?
A It's my understanding -- this is our

understanding. Their slide says that, in 1998. If you review the slide show that NCRIC authorized, printed, exhibited and explained, it says, If Columbia does not renew, we will offer you other hospitals with similar programs. This is an inducement to leave, as early as 1998.
And it's not only an inducement to leave, it's an inducement to kill. Because they told everybody, while we are in bankruptcy, that we are insolvent and the self-insurance trust is underfunded and that Columbia thinks it's going to increase its business and reorganize and get out of Chapter 11.
Let me tell you something, they don't sign with us, we will send your doctors to somebody, to another hospital that has similar programs. Hence, Columbia will not have the number of admissions. Hence, Columbia cannot reorganize. Hence, Columbia will convert from Chapter 12, 11 to Chapter 7. It was a nightmare for us.
So the tactics that they used was heavy-handed tactics, was uncalled for. It was a

war that they waged against the reputation of the hospital and against the relationship, the medical relationship between the physicians and the hospital.

And they have thus deprived two things. They deprived the patients from being admitted to a wonderful place and they have really made us suffer as management and as an entity as Columbia Hospital for Women.

So in '97 they took from us, while we are in combat with the Bank of Tokyo about the letter of credit that was to be renewed, or not renewed. And there they were, saying we can't renew it because of your financial condition. Remember, Columbia went out from receivership in 1997.

We're trying to convince them that we are viable, we're a new management. We're fixing the place well, because we came to exist in April of 1997 as a new board. And suddenly they take a million dollars away from us. The Bank of Tokyo does not like that story at all. And hence, they became very aggressive with us. And that

precipitated us going into Chapter 11.

And hence, as we were in Chapter 11 -- this did not even end like this. So we were in Chapter 11. They took the million dollars, an institution that doesn't have a lot of money, it has creditors. If it has some money and then it has one million less, it's not going to make it more attractive for your primary creditor. So we went into a Chapter 11.

While we were in Chapter 11, in 1998, NCRIC descended on us with even heavier hand. We tried to get an insurance company that does not put the hospital assets at risk and gives the physician a great insurance, cheaper. And from a better company, point of fact.

And what NCRIC did was heavy-handed tactics. It fought us on NCRIC, it floated allegations of cronyism. It propagated that our self-insurance trust is gone, while we are in bankruptcy. Threatened that if we don't renew the retro plan they will take our physicians somewhere else. And that Columbia board really has the money,

they are not saying the truth.

And we were looking at these guys and saying, well, that's not -- that was all heavy-handed tactics. So what we had to do, we had to acquiesce to their demands. Because we were in Chapter 11 and we could not afford to lose patients. Nor can we afford to lose physicians.

Nor can we afford another reputation that our self-insurance is unsolvent. Nor can we afford a risk that the board has cronyism, so that the court will come and take over the hospital. We could not afford any of these unfair fights that they put us, in front of the table. So we had to backtrack and we had to renew.

But that was the first seed that they have planted and the first dagger that they have put in our backs. And then the bigger dagger came, the battle of the year 2000. This is where they continue the thing from '98 to 2000. In the year 2000, you ask me how did they try to kill us? In

the year of 2000 --

Q I specifically asked you how Mr. Pate tried to kill?

A Well, Mr. Pate --

Q That was your word.

A -- is the president of the company. He is the, one of the big bosses there. And that's how he tried to kill us. The slide show, the misinformation to the physicians creating panic among physicians. Telling them that they are going to take them to another hospital, there are other programs there. You can leave Columbia.

Telling them the hospital is non-solvent, bankrupt. Going to go, it's in Chapter 11, might not make it. The self-insurance trust is bankrupt. Board is full of cronyism, they're trying to make a buck on you. All of this does not help the hospital at all. And we had to backtrack.

We, the board, while we have decided to go with NCRIC, with MIIX, I mean. I apologize. We then had to eat our words and go back with NCRIC,

because we really could not afford what we were faced with. They are threatening on the slide, on their slide show, from their own doing with their own hands. I remember that slide, it put goose bumps on me.

The last line they say, Columbia, if Columbia does not do it, we have other programs and other hospitals can. How do you like that when you are in bankruptcy trying to increase your business, to reorganize? To have an insurance company come and tell your physicians to lure them out of your relationship? These are physicians who stayed with you for years and years.

So we backtracked. And we signed another agreement with NCRIC. Because we were under the gun in bankruptcy court, we didn't want to go to Chapter 7. We want to reorganize, we want to keep serving the community. And we wanted to keep the hospital open as a tradition of the hundreds of years. That's how they killed us. That's how they attempted to.

And then in the year 2000, so the million dollars which is our money, at the worst moment they took it away and they left smiling. Two, we never, it was promised to us, we never saw it. We never even saw the interest that they promised in '97, that this is due us. In '98 they floated, they fought us tooth and nail and floated all kinds of rumors against us, against the hospital. And in 2000 came the big event. And that's how they put the dagger into our back.

We were a hospital that is trying to make it with the help of the community and with the help of the doctors and with the help of the patients. And with the help of the benevolent people in this cosmopolitan area, the hospital was making it and turning the corner every week. From the year mid 1999 till the summer of 2000.

And suddenly you have all of this problems that happened to us, starting September 1st of 2000. And -- this is the story of a struggling hospital that was trying to deliver the best of care, fighting the Goliath, the big insurance

company that put daggers in our backs and in our heart. That's how the institution feels, Mr. Badami.

Q I very much appreciate that response.

A If you want me to talk about the year 2000, I am ready to tell you the continuation of the, of the waging war from NCRIC against Columbia Hospital for Women.

Q We'll get there. Your response was extraordinarily long and --

A Forgive me, I am passionate about it because I am, I serve this hospital, which is a non-for-profit hospital out of my own time without any financial incentive other than incentive to serve the community. And evidently the passion of commitment outweighs the passion of finances. So go ahead.

Q Again, I had asked you specifically what Mr. Pate did, and I don't recall if you, in your response you specifically referred to actions that were taken by Mr. Pate.

And I was hoping that we could go, we -- you

listed a number of NCRIC employees; Mr. Pate, Mr. Fargis, Mr. Burgess, Mr. Song. And I'm trying to find out --

A Nelson, Dr. Nelson Trujillo.

Q Yes, you mentioned that, too. I would like to ask you with respect to each of those individuals, what did they do? You can start with Mr. Pate.

A Mr. Pate -- I will start like you like it from 2000 backwards. Mr. Pate has vetoed every single agreement that comes between Mr. Larry Wilson and Mr. Osborne. We were negotiating in the year 2000.

Q When you say agreement, did he veto a signed agreement?

A They will talk and they will agree, both, on something. And he will, at the wee hour or the last hour drops the ball on us. Mr. Pate attended meetings in July 11 of 2000 inducing the faculty to leave the hospital.

Q Wait, wait, I'm sorry. You've got to -- I'm sorry.

A Okay. I go backwards.
Q On July 11th what happened, a meeting with Mr. Pate? How did he induce the faculty like that?
A I think we can see -- there was, again, a slide show. The beauty about NCRIC, they put slides and slides are not erasable. And one of the slides mention that Columbia Hospital, if Columbia does not do the retro plan other hospitals are there to do so. And they mention, too --
Q And was Mr. Pate at that meeting?
A Yes. And they mention, too --
Q Did he mention this?
A Yes.
Q Okay.
A And it was in one of the slides, if, too, was that they have to structure something with GW. One of the slides, too, saying a lot of things that will induce the faculty to leave Columbia Hospital for Women.
Q But this is the faculty that didn't

have a contract with you?
A There is no contract between physicians and the hospital. But let me -- the contract is --
Q No, I'm sorry, you said there was no contract?
A There was no contract. But these are the same physicians, if I may continue? Or --
Q Please.
A -- you want me to -- can I continue, sir?
Q Please continue.
A Okay. These are the same faculty that stayed during the receivership. Was all over the Washington Post, Columbia Hospital for Women fights for receivership. And it was, we opposed the receivership.
We went to court and we won because the receivership was illegal by the previous board. And the court ordered a reconstitution of a new board, which I'm a part of as of April of '97. This -- during that receivership we had no

defections from the faculty.
Q So in other words, the faculty chose to stay?
A Yes. During one year of bankruptcy, or whatever the clause over bankruptcy is, the attending faculty in Columbia stayed, admitting to Columbia Hospital for Women. Electively and selectively.
Q Correct.
A And then all of a sudden, September 1st 2000, the NCRIC retro plan is not renewed for another year. NCRIC switches the entity policy off of the clinic. And NCRIC --
Q Was NCRIC within its rights to do that?
MR. SCHULMAN: Did you finish your answer, Dr. Rifka?
THE WITNESS: No.
MR. SCHULMAN: Why don't you finish.
THE WITNESS: NCRIC all of a sudden, in September 1 of 2000, physicians, some physicians stopped admitting patients to the hospital, Columbia Hospital. And had started admitting

patients to Sibley and GW. These admissions were preceded by a plan by NCRIC. The plan was the following.
In July of 2000, two months before the retro plan ends and in an unprecedented move, NCRIC bills physicians for the entire amount.
Q I'm sorry?
A Yes.
Q The entire amount of what?
A Of their premium.
Q For what time period?
A For, as of September 2000, for another year. Because they expire, their insurance expires, September 2000. In previous years, even when we did not reach a written agreement with NCRIC or a signed written agreement with NCRIC, while we were originally talking, we have not signed for year, or year and a half, and the plan and this continue, the retro plan continue.
For example, in '96, I think, for the year, September '97, this was renewed in '98. Two years. So every time it will expire, we're going

Page 122

to have the same agreement, so they bill the physicians for the discounted, less 30 percent of their premium.

In 2002, months before the expiration -- remember in the year '96, we have no signed agreement with them. We signed the '96 agreement, I think, in '97 or '98. A year or two years later, and the contract was in effect. So in July 2002, two months before the, before the year ends or the insurance expired, they bill the physicians for the total amount, the non-discounted, to induce panic to the physicians, say, Two months from now, there's not going to be a plan with Columbia, that's your total amount, you're due.

Q How do you know that was done to induce panic among the physicians?

A I know, because it induced it.

Q But how do you know that?

A But it induced it.

Q Who told you that?

A Because it's unprecedented. They never

Page 123

done that for the entire years of the plan, from '93 to 2000. NCRIC never billed before the expiration date and never billed for the total undiscounted amount for each individual physician.

Q Was NCRIC permitted to do that under the terms of the retro plan?

A I think it was -- was it permitted to do that?

Q Yes.

A I do not know whether it was permitted or not but it was definitely unprecedented, it never happened before. This was the first year that they billed the physicians for the entire amount two months before the expiration date. While we were in good faith negotiation with them to extend it.

Q Is it your --

A It's not like we broke off talks, we are talking. And similarly this has happened earlier and they waited a year, year and a half. Or two years in certain cases. Because they know

Page 124

that we are in good faith talks with them to renew it.

Unless this time they did not lead a good faith effort in renewing the deal with us and they knew ahead of schedule that there is not going to be a deal. It's time to switch the light off and call it off.

Q And who at NCRIC was not negotiating in good faith with you?

A All of them.

Q Ray Pate?

A Ray -- nobody was negotiating in good faith. Because we, Columbia, did not have an alternative plan, other, because we thought we were going to reach a deal with them. We're negotiating in good faith with them.

Q And did they --

A They, meanwhile, had an alternative plan, which they have executed two to three months before we, before it all expired in September 1st.

So while we were thinking we're going to

Page 125

reach a deal with them, going forward. And we had no alternative plan till the 24th hour, NCRIC had an alternative plan. Before that it did the following. Structured a retro plan with GW, across the street from us. GW did not have a plan before that, NCRIC structured it.

Q Did that somehow violate the terms of the Columbia retro plan?

A Can I continue, please? Because I want to give you the whole story and -- it doesn't violate Columbia Hospital and written agreement with them. It sure does violate the good effort that we were trying to reach a deal with them.

Because what they are telling me, I've already structured the deal with the competition. You do as I tell you or these physicians will go somewhere else. Yes, this is a muscling tactic.

To go across the street from you, and you being the premier place for women. To siphon physicians away from Columbia Hospital to another institution. Yes, that is not correct in my mind.

Second, they have billed the physicians for the total amount to create chaos. Either you're onboard now or we're not going to renew you. Now means right now you're going to go to NCRIC and tell them, I'm going to stay with you no matter what.

Q Did NCRIC violate the terms of the retro plan by sending those bills when they did?

A I think it, NCRIC violated the trust that we put in them. And we put the trust in them that we are in good faith earnest negotiation with NCRIC, to reach an agreement. And they violated our trust, they were, violated our confidence. And they looked like a one million ton gorilla, Godzilla who is beating on us.

Q But I want to make clear that you're not saying they violated the terms of the retro plan?

A Well, I will tell you how they violated the, later on what we learned about the retro plan, about the miscalculations. I'm going to

come up with this in a minute.

Q Right.

A I haven't finished yet.

Q I would appreciate if you let me ask the questions, too. And so we can try to do this together.

A I apologize, Mr. Badami. It's your show, I agree.

Q That's okay.

MR. BADAMI: Can we take a short break?

MR. SCHULMAN: Sure.

(Thereupon, a brief recess was taken.)

MR. BADAMI: Back on the record.

BY MR. BADAMI:

Q Dr. Rifka, I would like to try to follow up on just a couple of the issues you raised in your previous responses. You mentioned the million dollars that, I understand it's your position, that NCRIC demanded from Columbia? Is that --

A Yes, sir. We were not giving money

unduly.

Q Am I correct, sir, didn't Columbia challenge that with the D.C. insurance commission? The treatment of that payment?

A I do not know if --

MR. SCHULMAN: Objection.

THE WITNESS: I cannot recall whether it did challenge with the insurance commission.

BY MR. BADAMI:

Q Do you think Columbia might have challenged that with the D.C. insurance commission?

A I think Columbia challenged the termination of the entity policy.

Q We'll get to that. Now I'm just referring to the million dollars.

A I am -- I do not, I do not recall actually.

Q Okay.

A Sitting here today, I cannot really recall.

Q All right. You mentioned the entity

policy. Columbia, indeed, did challenge that to the D.C. insurance commission, didn't it?

A Yes.

Q And do you recall what the D.C. insurance commission found about the cancellation of the entity policy?

A I think that the D.C. commission's response was, and I would have to recall from my own memory now, is that they don't indulge in fact finding and therefore they cannot rule whether or not this should or should not happen.

Q So it's not Columbia's belief that the D.C. insurance commission found that it was acceptable, how the entity policy ended?

MR. SCHULMAN: I just want to object on two grounds. First, that the D.C. commission's findings speak for themselves. And second, that it's asked and answered. But go ahead, Doctor, if there's anything you feel you can add.

BY MR. BADAMI:

Q Do you have anything else to add to that? The D.C. insurance commission, didn't they

find that the cancellation was, indeed, accomplished? It was acceptable, it was fine?

A I, what I remember is that they did not want to deal with it because they are not really indulging in fact findings. And therefore they wouldn't act, because they need to do fact finding and it's not a fact finding commission or something.

Q But the D.C. insurance commission didn't find that NCRIC did anything wrong? Let me try it that way.

MR. SCHULMAN: Objection.

THE WITNESS: I am not sure that this was addressed in the letter.

BY MR. BADAMI:

Q Okay. You mentioned in your response that NCRIC's Ray Pate violated some agreements. I'm trying to find out from you which agreements. I believe you were referring to it, in the summer of 2000?

A Oh, what I was referring to is that Mr. Wilson was negotiating in good faith.

Q For purposes of the record, that's Columbia's Larry Wilson?

A Yes, sir.

Q Okay.

A Sorry. Mr. Larry Wilson, the CEO of Columbia Hospital, was negotiating with Mr. Osborne from NCRIC insurance company. And what I've learned from Mr. Wilson, that Mr. Osborne was forthcoming and was trying to reach an agreement with Larry Wilson. And they reached an agreement.

Q Do you know if it was -- an agreement as to what?

A An agreement to extend the retro plan or to structure something going forward. And --

Q Was it a signed agreement?

A Mr. Badami, I will get you to the point. And then when Mr. Osborne floated it by his boss, Mr. Pate, Mr. Pate flatly rejected the agreement that has been reached by Mr. Osborne and Mr. Wilson.

I may add, though, I was having reports from

Mr. Wilson, in August of 2000, that we were near a breaking point of reaching an agreement. And that, in two occasions that we have reached an agreement, meaning Larry Wilson and Mr. Osborne. And Mr. Wilson was reaching this agreement with my authority as chairman of the board.

And then when it is floated by, when Mr. Osborne took it to his boss, Mr. Pate, Mr. Pate would shoot it down. And that scenario continued until the 24th hour.

Larry Wilson will agree with Mr. Osborne, Mr. Osborne will agree with Larry. Larry will, and Osborne will ask that, Osborne will take it to Ray Pate and Ray Pate, and maybe other superiors there at NCRIC, would shoot it down and bring it back to the table. Or will make the demands impossible.

Q I don't mean to quibble with you but when you say Mr. Wilson and Mr. Osborne reached an agreement?

A Yes.

Q Is it Columbia's position that Mr.

Osborne, at that time, agreed to a renewal of the retro plan and had the authority to do that?

A Mr. Osborne was the negotiator on behalf of NCRIC. That's what NCRIC sent us, a representative to negotiate with. We did not invent Mr. Osborne. Mr. Osborne was sent as a NCRIC negotiator. And he and Mr. Wilson have reached an agreement.

Q Was it ever signed?

A The agreement will not be signed unless NCRIC will approve it, the higher authority, the president of NCRIC.

Q Okay. So it wasn't approved by the higher authority of NCRIC?

A That's what I'm trying to say. It was approved by the negotiator from NCRIC, who is on, from NCRIC's behalf, who is an employee of NCRIC. But then when this taken to his boss, Mr.Pate, it will be shot down and turned down. And we will start from square one, negotiating again.

Q Is it Columbia's position that Mr. Osborne could bind NCRIC, was the final

decision maker? You used the word agreement. And I'm just trying to find out exactly what you're referring to with an agreement. I mean, did they shake on it? I'm just hoping you can help me.

A Okay. Well, the agreement --

MR. SCHULMAN: I want to object to the question to the extent that it calls for a legal conclusion. Also, the extent that it's compound.

MR. BADAMI: It may be compound, but I'm using the words that he's using.

MR. SCHULMAN: You asked him whether or not it's Columbia's position that Osborne could bind NCRIC. And that is a legal conclusion.

BY MR. BADAMI:

Q Is it Columbia's position that Mr. Osborne had the final decision making authority for NCRIC?

A We thought so, because we were, our president was negotiating, who has the authority. We thought he was negotiating with somebody who had the authority.

Q Did Mr. Osborne ever tell Columbia that he had the final decision making authority for NCRIC?

A We have reached an understanding with NCRIC.

Q With Mr. Osborne or with something that had been approved by Mr. Pate for NCRIC?

A With Mr. Pate. I think Larry Wilson have had, has been led to Mr. Osborne by the higher authority in NCRIC. And I am surmising it is Ray Pate the president of NCRIC.

Somebody led our president to Osborne. I didn't lead our president to Osborne. I presented our president, with the authority, to sign an agreement with NCRIC that is advantageous to both sides.

My president has the full authority that if he approves, to go forward. He was negotiating with Mr. Osborne who was delegated from NCRIC, who we thought had the authority to make a deal.

Q Who told you that? Did anybody tell you that?

A My president was negotiating with the authority in NCRIC, he was not negotiating with the busboy in NCRIC. And I would never commit the time, the precious time of our president to negotiate with second- or third- or fourth- or fifth-year level.

My understanding is when a president of an organization sits and negotiates, he negotiates with people with authority. I've never seen any president negotiating with a busboy. Hence, I would assume, and it has been made clear to us, that you and Mr. Osborne, Larry Wilson and Mr. Osborne, will sit down, hammer an agreement which both sides will agree to.

They hammered an agreement and the agreement was shot down by Ray Pate. And it was rejected. And this was late in August. So we did not have time, Columbia Hospital for Women, we did not have an alternative plan. We were negotiating in good faith. We did not have a deal structured with anybody. We were negotiating in good faith. And we were led to believe that there will be an

agreement.

Q Who led you to believe that?

A The negotiators from NCRIC and the NCRIC authorities, whoever the authorities are, is that we were led to believe that we are going forward with an agreement. That it will be solved. We have heard this before and we solved them. And this time it will be solved.

And leading us to believe that was leading us to sleep on an easy pillow. While they are sweet talking to us they are weaving something totally different to us from behind.

Q Okay. Let's just be perfectly clear here. Was there ever a signed agreement between NCRIC and Columbia with respect to renewing the retro plan, after September of 2000?

A There were letters --

MR. SCHULMAN: Objection, asked and answered.

THE WITNESS: There were letters, communiques, numerous meeting that led to an agreement. That when it was presented to the

49b37162-b0b6-4492-8460-df74f0b3bcde
16d-002282

leadership of NCRIC, apparently Mr. Pate, that was turned down.
Q So you have no signed final agreement?
MR. SCHULMAN: Objection, asked and answered multiple times.
BY MR. BADAMI:
Q Do you have a signed agreement?
A We do not have a signed agreement.
Q Let me try it this way. Does Columbia take the position that the retro plan was renewed following September of 2000?
MR. SCHULMAN: Objection, asked and answered.
THE WITNESS: Columbia Hospital takes the position that the plan is still going on. Because the plan will, only goes off when the year or the claims pertinent to an experienced period is closed.
BY MR. BADAMI:
Q I'm sorry. I was imprecise, Dr. Rifka. Does Columbia take the position that the plan for new claims was continued following September of

2000?
A No.
MR. SCHULMAN: Objection, asked and answered.
MR. BADAMI: No, counsel, I don't believe that question has been asked.
THE WITNESS: If – are you asking me, does Columbia believe that we have a renewed retro plan after August 31st or September 1st of 2000?
MR. BADAMI: Yes, sir, I am.
THE WITNESS: Definitely not, as witnessed by the physicians that left.
BY MR. BADAMI:
Q Okay. Thank you. Did Mr. Pate, you said he violated agreements. Are there any other agreements which Columbia alleges Mr. Pate violated?
A Mr. Pate has structured, I would have to say and you have to give me time for that, to tell you about the year 2000. Because that is what I haven't talked about.
First, NCRIC had a meeting for the attending

faculty on July 11 of 2000.
Q And who was at that meeting?
A Attending faculties and Mr. Pate. And other leaderships from NCRIC, too.
Q Do you know anybody else other than Mr. Pate? You know I'm going to ask their names.
A I think it's the usual crowd. You can -- but I recall that, from reading the letters.
Q I'm sorry, the usual crowd?
A That NCRIC presents, maybe. I don't know.
Q Are you talking about Mr. Pate, Mr. Fargis, Mr. Burgess?
A You said that.
Q No, I'm trying to ask you, sir. I'm really trying to ask you.
MR. SCHULMAN: Answer to the best of your knowledge.
THE WITNESS: I, to the best of my knowledge, I only would think that Mr. Pate was there. Because I was not at that meeting.

MR. BADAMI: Okay.
THE WITNESS: I read about that meeting. And I saw the slides that were projected at that meeting. And the slides is very injurious to Columbia Hospital. One --
BY MR. BADAMI:
Q I asked you what agreement Mr. Pate was violating. Do these slides violate some agreement with Columbia?
A The trust and the relationship and the so-called partnership that they have floated with us all these years.
Q Is the partnership in the retro plan? Is that what you're referring to as the partnership?
A The partnership is more than the retro plan, Mr. Badami. NCRIC used to be doctor owned companies. So --
Q I'm trying to find out. You said he violated --
A Now it's a Wall Street company. I think that the relationship has ended when they

transitioned from health street to Wall Street.
Q I appreciate that and that's a nonresponsive answer. I'm trying to find out --
A Yes, sir.
Q -- from you, which agreements Mr. Pate violated? You started to talk about a meeting with some more slides. And I'm trying to find out what agreement that violated, that Mr. Pate did with respect to those slides?
A Because Mr. Pate was assuring us and our leadership that we're going to have an agreement. And Mr. Pate was --
Q What did he say?
A And then he was structuring a meeting in June, in July 11, 2000, telling our physicians they can go somewhere else if there is no plan. And actually even worse, that NCRIC has consulted lawyers in case Columbia goes in bankruptcy. Now, who said we're going to go to bankruptcy.
He has gathered our physicians and used this as a podium to inform them that NCRIC has already consulted lawyers in case Columbia goes into

Chapter 11.
Q I'm sorry?
A But Columbia was doing great at that time. He violate --
Q What agreement? All right. I thought you testified earlier that physicians had the, the attending faculty at Columbia had the ability to go somewhere else if the doctor choses to do so?
A And they haven't.
Q I'm sorry, Dr. Rifka.
A No. And they haven't.
Q Dr. Rifka.
A It's very important.
Q I'm sorry.
A And they haven't till September 1, 2000.
Q Dr. Rifka, I'm sorry.
A They had the ability --
Q You said they could. I'm asking you, what agreement Mr. Pate violated by saying physicians can go somewhere else?

A He violated the agreement.
MR. SCHULMAN: I just want to renew the same objection to this line of questioning.
THE WITNESS: He violated our trust. He was negotiating with us to have a plan with him, yet he was putting all the setup for our physicians to leave us. He has violated all kinds of agreements.
BY MR. BADAMI:
Q I'm sorry. What agreements has he violated?
A The agreement that we are going to have a deal together.
Q Did you have, was that written down, that you were going to have an agreement? That you were going to have another deal?
A No. But he, this is what he said.
Q Did you shake hands?
A He didn't want me to shake hands. He said it.
Q Dr. Rifka, you're testifying that Mr. Pate violated agreements. I'm only aware of

the retro plan. I'm trying to find out if there's another agreement that he violated. You have talked about trust. With all due respect, you and I may trust each other but -- is there a written trust agreement between Columbia and NCRIC?
A But there is an agreement between us and them to go forward. And if they gather my physicians, our physicians, and tell them that they've consulted lawyers in case we go to Chapter 11.
Q What agreement does that violate?
A Just as interference, bad PR. Somebody is gathering your physicians and telling them you're going to go to Chapter 11 while you're riding high. What agreement did you violate?
Q What agreement did he violate?
A He violated all kinds of agreement, the trade agreement. The handshake --
Q I'm sorry, the trade agreement?
A Trades agreement, agreement. He is a responsible company who is waging war against a

healthy institution.
Q Dr. Rifka, you've testified Columbia had lost money every year since 1994?
A And I testified that Columbia, from 1999 to 2000, was doing fantastic. Was turning the corner. You don't want to listen to that because that doesn't suit you.
Q Oh, Dr. Rifka --
A Let me reiterate that.
Q Dr. Rifka, with all due respect, you testified every year Columbia lost money. I believe you testified, after you emerged from bankruptcy there might have been a month or two where you showed a little bit of profit.
A And we have consistently lost less. And we were on our way to recovery and we were doing much better, up till we were hit by this big rock called the NCRIC problem.
And I have testified, too, and enumerated from 1999 when we emerged from bankruptcy, what steps did we took in a concrete way. And I have enumerated them. What did we do to turn the

corner and to become more cost effective. And how to raise money and how to get long-term loan. And how to increase our admission and how to expand our services.
Q And I'm trying to find out --
A And how to --
Q -- what Mr. Pate violated.
A Mr. Pate floated --
MR. SCHULMAN: I want to --
THE WITNESS: -- all kinds of rumors --
MR. SCHULMAN: I want to object.
THE WITNESS: -- about the hospital.
MR. SCHULMAN: Dr. Rifka.
THE WITNESS: Yes.
MR. SCHULMAN: I want to object. I think it's clear from the line of questioning that the objection as to calling for legal conclusions is quite well taken here. Because the lay witness is obviously having difficulty answering the question with respect to agreements. If we could take a quick break I think maybe we could clear this up.

THE WITNESS: Can I add one sentence, though?
MR. SCHULMAN: Let's take a break first.
THE WITNESS: Sure.
MR. SCHULMAN: And then I think we could short circuit a lot of the issues here if we just --
MR. BADAMI: Before we take a break, let me just put on the record that I'm using his words these are not my words. I just want to make that clear.
THE WITNESS: Violated, I will tell you how they violate the agreements.
MR. SCHULMAN: Dr. Rifka, we're going to take a break now. We're off the record.
THE WITNESS: When I come back.
(Thereupon, a brief recess was taken.)
MR. SCHULMAN: I think Dr. Rifka would like to clarify the matter at hand.
MR. BADAMI: Okay. Great. Please, Dr. Rifka, go ahead.

THE WITNESS: Of course I am not a lawyer so I will address the breach of good faith and trust that we have in them. But on the agreement, on the retro plan agreement, Columbia maintains the position that they have breached the contract of the retro plan by doing miscalculation on the deposit premium, the minimum premium.
MR. BADAMI: I appreciate that, but you know that wasn't the question that we were talking about before the break.
MR. SCHULMAN: Why don't you address whether there's another agreement besides the retro plan at issue here?
MR. BADAMI: Right.
MR. SCHULMAN: Or what's at issue?
MR. BADAMI: I understand.
MR. SCHULMAN: You alluded to it now in terms of good faith and trust. But why don't you address that straight out in terms of whether or not that's --
BY MR. BADAMI:
Q The question is, agreements that

Mr. Pate has violated? And I was trying to ask you, what specific agreements? Do you have anything signed? And then we took a break and now we're back.

A Okay. That the agreements, the signed agreement that we have with them on the retro plan, Columbia maintains the position that there has been violations and breach of contract on that one. The million dollars that they took in '97 was not called for in that plan.

Q Again, I appreciate that. I'm trying to find in addition to the retro plan. You mentioned other agreements that Mr. Pate violated.

A Yes.

Q And I'm trying to find out what they are. Other than the retro plan.

A The agreement of trust, the good faith and the trust. There is a breach of trust and good faith between us.

Q Okay. But it's a breach of trust?

A And the oral agreement that happens in

1996, too.

Q Okay. All right. Tell me about the oral agreement in 1996.

A That there was an oral agreement with NCRIC that money would not change hands till the closure.

MR. BADAMI: Go off the record.

(Thereupon, a brief recess was taken.)

MR. BADAMI: Let's go back on.

THE WITNESS: So there was an oral agreement that money will not change hands unless a specific year has closed. And based on that, we think there has been a violation of that agreement when they came and descended and they asked for the million dollars. That was a violation of the agreement.

Billing us for money is a violation of the oral agreement, because as far as we know, only two years have closed and they don't, we don't owe them. I think they owe us.

BY MR. BADAMI:

Q Okay. So we have the retro plan and we have this oral agreement?

A The oral agreement.

Q Are there any other agreements?

A The trust that we had in them and the good faith that we had in them.

Q Is the trust written down anywhere?

A The trust was not written down.

Q Was the good faith written down anywhere?

A It was not, it was expected.

Q Okay, that's fine. You mentioned that, I thought, in your answer previously, that, and I don't want to put words into your mouth, that by NCRIC negotiating with another hospital to come up with another plan, violated something with respect to Columbia? Is that accurate?

MR. SCHULMAN: Object to the extent that it mischaracterizes his prior testimony.

MR. BADAMI: I'm not intending to, as you know. I'm purely trying to follow up.

BY MR. BADAMI:

Q You mentioned a plan at GW that NCRIC was trying to negotiate?

A NCRIC started a plan with GW at the time that our plan was switched off with them.

Q Was there any agreement between NCRIC and Columbia that NCRIC couldn't try to negotiate a plan with another hospital?

A No.

Q Okay. After the retro plan was not renewed in September of 2000, did Columbia find another insurance carrier or another plan to take over?

A Columbia found a group rate rather than a retro plan.

Q Okay.

A Through a brokerage firm that arranged for it.

Q Can I ask you, Dr. Rifka, if it is Columbia's intention -- excuse me -- Columbia's contention that NCRIC prevented the hospital from performing any obligation under the terms of the retro plan, that the hospital was supposed to do?

A Can you ask me this question again?
Q Sure.
MR. SCHULMAN: Objection, vague and ambiguous. Go ahead.
THE WITNESS: Can you specify?
MR. BADAMI: Sure.
MR. SCHULMAN: Maybe explain what you mean by prevent.
BY MR. BADAMI:
Q Pursuant to the terms of the order that permits this deposition, I am trying to determine if it is Columbia's contention that somehow NCRIC prevented Columbia from doing anything that the hospital was supposed to do under the retro plan? Is it NCRIC's fault something didn't get done by Columbia that should have been done by Columbia?
A Can you elaborate or be specific? I'm sorry, I don't mean to be --
Q Sure. No, I --
A I just went to comprehend it, Mr. Badami.
Q Under the terms of the retro plan?

A Yes.
Q NCRIC was supposed to do certain things and Columbia was supposed to do certain things? Is that accurate?
A Yes.
Q I am trying to ask you, is it Columbia's view that with respect to the items that Columbia was supposed to do under the terms of the plan, somehow NCRIC prevented Columbia from doing anything that it was supposed to do under the terms of the retro plan?
A That Columbia was supposed to do under the retro plan?
Q Yes, sir.
A Sitting here today, I cannot recall of anything that Columbia was supposed to do that it did not do.
Q Do you know if there was a previous time when you thought of this, that you can remember there was something? I mean, I don't mean to quibble with you. But when you say sitting here today, I'm trying to find out if

there was another time when you thought that there might have been something along those lines?
MR. SCHULMAN: Objection.
THE WITNESS: I think that's all what I can say at the present time on that issue.
BY MR. BADAMI:
Q Okay. So far as you know, sitting here today, it is not Columbia's position that NCRIC prevented the hospital from doing any of the tasks that were assigned to it under the terms of the retro plan?
MR. SCHULMAN: Objection, asked and answered. And mischaracterizes his prior testimony.
MR. BADAMI: Well, the record will speak for itself. I'm just trying to confirm his response.
MR. SCHULMAN: He's answered the question to the best of his ability.
THE WITNESS: Sitting here today, this is what I recall.
BY MR. BADAMI:

Q Okay. Dr. Rifka, does Columbia contend that NCRIC somehow excused Columbia from performing any obligation that the hospital had under the terms of the retro plan?
A What do you mean by that?
Q Sure.
A I'm sorry.
Q That's fine. Again, under the terms of the retro plan, NCRIC was supposed to do a number of things and Columbia was supposed to do a number of things. With respect to Columbia's tasks, is it Columbia's position that somehow NCRIC excused Columbia and said, no, Columbia you don't really have to do that even though the document says you do?
A Other than the oral agreement which said that no money will change hands, I do not recall any.
Q Okay. And that's the oral agreement you testified about previously?
A Yes.
Q Which, and I don't want to

mischaracterize it. But the one we talked about two or three minutes ago?

A I think the 1996 oral agreement, Mr. Badami.

Q Correct. Any other oral agreements with respect to the retro plan? Anything else that was excused, in Columbia's position?

A Sitting here today, that's all what I can recall.

Q Okay. Does Columbia contend that NCRIC waived any of Columbia's duties under the retro plan?

A I do not think anything has been waived by NCRIC of Columbia's duty, from what I can recall sitting here today.

Q Okay. I would like to just show you another exhibit. Dr. Rifka, I'm asking the court reporter to mark this as, I believe it's Rifka C. You'll note that it says, Rifka 3, which means that it was used at a previous deposition in which you sat through.

(Rifka Exhibit C was marked

for identification.)

MR. SCHULMAN: Thank you.

BY MR. BADAMI:

Q Dr. Rifka?

A Yes, sir.

Q I've just handed you what has been marked as Rifka Exhibit C. And I would ask you, sir, if you recognize this document?

A I don't recall.

Q Do you recognize this document as the original retro plan between Columbia and NCRIC?

A I have never read the plan personally, the plan has been explained.

Q Will you accept my representation that it is the original retro plan between Columbia and NCRIC?

MR. SCHULMAN: Objection.

MR. BADAMI: Objection on what grounds? This is a 30(b)(6) witness to talk about the retro plan. If he's never seen it and if you're objecting to me asking about it, we have to go back to the judge. Eli, come on.

MR. SCHULMAN: Scott, first, he doesn't have to accept your representations. And second, if it's fairly called for, for him to testify about a specific language or something like that from the retro plan, I would appreciate you directing me to what calls for that.

MR. BADAMI: Specifically Number 4 in the items that were permitted by the court for this deposition to continue. It talks about performances under the retro plan, prevented, excused or waived by NCRIC. I want a -- he's -- I've -- he's given me his opinion with respect to those three terms.

MR. SCHULMAN: Yes, he's answered them.

MR. BADAMI: And I want to follow up. He said to the best of his ability sitting here today.

MR. SCHULMAN: Okay.

MR. BADAMI: And I think I'm entitled to follow up.

MR. SCHULMAN: Okay. You know, he'll answer to the best of his ability. I think he's already

answered all of the questions, you know, all of the questions that you have asked him on this topic, fairly. Go ahead.

BY MR. BADAMI:

Q Dr. Rifka, I would like to refer you to Paragraph 8 on Page 2. The Bates Number, this is a document that was produced to us from Columbia, CHW MC 000037. Do you see Paragraph 8?

A Yes, I do, sir.

Q Do you see the paragraph that says, "Medical Center hereby represents and warrants that it has made, and will continue to make, adequate provision for the contingent liabilities it has assumed hereunder."

A Yes.

Q Did I read that correctly?

A You did.

Q At the time this agreement was entered into, do you know the adequate provision for continued liabilities that Columbia hereby represented and warranted that it had made?

MR. SCHULMAN: I want to object to the

question.
THE WITNESS: Assuming this is the retro plan, I would think that Columbia would have made it through variable means.
BY MR. BADAMI:
Q Can you tell me what those variable means are?
A I think by either purchasing insurance coverage or by the self-insurance trust. Or by having the assets of the organization to protect its liabilities.
Q You mentioned the self-insurance trust. Throughout the term of the retro plan, did Columbia have a self-insurance trust the whole time?
A Yes.
Q To your knowledge, in addition to the trust fund, was there another account or, you know, another insurance policy or something?
A There was another insurance policy that Columbia purchases from Lloyds of London, I think, for the umbrella organization, for the

umbrella of the organization. And the assets of the organization, the land and the building, will be, as well, part of what Paragraph 8 is alluding to.
Q Do you know the status, and status, I mean the amount that was in the Columbia self-insurance trust fund throughout the time that the retro plan was in effect?
A It is variable because it depends how much you have to pay from the self-insurance trust. So it's not a static thing.
Q I recognize that and I guess I, maybe I was imprecise. I'm tired. I apologize for that. For example, on January 1 of 1994, do you know how much money was in the self-insurance trust fund?
A I think it was anywhere from 10 to 15 million.
Q Can you be any more specific or is that --
A I actually should make it between 5 to 15 million. I do not know the exact number.

Q How about January of '95?
A Probably is the same thing.
Q January of '96?
A Probably is the same thing, between 5 to 15, I would think.
Q January of '97?
A Minus a million dollars that NCRIC took. And then we went into Chapter 11 where we are prevented from putting any money into the self-insurance trust.
Q So to your --
A Because by bankruptcy court you cannot, the bankruptcy estate will prevent you from doing that.
Q Do I understand your testimony, then, to be that prior to when Columbia filed for bankruptcy you had somewhere between 4 and 14 million in the self-insurance trust fund?
A Prior -- we -- okay, how long prior? Prior could be from 1997 to --
Q I was trying to --
A -- to 1886.

Q I was trying to use the January.
A Yes.
Q And you went, I believe it was in February or March of 1998, when you went into bankruptcy?
A Yes, sir.
Q So I guess January 1 of 1988? 1998, I apologize.
A January 1 of 1998. I think there was something like 4 to $3 million, between 3 --
Q I'm sorry?
A Between 3 to $5 million.
Q Between three to five?
A This is my thinking.
Q So --
A And this is a thinking, it is not an accurate number. I'm scratching my memory. And I am sure it will be found in the numerous records that, that you have and we have and we filed.
Q So is it your testimony, you believe that Columbia has provided the documents which

prove, or which demonstrate the amount of money that was in the self-insurance trust fund?
A I think that NCRIC will probably have that documentation.
Q Do you know if that was produced to us in this lawsuit?
A I know that NCRIC has it, so you have to ask NCRIC. They will produce it to you.
Q How do you know NCRIC has it?
A Because they came and told me in 1997 that --
Q They told you they knew how much was in the self-insurance trust fund?
A They told me that, our financial position and that there is, the self-insurance trust is running low. And therefore they would need to take a million dollars from our money to put it on our, it will be on our books, we will accrue interest. It will be with them, just kind of an insurance there.
Q Your testimony a few minutes ago was that in January of '97, that the self-insurance

trust fund, I believe, had somewhere between 5 and $15 million in it?
A Between, I said between 3 to $5 million.
Q Oh, okay. Three to five million?
A In January. Three to five million. And I think when they came to talk to us, or to the administration of Columbia, they came about a year later, November, December of '97.
Q Okay.
A So 10 months thereafter they came and they told us that the self-insurance trust is running low.
Q Was that accurate?
A I don't know if it was. I think it was accurate. It was -- we had not put any, added any money to it. The last time they added, we added money to it was, I would think, in '96. And then of course during receivership you cannot add money to it. And so in --
Q In '99 when you --
A Hold on.

Q I'm sorry.
A In December or November of '97 they came and told us that the self-insurance trust is low, our financial position is not good. And as they would have, they presented us a 1.7 million dollar, if I remember, bill, to pay now or else they are not going to renew the retro plan going forward. And that was in November of 1997.
Q When the NCRIC representatives --
A Yes.
Q -- told you the self-insurance trust funds was low?
A Yes.
Q Did you agree with them, was the NCRIC representative correct?
A Correct, it was low.
Q How much was in it then?
A I do not recall. But I think it was about maybe 3 million, 2 to $3 million. It was low.
Q When you, when Columbia emerged from bankruptcy, what was the state of the

self-insurance trust fund?
A Minus a million dollars that we paid to NCRIC. Because during bankruptcy you cannot put money in the self-insurance trust.
Q I appreciate that, Dr. Rifka. But when you emerged from bankruptcy, what was the status of the self-insurance trust fund?
A I think was, it was what we entered minus a million dollars, which is the cost of, that we had to pay to NCRIC to keep the money for us on our books, with interest rate. That is the million dollars.
Q If you don't know the number, just please say you don't know the number.
A It was low, and it has to be less than three million.
Q How about January of 2000, what was the status of the self-insurance trust fund?
A January of 2000, we did not add any money because we were still under court protection till June, I think, of 2000, when we got the piece of paper. I would have to say

either June of 2000 or June of '99, from the bankruptcy court saying we are out of their jurisdiction.

So up till then we did not think we had the free hand. And we were paying for all the claims from the cash flow and were deferring some of the payment by staggering them.

Q So --

A It was low.

Q Low, is it close to zero?

A I think it reach at certain times, in few $100,000.

Q And do you know when those certain times were?

A I think somewhere in the year 2000.

Q Do you know -- in the year 2000, did Columbia ever put any additional monies into the self-insurance trust fund?

A No, because up till June of 2000, if I recall, we exited, we had a court documents. Because they had to circulate, wait for 60 days and 90 days, a hundred days. Then June 2000, we

got something stamped that you are out of the jurisdiction of bankruptcy court. So prior to that, even if we had it, we wouldn't put in it.

Q Following whatever term, and you believe it ended in June of 2000, did Columbia replenish the self-insurance trust fund?

A No, no. We decided that, to pay for any expenses from the cash flow.

Q From the time of June of 2000, up until the hospital closed, did Columbia put any money in the self-insurance trust fund?

A No.

Q Can I ask you to turn to Paragraph 17 on Exhibit C, please, which is on Page 5? Again, the same document that was produced by Columbia, CHW MC 000040. And ask you to take a look at Paragraph 17?

And I'll read it for the record. "Medical Center", that's Columbia, "hereby warrants and represents that it has made, and agrees to provide NCRIC with its auditor's or actuary's annual statement reflecting, adequate provision for the

contingent liabilities it has assumed hereunder."

Did I read that paragraph correctly, Dr. Rifka?

A You did.

Q Do you know if Columbia provided NCRIC with its auditor's or actuary's annual statements reflecting adequate provision for the contingent liabilities that Columbia had assumed pursuant to the terms of the retro plan?

A Sitting here today, I think that NCRIC knew exactly about the self-insurance trust and about our financial position. Whether through audited financial statements, when we had it, or whether from financial statements that were sent, or shown to NCRIC representatives.

Q I appreciate that.

A At certain time, we could not have audited financial statements. Because when you are in bankruptcy, you can't have them. You growing concern stops. So as you know, there are certain times when it wasn't there. But when it was there, it was furnished. And other financial statements, they were, they knew about.

Q That is really the focus of my question.

A Yes.

Q Is it your testimony that Columbia provided the annual statements of its auditors and actuaries whenever they were available, to NCRIC, pursuant to the terms of the retro plan?

MR. SCHULMAN: Objection, mischaracterizes the document.

THE WITNESS: As I stand here today, I recall that NCRIC knows about the self-insurance trust and about actuary statements, and knows about the financial condition of the hospital.

BY MR. BADAMI:

Q How do you know that? How did the board know about that?

A They told me.

Q Who told you?

A In 1997, Mr. Badami, there was a famous meeting.

Q I just want to make sure that -- if you're referring to that same meeting, I'm just

trying to make sure I understand all the facts.
A Yes. So from 1997, at least, onwards, to my own ears, they have said that they know about our financial position. And --
Q Do you know if that included whether or not NCRIC had been provided your auditor's or actuary's annual statements?
A To my knowledge, sitting here today, NCRIC knows everything about the hospital's financial position. The hospital has told NCRIC about its financial position. Financial position of the hospital was public, was in the courts. They attended the court's proceeding. They know everything. There is nothing that they don't know.
They were in court. And, the bankruptcy court at certain times. And they heard everything that pertains to the hospital. So there is no way like a sophisticated company as they are, with the attendance of the bankruptcy court proceedings, that they did. And with the meetings that we had with them, that NCRIC did

not have any knowledge. They sure did. And they did.
Q Is it your position that Columbia complied with Paragraph 17 of the retro plan?
A It is my position that Columbia have provided NCRIC with all the financial numbers that NCRIC asked. We have shared with NCRIC --
Q I'm sorry, Dr. Rifka. I didn't ask that question.
A Well, I'm answering --
MR. SCHULMAN: Did you finish your answer?
THE WITNESS: I haven't finished.
MR. SCHULMAN: Please finish.
THE WITNESS: Okay. And that we have provided NCRIC with all of the information about our trust, self-insurance trust. And we have provided NCRIC about the financial position of the hospital. Moreover, NCRIC has attended the bankruptcy court proceedings.
And I think that they were fully informed and fully engaged in the attendance of the bankruptcy court. So they are fully aware and

fully informed.
BY MR. BADAMI:
Q Did you know if those documents were produced in this litigation?
A I do not know what you as lawyers got hold of documents. NCRIC knows them and has them. And I'm sure they will share them with you.
Q All right. Let me ask you, Dr. Rifka. Are there any facts related to the retro plan that the hospital claims NCRIC concealed from Columbia?
A Yes.
Q What are those?
A One, is that NCRIC is supposed to -- I will start with the major things. There was a miscalculation on the deposit premium, the minimum premium and the development factors. That we made NCRIC aware of in the early 2000s, when our insurance consultants caught the problem.
Q And NCRIC concealed those from you?

A Concealed that from us. We contend that they have used the wrong development factors, they have used the wrong deposit premium, they have used the wrong loss premium.
Q And how were those concealed from you?
A They changed the percentages unilaterally without informing us. And we discovered this and -- I'm telling you this only as an example. You can -- I will refer you to the at-length explanation that we included in our statements of material fact.
Q Again, I appreciate that, Dr. Rifka.
A The briefs, interrogatories.
Q But that doesn't respond to my question.
MR. SCHULMAN: Can you let Dr. Rifka finish his answer, please?
MR. BADAMI: He's not responding to my question.
MR. SCHULMAN: He's still entitled to finish his answer, Scott.
MR. BADAMI: I believe I have been very

lenient on that.
BY MR. BADAMI:
Q I'm trying to find out what NCRIC concealed, Dr. Rifka. You said you gave materials to your insurance broker and they told you, they gave you some conclusions. How did NCRIC conceal it if your insurance broker told you about it and we, it's a matter in this litigation? It would certainly be brought to your attention.
A We discovered it, we discovered it. They did not come forward with it, we uncovered it. And when we uncover something that is a mistake -- they were over-calculating everything to their advantage. And they were presenting us with the bill. And mind you, Columbia, under the plan, had no rights to an audit and did not know the actual numbers even to perform an audit.
Q That was the plan Columbia agreed to, though, right?
A Yes.
Q Okay.

A But then we agreed to certain deposit premium and they used a different one. We agreed to a certain loss premium and they use a different one. And we agreed to certain development factors and they used a different one.
By these three factors, their calculation is constantly to the advantage of NCRIC and the detriment of Columbia. Therefore, how we uncovered it, we made our own homework, we got our own consultants. And we dug and we dug and we dug, and we uncovered the miscalculation, big miscalculation.
The other thing they were supposed to do, they concede, is quarterly statements that they never did, sometimes. So sometimes they will do quarterly reconciliation, sometimes not. Under the plan, they are mandated.
Under the plan, they are mandated to hire an audit, to audit. Because they have their raw material to audit, we do not have the raw material to audit. We trusted them. They didn't

do an audit.
Q Okay.
A And under the plan, they are not entitled to million dollars which they took from us. Under the plan, we don't owe them any money. Under the plan, we do not owe them the money, the bill they presented to us, because there are only two years that have closed, as far as we can tell, I think. Nineteen -- the last year that has closed was '96. So to present us a bill for years that have not closed violate the plan and is a scare tactic just to put us under.
Q Okay. Let's get back to the concealment?
A Yes.
Q You mentioned the development factor, the deposit premium? The, I believe you said, the loss premium?
A Yes.
Q I understand those three. You said quarterly reconciliations?
A Uh-huh, or quarterly estimates of how

much the year we're looking through. And they have not presented this to us on a regular basis.
Q When did NCRIC not present them to you on a regular basis?
A I think I would refer you to the statement of material facts, it's all documented there. We have researched this in an ample way. And if you would look at it, or you have it I will be happy to show you. But there are quarters that we have not received any work from them. And there are certain quarters that they have done miscalculations at certain times, too.
Q But sitting here now, you can't specifically identify when you may or may not have received the quarterly reconciliation materials?
A I can specifically tell you that they have not done it in a persistent way. And for more exact dates as to when they didn't do that, I will refer you to our statement of material facts. It's mentioned there.
MR. BADAMI: And again, this is the

discussion that Eli and I had earlier about the responsibilities of the party under a 30(b)(6) deposition. And, you know, we respectfully disagree. And we may have to deal with that later. But --

THE WITNESS: Okay.

MR. BADAMI: Okay. Fair enough.

BY MR. BADAMI:

Q You said the audit. I would like to turn to that. What is your position that NCRIC concealed about an audit?

A They have not performed their duty. They have --

Q What was their duty?

A Just to perform an audit. They should audit the plan every year. Because Columbia cannot audit the plan because they don't give us the raw numbers to audit it.

Q Were you entitled to the raw numbers, under the terms of the retro plan?

A No.

Q Okay. So --

A That's why they have --

Q Why would they have given you the raw number if you weren't entitled to them --

A Mr. Badami?

Q -- under the terms of the retro plan?

A Dr. Badami?

Q Dr. Rifka.

A That is not what I am saying. I'm saying Columbia could not perform an audit, because under the plan we did not, we were not allowed the numbers, okay. So we did not perform an audit. Hence, the agreement is NCRIC will perform the audit since NCRIC has the raw data.

Q And is --

A NCRIC did not perform an audit.

Q When did NCRIC not perform an audit?

A I have not seen a real audit from NCRIC on every year, for the plan.

Q So starting from 1993 until the end of the plan -- well, I guess even -- do you believe you still should be receiving audits today?

A Absolutely, the plan is in effect. Up

till all the years close.

Q Sure. I would --

A Right now there is a plan, believe it or not.

Q For the years that have --

A I have the --

Q For years that have not closed?

A Yes, that is absolutely correct. And therefore I would like to see an audit. Somebody should have seen an audit from NCRIC rather than an ultimatum to pay. Want an audit, an audit has never been given to us.

Quarterly evaluation of the plan has not been timely, they missed quarters and quarters and quarters. It was sporadic. The numbers were inaccurate and the factors they relied on them, were not what we agreed on.

And we were totally surprised. You know why, because we trusted them. And they did not meet the trust level. Behind every, under every stone there was a big snake.

Q You have mentioned these five facts

which you have alleged that NCRIC has concealed from Columbia. Are there any others?

A These are only an example. For more I would refer you to the statement of material facts I, and we have. There is a more comprehensive detail in it, in the interrogatories and the briefs and the papers and the exhibits of the case. I'm just highlighting what I remember today.

Q I'm asking for your memory, as the representative of Columbia sitting here at this deposition today.

A My memory as a representative of Columbia lies in the thousands of pages of documents that has presented to you. And to the briefs that includes the totality of the case. And the depositions and the interrogatories and the million fact findings jobs that you have tried to do. This includes the total case.

I'm here to highlight and to lead you. And if you want to discuss an issue with me, show me, I am ready to empty my knowledge to you. But I'm

giving you the most important things that I can recall today. Others still exist in the copious paperwork that you have between your hands.

Q Actually, Dr. Rifka, you're not here just to highlight, you're here to respond to the questions in detail, as the representative of Columbia. Again, Eli and I will disagree about the specific role of the witness.

But needless to say, you know, it's not our opinion that you're here just to highlight and rely on things that allegedly have been produced or not produced. You're here to testify as the witness, as the representative of the hospital.

A I guess I haven't highlighted --

MR. SCHULMAN: I'll object to the commentary back and forth. Mr. Badami has stated his position for the record and Columbia has stated its position for the record. And it's not necessary to --

THE WITNESS: Okay.

MR. SCHULMAN: -- go into it in any greater detail, I think.

BY MR. BADAMI:

Q Dr. Rifka?

A I just want to say about highlighting, I don't think what I have talked today is highlight. If you don't think that there is the beef in what I said, and this is what the real crux of the matter. When an insurance company concocts numbers and factors and fake premiums and fake numbers, I think I have told you what I know about it sitting here today. More to come, I'm sure, if you look in your documents.

MR. SCHULMAN: That's good.

MR. BADAMI: Dr. Rifka, subject to the discussions between Eli and myself, that's all the questions I have for you right now. For purposes of the record, you know, I'm not going to formally close the deposition because we have disagreements. But that's all the questions that I have for you right now.

THE WITNESS: Thank you, Mr. Badami. On the record, thank you for, for the deposition today.

MR. SCHULMAN: Can we take a break and we'll

come back in a few minutes?

MR. BADAMI: Sure.

MR. SCHULMAN: Thank you.

(Thereupon, a brief recess was taken.)

MR. SCHULMAN: We're back on the record. I'll try and make this very brief. Really.

MR. BADAMI: Heard that before.

EXAMINATION BY COUNSEL FOR THE DEFENDANT

BY MR. SCHULMAN:

Q Dr. Rifka, before we took a break you were discussing with Mr. Badami the self-insurance trust, which he said was running low. Do you recall having that discussion with him?

A Yes, sir.

Q You don't believe that the self-insurance trust was underfunded, do you?

A No. Actually we met all the payments to, from the, for any malpractice case. So we had, we had the money.

Q And you said that you managed to make

the payments primarily through cash flow?

A To make the payment stagger through cash flow, yes.

Q So there was never a situation in which Columbia was unable to cover its contingent liabilities that it assumed under the retro plan? Is that right?

A There was no situation like this.

MR. SCHULMAN: Okay. Thank you very much.

MR. BADAMI: Thank you, Dr. Rifka. That's all.

(Whereupon, at 6:21 p.m., the taking of the deposition was concluded.)

49b37162-b0b6-4492-8460-df74f0b3bcde
16d-002295

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division
----------x
NCRIC, INC., :
:
Plaintiff, :
:
v. :Civil Action No.
COLUMBIA HOSPITAL FOR WOMEN : 00-0007308
CENTER, INC., :
:
Defendant. :
:
----------x

ACKNOWLEDGMENT OF DEPONENT

I, SAFA RIFKA, M.D., do hereby acknowledge that I have read the foregoing deposition, which contains a correct transcription of the answers given by me to the questions therein recorded, on Pages 4 through 189, except as to errors which may be indicated on an attached errata sheet.

_____ _____
Date Signature

Subscribed and sworn to before me this
_____ day of _____, 20__, in
_____
My Commission Expires: Notary Public
_____, 20__

ERRATA SHEET

Please return Errata page and Acknowledgment to.

DLC REPORTING
P.O. BOX 382
Stafford, Virginia 22555

Deposition date: 5-29-03
Witness: Safa Rifka, M.D.

Page and line number Correction or change

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

_____ _____
Date Signature

C-E-R-T-I-F-I-C-A-T-E

DISTRICT OF COLUMBIA:

I, Diana L. Cox, a stenographic reporter and Notary Public in and for the District of Columbia, do hereby certify that the witness was duly sworn by me; proceedings were taken by me in shorthand and thereafter reduced to typewriting under my supervision; that said proceedings is a true and accurate transcript of same to the best of my ability.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which the proceedings were taken; and, further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____
Diana L. Cox, Stenographer
Notary Public in and for the
District of Columbia
My commission expires:
November 30, 2006

EXHIBIT 11

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

May 15, 2003

By Facsimile and U.S. Mail

Scott M. Badami, Esq.
Jenifer Berger, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Scott and Jenifer:

Columbia is prepared to proceed with the remaining Rule 30(b)(6) deposition as soon as possible and designates Dr. Safa Rifka to testify with respect to NCRIC's Supplemental Notice of Deposition. Dr. Rifka is available on May 22, 2003 at 3 p.m. Please let me know where you would like to hold the deposition.

Columbia objects, however, to NCRIC's newly propounded "supplemental" document requests. NCRIC has no authority, well over a year after the close of discovery and without leave of Court, to issue additional document requests. Indeed, NCRIC's conduct contravenes the Court's admonition that its Order authorizing further limited discovery "is not an opportunity for NCRIC to inquire more broadly than the subject matter" that was at issue in NCRIC's motion. Order of 4/7/03 at 1-2 n.1. In any event, as you must appreciate by now, Columbia has already produced an extensive array of documents responsive to your untimely requests.

Separately, you will recall that the Court's Order does call for production of the following documents *only*: "financial accounts or statements as to [Columbia's] financial situation at the time Columbia authorized the $1 million check to be given to [NCRIC]." *Id.* at 2-3. As it so happens, many months ago Columbia *did* in fact produce to NCRIC such financial accounts or statements. Rather than re-produce those documents, I direct your attention to the documents at bates range CHWMC 008036 to CHWMC 008124.

Sincerely,

Eli C. Schulman

Eli C. Schulman

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Sumner Square
1615 M Street, N.W.
Suite 400
Washington, DC 20036
---
(202) 326-7900
Facsimile:
(202) 326-7999

FACSIMILE TRANSMISSION

TO:	Scott M. Badami, Esq. Jenifer Berger, Esq.	**FAX NO.:**	(202) 508-6200
FROM:	Eli C. Schulman	**CLIENT NO.:**	00198
PHONE:	(202) 326-7936		
DATE:	May 15, 2003		
RE:	*NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.*		

MESSAGE:

TOTAL NUMBER OF PAGES: 3 (INCLUDING THIS SHEET)

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US IMMEDIATELY OR CONTACT OUR COPY SERVICE CENTER:

(202) 326-7949
or Carol Inniss: (202) 367-7728

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE CONTAINS PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATIONS AND/OR ATTORNEY WORK PRODUCT. THIS INFORMATION INTENDED ONLY FOR THE USE OF THE ADDRESSEE. PERSONS RESPONSIBLE FOR DELIVERING THIS COMMUNICATION TO THE INTENDED RECIPIENT ARE HEREBY NOTIFIED NOT TO READ THE ATTACHED AND THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND PLEASE RETURN THE ORIGINAL MESSAGE TO US AT OUR LETTERHEAD ADDRESS VIA THE U.S. POSTAL SERVICE.

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	2703
CONNECTION TEL	7936001982025086200
SUBADDRESS	
CONNECTION ID	BRYAN CAVE,DC
ST. TIME	05/15 18:21
USAGE T	00'48
PGS. SENT	3
RESULT	OK

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Sumner Square
1615 M Street, N.W.
Suite 400
Washington, DC 20036
---
(202) 326-7900
Facsimile:
(202) 326-7999

FACSIMILE TRANSMISSION

TO: Scott M. Badami, Esq.
Jenifer Berger, Esq.

FAX NO.: (202) 508-6200

FROM: Eli C. Schulman

CLIENT NO.: 00198

PHONE: (202) 326-7936

DATE: May 15, 2003

RE: *NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.*

MESSAGE:

TOTAL NUMBER OF PAGES: 3 (INCLUDING THIS SHEET)

EXHIBIT 12

RECEIVED
Civil Clerk's Office
JUN 20 2003
Superior Court of the
District of Columbia
Washington, D.C.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference, July 31, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S OPPOSITION TO NCRIC'S MOTION TO COMPEL AND FOR SANCTIONS PURSUANT TO RULES 33(b) and 37(a)

Mark C. Hansen
David E. Ross
Eli C. Schulman
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036-3209
(202) 326-7900 – Telephone

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

June 19, 2003

16d-002303

RECEIVED
Civil Clerk's Office
JUL 08 2003
Superior Court of the
District of Columbia
Washington, D.C.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

PRAECIPE

The Clerk of said Court will hereby enter the appearance of Neil M. Gorsuch, D.C. Bar No. 456411, as attorney for the defendant, Columbia Hospital for Women Medical Center, Inc., in the above-captioned matter.

DATED: July 8, 2003

Respectfully submitted,

Neil M. Gorsuch, D.C. Bar # 456411
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

CERTIFICATE OF SERVICE

I, Neil M. Gorsuch, hereby certify that on this 8th day of July 2003, a copy of the attached Praecipe was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

In addition, on the same date, a courtesy copy of the aforementioned Praecipe was served on the chambers of Judge Blackburne-Rigsby by hand delivery.

Neil M. Gorsuch

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

July 8, 2003

Clerk of the Court
Civil Division Clerk's Office
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room JM170
Washington, D.C. 20001

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.,***
Civil Action No. 0007308-00

Dear Sir or Madam:

Enclosed for filing please find an original and two copies of Columbia Hospital for Women Medical Center Inc.'s Praecipe for the Appearance of Neil M. Gorsuch. Please date stamp one of the copies and return it to us in the enclosed self-addressed envelope.

Thank you for your assistance in this matter. If you have any questions or concerns, please feel free to contact me at (202) 326-7978.

Sincerely yours,

Neil M. Gorsuch

Enclosures

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

July 8, 2003

BY HAND DELIVERY

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 3540
Washington, D.C. 20001

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Civil Action No. 0007308-00

Dear Judge Blackburne-Rigsby:

Enclosed is a courtesy copy of Columbia's Praecipe for the Appearance of Neil M. Gorsuch filed today in the above-captioned matter.

If you have any questions, please call Neil Gorsuch at (202) 326-7978.

Sincerely,

Jessica Bartlow
Assistant to Neil Gorsuch

Enclosure

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
JUL 24 2003
Superior Court of the
District of Columbia
Washington, D.C.

RECEIVED
JUL 24 11 04 PM '03
ADMINISTRATIVE DIVISION

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 – Judge Blackburne-Rigsby Next Event: Pretrial Conference, July 31, 2003

COLUMBIA'S OPPOSITION TO NCRIC'S MOTION FOR LEAVE TO AMEND THE COMPLAINT

NCRIC's motion for leave to amend is another last-minute attempt to derail proceedings and avoid a trial on the merits of its tortious conduct. NCRIC has not and cannot explain why it has waited nearly *three years* before seeking to add a claim that it acknowledges was apparent to it from the moment this suit was filed. Allowing such an amendment at this late stage would, moreover, plainly prejudice both this Court and Columbia, both of which have invested substantial resources in discovery, summary judgment, and pre-trial proceedings – proceedings that would now have to be re-done to accommodate NCRIC's late-blossoming request. This Court should deny NCRIC's motion.

Discussion

When faced with a motion for leave to amend that is filed after the responsive pleading stage, the District of Columbia Court of Appeals has held that the court's decision should be guided by five factors "'(1) the number of requests to amend made by the movant; (2) the length of time the case has been pending; (3) bad faith or dilatory

tactics on the part of the movant; (4) the merit of the preferred pleading; and (5) prejudice to the nonmoving party.'" *Sherman v. Adoption Ctr. of Washington*, 741 A.2d 1031, 1038 (D.C. 1999) (quoting *Johnson v. Fairfax Village Condo. IV*, 641 A.2d 495, 501 (D.C. 1994)). While it is sometimes said that amendment should be liberally granted, "that liberalism does not mean amendments must be granted automatically; a refusal to allow an amendment is to be upheld if predicated on some valid ground." *Id.* at 1037-38 (internal quotation marks omitted). A decision to deny leave to amend will be reviewed only for abuse of discretion. *Id.*

A. NCRIC's motion is plainly dilatory. This lawsuit has been pending for nearly *three* years – since October 2000. Discovery closed *eighteen months ago*, in January 2002, and dispositive motions were fully briefed by March 2002. *See* Exh. 1 (attaching scheduling order). The case is set for imminent trial. Yet NCRIC offers *no explanation whatsoever* for its failure to wait so long before bringing this motion to amend. Nor could it do so: the contract containing the provision on which NCRIC seeks to recover is only six pages long, and was drafted by NCRIC. NCRIC can, thus, hardly suggest that its amendment is based on "newly discovered" evidence.

NCRIC's lengthy delay, coupled with its inability to offer any good faith reason for the delay is, under D.C. precedent, sufficient standing alone to deny the motion. In *Gordon v. Raven Sys. & Research, Inc.*, 462 A.2d 10 (D.C. 1983), for example, the court upheld denial of leave to amend where appellant had waited a mere "18 months after its initial filing and over one month after the court ordered cessation of discovery" because, as here, the request for leave to amend "was first made at a pretrial conference." *Id.* at 13. Although there was "no showing of bad faith, appellant offered no explanation

regarding the reasons for the aggravated delay" and this, the court held, was enough to establish "'the predicate for a proper determination that prejudice to the opposing party would result if an amendment were allowed.'" *Id.* (quoting *Eagle Wine and Liquor Co. v. Silverberg Elec. Co.*, 402 A.2d 31, 35 (D.C. 1979)).

Similarly, in *Eagle Wine and Liquor*, the court upheld denial of leave to amend where plaintiff waited "two years after the initiation of the action" before submitting the proffered amendment; though there was no "outright showing of bad faith, the lateness of the motion" plus the lack of "any satisfactory reason for the delay (E.g., new information which could not have been uncovered [any] earlier)" made amendment inappropriate. 402 A.2d at 35. *See also Sherman*, 741 A.2d at 1038 (denying leave to amend because of movant's "unacceptable dilatory approach" in waiting three years to bring the amended complaint, two months after the close of discovery, without explanation for the delay). No different result should obtain here.

B. Columbia and the Court would also suffer substantial prejudice if NCRIC is permitted to add a new claim for attorney fees. While NCRIC characterizes its request as a "simple" change that merely clarifies its claimed damages and alters nothing of substance, nothing could be further from the truth. It is a matter of black letter law that a party claiming entitlement to attorney fees arising from the instant litigation must plead them as "special damages" under Rule 9(g). *See, e.g., National Liberty Corp. v. Wal-Mart Stores, Inc.*, 120 F.3d 913, 917 (8th Cir. 1997); *United Indus., Inc. v. Simon-Hartley, Ltd.*, 91 F.3d 762, 764 (5th Cir. 1996) (noting broad approval among the circuits that "attorney's fees [are] special damages that must be specifically pleaded under Federal Rule of Civil Procedure 9(g)"); *Atlantic Purchasers, Inc. v. Aircraft Sales, Inc.*,

705 F.2d 712, 716 n.4 (4th Cir. 1983) (claims for attorney fees are special damages that must be pleaded specifically). NCRIC's failure to comply with Rule 9(g) in a timely fashion means that Columbia has had no opportunity to question NCRIC executives and attorneys regarding the attorney fee provision's construction or enforceability, what fees NCRIC has incurred, or the reasonableness of those fees.

Had NCRIC brought its amendment in a timely manner, Columbia surely would have, for example, sought discovery from NCRIC's attorneys regarding the scope of the work they have performed and obtained expert testimony regarding the reasonableness of NCRIC's claimed fees. NCRIC, too, would have been expected to come forward with testimony establishing the reasonableness of the fees it incurred, and Columbia would have wished to cross-examine any such witness. Given that the Retro Plan, written by monopolist NCRIC, bestows a one-sided benefit to NCRIC with regard to attorney fees (no such mirror-image provision is provided to Columbia), Columbia would also surely have wanted to develop an affirmative defense of unconscionability through, among other things, cross-examination of NCRIC's executives who have already been deposed. *See Urban Investments, Inc. v. Branham*, 464 A.2d 93, 99 (D.C. 1983) (contractual term is unconscionable if there was "'an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.'") (quoting *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 449 (D.C. Cir. 1965)).

Essentially, NCRIC wants Columbia and the Court, after investing substantial resources, time, and money in this litigation, to halt the progress of this case and re-do discovery, summary judgment, and the already-completed pre-trial exchanges. Court

after court has denied motions to amend on lesser showings of prejudice than this. In *Gordon*, the D.C. Court of Appeals affirmed a denial of leave to amend because the proposed amendment there, just as here, "would create new theories of liability and thereby require additional discovery and probably the necessity of additional witnesses, including experts who otherwise would not have been called." *Gordon*, 462 A.2d at 13. In doing so, the court pointed out that the amendment would have also imposed prejudicial burdens on the court because "the amendment would require the court begin anew the pretrial . . . process. *Id.*

The court of appeals in *Sherman*, too, affirmed a denial of motion because "the trial would have to be delayed and discovery reopened," and, "as we have reiterated on several occasions, prejudice caused by delays and postponements of this type affect not only the individual litigants but the court system as a whole and others who invoke its aid in dispute resolution." *Sherman*, 741 A.2d at 1039. *See also Gaetan v. Weber*, 729 A.2d 895, 898-99 (D.C. 1999) (court of appeals affirming denial of leave to amend when the request was brought a month prior to trial because amendment would have "caused significant judicial delay" and "would have . . . severely prejudiced the appellees who had spent significant time and expense during two years of litigation to defend against appellant's assertions"); *Perry v. Sera*, 623 A.2d 1210, 1219 (D.C. 1993).

In *National Liberty Corporation*, the Eighth Circuit considered a trial court's decision to deny leave to add a special damages claim for attorney fees remarkably analogous to NCRIC's current request. The court first rejected the notion that the proffered amendment was "merely clarifying the damages" alleged by plaintiff, noting that attorney fees are special damages that must be pled under the federal analog to SCR

9(g). The court then proceeded to reject the amendment as prejudicially late: it was offered three months after the deadline for any amendments to the pleadings and the non-moving party "would be prejudiced by the untimely amendment because it had already completed depositions of witnesses who were likely to have knowledge of such a claim, and adding the claim after the amendment deadline would have required retaking those depositions." *National Liberty Corp.*, 120 F.3d at 917. Again, no different result should obtain here.[1]

C. Though the foregoing factors are sufficient to dispose of NCRIC's motion under settled law, its request fares no better under the other remaining factors. NCRIC has already amended its complaint once, in January 2001, three months after filing its original complaint. NCRIC does not (and cannot) demonstrate why it did not include the amendment it now seeks at that time. *See Sherman*, 741 A.2d at 1038-39 (denying leave where there had been only one amendment to the pleadings because it was brought so late). Nor is the claim NCRIC wishes to add obviously meritorious. To prevail, NCRIC would also have to show that its fees were reasonably incurred, but NCRIC has brought forward no such testimony, nor can it do so at this late juncture, after the parties have

[1] Nor do the two lone cases cited by NCRIC aid its cause. The first, *Johnson*, simply affirmed the trial court's discretionary decision to permit an amendment where the trial court found no evidence of dilatory behavior and the amendment would not have prejudiced defendant because he did not deny the substance of the new allegation (namely that he had, in fact, failed to pay his assessments to a condominium association). *See Johnson*, 641 A.2d at 501-02. The same cannot remotely be said here: NCRIC has been dilatory and Columbia does deny liability for attorney fees. In the second case, *District of Columbia v. Tinker*, 691 A.2d 57 (D.C. 1997), the District sought leave to add a limitations defense which, the court found, was "readily apparent from the face of [the] complaint," and thus could not prejudice plaintiff; again, the same cannot be said here, where NCRIC's new claim could have been, but did not, appear anywhere in its initial or amended complaints. *Id.* at 61. The court in *Tinker* also expressly noted that the non-moving party there had made "no claim on appeal that he would have been prejudiced by having to incur further litigation expenses," *id.* n.3, something indisputably at issue here.

exchanged final trial witness lists and NCRIC has not sought leave to add any new witnesses. Finally, there is ample precedent, *see supra,* for the conclusion that this one-sided provision, drafted by an admitted monopolist insurer, with no mirror-image provision for Columbia, is unconscionable as a matter of law. *See Sherman*, 741 A.2d at 1038 (denying leave where amendment "apparent[ly]" lacked merit).[2]

[2] Though NCRIC claims it will be forced to bring a separate claim for attorney fees, and therefore "efficiencies" will be gained by re-doing discovery now, this is erroneous for several reasons. First, if correct, NCRIC's argument would mean that amendments must always be permitted no matter how late, to avoid second lawsuits. That is not the law, as *Gordon*, *Sherman*, *Gaeten* and the other cases cited above demonstrate. Second, NCRIC's attorney fee request was compulsory and had to be brought with its main claims; accordingly, there will be no second suit on damages. *See U.S. Indus., Inc. v. Blake Constr. Co.*, 765 F.2d 195, 205 (D.C. Cir. 1985) (subsequent lawsuit seeking attorney fees for indemnification claim barred by *res judicata* where indemnification agreement provided for attorney fees and the claim therefore could have been brought as part of the underlying action); *Fox v. Connecticut Fire Ins. Co.*, 380 F.2d 360, 361 (10th Cir. 1967) (judgment in prior action by insured against its insurer barred subsequent action by the insured to recover cost of litigating initial action). Third, even if NCRIC could bring a second lawsuit, it will be necessary only in the event it prevails on its contract claim at trial; Columbia, on the eve of trial, should not be forced to re-do all of discovery on the speculative possibility that NCRIC will prevail. Finally, there would be few, if any, efficiencies achieved by adding the attorney-fee question to this lawsuit; the only questions in any fee proceedings will be the reasonableness of the fees NCRIC incurred and the enforceability of the contractual provision on which it relies; these issues overlap not at all with the issues in the current suit which has already been pending for nearly three years.

16d-002314

Conclusion

For the reasons stated above, *NCRIC's Motion for Leave to Amend the Complaint* should be denied. A proposed order is attached.

DATED: July 24, 2003

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-002315

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion For Leave to Amend the Complaint*, and the opposition thereto, it is hereby ORDERED, that the motion is DENIED.

ENTERED this ____ day of _____, 2003.

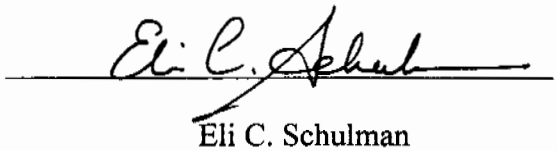
_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 24th day of July, 2003, a copy of the foregoing *Columbia's Opposition to NCRIC's Motion For Leave to Amend the Complaint* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on this 24th day of July, 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.



Eli C. Schulman

EXHIBIT 1

12/20/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

WHEREFORE, for good cause shown, the parties' Consent Motion to Amend Scheduling Order is hereby GRANTED, and the current scheduling order shall be amended as follows:

Deadline	**Current**	**As Amended**
Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/13/01	1/17/02
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	12/13/01	1/17/02
Expert depositions completed:	12/20/01	1/17/02
All discovery closes:	12/20/01	1/24/02
Dispositive motions filed:	1/3/02	1/31/02
Oppositions to dispositive motions filed:	1/31/02	2/28/02
Replies to oppositions to dispositive motions filed:	2/18/02	3/18/02
Dispositive motions decided:	4/11/02	5/9/02
Confidential Settlement Statement due:	4/22/02	5/19/02
ADR:	T.B.D.[1]	T.B.D.
Pretrial:	T.B.D.	T.B.D.
ADR:	T.B.D.	T.B.D.
Pretrial:	T.B.D.	T.B.D.

[1] To be determined by the Assignment Office.

SO ORDERED.

Judge Linda K. Davis

SIGNED IN CHAMBERS
Copies mailed from chambers
on 12-21-01.

Dated: 12/20, 2001.

Copies to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, M.D. 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

16d-002320

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburn-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Certain Depositions Completed, December 6, 2001
	)	
Defendant/Counter-Plaintiff.	)	

RECEIVED
Civil Clerk's Office
JAN 15 2002
Superior Court of the
District of Columbia

PRAECIPE

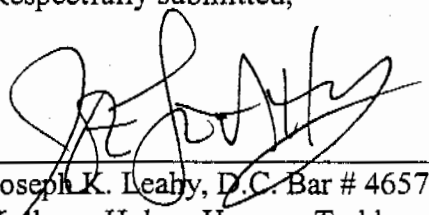
Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by its counsel, hereby states, in accordance with Superior Court Rule 16(b), that counsel for Plaintiff NCRIC, Inc. ("NCRIC"), has consented to extend, by approximately one week, the following deadlines in the current scheduling order, for the mutual benefit of the parties:

Deadline In Current Scheduling Order	Order Date	New Date
Non-expert, non-party depositions first noticed prior 8/13/01 discovery deadline shall be completed:	1/17/01	1/25/02
Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed:	1/17/01	1/25/02
All discovery closes:	1/24/02	1/31/02
Dispositive motions filed:	1/31/02	2/07/02

The parties also hereby agree that the aforementioned deadlines, as stated in the current scheduling order, have not previously been modified. Accordingly, the parties' modification of these deadlines by stipulation pursuant to Superior Court Rule 16(b) is valid.

DATED: January 15, 2001

Respectfully submitted,



Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorney for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-002322

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 15th day of January 2002, a copy of the attached Praecipe was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

In addition, on the same date, a courtesy copy of the aforementioned Praecipe was served on the chambers of Judge Blackburn-Rigsby by hand delivery.

Joseph K. Leahy

EXHIBIT A

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Pretrial Conference
MEDICAL CENTER, INC.,	)	June 19, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DEFENDANT'S LIST OF WITNESSES FOR TRIAL

Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby submits the following list of witnesses who may be called at trial:

Expect to Call

1. Nabil Asterbadi, M.D.,
   2440 M Street, N.W., Suite 703
   Washington, D.C. 20037
   (202) 822-8368

2. Gerald Beaulieu
   639 Park Road, N.W., #2
   Washington, D.C. 20010
   (202) 216-2347

3. Peter Ben Ezra
   4930 Fort Summer Drive
   Bethesda, MD, 20816-1945
   (301) 229-0028

4. Michael R. Feldman
   Senior Vice President Riggs
   Counselman, Michaels and Downes, Inc.
   555 Fairmont Avenue
   Baltimore, MD 21286

5. Ann Gaffey
1937 N. Utah Street
Arlington, VA 22207
(703) 841-5122

6. Eric Hempelman
NCRIC, Inc.
2710 Wisconsin Avenue, N.W.
Washington, D.C. 20007
(202) 342-6690

7. Elizabeth Jackson
(last known business address)
Columbia Hospital for Women
2440 M Street, N.W.
Washington, D.C. 20037

8. David Osborn
Vice President
NCRIC, Inc.
2710 Wisconsin Avenue, N.W.
Washington, D.C. 20007
(202) 342-6690

9. Francis Renee Perkins
(last known business address)
Columbia Hospital for Women
2440 M Street, N.W.
Washington, D.C. 20037

10. Safa Rifka, M.D.
2440 M Street, N.W., Suite 401
Washington, D.C. 20037
(202) 293-2042

11. George Samman, M.D.
2021 K Street, N.W.
Washington, D.C. 20006
(202) 833-8538

12. Grant Sohm
Director of Underwriting
NCRIC, Inc.
2710 Wisconsin Avenue, N.W.
Washington, D.C. 20007
(202) 342-6690

13. Larry Wilson, Jr.
12120 Old Colony Drive
Upper Marlboro, MD 20772
(301) 952-1048

14. David Young
3614 Patterson Street, N.W.
Washington, D.C. 20015
(202) 364-0382

May Call

15. John David Berryman, M.D.
2400 Pennsylvania Avenue, N.W., Suite 109
Washington, D.C. 20037
(202) 965-0735

16. Alan Birnkrant, M.D.
2311 M Street, N.W.
Suite 304
Washington, D.C. 20037
(202) 466-4800

17. Kenneth Blank, M.D.
2141 K Street, N.W., Suite 808
Washington, D.C. 20037
(202) 331-9293

18. Bruce Bonn, M.D.
2311 M Street, N.W., Suite 304
Washington, D.C. 20037
(202) 331-0577

19. William Burgess
NCRIC, Inc.
2710 Wisconsin Avenue, N.W.
Washington, D.C. 20007
(202) 342-6690

20. Daryl Chamblee
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20026
(202) 429-3000

21. Wayne D. Cooper, M.D.
2400 Pennsylvania Avenue, N.W., Suite 109
Washington, D.C. 20037
(202) 342-9099

22. Stephen Fargis
President
NCRIC, Inc.
2710 Wisconsin Avenue, N.W.
Washington, D.C. 20007
(202) 342-6690

23. Charles Dwaine Gasser
6203 Glenshawn Row
Alexandria, VA 22315

24. Leonard Glassman
2141 K Street, N.W.
Suite 900
Washington, D.C. 20037
(202) 223-9722

25. Susan Hansen
6925 Scotforth Road
Philadelphia, PA 19119

26. Sarah Imerschein, M.D.
2311 M Street, N.W.
Suite 304
Washington, D.C. 20037
(202) 466-4800

27. Heather Johnson, M.D.
202 19th Street, N.W.
Washington, D.C. 20036

28. Gideon Kioko, M.D.
7411 Riggs Road
Suite 300
Hyattsville, MD 20783
(301) 434-2300

29. Edward Koch, M.D.
908 New Hampshire Avenue, N.W. Suite 200
Washington, D.C. 20037
(202) 861-7726

16d-002328

30. Charlotte Larson, M.D.
5530 Wisconsin Avenue
Chevy Chase, MD 20815
(301) 657-8600

31. Jeffrey Marsh
NCRIC, Inc.,
2710 Wisconsin Avenue, N.W.
Washington, D.C. 20007
(202) 342-6690

32. Melinda Murray
3331 Stuyvesant Place
Washington, D.C. 20015

33. Norman Neches, M.D.
2400 Pennsylvania Avenue, N.W., Suite 108
Washington, D.C. 20037
(202) 342-1883

34. Richard Newman, M.D.
2141 K Street, N.W., Suite 808
Washington, D.C. 20037
(202) 331-9293

35. Jerome T. O'Connell, Sr., M.D.
2120 Bancroft Place, N.W.
Washington, D.C. 20008
(202) 667-3093

36. R. Ray Pate, Jr.
NCRIC, Inc.
2710 Wisconsin Avenue, N.W.
Washington, D.C. 20007
(202) 342-6690

37. Lynn Petersons
Nichols & Associates, Inc.
1800 John F. Kennedy Boulevard
Philadelphia, PA 19103
(215) 587-1200

38. Morton Roberts, M.D.
2112 F Street, N.W., Suite 509
Washington, D.C. 20037
(202) 298-8322

39. James Rodgers
President
The CIMA Companies
316 South Peyton Street
Alexandria, VA 22314
(703) 739-9300

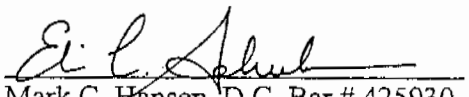
40. Robert Sloan
Address unknown

41. Marciana Wilkerson, M.D.
2440 M Street, N.W., Suite 510
Washington, D.C. 20037
(202) 835-8363

Columbia reserves the right to call any witnesses called by NCRIC and to add to this list based on the evidence adduced at trial.

Dated: July 24, 2003

Respectfully Submitted,



Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-002330

EXHIBIT B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Pretrial Conference -- July 31, 2003.
Defendant	

NCRIC'S TRIAL WITNESS LIST

Pursuant to Rule 16 of the District of Columbia Superior Court Rules of Civil Procedure, Plaintiff NCRIC, Inc. ("NCRIC") presents the following witness list for use at trial in the above-captioned action.

In the absence of reasonable notice to opposing counsel to the contrary, NCRIC intends to call, or will have available to call, at trial:

1. R. Ray Pate
   NCRIC, Inc.
   1115 30th Street, NW
   Washington, DC 20007

2. Stephen S. Fargis
   NCRIC, Inc.
   1115 30th Street, NW
   Washington, DC 20007

3. William Burgess
   NCRIC, Inc.
   1115 30th Street, NW
   Washington, DC 20007

4. Grant Sohm
   NCRIC, Inc.
   1115 30th Street, NW
   Washington, DC 2000

5. Stephen Horowitz, M.D.
   2141 K Street, NW, Suite 808
   Washington, DC 20037
   (202) 331-9293

6. Nabil Asterbadi, M.D.
   2440 M Street, NW, Suite 703
   Washington, DC 20037
   (202) 822-8368

16d-002332

7. W. McKay Henderson
Pricewaterhouse Coopers LLP
Suite 900
1900 K Street, NW
Washington, DC 20006-1110
(202) 822-4035

8. Steven Moore
PWC LLP
Suite 800W
1301 K Street, NW
Washington, DC 20005-3333

9. Edward Koch, M.D.
2501 N. Glebe Road, Suite 301
Arlington, VA 22207
(703) 527-5155

10. Arthur Becker, M.D.
2440 M Street, NW, Suite 510
Washington, DC 20037
(202) 835-8363

11. Ken Blank, M.D.
2141 K Street, NW, Suite 808
Washington, DC 20037
(202) 331-9293

12. David Powers
2440 M Street, NW, Suite 510
Washington, DC 20037
(202) 835-8363

13. Nancy Ripp, M.D.
16220 Frederick Road., Suite 419
Gaithersburg, MD 20877
(301) 258-0680

14. Elnora Johnson
11808 Earnshaw Court
Brandywine, MD 20613

15. Larry Wilson
12120 Old Colony Drive
Upper Marlboro, MD 20772

16. Safa Rifka, M.D.
2440 M. Street, N.W., Suite 401
Washington, DC 20037
(202) 293-2042

17. Representative(s) of the D.C. Department of Insurance and Securities Regulation of the District of Columbia.

In the absence of reasonable notice to opposing counsel to the contrary, NCRIC may call, or may have available to call, at trial:

1. Mary Woodford
Cornerstone Research
1301 K Street, NW
Suite 350 E
Washington, DC 20005

2. Eric Hempleman
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

16d-002333

3. David Little
13 Alto Court
Placitas, NM 87043
(505) 867-7991

4. David Osborn
Oklahoma City, OK

5. James McGuire
750 Seventh Avenue
New York, NY 10019-6829

6. Jeffrey Marsh
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

7. Eric Anderson
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

8. James Hurley
Tillinghast-Towers Perrin
One Atlanta Plaza
950 East Paces Ferry Road
Atlanta, GA 30326-1119

9. Morton Roberts, M.D.
2112 F Street, N.W., Suite 509
Washington, DC 20037
(202) 298-8322

10. Melinda Murray
3331 Stuyvesant Place
Washington D.C. 20015

11. Ann Gaffey
1937 N. Utah Street
Arlington, VA 22207
(703) 841-5122

12. Susan Hansen
6925 Scotforth Rd.
Philadelphia, PA 19119

13. Gerald Beaulieu
1639 Park Road, NW
Washington, DC 20010
(202) 216-2347

14. Thomas Foley
{Current address unknown}

15. Patrick Kane
1806 Merrifields Drive
Silver Spring, MD 20906
(301) 598-6422

16. Len Peterson
{Current address unknown}

17. David Bickerstaff
Bickerstaff & Whatley
Indian Wells, CA

18. Diana Winter
{Current address unknown}

19. Nancy Catalano
{Current address unknown}

20. Rebecca Crunk
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

21. Christina Culp
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

22. Brian Jordan
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

23. Brian Nash, Esq.
809 Gleneagles Court, Suite 201
Towson, MD 21286

24. Nicholas McConnell, Esq.
1120 20th St., NW
Washington, DC 20036

25. Sharon Starks (Spinks)
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

26. Steve Seitzman
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

27. Terry Rutkowski
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

28. Joyce Adams
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

29. T. Todd Sullivan
Atlanta, GA

30. Beverly Sanders
Palm Beach, Florida

31. Any current or former members of the Attending Faculty at Columbia and/or the Columbia Physicians Group.

32. Any witness needed to authenticate documents or other evidence offered at trial.

33. Any witness listed on Defendant Columbia's witness list.

34. Any witness required for rebuttal.

16d-002335

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, DC 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center
Suite 430
Bethesda, MD 20814

Counsel for Plaintiff NCRIC, Inc.

Date: July 24, 2003

16d-002336

RECEIVED
Civil Clerk's Office
JUL 24 2003
Superior Court of the
District of Columbia
Washington, D.C.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 – Judge Blackburne-Rigsby Pretrial Date: July 31, 2003, 4:30 p.m. Trial Date: To be determined (Jury)

JOINT PRETRIAL STATEMENT

The parties, Plaintiff and Counter-Defendant, NCRIC, Inc. ("NCRIC"), and Defendant and Counter-Plaintiff, Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by and through their respective counsel, hereby submit this Joint Pretrial Statement in accordance with Rule 16(e) and the Court's Form for Pretrial Statement.

A. CERTIFICATION OF RULE 16(c) MEETING

On May 29, 2003 at 6:30 p.m., the parties met at the offices of NCRIC's counsel, Bryan Cave LLP, 700 Thirteenth Street, N.W., Washington, D.C. Scott M. Badami, Margaret G. Perl, and Jenifer Berger attended on behalf of NCRIC; Eli C. Schulman attended on behalf of Columbia. The parties made a good-faith effort to reach agreement on all of the matters listed in Rule 16(c).

The parties also met on June 22, 2003 at 2:30 p.m. at the offices of Columbia's counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., 1615 M Street, N.W., Washington, D.C. Margaret G. Perl and Eileen Weiss attended on behalf of NCRIC; Eli C. Schulman attended on behalf of Columbia. The parties made further good-faith efforts to reach agreement on outstanding matters included in this Joint Pretrial Statement.

B. PARTIES AND COUNSEL

Plaintiff/Counter-Defendant

NCRIC, Inc.
1115 30th Street, N.W.
Washington, D.C. 20007
(202) 969-1866

Counsel for Plaintiff/Counter-Defendant

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Margaret G. Perl, Esq.
Jenifer Berger, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(202) 508-6000

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(301) 951-4456

Defendant/Counter-Plaintiff

Columbia Hospital for Women Medical Center, Inc.
2425 L Street, N.W.
Washington, D.C. 20037
(202) 293-6500

Counsel for Defendant/Counter-Plaintiff

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

16d-002338

C. NATURE OF THE CASE

In October 1993, Columbia, a non-profit hospital specializing in care for women, and NCRIC, a provider of malpractice liability insurance to physicians in the District of Columbia, entered into an agreement called the Retrospective Rating Plan (or, "Retro Plan"). The purpose of the plan was to establish a malpractice liability program for physicians at Columbia to help reduce the costs to physicians through a sharing of malpractice risk.

In October 2000 NCRIC filed a breach of contract claim against Columbia contending that Columbia refused to pay the Additional Premium due under the Retro Plan when it expired on September 1, 2000.

Columbia countersued in November 2000, contending that NCRIC breached the contract and owes Columbia money under the plan. Columbia also contends that NCRIC communicated that it would administer a medical malpractice plan for Columbia so that the hospital did not have to do so itself, and, after assuring Columbia that it would act in the hospital's best interests, deceived Columbia about the terms of the Plan and overcharged the hospital, failing to perform required calculations honestly and accurately. In addition, Columbia contends that NCRIC interfered with Columbia's existing and expected business relationships with the doctors who worked at Columbia by disparaging Columbia and inducing Columbia's doctors to move their practices to other hospitals. Columbia contends that NCRIC also made false and defamatory statements about Columbia that caused harm to Columbia's reputation in the community. Additionally, Columbia contends that NCRIC improperly demanded a $1 million deposit not called for by the parties' contract on threat of discontinuing malpractice coverage to the hospital and later refused to return Columbia's money. Columbia seeks damages in the multiple millions of dollars.

D. CLAIMS AND DEFENSES

1. NCRIC's Claim

NCRIC and Columbia are parties to a Retrospective Rating Plan Agreement ("Retro Plan") which provided medical malpractice insurance to physicians from 1993 through September 1, 2000. Pursuant to the Retro Plan, NCRIC provided insurance at discounted premiums to doctors practicing at Columbia, and in return Columbia agreed to share a portion of the risk of future malpractice claims. The Retro Plan requires a "reconciliation" that looks back over the term of each year to compare the discounted premiums to the actual claims for a given year. Each reconciliation follows the calculation formula presented in the Retro Plan to determine: (1) if Columbia was required to pay "Additional Premium" to NCRIC, because losses under the plan exceeded the physician premiums by a predetermined calculated amount, or (2) if NCRIC was required to pay "Return Premium" to Columbia, should the losses have been less than the predetermined amount.

NCRIC's breach of contract claim is based upon Columbia's refusal to pay NCRIC the Additional Premium due under the Retro Plan calculations. In November 1996, the parties orally agreed to avoid interim payments of Additional and Return Premium by exchanging money only when a year was "closed-out" under the plan or the Retro Plan ended. After a series of renewals from 1993 to 2000, the parties chose not to further renew the plan. The Retro Plan expired on September 1, 2000. As obligated under the Retro Plan and the parties' oral agreement, NCRIC performed the reconciliation calculation and sent the reconciliation with a notice and request for payment of Additional Premium due from Columbia on September 1, 2000. Columbia has not paid NCRIC any of the Additional Premium owed to NCRIC under the terms of the Retro Plan since September 1, 2000. NCRIC's breach of contract claim seeks to recover this amount.

Finally, NCRIC contends that none of the alleged misconduct detailed in Columbia's counterclaims, assuming *arguendo* that Columbia proves such conduct, negates the Retro Plan and relieves Columbia of the obligation to pay NCRIC the amount owed for the premiums as calculated under the Retro Plan.

2. Columbia's Claims

1. Breach of Contract: NCRIC breached the Retro Plan by, *inter alia*, failing to pay Columbia Return Premium that Columbia was due. NCRIC further breached the parties' agreement by seeking payment from Columbia in violation of the parties' oral agreement.

2. Breach of Implied Covenant of Good Faith and Fair Dealing: NCRIC evaded the spirit of the contract, willfully rendered imperfect performance, and/or interfered with Columbia's performance by, *inter alia*, performing Reconciliations inaccurately.

3. Breach of Fiduciary Duty: NCRIC breached its fiduciary duty to Columbia by, *inter alia*, failing to perform Reconciliations honestly and accurately; demanding a $1 million deposit when it was not due and then refusing to return the $1 million; refusing to allow Columbia to audit NCRIC's calculations; and causing Columbia to overpay Additional Premium.

4. Tortious Interference with Business Relations: NCRIC wrongfully interfered with Columbia's business relations with the Attending Faculty doctors, causing about 30 Attending Faculty members to terminate their association with Columbia and move the bulk of their practices to Sibley and/or George Washington University hospitals.

5. Tortious Interference with Prospective Business Advantage: NCRIC wrongfully interfered with Columbia's reasonable expectation of continuing its business relations with the Attending Faculty doctors, causing about 30 Attending Faculty members to terminate their association with Columbia and move the bulk of their practices to Sibley and/or GW hospitals.

6. Actual and/or Constructive Fraud: NCRIC made false representations of material facts to Columbia, including, for example, those relating to NCRIC's improper Retro Plan calculations, and concealed from Columbia material facts that amounted to a misrepresentation by refusing to provide Columbia information as provided for by the Retro Plan and by refusing to provide Columbia access to data necessary independently to verify NCRIC's bookkeeping.

7. Negligent Misrepresentation: NCRIC negligently made false representations by, *inter alia*, miscalculating Reconciliations.

8. Defamation and Libel: NCRIC published material false statements about Columbia that disparaged Columbia, causing Columbia harm to its reputation and substantial economic loss.

9. Trade Libel/Commercial Disparagement/Injurious Falsehood: NCRIC published false and misleading statements that disparaged the quality of Columbia's services as a health care facility, causing Columbia harm to its reputation and substantial economic loss.

10. Conversion: NCRIC unlawfully exercised ownership, dominion, and control over Columbia's $1 million deposit, in denial or repudiation of Columbia's rights to the money.[1]

Columbia reserves the right to offer evidence of additional facts in support of any of its claims.

3. NCRIC's Defenses

Columbia's Breach of Contract and Breach of Implied Duty of Good Faith and Fair Dealing (Counts 1 and 2)

NCRIC denies all allegations of improper calculations of premiums and intends to present fact and expert testimony in support of its position that all calculations were valid and

[1] The negligence claim originally pleaded by Columbia as Count Six was dismissed by order of July 3, 2001.

16d-002342

that the amount of Additional Premium owed by Columbia is proper and correct. Columbia's evidence regarding the alleged miscalculations of the Retro Premium is inadmissible and non-credible as it consists of calculations performed by Columbia's counsel for the purposes of this litigation. NCRIC will also present credible and undisputed evidence that NCRIC maintained the loss reserves under the Retro Plan in accordance with the requirements of the plan and according to "industry standards." Columbia has not presented any credible evidence that NCRIC's alleged breach caused Columbia's financial problems or proximately caused Columbia's bankruptcy filing such that NCRIC is liable for these damages. NCRIC has performed all duties properly under the Retro Plan and has not "evaded the spirit of the contract," therefore NCRIC is not liable for breach of contract or breach of the implied duty of good faith and fair dealing.

Columbia's Breach of Fiduciary Duty Claim (Count 3)

NCRIC denies all allegations that it was under a duty to act on Columbia's behalf in a fiduciary capacity. The parties in this case were two sophisticated business entities which negotiated a commercial contract, the Retro Plan, which did not contemplate the creation of a fiduciary relationship. The Retro Plan and all subsequent amendments and renewals were negotiated instruments between the parties and their counsel and consultants. There is no evidence of unequal bargaining power. Finally, a fiduciary relationship did not evolve over time during the course and dealings of the parties.

Columbia's Tortious Interference Claims (Counts 4 and 5)

NCRIC further denies all allegations of tortious activity which allegedly interfered with current or prospective business relations between Columbia and its attending faculty. There is no evidence that any physician terminated his or her relationship with Columbia based on the

alleged defamatory statements by NCRIC in 2000, because NCRIC representatives urged them to do so, or because the parties did not agree to renew the Retro Plan in September 2000. To the extent the tortious interference claims rely upon the alleged defamatory statements, NCRIC incorporates the defenses to the defamation claims below. Finally, NCRIC contends that Columbia's future business expectancy in patient referrals is too remote to support a tortious interference claim. NCRIC intends to present fact and expert testimony in support of its position that any economic loss suffered by Columbia during the time of alleged tortious acts in 2000 was caused by a number of other market factors and conditions at the hospital itself, as opposed to the alleged tortious interference Columbia attributes to NCRIC. Moreover, NCRIC contends that Columbia has failed to mitigate any such damages which it claims.

Columbia's Fraudulent and Negligent Misrepresentation Claims (Counts 7 and 8)

NCRIC denies all allegations that it made fraudulent and/or negligent misrepresentations of fact to Columbia regarding the Retro Plan. As discussed with regard to the breach of contract claims above, NCRIC's calculations were proper and did not constitute a fraudulent misrepresentation regarding the amount of Additional Premium due from Columbia. Columbia cannot prove that any reconciliations were false because there is no credible evidence from any witnesses regarding the alleged "proper" calculations under the Retro Plan. Moreover, as discussed above, any statements with regard to the loss reserves set for the Retro Plan were true as the loss reserves were set and maintained properly under the Retro Plan and industry standards. NCRIC did not have any intent to defraud Columbia at any time, nor did Columbia and NCRIC have a "confidential relationship" to support a negligent misrepresentation claim in the absence of fraudulent intent.

Columbia's Defamation and Injurious Falsehood Claims (Counts 9 and 10)

NCRIC denies all allegations of defamatory statements by NCRIC representatives in 2000. The Court has found in favor of NCRIC on summary judgment with regard to all defamation and injurious falsehood claims based upon alleged statements by NCRIC in 1998; therefore, these statements are not properly presented by Columbia at trial. There is no evidence that the "rumors" of September 2000 regarding the possible closure of Columbia were attributable to any NCRIC representative. Any defamatory statements allegedly made by Dr. Glassman in September 2000 do not support a claim against NCRIC because (1) Dr. Glassman was not speaking as a representative of NCRIC, (2) these alleged statements were not properly "published" to third parties, and (3) these alleged statements were true. Moreover, these alleged statements do not support an injurious falsehood claim because these statements do not concern a product or service of Columbia. Finally, as discussed with regard to the tortious interference claims above, NCRIC intends to present fact and expert testimony in support of its position that any economic loss suffered by Columbia during the time of alleged defamatory statements in September 2000 was caused by a number of other market factors and conditions at the hospital itself, as opposed to the alleged defamation and harm to reputation which Columbia attributes to NCRIC.

Columbia's Conversion Claim (Count 11)

NCRIC denies all allegations of conversion with regard to the $1 million partial payment of Additional Premium made by Columbia in 1998. The $1 million payment was a negotiated partial payment towards a balance of approximately $1.7 million in Additional Premium due in 1997. NCRIC consistently applied this amount towards the premium due in all subsequent reconciliations under the Retro Plan. There is no evidence that the parties agreed that this

16d-002345

payment would be held by NCRIC as a "deposit" which would accrue interest. Nor is there any evidence that Columbia demanded the money be returned as it was allegedly held by NCRIC unlawfully. Finally, Columbia has not presented any credible evidence that NCRIC's alleged conversion caused the hospital's financial problems or proximately caused Columbia's bankruptcy filing such that NCRIC is liable for these damages.

4. Columbia's Defenses

1. Columbia did not breach the contract and does not owe NCRIC any Additional Premium because NCRIC miscalculated the Deposit Premium, Minimum Premium, and Development Factors under the Retro Plan. When the proper calculations are made, NCRIC in fact owes Columbia premium.

2. Columbia did not breach the contract and does not owe NCRIC any Additional Premium because NCRIC's demand for Additional Premium violates the parties' November 1996 oral agreement that the parties would not exchange Additional or Return Premium for any year of the Plan until all outstanding claims for that year had closed. The only closed years are those for which NCRIC owes Columbia premium.

3. Columbia did not breach the contract and does not owe NCRIC any Additional Premium because NCRIC, the Plan's bookkeeper, failed to notify Columbia of any amount of premium due, as required by the Plan. Such notice is a precondition to any obligation of Columbia to pay NCRIC Additional Premium.

4. Columbia fully performed all of its duties and obligations under the alleged agreement between it and NCRIC.

5. NCRIC's claim is barred as a result of NCRIC's failure to satisfy conditions precedent, including, but not limited to, failing to perform Reconciliations properly, and failing to calculate and inform Columbia of the correct amount of Additional or Return Premium due.

6. NCRIC's claim is barred by the doctrines of estoppel, waiver and/or unclean hands.

7. The alleged agreement between Columbia and NCRIC is unenforceable, in whole or in part, due to NCRIC's material breach of the express and/or implied terms thereof.

8. The alleged agreement between Columbia and NCRIC is unenforceable, in whole or in part, due to modification, novation, and/or accord and satisfaction.

9. The alleged agreement between Columbia and NCRIC is void, in whole or in part, because Columbia renewed and/or amended it while under duress caused by NCRIC.

10. The Amended Complaint fails to state a cause of action upon which relief may be granted.

11. Columbia denies all allegations in the Amended Complaint not specifically admitted, and demands strict proof thereof.

E. UNDISPUTED ISSUES/STIPULATIONS

1. On or about October 23, 1993, Columbia and NCRIC entered into the Retrospective Rating Plan Agreement ("Retro Plan"). NCRIC drafted the Retro Plan.

2. The original term of the Retro Plan was three years.

3. A retrospective rating plan, such as the Retro Plan, requires a "reconciliation" that looks back over each year to compare the premium to the claims to determine: (1) if additional premium is due to the insurance company; or (2) if a return of premium is due the hospital, should losses have been favorable based on a predetermined calculation.

4. All premiums under the Retro Plan are calculated by applying multipliers to the subject premium.

5. To determine if the appropriate premium amounts were collected to pay losses under the Retro Plan, the Retro Premium (as calculated based on a preset formula) is then compared to the Deposit Premium. If the Retro Premium is less than the Deposit Premium, the premium is due to Columbia. If the Retro Premium is more than the Deposit Premium, Columbia owes NCRIC the additional premium to pay against the losses. But any amount of Retro Premium is limited by the set Minimum Premium and Maximum Premium.

6. A "floor" and a "ceiling" are set to financially protect both Columbia and NCRIC from large swings in risk. If total losses were large (130% of total), then this would cap Columbia's risk. If losses were extremely favorable (60% of total), then NCRIC is protected. The "floor" is the Minimum Premium, and the "ceiling" is the Maximum Premium.

7. When the parties entered into the Retro Plan, the premium discount ("Attending Faculty discount") was 19% off the cost of $500,000 in malpractice coverage.

8. In November 1996, NCRIC representatives met with Columbia's Finance Committee. The NCRIC representatives presented the first Reconciliation under the Retro Plan and proposed new revisions to the discount and premium calculations.

9. During these meetings, the NCRIC representatives explained that claims from prior years were still pending and therefore calculations of premium for those years were subject to change.

10. NCRIC's Reconciliation for the 1993-94 Experience Period showed a balance $172,815 in Return Premium due to Columbia for this Experience Period.

11. In 1997, Columbia was fighting a lawsuit by one of its largest creditors, The Bank of Tokyo-Mitsubishi, regarding Columbia's line of credit.

12. In February 1998, Columbia filed for reorganization under Chapter 11 of the United States Bankruptcy Code.

13. Columbia emerged from bankruptcy in January 1999.

14. The Medical Entity Policy issued by NCRIC was a standard group insurance policy which covered the physicians practicing medicine at Columbia's Clinic for professional liability in return for the payment of a set premium each year.

15. In the fall of 1999, NCRIC and Columbia renewed both the Retro Plan and the Medical Entity Policy until September 1, 2000 and December 1, 2000, respectively.

16. During the spring of 2000, Columbia requested NCRIC propose a transitional plan to replace the Retro Plan with a new program which did not require a retroactively calculated premium.

17. NCRIC proposed a method of "closing out" the Retro Plan and converting the program to a guaranteed cost contract which would discontinue the retroactive calculations from previous years of the Retro Plan.

18. The parties negotiated the one-time cost that Columbia would have to pay to accomplish such a close out throughout the spring and summer of 2000.

19. The endorsement excluded from coverage any activities in the Clinic after November 15, 2000.

F. DISPUTED ISSUES

NCRIC's Issues

1. Whether Columbia breached the Retro Plan by not remitting Additional Premium due under the Retro Plan Reconciliations when the Retro Plan expired on September 1, 2000. NCRIC contends that Columbia breached the agreement; Columbia contends that it did not.

Columbia's Issues

2. Whether NCRIC breached the Retro Plan by, *inter alia*, failing to pay Columbia Return Premium that Columbia was due and seeking payment from Columbia in violation of the parties' oral agreement? Columbia contends that NCRIC breached the agreement; NCRIC contends that it did not.

3. Whether NCRIC evaded the spirit of the contract, willfully rendered imperfect performance, and/or interfered with Columbia's performance by, *inter alia*, performing Reconciliations inaccurately? Columbia contends that NCRIC did; NCRIC contends that it did not.

4. Whether NCRIC breached its fiduciary duty to Columbia by, *inter alia*, failing to perform Reconciliations honestly and accurately; demanding a $1 million deposit when it was not due and then refusing to return the $1 million; refusing to allow Columbia to audit NCRIC's calculations; and causing Columbia to overpay Additional Premium? Columbia contends that NCRIC did; NCRIC contends that it did not.

5. Whether NCRIC wrongfully interfered with Columbia's business relations with the Attending Faculty doctors, causing about 30 Attending Faculty members to terminate their association with Columbia and move the bulk of their practices to Sibley and/or George

16d-002350

Washington University hospitals? Columbia contends that NCRIC did; NCRIC contends that it did not.

6. Whether NCRIC wrongfully interfered with Columbia's reasonable expectation of continuing its business relations with the Attending Faculty doctors, causing about 30 Attending Faculty members to terminate their association with Columbia and move the bulk of their practices to Sibley and/or GW hospitals? Columbia contends that NCRIC did; NCRIC contends that it did not.

7. Whether NCRIC made false representations of material facts to Columbia, including those relating to NCRIC's improper Retro Plan calculations, and concealed from Columbia material facts that amounted to a misrepresentation by refusing to provide Columbia information as provided for by the Retro Plan and by refusing to provide Columbia access to data necessary independently to verify NCRIC's bookkeeping? Columbia contends that NCRIC did; NCRIC contends that it did not.

8. Whether NCRIC negligently made false representations by, *inter alia*, miscalculating Reconciliations? Columbia contends that NCRIC did; NCRIC contends that it did not.

9. Whether NCRIC published material false statements about Columbia that disparaged Columbia, causing Columbia harm to its reputation and substantial economic loss? Columbia contends that NCRIC did; NCRIC contends that it did not.

10. Whether NCRIC published false and misleading statements that disparaged the quality of Columbia's services as a health care facility, causing Columbia harm to its reputation and substantial economic loss? Columbia contends that NCRIC did; NCRIC contends that it did not.

11. Whether NCRIC unlawfully exercised ownership, dominion, and control over Columbia's $1 million deposit, in denial or repudiation of Columbia's rights to the money. Columbia contends that NCRIC did; NCRIC contends that it did not.

G. REQUESTED STIPULATIONS

Attached at Tab G are the parties' Proposed Stipulations and objections, as follows:

1. NCRIC's Proposed Stipulations

2. Columbia's Objections to NCRIC's Proposed Stipulations

3. Columbia's Proposed Stipulations

4. NCRIC's Objections to Columbia's Proposed Stipulations

H. RELIEF SOUGHT

1. NCRIC seeks the following relief:

NCRIC seeks to recover money owed by Columbia pursuant to the calculations agreed to by the parties in the Retro Plan. The amount of Return Premium owed is calculated in quarterly reconciliations of premium according to methodology contained in the Retro Plan. Columbia currently owes NCRIC the sum of $3,090,693, or such amount as is calculated periodically under the plan.

2. Columbia seeks the following relief:

- lost profits in the amount of approximately $21.5 million;
- lost proceeds from annual fundraiser (more than $1.5 million per year);
- loss of $35 million, low-interest HUD loan, reasonably expected to reduce the hospital's cost of capital from 10.5% to 4.5% per month (resulting in lost savings for Columbia of approximately $2 million per year);
- more than $1.5 million for expenses incurred in connection with bankruptcy;

- return of $1 million deposit;
- $765,347.49 in Return Premium;
- prejudgment interest;
- punitive damages;
- costs, including reasonable attorney fees;
- further relief as the Court may deem just and equitable.

I. CITATIONS

Attached at Tab I are lists of citations that the parties wish to call to the Court's attention.

1. NCRIC's Citations

2. Columbia's Citations

Each party is providing the Court with copies of those authorities not found in D.C. Code, A.2d, or U.S. App. D.C. Because of the volume of the authorities, each party is submitting for the Court's convenience two separate stand-alone volumes to accompany the citation lists – one volume with citations relevant to the substantive claims, and a second volume with citations relevant to the pending motions listed in Section J below.

J. PENDING MOTIONS

NCRIC

The following motions were filed by NCRIC on June 5, 2003:

1. NCRIC's Motion To Require Defendant to Provide Security for Costs

2. NCRIC's Motion for Leave to Amend the Complaint

3. NCRIC's Motion for Reference to a Special Master

4. NCRIC's Motion To Exclude the Opinions and Testimony of Defendant Columbia's Designated Damages Expert

5. NCRIC's Motion to Exclude Evidence of Certain Counterclaim Damages

6. NCRIC's Motion to Exclude the Testimony of Columbia's Newly Named Witnesses

7. NCRIC's Motion to Exclude Certain Documents and Calculations

8. NCRIC's Motion To Compel and for Sanctions Pursuant to Rules 33(b) and 37(a)

Columbia

The following motions were filed by Columbia on June 5, 2003:

1. Motion *in Limine* of Defendant To Exclude Testimony of NCRIC's Purported Expert Witnesses

2. Motions *in Limine* of Defendant

   a. Motion To Re-Order Presentation of Proof to Conform to Evidence

   b. Motion To Establish Admissibility of Documentary Exhibits Before Trial

K. WITNESSES

Attached at Tab K are the parties' respective Witness Lists.

1. NCRIC's Witness List

2. Columbia's Witness List

The matters about which experts will, if allowed by the Court, testify are as follows:

1. NCRIC's Experts

A) **James McGuire, Esq.:** Mr. McGuire's testimony will support NCRIC's claim that the loss reserves set by NCRIC under the Retro Plan were valid, adequate, proper and correctly calculated based upon appropriate insurance industry methods.

B) **James D. Hurley:** Mr. Hurley's testimony will support NCRIC's claim that the premiums owed by Columbia are calculated using the proper deposit factors which were derived as a result of mathematical and actuarial computation.

C) **Steve Moore:** Mr. Moore's testimony will support NCRIC's rebuttal of the damages alleged by Columbia to have been caused by NCRIC's commission of various alleged torts. Mr. Moore will support NCRIC's position that any losses experienced by Columbia (such as decreased profits) are the result of other factors outside of any alleged misconduct by NCRIC.

D) **W. McKay Henderson and Mary Woodford**: Mr. Henderson and Ms. Woodford's testimony will support NCRIC's rebuttal of Columbia's expert testimony regarding damages allegedly suffered as a result of NCRIC's alleged misconduct. Mr. Henderson and Ms. Woodford's testimony will support NCRIC's position that any losses experienced by Columbia (such as decreased profits) are the result of other factors outside of any alleged misconduct by NCRIC.

2. **Columbia's Expert**

Peter Ben Ezra: In his role as an expert, Mr. Peter Ben Ezra, Professor of Accountancy at the George Washington University's School of Business and Public Management, will testify with respect to the calculation of lost profits incurred by Columbia as a result of NCRIC's tortious conduct.

L. EXHIBITS

Attached at Tab L are the parties' Exhibit Lists and objections to exhibits, as follows:

1. NCRIC's Exhibit Summary Form
2. Columbia's Objections to NCRIC's Exhibits

16d-002355

3. Columbia's Exhibit Summary Form

4. NCRIC's Objections to Columbia's Exhibits

Each party is also submitting separately a copy of its objections, together with copies of the exhibits to which the objections are made.

Both parties reserve the right to offer all exhibits listed on the opposing party's exhibit list, as well as all deposition exhibits and rebuttal exhibits that have not been identified herein. To the extent one party has identified a document as an exhibit, at this time, that party is not stipulating to the authenticity or admissibility of that document. To the extent Columbia and NCRIC identify the same exhibit, both parties preserve the right to object to its admission.

M. DEPOSITIONS

Attached at Tab M are the parties' respective deposition designations, as follows:

1. NCRIC's Deposition Designations

2. Columbia's Deposition Designations

Both parties reserve the right to object at trial to any designation of deposition testimony included in this submission pursuant to Superior Court Rule 32(b) and/or to require additional parts of depositions that ought in fairness to be considered with the part designated pursuant to Superior Court Rule 32(a)(5).

N. PLEADINGS AND DISCOVERY RESPONSES

Attached at Tab N are the parties' respective designations of pleadings and discovery responses, as follows:

1. NCRIC's Designations of Pleadings and Discovery Responses

2. Columbia's Designations of Pleadings and Discovery Responses

16d-002356

O. DEMONSTRATIVE OR PHYSICAL EVIDENCE

The parties have agreed to exchange the demonstrative aids they intend to use in their opening statements and cases-in-chief one week prior to trial. Both sides reserve the right to prepare additional demonstratives aids based on the evidence actually adduced at trial, subject to 24 hours' advance notice to the opposing party.

P. VIDEOTAPES

The parties do not expect to use videotapes at trial.

Q. REQUESTED VOIR DIRE QUESTIONS

Attached at Tab Q are the requested questions that the parties have agreed upon and those that the parties have not agreed upon.

R. LIST OF STANDARD JURY INSTRUCTIONS REQUESTED

1. The following standard instructions have been agreed upon:

Instruction 1-1	Function of the Court
Instruction 1-2	Function of the Jury
Instruction 1-4	Juror's Duty To Deliberate
Instruction 1-5	Attitude and Conduct of Jurors
Instruction 1-6	Instructions To Be Considered as a Whole
Instruction 1-7	Court's Commenting on the Evidence
Instruction 1-8	Court's Questions to Witnesses
Instruction 1-9	Jury Not To Take Cue from Judge
Instruction 1-10	Rulings on Objections
Instruction 1-11	Equality of Litigants – Corporations
Instruction 2-1	Evidence in the Case
Instruction 2-2	Evidence in the Case – Judicial Notice
Instruction 2-3	Inferences
Instruction 2-4	Inadmissible and Stricken Evidence
Instruction 2-5	Statements of Counsel
Instruction 2-6	Jury's Recollection of Controls
Instruction 2-7	Evidence Admitted Against One Party Only
Instruction 2-9	Evidence Produced by Adversary

16d-002357

Instruction 2-10	Direct and Circumstantial Evidence
Instruction 3-1	Jury To Determine Credibility of Witnesses
Instruction 3-2	Number of Witnesses
Instruction 3-3	Expert Opinion
Instruction 3-4	Failure To Produce Stronger Available Evidence
Instruction 3-5	Depositions as Evidence
Instruction 3-8	Impeachment by Prior Inconsistent Statements
Instruction 3-9	Adopting Prior Inconsistent Statements
Instruction 3-10	Charts and Summaries
Instruction 4-4	Columbia's Claims, Cross-Claims, and Third-Party Complaints
Instruction 4-5	Consideration of the Evidence – Corporate Party's Agents and Employees
Instruction 6-2	Vicarious Liability – Basis
Instruction 11-12	Contract To Be Construed as a Whole
Instruction 11-13	Terms of a Contract – Evidence
Instruction 12-2	Extent of Damages – Proximate Cause
Instruction 12-3	Burden of Proof – Speculative Damages
Instruction 17-4	Interpretation/Defamatory Meaning
Instruction 17-5	Identification
Instruction 17-14	Punitive Damages
Instruction 20-7	Fraudulent Misrepresentation – Reliance on Actionability of Misrepresentation
Instruction 20-8	Fraud – Opinion
Instruction 20-10	Reliance Where Falsity Obvious – Duty To Investigate

2. The following instructions have not been agreed upon:

Standard Instructions Requested by NCRIC

None.

Standard Instructions Requested by Columbia

General Instructions

Instruction 2-8	Burden of Proof

Columbia's Claim 1 & NCRIC's Claim 1 (Breach of Contract)

Instruction 11-1	Contract – Defined
Instruction 11-2	Contract Formation – Elements
Instruction 11-3	Offer
Instruction 11-4	Acceptance
Instruction 11-5	Consideration
Instruction 11-6	Past Act Not Consideration
Instruction 11-7	Intent To Be Bound
Instruction 11-8	Certainty
Instruction 11-9	Express and Implied Contracts
Instruction 11-10	Oral Contracts
Instruction 11-14	Contract Interpretation – Course of Performance
Instruction 11-16	Condition Precedent
Instruction 11-17	Breach of Contract – Defined
Instruction 11-19	Excuse from Performance
Instruction 11-20	Prevention of a Condition
Instruction 11-22	Estoppel
Instruction 11-23	Modification
Instruction 11-24	Substantial Performance
Instruction 11-25	Waiver
Instruction 11-26	Novation
Instruction 11-27	Mistake
Instruction 11-28	Fraud in the Inducement
Instruction 11-29	Undue Influence
Instruction 11-30	Duress
Instruction 11-31	Breach of Contract – Damages
Instruction 11-32	Nominal Damages

Columbia's Claim 6 (Fraud)

Instruction 20-1	Fraudulent Misrepresentation – Elements of the Claim
Instruction 20-2	Fraudulent Misrepresentation – Elements Defined
Instruction 20-3	Fraudulent Misrepresentation – Burden of Proof
Instruction 20-4	Fraudulent Misrepresentation – Determination of Liability and Damages
Instruction 20-5	Fraudulent Misrepresentation – Misrepresentation Made Through Third Person
Instruction 20-6	Fraudulent Misrepresentation – Plaintiff's Reliance Upon Own Investigation
Instruction 20-9	Fraud – Predictions

16d-002359

Columbia's Claim 8 (Defamation or Libel)

Instruction 17-1	Defamation – Private Plaintiff/Non-Media Defendant
Instruction 17-6	Substantial Truth
Instruction 17-7	Consent
Instruction 17-13	Compensatory Damages

Damages

Instruction 12-1	Damages – Jury To Award
Instruction 12-7	Duty To Mitigate Damages
Instruction 16-1	Punitive Damages
Instruction 16-2	Punitive Damages Against a Corporation
Instruction 16-3	Computation of Punitive Damages Award

S. NON-STANDARD JURY INSTRUCTIONS

Attached at Tab S are proposed non-standard jury instructions, as follows:

1. NCRIC's Proposed Jury Instructions
2. Columbia's Objections to NCRIC's Proposed Jury Instructions
3. Columbia's Proposed Jury Instructions
4. NCRIC's Objections to Columbia's Proposed Jury Instructions

T. VERDICT FORM

Attached at Tab T are proposed verdict forms, as follows:

1. NCRIC's Proposed Verdict Form
2. Columbia's Objections to NCRIC's Proposed Verdict Form
3. Columbia's Proposed Verdict Form
4. NCRIC's Objections to Columbia's Proposed Verdict Form

16d-002360

U. SETTLEMENT

1. NCRIC Statement Regarding Settlement:

The parties engaged in extensive settlement negotiations, including the exchange of draft agreements, throughout the Fall of 2001. Although NCRIC believes it is owed the amounts due as calculated under the Retro Plan, the parties agreed in principle on an amount of $1.5 million for NCRIC to hold as collateral while reconciliation calculations under the Retro Plan continue over the next few years. Unfortunately, previous settlement negotiations have stalled due to Columbia's repeated attempts to push NCRIC down farther in priority behind a group of Columbia's secured and unsecured creditors. Columbia has also consistently imposed additional conditions into the draft settlement agreement which are unnecessarily prejudicial to NCRIC. At subsequent settlement meetings and court-sponsored mediation attempts in 2002, Columbia appears to have had essentially an unexplained $5 million swing in how the hospital values this case. Despite Columbia's drastic shift in position, NCRIC has again within the last month extended a proposal for resolution of this case by the parties. Columbia has not responded to that proposal.

2. Columbia Statement Regarding Settlement:

The parties have engaged in court-ordered mediation and private settlement discussions, neither of which yielded any meaningful progress. Columbia respectfully submits that settlement of this matter is not likely.

V. ESTIMATED LENGTH OF TRIAL

NCRIC estimates that the trial will run approximately 5-10 days.

Columbia estimates that the trial will run approximately 5 days.

16d-002361

The foregoing Joint Pretrial Statement, as revised at the pretrial conference in the presence of the parties and counsel, shall stand as the pretrial order in this case.

Dated: July 24, 2003

Respectfully submitted,

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6000

Attorneys for:
Plaintiff/Counter-Defendant NCRIC, Inc.

Mark C. Hansen, D.C. Bar No. 425930
Neil M. Gorsuch, D.C. Bar No. 456411
Eli C. Schulman, D.C. Bar No. 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc.

16d-002362

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference, July 31, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

JOINT PRETRIAL STATEMENT
CERTIFICATE OF SERVICE

We hereby certify that, on this 24th day of July 2003, a copy of the *Joint Pretrial Statement*, and all attachments thereto, was served upon opposing counsel by hand delivery.

We further certify that, on this 24th day of July 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Scott M. Badami by ECS with permission

Scott M. Badami

Eli C. Schulman

Eli C. Schulman

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- July 31, 2003**
Defendant.	

NCRIC'S OPPOSITION TO COLUMBIA'S MOTION TO EXCLUDE THE TESTIMONY OF NCRIC'S EXPERT WITNESSES

Pursuant to District of Columbia Superior Court Rule 16(e)(5), Plaintiff NCRIC, Inc. ("NCRIC") submits this Memorandum in Opposition to Defendant Columbia Hospital for Women Medical Center, Inc.'s ("Columbia") motion *in limine* to exclude testimony of NCRIC's expert witnesses ("Columbia's motion") in the above-captioned proceeding.

I. Introduction

This case was originally filed in October 2000. NCRIC timely filed its Rule 26(b)(4) statement with this Court on August 9, 2001 and then supplemented that statement on February 14, 2002. Those statements appropriately identified the expert witnesses NCRIC intended to call in this case and summarized the testimony each witness was expected to provide. Tellingly absent from Columbia's motion is the admission that from the time these witnesses were identified until the close of discovery, Columbia never served a deposition notice or otherwise sought further information from them. Indeed, also omitted from Columbia's motion is an admission that Columbia failed

to provide the conclusions of the hospital's alleged damages expert until less than 24 hours prior to his deposition during the last week of discovery and that the hospital withdrew the other experts it had previously identified. The only reason NCRIC had to supplement its Rule 26(b)(4) statement after the close of discovery is because Columbia failed to produce its damages witness until the last week of discovery. As the Court is aware, because of these and other deficiencies, NCRIC filed a motion to exclude Columbia's purported damages expert on June 5, 2003.

It rings hollow that Columbia – because it failed to depose any of NCRIC's experts and withdrew other purported experts it named – should now be able to exclude NCRIC's witnesses because the hospital claims it does not know enough about the testimony and qualifications of NCRIC's experts.

II. The NCRIC Experts Should Not Be Excluded

NCRIC's distinguished panel – Mary A. Woodford, W. McKay Henderson, Steve Moore, and Martin Cohen ("NCRIC's experts") – must be allowed to testify as expert witnesses in this trial. These witnesses have vital evidence which prove the fallacy of Columbia's claims that somehow NCRIC was the cause of the hospital's long-standing and well-documented bankruptcy and financial problems. As the facts make clear, NCRIC has complied with Rule 26(b)(4) with respect to all NCRIC experts, including supplementation for Ms. Woodford's initial Rule 26(b)(4) statement.

Ms. Woodford's testimony should also be admitted over the objections raised in Columbia's motion. First, her proposed testimony involves complicated accounting principles and is certainly beyond the ken of the average juror. Columbia has put forward a convoluted (and unsupported) damages theory stretching 20 years into the future. Ms. Woodford and Mr. Henderson will directly counter Columbia's claims.

Additionally, there is no merit to Columbia's allegation that Ms. Woodford intends to offer legal opinions and improper conclusions in her testimony. Ms. Woodford's testimony is highly probative on the issues and presents no unfair danger or prejudice. Finally, she is fully qualified to testify as a damages expert. Indeed, Columbia would know these important facts had the hospital elected to depose her (or NCRIC's other experts).

A. The NCRIC Experts Should Not Be Excluded Because NCRIC Complied with Rule 26(b)(4).

On the eve of trial, Columbia seeks to exclude the NCRIC experts for newly alleged deficiencies in NCRIC's Rule 26(b)(4) statements filed almost two years ago. As noted above, NCRIC's Rule 26(b)(4) statements were timely submitted on August 9, 2001 and supplemented on February 14, 2002. Columbia did not raise any objection to NCRIC's statements at the time of filing, nor though the entire period of discovery. The exclusion of evidence is a "severe sanction," which is not warranted by the circumstances of this case. *See Weiner v. Kneller*, 557 A.2d 1306, 1310 n.5 (D.C. 1989) (noting that, "[e]xclusion of evidence is a severe sanction"). Although a trial judge has the power to sanction litigants for a breach of the duty to supplement responses, the court has wide discretion, "including the discretion not to apply discovery sanctions at all." *Id.* at 1309; *see also Corley v. BP Oil Corp.*, 402 A.2d 1258, 1261 (D.C. 1979). The primary purpose of liberalized discovery rules is to "prevent unfair surprise and limit the issues to those articulated before trial," and the court should exercise its discretion with this goal in mind. *Weiner*, 557 A.2d at 1309; *Corley*, 402 A.2d at 1262. As it was Columbia which identified and then withdrew experts throughout discovery, and it was Columbia which was late in providing its expert materials to NCRIC, it is disingenuous

for Columbia – a party who never sought a single expert deposition – to now claim prejudice.

Additionally, the cases cited in Columbia's motion are distinguishable from the present situation, and do not support their contention that NCRIC's expert testimony should be excluded for failure to comply with Rule 26(b)(4).

To illustrate, in *Sowell v. Walker*, 755 A.2d 438 (D.C. 2000) the proffered expert did not conduct his analysis until after the close of discovery. *Id.* at 445. As a result, the judge ordered the plaintiff -- the party seeking to enter the testimony -- to furnish the defendant with "the substance of the facts and opinions to which [the expert was] . . . expected to testify and a summary of the grounds for each opinion." The plaintiff failed to comply with this order, and the expert testified to facts central to calculating damages without any manner of previous disclosure. *Id.* at 445-46. Because the first disclosure of this information came on the witness stand, in obvious disregard for a pre-trial disclosure order, the trial judge applied discovery sanctions under Rule 26 and excluded the expert testimony. *Id.* In *Sowell*, the D.C. Court of Appeals noted that "[t]he judge was obviously of the opinion that the problem was brought on by the plaintiff's unjustified failure to disclose information that ought to have been disclosed," and affirmed the trial judge's decision to strike the expert's testimony. *Id.* at 447. Thus, the plaintiff's failure to comply with an explicit pre-trial order was a critical component of the exclusion in *Sowell*, rather than a failure to supplement an initial 26(b)(4) statement.

Similarly, *Dada v. Children's National Medical Center*, 763 A.2d 1113 (D.C. 2000) is also distinguishable from the instant situation. In *Dada*, a medical malpractice liability case, the plaintiff failed to proffer adequate expert testimony about

the applicable standard of care, and the trial judge denied a motion to reopen discovery, which would have allowed the plaintiff an opportunity to develop sufficient expert testimony. *Id.* at 1114-15. On appeal, the case revolved around whether plaintiff's counsel could show excusable neglect in order to reopen discovery and gain admission of additional expert testimony. *Id.* at 1115-17. The D.C. Court of Appeals upheld the decision to deny the plaintiff's motion, after finding that plaintiff's counsel willfully failed to comply with the court's scheduling order, failed to file timely responses to discovery requests, filed her Rule 26(b)(4) statement late, ignored the substantive requirements of Rule 26(b)(4), and failed to appear at the hearing on her own motion for reconsideration. *Id.* at 1116. As in *Sowell*, the court's decision was motivated by a blatant disregard for discovery obligations, rather than a failure to supplement a Rule 26(b)(4) statement.

Columbia here is unable to stretch the facts of this case to support the drastic sanction of exclusion of witnesses. NCRIC filed timely Rule 26(b)(4) statements to which Columbia never objected, and NCRIC did not ignore any dictates from this Court regarding discovery of expert opinions. Columbia chose not to inquire further regarding NCRIC's disclosed experts, through written discovery or depositions, throughout the discovery period over a year in length. Columbia's eleventh-hour attempt to exclude the testimony of NCRIC's experts based on alleged prejudice must fail.

B. Ms. Woodford's Testimony Should Not Be Excluded.

In addition to its belated technical objections to NCRIC's Rule 26(b)(4) statements, Columbia seeks to exclude Ms. Woodford's testimony on the basis that she does not meet the standards for expert witnesses. Courts in this jurisdiction undertake a three-part inquiry to determine whether expert testimony is admissible:

1. The subject matter "must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average [juror];
2. the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear, that his opinion or inference will probably aid the trier in his search for truth," and;
3. expert testimony is inadmissible if "the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert."

Dyas v. United States, 376 A.2d 827, 832 (D.C. 1977) (citation omitted). Although Columbia contends otherwise, Ms. Woodford's proposed testimony easily passes these tests.

1. Ms. Woodford's Testimony Meets the Standard for Expert Witnesses

As her resume reveals, Ms. Woodford is a distinguished economist and her proposed testimony satisfies the standards for admissibility imposed by District of Columbia courts. Ms. Woodford's testimony regarding the unreliability of the methodologies employed by Columbia's Mr. Ben Ezra will help the jury understand complicated accounting principles that will be applied to calculate Columbia's alleged damages. Ms. Woodford's testimony about the proper application of these methodologies addresses a subject that is unquestionably "beyond the ken of the average [juror]." *Dyas*, 376 A.2d at 832. It cannot be credibly argued that the average juror understands the degree of diligence required to accurately apply complicated accounting methodology in order to arrive at a reasonably certain figure.

Mr. Ben Ezra's proposed testimony purports to calculate the damages Columbia claims that it suffered as a result of NCRIC's conduct. In appropriate cases and under certain controlled conditions, such a damage model can be advanced by

16d-002369

experts.[1] *See, e.g., Hughes v. Pender*, 391 A.2d 259, 262 (D.C. 1978) (noting that "the task of projecting a person's lost earnings lends itself to clarification by expert testimony because it involves the use of statistical techniques and requires a broad knowledge of economics"); *Schleier v. Kaiser Found. Health Plan of the Mid-Atlantic States, Inc.*, 876 F.2d 174, 179-80 (D.C. Cir. 1989) (stating that jury needed expert guidance in order to discount lost future wages to their present value). With this standard in mind, Columbia's contention that Ms. Woodford's proposed testimony is within the understanding of the average juror makes no sense. Her proposed testimony about Mr. Ben Ezra's questionable underlying data sources, faulty historical trend analysis, imagined work life expectancy inputs, and lack of any independent inquiry will provide the jury with critical information necessary to evaluating the accuracy of Columbia's damage calculations. *See* Declaration of Mary A. Woodford ¶ 7-26 (hereinafter "Woodford Decl.") attached as Exhibit 39 to NCRIC's motion for Summary Judgment (and as Exhibit A here). It is unreasonable to suggest that the jury should undertake this analysis without the type of guidance that Ms. Woodford's testimony will provide.

The decisions relied upon by Columbia all exclude expert testimony of a fundamentally different nature than that offered by Ms. Woodford and are of no assistance to Columbia here. There can be little doubt that courts properly exclude expert testimony about the reliability of eyewitnesses, *Green v. United States*, 718 A.2d 1042, 1053 (D.C. 1998), the nature of obscenity, *Fennekohl v. United States*, 354 A.2d 238, 240 (D.C. 1976), loading procedures for tractor-trailers, *Darby v. System Transport, Inc.*, No.

[1] NCRIC's motion to exclude Mr. Ben Ezra's testimony does not quarrel with the admissibility of expert testimony based on a discounted cash flow analysis in a particular case and which is supported by appropriate factual evidence. NCRIC's motion, however, contends that his testimony is inherently unreliable because it is based on unreasonable on tenuous assumptions, and therefore fails to satisfy the basic threshold of admissibility for expert testimony.

16d-002370

99-CV-0075E(Sr), 2001 U.S. Dist. LEXIS 16541, at *17 (W.D.N.Y. Oct. 3, 2001), or the effect of distractions on drivers, *Roback v. V.I.P. Transport, Inc.*, No. 91 C 5902, 1994 U.S. Dist. LEXIS 14054, at *10 (N.D. Ill. Oct. 4, 1994). These subjects are all within the common experience of most laymen, and certainly not "beyond the ken" of the average juror. One need not gain special skills, training, or experience to understand, for example, that certain expressions are obscene or that eyewitnesses may not be reliable. In contrast, considerable education and experience are necessary to master the proper application of accounting methodologies. It is difficult to imagine a basis for contending that accounting principles are easily understood as a byproduct of normal life experiences and common sense. Columbia has not advanced any credible reason for thinking otherwise.

Next, Columbia contends that Ms. Woodford's testimony should be excluded because she "points to no available data in the record which she believes is more reasonable or accurate" than the information relied upon by Mr. Ben Ezra. This argument, however, overlooks the simple fact that Columbia has the burden of proving damages caused by NCRIC's alleged wrongdoing. *See Nader v. de Toledano*, 408 A.2d 31, 48 (D.C. 1979) (noting that, "[t]he general rule is that a party asserting or pleading an issue has the burden of proof"). It is not incumbent upon NCRIC, nor Ms. Woodford, to suggest alternative methodologies or sources of data for calculating Columbia's damages, particularly since NCRIC does not admit that Columbia even suffered the alleged injuries that gave rise to the damages claimed here.[2] Because the purpose of Ms. Woodford's

[2] It is worth noting, however, that Ms. Woodford does give examples of more reasonable and accurate data, including Bureau of Labor Statistics information that is typically used to calculate work life expectancy. *See* Woodford Decl. ¶ 18-19.

16d-002371

proposed expert testimony is to rebut the substantive accuracy of Mr. Ben Ezra's damage calculations, Columbia's argument on this point is unfounded.

Recognizing the weakness of its argument, Columbia also argues that Ms. Woodford's proposed testimony is "nothing more than cross-examination going to the weight the jury should give to Mr. Ben Ezra's testimony." *See* Columbia's Motion at 6. While cross-examination is certainly important, this Court has the responsibility to keep out unreliable and unsupported evidence. In the event any of Mr. Ben Ezra's conclusions survive NCRIC's motion to exclude, Ms. Woodford's testimony is essential to assist the jury to understand the implications of his methodological errors, and also to demonstrate that his conclusions are unreasonable.

2. Ms. Woodford's Testimony Does Not Involve Legal Conclusions

Columbia argues that Ms. Woodford's testimony should be excluded because her statement that Mr. Ben Ezra "has not relied upon expected work life studies typically accepted by courts" constitutes impermissible testimony of legal conclusions.[3] Columbia's argument, however, fails to consider the context of the dialogue upon which it relies. Ms. Woodford's proposed testimony does not purport to explain the evidentiary requirements of courts with respect to work life expectancy data. Rather, she will testify that experts calculating damages typically rely on expected work life data from the Bureau of Labor Statistics. *See* Woodford Decl. ¶ 18-19. Because Mr. Ben Ezra's calculations are not based on any empirical data about work life expectancy, this

[3] Although Ms. Woodford may not testify to legal conclusions, she is nevertheless correct that courts typically accept empirical data to support work life expectancy figures. *See, e.g., District of Columbia v. Barriteau*, 399 A.2d 563, 565 (D.C. 1979) (describing expert witness' use of "Department of Labor Statistics" [sic] data to determine plaintiff's work life expectancy in lost earning damage calculation).

testimony is crucial for the jury to evaluate the substantive accuracy of his damage estimates.[4] Columbia's argument on this point is semantic and out of context.

3. Ms. Woodford's Testimony is Probative

In the alternative, Columbia also argues that Ms. Woodford's testimony should be excluded because of its allegedly prejudicial effect. However, when balanced against the highly probative nature of her expert opinion, the danger of unfair prejudice from Ms. Woodford's proposed testimony is non-existent.

Relevant evidence may only be excluded on this ground if its probative value is *substantially* outweighed by the danger of unfair prejudice. *Johnson v. United States*, 683 A.2d 1087, 1099 (D.C. 1996) (en banc). This is a liberal standard, which allows "the admission of as much relevant evidence as reasonably possible." *Id.* Otherwise relevant and probative evidence "should not be excluded because of 'crabbed notions of relevance or excessive mistrust of juries.'" *Allen v. United States*, 603 A.2d 1219, 1224 (D.C. 1992) (en banc) (citation omitted).

Ms. Woodford's testimony is relevant and probative of several material issues in dispute in this case. Most prominently, it sheds light on the substantive inaccuracy of Columbia's purported damage calculations, and will assist the jury to determine the extent of Columbia's alleged injuries. Her proposed testimony about the methodological safeguards required to compute damages to a reasonable certainty is important. Columbia's argument that Ms. Woodford's testimony is "highly prejudicial," because it would allow "attorney arguments and legal opinions" to be "delivered from the

[4] Mr. Ben Ezra based his analysis solely on his unsupported assumption that the doctors would have worked at Columbia Hospital for either twenty years or until age 65.

stand by a witness who has donned the mantle of an 'expert'" is without merit. *See* Columbia's Motion at 7-8.

First, as discussed above, Ms. Woodford's testimony is not related to any legal conclusion or opinion. Second, there is no significant danger of prejudice from the alleged overlap between her testimony and the legal arguments that will be presented to the jury by counsel for NCRIC. Ms. Woodford will testify about the proper application of accounting methodologies, and the accuracy of damage calculations produced by Columbia, through its proposed expert. Ms. Woodford's testimony is highly probative of disputed, material issues in this case, and its admission will not unfairly prejudice the jury against Columbia. Because its probative value is not substantially outweighed by the danger of unfair prejudice, her proposed testimony should be admitted.

4. Ms. Woodford is an Eminently Qualified Expert Witness

Because of her extensive education and financial experience, Ms. Woodford is eminently qualified to testify about proper methods for calculating damages. Columbia, however, objects to Ms. Woodford's proposed testimony, alleging that she lacks sufficient skills or knowledge to testify as an expert on damages. In order to testify as an expert, a "'witness must have sufficient skill, knowledge or experience in that field or calling to make it appear that [her] opinion or inference will probably aid the trier in his search for truth.'" *Dyas*, 376 A.2d at 832 (citation omitted) . To qualify as an expert, a witness must be specially qualified to assist the trier of fact in answering the particular questions presented in the case. *See Johnson v. District of Columbia*, 728 A.2d 70, 74 (D.C. 1999) (stating that, when evaluating the competency of an expert, "a judge is obliged to consider the qualifications of the witness in relation to the questions

16d-002374

presented"). An expert should only be excluded as unqualified, therefore, when the witness lacks the relevant knowledge, skills, or experience necessary to offer an opinion that will assist the jury.

Ms. Woodford holds an A.B. in Economics from Sweet Briar College, and an M.B.A. from the Colgate Darden Graduate School of Business Administration at the University of Virginia. She has worked in the financial industry since 1979, most recently as Director of Financial Advisory Services for PriceWaterhouseCoopers in Washington, D.C. and now as a Director at Cornerstone Research. Ms. Woodford is the author of numerous publications, including articles about calculating damages and prejudgment interest awards.

Ms. Woodford's special knowledge, which she has gained from her impressive education and experiences, will assist the jury's evaluation of the substantive accuracy of Columbia's damage estimates. She holds an advanced degree in business administration, and has worked in the financial industry for over twenty years. Other courts have found her qualifications acceptable, and have allowed her to testify as an expert on damage calculations on several occasions. For all of these reasons, there can be little doubt that Ms. Woodford is qualified to testify as an expert witness in this case.

III. Conclusion

For the reasons stated above Columbia's motion to exclude expert testimony from Ms. Woodford and Messrs. Henderson, Moore and Cohen must be denied.

16d-002375

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Columbia's Motion to Exclude NCRIC's Expert Witnesses was served this 24 day of July 2003, via hand delivery to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

16d-002376

EXHIBIT A

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

NCRIC, INC.,	:	
Plaintiff	:	
	:	CA No. 00-0007308
v.	:	Calendar # 8
	:	Judge Davis
	:	
COLUMBIA HOSPITAL FOR WOMEN	:	
MEDICAL CENTER, INC.,	:	
Defendant	:	
	:	

DECLARATION OF MARY A. WOODFORD

I, Mary Woodford, have been asked by counsel for NCRIC, Inc. ("NCRIC") to assess the reasonableness of Mr. Peter Ben Ezra's damage calculations in relation to matter of NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc. ("CHW").

1) I am a Director in PricewaterhouseCoopers' ("PwC") Financial Advisory Services practice. My curriculum vitae is included as Exhibit 1.

2) A list of the documents I and other PwC employees under my supervision have reviewed from the discovery on this case is provided in Exhibit 2 to this statement. In addition, we held discussions with certain other PwC industry experts about the reasonableness of Mr. Ben Ezra's damages calculations.

16d-002378

3) Mr. Peter Ben Ezra produced a report dated January 22, 2002 and was deposed on January 24, 2002. Mr. Ben Ezra's report contains two alternative damages analyses that purport to measure the economic loss suffered by CHW "as a result of the NCRIC group of Doctors leaving or cutting back on patients referred to [CHW]."

4) Both models follow a similar methodology. Generally, they project into the future a "lost cash flow" based on the difference between fiscal year 2000 net charges and fiscal year 2001 net charges for an assumed number of doctors that allegedly left CHW due to NCRIC's conduct.

5) The first model assumes that the "lost cash flow" will continue for 20 years while the second model assumes that the "lost cash flow" will continue for 3 to 30 years depending on doctor age. In both models, Mr. Ben Ezra makes assumptions in order to calculate the damages.

6) It is my opinion that Mr. Ben Ezra has not made a damage calculation to a reasonable degree of economic certainty due to his lack of independent inquiry and lack of reasonable and supportable bases for his assumptions which include, among others:

-Which doctors left or cut back on patients referred to CHW

-Long term projections based on one year of data

-That data provided to him by CHW were accurate

-The length of time "lost cash flows" would accrue

-The marginal cost of providing services of 30%

-Lack of independent inquiry

I address each in turn (please See Exhibit 3 concurrently with this section).

Which doctors left or cut back on patients referred to CHW

7) In his damages calculations, Mr. Ben Ezra makes an assumption that a certain set of doctors "left" or cut back on patients referred to CHW. His assumption is flawed in four ways.

8) First, Mr. Ben Ezra chooses this set of doctors based on a list of doctors created by CHW counsel and he relies on this list despite the fact that he is not sure of its accuracy. Generally, he relied on the list as presented with no procedures to verify its reasonableness or accuracy.

9) Second, Mr. Ben Ezra makes no independent inquiry as to why any doctors "left," making instead the implicit assumption that they left due to the situation with NCRIC. In his role as Chairman of the Board of CHW he no doubt could have asked any or all doctors why they left. He did not. It is interesting to note that if he learned that a doctor had not "left" CHW due to NCRIC, he could not reasonably include damages attributed to that doctor's departure in his damage analysis. His analysis fails to consider this mitigating factor.

10) Third, Mr. Ben Ezra does not consider the mitigating factor that doctors may have left CHW for reasons other than one related to NCRIC. For example, I understand most if not all of the departed doctors joined hospitals located in the District of Columbia (i.e., Sibley or George Washington hospitals). It is possible that either hospital may have been competing for CHW doctors. Mr. Ben Ezra admitted in his deposition that CHW had and is "having problems" financially. Doctors may have been concerned about the long-term viability of CHW. However, Mr. Ben Ezra's "but-for" scenario assumes that all the "NCRIC doctors" would stay at CHW for the long term (20 years or retirement). This is an unsupported and unreasonable assumption given all the other local possibilities available to the "NCRIC doctors" or other reasons for their respective departures from CHW.

11) Finally, Mr. Ben Ezra removes doctors on this list from his analysis when they are "not dilutive." For example, if a doctor on the list created net charges in FY 2001 greater than those in FY 2000, there

should be a net benefit (under Mr. Ben Ezra's theory). However, as in this case, when inclusion of a doctor on the list in his damages analysis would offset a loss (e.g. making the damages lower), he does not include that doctor in his damage analysis. He therefore fails to consider this mitigating factor in his analysis.

Long-term projections based on one year of data

12) Mr. Ben Ezra bases his "lost cash flow" for doctors on the difference between the doctors' net charges in FY 2000 and FY 2001. His theory is that the reduction in charges from FY 2000 (before the problems attributed to NCRIC by the plaintiff) to FY 2001 (after) represents losses due to NCRIC. These losses are then assumed to last from 3 to 30 years.

13) This assumption is inherently speculative in that it only relies on one data point to make a long-term projection. Typically, a reasonable projection would be based upon or would include a trend analysis of relevant data. One data point does not equal a trend. If it is the case that either FY 2000 or FY 2001 are extraordinary years -- with either higher or lower net charges due to factors unrelated to NCRIC -- then the damages calculations are fundamentally flawed.

14) Despite this possibility, Mr. Ben Ezra apparently made no inquiry into whether FY 2000 or FY 2001 were representative years or extraordinary years. For example, he did not review CHW financial statements and he did not feel that comparable data from the two years prior to FY 2000-2001 were relevant because "they didn't look right." This apparent lack of inquiry is all the more troubling as his role of Chairman of the Board of CHW clearly would have given him access to the best/most relevant data, had he chosen to examine such.

That data provided to him by CHW were accurate

15) Mr. Ben Ezra relies on certain documents produced for him by CHW. Most specifically, he relies upon reports that purport to include line items for "Total Charges," "Total Adjustments," and "Total Payments." These documents form the basis for his estimate of net charges associated with the doctors that he assumes "left" CHW.

16) However, Mr. Ben Ezra could neither describe what constituted the line items on the documents nor did he verify (in his words 'audit') that the line items were correct. While Mr. Ben Ezra claims that his model represents "lost cash flows," he does not know the contents of the line items that comprise the bases for his assumptions, which may not actually be cash flows. He presumes, without independent investigation, that "total payments" represents cash collected.

The length of time "lost cash flows" would accrue

17) Mr. Ben Ezra's damage calculation makes a projection far into the future. His model is the difference in "cash flows" between an assumed "actual world" where all the doctors he has deemed "left" CHW are gone forever and a "but-for" world where all of the doctor he has deemed "left" CHW never would have left.

18) This projection methodology is flawed for a variety of reasons including: (1) Ben Ezra has not relied upon expected work life studies typically accepted by courts, (2) in the "but-for" world he does not give any consideration to the idea that these doctors may have "left" CHW for a reason other than one related to NCRIC, and (3) in the "actual" world he does not give any consideration that these doctors may in the future return to NCRIC or be replaced by other doctors.

19) First, expected work life information accepted by courts comes from the Bureau of Labor Statistics and is stratified by race, age, gender, and education. Further, work life studies by occupation have

been performed and also used in this type of calculation. Mr. Ben Ezra has done no such study and does not rely upon any existing study to come to his determinations that all so-called "NCRIC Doctors" would have either worked at CHW for 20 year or until age 65.

20) Second, Mr. Ben Ezra does not consider that doctors may leave CHW in the future for a reason other than one related to NCRIC. For example, either Sibley or GW hospital may recruit CHW doctors. Patients may demand to have their birth at Sibley. Doctors may be interested in the brand new medical office being built at GW.

21) Further, any of these doctors could relocate out of the DC area, die, scale back their practices, go on maternity leave, retire early, etc. Mr. Ben Ezra does not consider these possibilities. Any of these decisions or changes could reduce the damages calculations significantly. Mr. Ben Ezra neither checks data "available to medical staff" that would allow him to quantify normal turnover for CHW doctors nor does he talk to the doctors about their motivations. In Mr. Ben Ezra's "but-for" scenario, the "NCRIC doctors" are assumed to stay at CHW for the long term (20 years or retirement). This is an unsubstantiated and unreliable assumption given these factors that typically can impact a professional's work life.

22) Finally, Ben Ezra takes no account of the fact that in the "actual" world these "NCRIC doctors" may in the future return to NCRIC or be replaced by other doctors at CHW. He fails to consider these mitigating factors in his analysis.

The marginal cost of providing services of 30%

23) Mr. Ben Ezra's damages calculations assume that the marginal cost of providing services is 30%. This assumption drives the damages calculations as Mr. Ben Ezra determines the amount of damages by deducting the "marginal cost" from the estimated doctor revenues.

16d-002383

24) The 30% assumed by Mr. Ben Ezra is wholly speculative. Not only did Mr. Ben Ezra take the marginal cost out of an accounting text book example (which has no relationship to CHW) but he also generally knows how to do a marginal cost analysis and chooses not to do one (ostensibly to "be conservative"). He does not review actual cost accounting information of CHW that would clearly be available to him in his role as Chairman of the Board of CHW. He neither reviews nor relies on income statement or other financial accounting documents produced in the case. In short, Mr. Ben Ezra has provided no basis for a 30% marginal cost amount.

The lack of independent inquiry

25) Finally, Mr. Ben Ezra generally has not made an independent inquiry into the bases for his damages analyses. In addition to the examples mentioned above, he has not reviewed any depositions transcripts, CHW financial statements, or data related to actual cash collections and patient mix of CHW and of CHW doctors. Again, he chooses to ignore actual CHW information that would clearly be available to him in his role as Chairman of the Board of CHW. His analysis is then little more than an exercise in adding up numbers.

26) To conclude, due to his use of unsupported assumptions, it is my opinion that Mr. Ben Ezra has not made damages calculations "to a reasonable degree of economic certainty." His opinions are based neither on an independent investigation of the facts nor a review of evidence provided to him by counsel. Given these facts, the conclusions reached by Mr. Ben Ezra are baseless and speculative.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 6, 2002.

_____

Mary A. Woodford

24) The 30% assumed by Mr. Ben Ezra is wholly speculative. Not only did Mr. Ben Ezra take the marginal cost data of an accounting text book example (which has no relationship to CHW) but he also generally knows how to do a marginal cost analysis and chooses not to do one (ostensibly to "be conservative"). He does not review actual cost accounting information of CHW that would clearly be available to him in his role as Chairman of the Board of CHW. He neither reviews nor relies on income statement or other financial accounting documents produced in the case. In short, Mr. Ben Ezra has provided no basis for a 30% marginal cost amount.

The lack of independent inquiry

25) Finally, Mr. Ben Ezra generally has not made an independent inquiry into the bases for his damages analyses. In addition to the examples mentioned above, he has not reviewed any depositions transcripts, CHW financial statements, or data related to actual cash collections and patient mix of CHW and of CHW doctors. Again, he chooses to ignore actual CHW information that would clearly be available to him in his role as Chairman of the Board of CHW. His analysis is then little more than an exercise in adding up numbers.

26) To conclude, due to his use of unsupported assumptions, it is my opinion that Mr. Ben Ezra has not made damages calculations "to a reasonable degree of economic certainty." His opinions are based neither on an independent investigation of the facts nor a review of evidence provided to him by counsel. Given these facts, the conclusions reached by Mr. Ben Ezra are baseless and speculative.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 6, 2002.

Mary A. Woodford

MARY A. WOODFORD
PricewaterhouseCoopers LLP
1900 K. Street, N.W., Suite 900
Washington, D.C. 20006
(202) 822 4248

PROFESSIONAL EXPERIENCE

PRICEWATERHOUSECOOPERS LLP, Washington, DC (1998 to present); Financial Advisory Services, Director

COOPERS & LYBRAND L.L.P., Philadelphia, PA (1993-1998); Financial Advisory Services, Director (1997-1998); Manager/Team Leader (1994-1997); Manager (1993-94)

PRICE WATERHOUSE, Philadelphia, PA (1989-93); Litigation Services; Senior Manager (promotion announced April 1993); Manager (1990-93); Senior Consultant (1989-90)

FMC CORPORATION, Chicago, IL (1979-89)

- Foret SA, Barcelona, Spain (Subsidiary of FMC Corporation) (1987-89) **Financial Manager**
- Peroxygen Chemicals Division, Philadelphia, PA (1984-87) **Financial Analyst**
- Special Products Group, Philadelphia, PA (1982-84) **Planning Manager**
- Corporate Development, Chicago, IL (1979-82) **Senior Acquisitions Analyst**

CONTINENTAL ILLINOIS BANK, Chicago, IL (1978-79)
Multinational Banking Associate

EDUCATION

MBA/General Management, Colgate Darden Graduate School of Business Administration, University of Virginia, Charlottesville, VA (1976-78); Recipient of the William Michael Shermet Award (1977)

AB/Economics, Summa Cum Laude, Sweet Briar College, Virginia (1972-76). Ranked first in graduating class. Phi Beta Kappa. Junior year at University of Southhampton, England.

PUBLICATIONS & PRESENTATIONS

"Financial Aspects of License Negotiations, LESSONS FROM GEORGIA PACIFIC", Les Nouvelles, September 1995.

"The Prejudgment Interest Award in Alpex Computer Corp. v. Nintendo Co. Ltd.", Pittsburgh Legal Journal, April 29, 1996; Les Nouvelles, December 1997.

Panelist at Stakeholder Session held by USPTO, October 1998, to discuss the role of intellectual property and of the USPTO in the US economy.

Presentation on the Use of Financial Statements for Lawyers, American Corporate Counsel Association, November 1998.

Instructor, PricewaterhouseCoopers Internal Training. Advanced Intellectual Property Course, 1998 and 2000; Introductory Intellectual Property Course, April 1999.

Review of Chapter on "Damages Issues of Trademark, Trade Secret, False Advertising and Copyright Cases," Litigation Services Handbook, 3rd Edition, Wiley 2001.

Calculating Monetary Relief: Damages and Profits, ALI-ABA Litigating Trademark, Trade Dress, and Unfair Competition Cases, December 2000.

Patent Damages, LEI Intellectual Property Law Conference, January 2001.

Did Grain Processing Murder Panduit in the Conservatory with a Candlestick? Or, Are Rumors of Panduit's Demise Exaggerated?, ABA IP Section Newsletter, Winter 2001.

TESTIMONY

U.S. v. George Brown
United States District Court Eastern District of Pennsylvania
Defendant; bank fraud. (Trial)

Paper Corporation of America v. Scholler Technical Paper
United States District Court Southern District of New York
Plaintiff; breach of contract; lost profits. (Deposition, Trial)

NET v. University of Iowa
State of Iowa
Plaintiff; antitrust; cost accounting in project management system. (Deposition, Trial)

Devineni, M.D. and Wilcox, M.D. v. Wyoming Valley Health Care System, Inc. et al.
Court of Common Pleas, Luzerne County, Pennsylvania
Defendant; breach of contract cardiac surgery practice; lost profits. (Trial)

Bumper Specialties, Inc. v. Essex Specialties. Inc. et al.
United States Bankruptcy Court, Camden, New Jersey
Plaintiff; breach of contract; lost profits. (Deposition)

Lithuanian Commerce Corporation Ltd., et al v. Sara Lee Hosiery, et al.
United States District Court of New Jersey
Defendant and Counter-claimant; breach of contract - lost profits. (Deposition, Pre-trial Hearing)

Fiskars, Inc., et al. v. Hunt Manufacturing Company
United States District Court Western District of Wisconsin
Defendant; patent infringement; lost profits, reasonable royalty. (Trial)

Unicomp, Inc. and Dexter Shoe Company v. Elementis Pigments, Inc. and Walsh & Associates, Inc.
United States District Court of Maine
Defendant, breach of warranty; costs, lost profits. (Deposition)

William J. Stoddard et al. v. Advanta Corp. and Advanta National Bank
United States District Court of Delaware
Defendant, breach of contract, fraud; additional interest charges.
(Deposition)

StarSight Telecast, Inc. v. General Instrument
American Arbitration Association (San Francisco)
Defendant, breach of contract, theft of trade secrets
(Arbitration hearing)

Agnès Troublé v. The Wet Seal, Inc.
United States District Court Southern District of New York
Defendant, Lanham Act
(Deposition)

IDX Systems v. Epic Systems et al.
United States District Court Western District of Wisconsin
Plaintiff, Misappropriation of trade secrets, tortious interference of competitive advantage
(Deposition)

IDX Systems v. St. John Health System
United States District Court of Michigan
Plaintiff, Breach of Contract
(Deposition)

Documents Reviewed

Report of Mr. Peter Ben Ezra Dated 01/22/02
Deposition of Mr. Peter Ben Ezra Dated 01/24/02

Electronic Files
3 data CDs, unreadable (no bates numbers)

Bates Numbered documents

From			
CHW	008179	to CHW	008206
CHWMC	001507	to CHWMC	001523
CHWMC	001557	to CHWMC	001572
CHWMC	001596	to CHWMC	001632
CHWMC	001643	to CHWMC	001670
CHWMC	001765	to CHWMC	001808
CHWMC	001871	to CHWMC	002111
CHWMC	002406	to CHWMC	002432
CHWMC	002452	to CHWMC	002498
CHWMC	005021	to CHWMC	005379
CHWMC	005380	to CHWMC	005475
CHWMC	005401	to CHWMC	005448
CHWMC	005476	to CHWMC	005599
CHWMC	005640	to CHWMC	005640
CHWMC	005641	to CHWMC	005888
CHWMC	005889	to CHWMC	005892
CHWMC	005893	to CHWMC	006101
CHWMC	006102	to CHWMC	006102
CHWMC	006221	to CHWMC	007033
CHWMC	007046	to CHWMC	007754
CHWMC	007872	to CHWMC	007940

16d-002389

Which doctors left or cut back on patients referred to CHW

A. No. The presumption is they have all left because of the NCRIC dispute.
Q. And when you say that presumption, what facts do you -- what facts underlie that presumption?
A. Basically, that is a list of doctors that was furnished to me by counsel.
Q. So you're not making any independent determination as to why the doctors left?
A. That's correct.
Q. I don't mean this to come out wrong, is your answer to my question because counsel told you these are the people who left because of the NCRIC dispute?
A. Basically, that's the list that was furnished to me, yes.
Q. Have you done any analysis with respect to why any of these specific doctors, in your opinion, left Columbia?
A. Independent analysis, no.
Q. Have you reviewed any analysis or any study that might have indicated why these doctors left Columbia?
A. No, I have not.
MR. LEAHY: Are you asking for an expert opinion with regard to why these doctors left Columbia?
MR. BADAMI: I'm asking for his opinion why they left Columbia.
MR. LEAHY: I object to that.
Go ahead.
THE WITNESS: I don't have any independent knowledge of why they left Columbia. My presumption is if they were on the list and indeed it went down it is because of the NCRIC dispute.
BY MR. BADAMI:
Q. Did you interview any of these doctors to find out why they would have left Columbia?
A. No, I did not.

(Pg. 104-106, Ben Ezra Deposition)

Q. So is this list, then, in your opinion inaccurate?
A. It's a list of doctors' names and numbers. I don't know whether it's accurate or not. I didn't audit it. I relied on this list as represented by counsel. This represents the population or pool of doctors that may have left or cut back at Columbia.

(Pg. 95-97, Ben Ezra Deposition)

Which doctors left or cut back on patients referred to CHW (Cont.)

Q. You just testified to that you have excluded a number of doctors from your report?
A. Yes.
Q. Tell me why you did that.
A. When I did the analysis, for example, I think it was Dr. 44039, there was no data. There was nothing there.
Q. How about Dr. Becker, No. 19?
A. Dr. Becker, as I recall, he was either close to retirement or had retired. Basically, to use my phrase, was not dilutive in nature; in other words, was not significant or actually may have increased.
Q. So he might have been improperly put on this list?
A. That's correct.
Q. How about Dr. Berryman, No. 20?
A. The same.
Q. You say, "The same." Could you -- either he didn't have enough admissions or it could have increased?
A. Yes.
Q. Dr. Birnkrant, No. 222?
A. The same.
Q. Is it the same for all the doctors?
A. Yes. Basically, if they are not dilutive in nature I did not include them.
Q. When you say dilutive in nature, did you make a determination it was dilutive?
A. Yes.
Q. What was the criteria whether it was dilutive?
A. When I did the analysis, if the number of cases had gone up or even the money had gone up, then it would not be dilutive in nature.
Q. So if the number of cases or the dollars went down a little they were included on your list?
A. That's correct.

(Pg. 102-104, Ben Ezra Deposition)

16d-002391

Long term projections based on one year of data

Q. You did this analysis, I think, for -- how many years did you do this analysis for?
A. The analysis is based on the difference between two years. I did look at the prior year data that was furnished to me. I elected not to use it. I was not comfortable in using that data.
Q. Why?
A. I don't think it was complete.
Q. And how did you know it wasn't complete?
A. It didn't look right.
Q. I'm sorry, I don't mean, again, to argue with you but what does, "It didn't look right," mean?
A. The number of records and the totals I couldn't rely on. I mean, I'm not going to use data in my analysis that I don't feel is correct.
Q. What year was this data?
A. It was data acquired two years from here.
Q. I guess you were uncomfortable with that data?
A. Yes.
(Pg 161, Ben Ezra Deposition)

Q. But you have no data with respect to Columbia or any other hospital with respect to what their actual collections are?
A. Well, the actual collections are going to be in the financial statements and the statement of cash flow.
Q. Did you review those?
A. For this, no. I did not.
Q. Did you review it for any other hospital?
A. No, I did not.
(Pg. 73, Ben Ezra Deposition)

Q. Do you know the amount of losses suffered by Columbia? We can go year by year, if you like.
A. Those would be in the audited and unaudited financial reports.
Q. Did you review those for this case?
A. No, I did not.
(Pg. 62- 63, Ben Ezra Deposition)

The data provided to him by CHW were accurate

A. Okay, basically, what I did was I took total collection, less this adjustment number, which is provided to me by the hospital.
Q. But you don't know what made up that adjustment number?
A. I can presume what makes it up.
Q. Please tell me what you presume for purposes of your report.
A. That these are whatever adjustments that hospital management and staff decided to put into that data field.
(Pg. 69, Ben Ezra Deposition)

Q. You believe, or do you know?
A. I don't know for a fact. It's whatever the write-downs were.
Q. You're not sure what encompassed all of those write-downs?
A. No, I don't know, nor did I audit that.
Q. You took what Columbia gave you and ran with it?
A. That's exactly it.
(Pg. 60, Ben Ezra Deposition)

Q. But you have no data with respect to Columbia or any other hospital with respect to what their actual collections are?
A. Well, the actual collections are going to be in the financial statements and the statement of cash flow.
Q. Did you review those?
A. For this, no, I did not.
Q. Did you review it for any other hospital?
A. No, I did not.
(Pg. 73, Ben Ezra Deposition)

The length of time "lost cash flows" would accrue

Q. In doing your analysis, Mr. Ben Ezra, did you take into account that some of these doctors might switch back to Columbia Hospital in the future?
A. It's my hope that they will.
Q. Is that included anywhere in your report?
A. No, it is not.
Q. So if a doctor made the decision two years from now to go back to Columbia your numbers would be in error?
A. That's correct. Without saying error, if you would tell me which doctors are going to return, I could run the numbers accordingly and determine the net economic lost.
(Pg140-141, Ben Ezra Deposition)

Q. I appreciate that. Have you done any studies or analysis with respect to what the average retirement date of a physician in the District of Columbia is?
A. No, I have not.
Q. Do you know what that number would be?
A. No, I do not.
Q. Sixty-five is your presumption?
A. That is a presumption, yes.
(Pg. 154, Ben Ezra Deposition)

Q. What I'm asking you, is that contained in your analysis, if the group was recruited to go to Sibley or GW?
A. I make the assumption that they will continue. The doctors that I have met have been at Columbia for, in many cases, several decades, maybe 30 or 40 years. It seems to me from my perception a degree of entropy that a doctor at Columbia is going to stay at Columbia unless they are hit by an outside force hard enough to get off of that track.
Q. What are those outside forces?
A. In this case it may be -- it could be NCRIC.
Q. Do you have any facts to back that up?
A. No. I have a presumption.
Q. But no facts?
A. No facts.
(Pg 174-175, Ben Ezra Deposition)

Q. I've tried to come up with some things that I thought might have been the outside forces?
A. We're talking entropy, like in the laws of physics, that basically a doctor at Columbia, I will presume, will stay at Columbia, and at least it is my experience and observation that that is true.
Q. Do you have any empirical data to back that up?
A. It would be available at the medical staff. They would have a number of years that the physician has been at Columbia.
Q. You didn't review any of that for the purposes of your report, did you?
A. No.
(Pg177-178, Ben Ezra Deposition)

16d-002394

The marginal cost of providing services of 30%

Q. Mr. Ben Ezra, I'm showing you what has been marked as Ben Ezra Exhibit No. 12. I'm wondering if this is the page in the textbook you were referring to?
A. Yes, it is, sir.
Q. I notice that phrase has been circled?
A. Yes.
Q. Can you tell me, did you do that circling?
A. Yes, I did.
Q. What did you use this textbook to determine?
A. I used the textbook, because I was looking for a number for marginal cost, the best I could find was this example problem in the textbook that I use for the management accounting course at the undergraduate level.
(Pg. 180, Ben Ezra Deposition)

Q. Do you know if that 30 percent figure is real?
A. I think it's a good estimate of the variable cost of the hospital. Notice that most of the costs, the other 70 percent, if they were at break even, would be fixed costs, so in terms of reasonableness, I think we're pretty close.
In the case of Columbia I think it's too high. That's, again, why I erred, but if I erred it was in favor of NCRIC.
Q. You didn't know what St. Vincent Hospital they are referring to and if this 30 percent referenced in this problem is true or not?
A. No. What's true is in the problem it says variable costs are 30 percent.
Q. And you don't know where the authors got that from?
A. No. I have used other textbooks, and I would say I've seen similar problems, and they may be even on the CPA exam, similar problems.
(P182, Ben Ezra Deposition)

That's the lost marginal revenue. I put a little note and calculated that. The marginal cost of services as a percentage of marginal revenue, I have 30 percent. I found it in a textbook.
I believe if I were to do further analysis; in other words, actually do a walk-through and tabulate -- let's say a patient comes in -- what your additional costs are, well, it's the cost of the bedding, if they have surgery it is the cost of the instruments that are used that are eventually thrown away, it's the cost of the sutures, it's the cost of a breakfast, a lunch, a dinner.
Actually, the marginal costs to me are probably less than 30 percent, but I took 30 percent.
Q. From a textbook problem?
A. From a textbook problem, and my experience at the hospital and what I would expect it to be. In other words, I expect a high amount of fixed costs because everything else is relatively fixed. They're staffed up for a level which is, basically, at the high end, so they have the available capacity, all they need is the patients. So what we're talking about for marginal costs is the marginal out-of-pocket costs, and they are, basically, the stuff that gets disposed of.
(Pg. 193-194, Ben Ezra Deposition)

16d-002395

The lack of independent inquiry

Q. Mr. Ben Ezra, I want to close a loop on a couple items that Mr. Leahy raised.
I want to make clear, you have acknowledged you're speculating with respect to the retirement age of the physicians?
A. That is an assumption that I used for the model.
Q. It is an assumption you used without any data to back it up?
A. Other than my general experience that most doctors retire around age 65.
Q. But you have no data that's been provided to me or that you reviewed to support that conclusion?
A. That's correct. This is a basic underlying assumption. The other assumption I used was 20 years straight out. I was quite surprised to find that the results were quite comparable.
(Pg. 243-244, Ben Ezra Deposition)

Q. Do you know the amount of losses suffered by Columbia? We can go year by year, if you like.
A. Those would be in the audited and unaudited financial reports.
Q. Did you review those for this case?
A. No, I did not.
(Pg. 62- 63, Ben Ezra Deposition)

Q. But you have no data with respect to Columbia or any other hospital with respect to what their actual collections are?
A. Well, the actual collections are going to be in the financial statements and the statement of cash flow.
Q. Did you review those?
A. For this, no, I did not.
Q. Did you review it for any other hospital?
A. No, I did not.
(Pg. 73, Ben Ezra Deposition)

Q. Have you reviewed any deposition transcripts in this case?
A. No, I have not.
Q. Have you done any interviews or had any conversations with anyone at Columbia with respect to your conclusions in this case?
A. No. I did present the hospital to the finance committee of Columbia Hospital for Women.
(Pg. 133-134, Ben Ezra Deposition)

Q. Where I left off was on page 8710, Point 2. For your analysis did you believe the patient mix to stay the same for each year going forward?
A. Yes, that is the presumption.
Q. Did you do any analysis to reach that conclusion?
A. No, I did not.
Q. Have you looked at any data to show how the patient mix might change over the years?
A. I did not look at any data, but I do have an opinion.
(Pg. 168, Ben Ezra Deposition)

16d-002396

RECEIVED
Civil Clerk's Office
JUL 24 2003
Superior Court of the
District of Columbia
Washington, D.C.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	
Plaintiff/Counter-Defendant,	
v.	Civil Action No. 00-0007308 Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Pretrial Conference, July 31, 2003
Defendant/Counter-Plaintiff.	

COLUMBIA'S OPPOSITION TO NCRIC'S MOTION TO EXCLUDE THE OPINIONS AND TESTIMONY OF COLUMBIA'S DESIGNATED DAMAGES EXPERT

On summary judgment, NCRIC argued that the expert testimony of Peter Ben Ezra, Professor of Accountancy at the School of Business and Public Management at George Washington University, should be excluded as a matter of law. In its motion in limine, NCRIC rehashes those same arguments. But NCRIC supplies no reason for the Court to accept now the same arguments that the Court has already rejected. NCRIC does not challenge Ben Ezra's qualifications. NCRIC does not challenge his methodology (classic "before-and-after" and cash-flow analyses). Instead, NCRIC merely contends that Ben Ezra "misapplied" these long-accepted damages methodologies. But in doing so, NCRIC badly misdescribes the analysis Ben Ezra performed. And under settled law it is axiomatic that disagreements over the application of accepted damages methodologies go to the weight the jury should accord expert testimony, not its admissibility. Tellingly, NCRIC fails to cite a single case from this jurisdiction in which the testimony of an expert has been barred before trial because of such disagreements. The motion *in limine* should be denied.

Statement of the Facts

Ben Ezra performed two separate and independent damages analyses: a traditional "before and after" test, and a second, physician-specific cash flow analysis.

A. The Before and After Test

Ben Ezra began his "before and after" analysis by comparing revenues from the year immediately before NCRIC's tortious misconduct with the year immediately following that conduct. Ben Ezra Decl. ¶ 6. Ben Ezra's investigations confirmed that the year before NCRIC's actions was "not an extraordinary year for the hospital with regard to volumes or utilization," but a good representation of Columbia's revenue stream in a normal year, unaffected by tortious conduct. *Id.* at ¶ 32.[1] Comparing Columbia's annual revenues immediately before and immediately after NCRIC's misconduct, he noted a difference in revenues of $3,932,163.09. Over twenty years, this difference would amount to lost revenues of over $70 million.

Ben Ezra, however, did not stop there. Instead, he proceeded to *reduce* the amount of damages that he estimated in three separate ways, *each* of which favored NCRIC. First, to take account of collection difficulties, Ben Ezra reduced Columbia's anticipated lost revenues by 5%, based on historical Columbia collection data and experience. Second, Ben Ezra deducted the marginal costs of providing service from the lost patient revenues. Because Columbia did not, in the ordinary course of its business, retain cost accounting records from which Ben Ezra could derive its marginal cost rate, Ben Ezra Decl. ¶ 26, Ben Ezra employed a 30% marginal cost rate, based on his experience in the accounting profession for 25 years, his service at Columbia as a member of its Board of Directors, and a widely used managerial accounting textbook, *id.* ¶¶ 27-

[1] Ben Ezra also explained that the data he used (starting in October 1999) was the only and best data available: "As NCRIC is aware, the hospital attempted to produce complete . . . data for the two fiscal years prior to October 1999, but failed. I spent many hours with Columbia's head of information systems, while she performed various

29. In doing so, Ben Ezra deliberately chose to employ a marginal cost rate at "the high end" of any plausible range, to ensure that his damages calculation was conservative and any question was resolved in NCRIC's favor. *Id.* ¶ 28.[2] Third, Ben Ezra calculated the net present value of Columbia's annual lost revenue over the next 20 years using a discount rate of 10.5%. Ben Ezra inspected Columbia's records and found that "this is the highest interest rate charged to Columbia." *Id.* ¶ 8. Despite the fact that Columbia "also has other, lower-interest rate loans," Ben Ezra chose to use this discount rate in order to ensure that his analysis, again, would be "conservative, in NCRIC's favor." *Id.* Based on the foregoing calculations, Ben Ezra estimated total lost profits over the next 20 years of $22,013,195.55.

B. The Doctor-Specific Cash Flow Test

Though he did not need to proceed further, Ben Ezra conducted a second, separate damages analysis that confirmed the findings of his initial calculation.

This time, Ben Ezra focused on each individual physician who left the hospital in October 2000, the period immediately after NCRIC's misconduct. Ben Ezra Decl. ¶¶ 18-20. Ben Ezra calculated, on a physician-by-physician basis, the lost cash flow to the hospital associated with the departure of each individual physician. *See* CHWMC 008713. To discern the impact of these losses over time, Ben Ezra assumed that, but for NCRIC's tortious behavior, each doctor would have remained at the hospital until he or she reached age 65, at which time he or she would have retired. Ben Ezra selected age 65 based on his tenure at Columbia as a

---

information queries on the hospital's computer systems. In the end, she simply was not able to pull a complete data set for those years that I could rely upon." *Id.* at ¶ 31.

[2] As Ben Ezra explained: "In my experience, Columbia's fixed costs are very high . . . . Its marginal costs (the difference between total costs and fixed costs) are much lower, the difference of 20 to 30 percent, which for the most part represents the cost of disposable materials and increased meals and laundry costs. I analogize Columbia's hospital beds and operating capacity to unsold seats on an airline: the marginal cost of an airline seat is only the meals and drinks not served and a few incremental units of fuel not used. Most of the costs are fixed, and the marginal costs are relatively few and vary with patient load." Ben Ezra Decl. ¶ 27.

member of the Board of Directors, noting that this estimate was "conservative" given the large number of physicians who had practiced at Columbia well beyond age 65.[3] Ben Ezra then proceeded to apply additional conservative assumptions favoring NCRIC: Ben Ezra again used Columbia's historical collections data to reduce the estimated damages, again assumed marginal costs of 30%, and again assumed a cost of capital of 10.5%. Based on these reductions, Ben Ezra estimated total lost profits to Columbia, using this separate physician-specific cash flow methodology, of $21,522,451.23.

Discussion

BEN EZRA'S EXPERT DAMAGES ANALYSIS MORE THAN MEETS THE REQUIREMENTS FOR ADMISSIBILITY

A. NCRIC Completely Ignores the "Lightened" Burden Applicable to Damages Evidence

In asking the Court to rule that Ben Ezra's testimony is overly "speculative," NCRIC completely ignores controlling law concerning the estimation of damages. Once the "fact of damages" is proven, it is settled law that a plaintiff "need prove damages only with reasonable certainty." *Affordable Elegance Travel, Inc. v. Worldspan, L.P.*, 774 A.2d 320, 329 (D.C. 2001) (quoting *Edmund J. Flynn Co. v. LaVay*, 431 A.2d 543, 550 (D.C. 1981)). Thus, the damages claimed by a plaintiff "need not be susceptible of computation with exactitude" in order to permit their award. *District of Columbia v. Gandy*, 450 A.2d 896, 901 (D.C. 1982), *modified on other grounds*, 458 A.2d 414 (D.C. 1983). An award of damages "will be upheld . . . even if it is not proven with mathematical exactitude." *Affordable Elegance Travel*, 774 A.2d at 329. This is so, the courts have held, because a party should not "be deprived of compensatory damages

[3] Ben Ezra also noted that, due to the "nature of [his] analysis" he is "able to opine with accuracy about the lost cash flows for each physician, for each year up until they retire. So, for example, if Columbia were to offer as part of its causation proof that the historic retirement age of its physicians is 64, my expert opinion encompasses that number

merely because they cannot be computed with exactitude." *Spar v. Obwoya*, 369 A.2d 173, 180 (D.C. 1977). In fact, a jury award will be overturned only if it is *entirely* speculative. *See Langevine v. District of Columbia*, 106 F.3d 1018, 1024 (D.C. Cir. 1997) ("[A] jury's determination of damages may only be disturbed if it 'is so inordinately large as to obviously exceed the maximum limit of a reasonable range within which the jury may properly operate.'") (quoting *Jeffries v. Potomac Dev. Corp.*, 822 F.2d 87, 96 (D.C. Cir. 1987)); *John Morrell & Co. v. Local Union 304A*, 913 F.2d 544, 558 (8th Cir. 1990) (holding that evidence supporting jury award of damages "is sufficient as long as it is 'not wholly speculative'"); *Laaperi v. Sear, Roebuck & Co.*, 787 F.2d 726, 734 (1st Cir. 1986) ("The jury is free to select the highest figures for which there is adequate evidentiary support; thus, a verdict will be reduced or set aside only if it is shown to exceed any rational appraisal or estimate of the damages that could be based on the evidence before the jury.") (quoting *Segal v. Gilbert Color Sys.*, 746 F.2d 78, 81 (1st Cir. 1984) (internal quotation marks omitted)); *Wood v. Diamond M Drilling Co.*, 691 F.2d 1165, 1168 (5th Cir. 1982) ("We have repeatedly held that a jury's award is not to be disturbed unless it is so large as to 'shock the judicial conscience,' indicate 'bias, passion, prejudice, corruption or other improper motive' on the part of the jury, or is 'contrary to all reason.'").

Ben Ezra's testimony more than passes these tests. In his first damages calculation, Ben Ezra used Columbia's *actual* revenues before and after NCRIC's tortious conduct. In his second calculation, he used *actual* cash flows from individual doctors who left the hospital in the month after NCRIC's illegal acts. Ben Ezra then used Columbia's *actual* collections data and its *actual* borrowing rates, and employed manifestly reasonable estimates, based on the available evidence, regarding Columbia's marginal costs and doctor retirement ages.

---

as well. Accordingly, while my overall opinion is specific with regard to date, and based on a reasonable assumption, it is not limited with respect to that assumption." Ben Ezra Decl. ¶ 24.

Remarkably, three of the four primary cases cited by NCRIC (*see* Mot. at 3-4) have *nothing* to do with damages, and NCRIC's primary case even *affirmed* the admission of the challenged (non-damages) expert testimony. *See In re Melton*, 597 A.2d 892, 902 (D.C. 1991) (en banc) (*allowing* expert psychiatric testimony based on information reported by relatives of the patient); *Toy v. District of Columbia*, 549 A.2d 1, 7-8 (D.C. 1988) (finding no sufficient basis in evidence for a national standard of care for police departments); *Dyas v. United States*, 376 A.2d 827, 832 (D.C. 1977) (refusing to allow the admission of expert testimony regarding the reliability of eyewitness testimony). The *only* case NCRIC cites that deals with damages, *Washington Metro. Area Transit Auth. v. Davis*, 606 A.2d 165 (D.C. 1992), is nothing like this case. There, after trial, the court determined that there was insufficient evidence of the expert's hypothesis that the decedent would have had a well-paying career as a professional. *See id.* at 177. This assumption was contradicted by record evidence that the decedent was, in fact, a C student in grade school. *See id.* No such deficiency in proof exists in Ben Ezra's damages model, which is firmly planted in the available evidence of Columbia's financial performance.

B. Ben Ezra's Analysis Easily Satisfies the *Dyas* Test

The test for the admissibility of expert testimony in the District of Columbia rests on a three-part analysis:

> (1) the subject matter must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average [juror], (2) the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth, and (3) expert testimony is inadmissible if the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert.

Nixon v. United States, 728 A.2d 582 (D.C. 1999) (quoting *Dyas v. United States*, 376

A.2d 827 (D.C. 1977)). Notably, NCRIC does not dispute that Ben Ezra's report meets *each of these prongs*.

First, NCRIC does not claim that the subject matter of Ben Ezra's testimony – the calculation of the present value of damages incurred by Columbia as a result of NCRIC's tortious conduct – is not distinctively related to accounting, Ben Ezra's area of expertise. Nor does NCRIC dispute that the methodologies employed by Ben Ezra in estimating damages are scientifically valid and accepted. *See* Mot. at 6 (choosing not to challenge the use of "discounted cash flow analysis," but only how Ben Ezra "*appli[ed]*" it here) (emphasis added).

Second, NCRIC makes no challenge to Ben Ezra's qualifications to offer his opinion. Nor could they do so. Ben Ezra is Professor of Accountancy at the George Washington University's School of Business and Public Management. He is also a certified public accountant with 25 years of accounting experience, including service as a Division Chief in charge of department-wide financial systems at the U.S. Department of Agriculture, and as Director of Corporate Analysis at the Corporation for National Service (charged with, among other things, administering the Americorps program).

Third, NCRIC does not dispute that the state of the art in accounting allows an expert to come to a reasonable opinion in this case.

Plainly, under *Dyas*, Columbia should be permitted to present Ben Ezra's testimony.

C. NCRIC's Specific Objections Provide No Basis For Exclusion

Unable to point to any basis for excluding Ben Ezra under *Dyas* and without even mentioning applicable case law on the lightened burden for establishing damages, NCRIC now, just as it did at summary judgment, bases its argument for exclusion on the unsupported assertion that Ben Ezra failed to consider supposedly relevant data, coupled with the erroneous assertion

that a party must prove damages with minute particularity. There is no authority in the law for such a result. Once an expert's methodology passes *Dyas* and his damages estimate is reasonable under the lightened standard applicable to damages evidence, there is no basis for exclusion. When the argument for exclusion is that an expert has "misapplied the generally valid principles" underlying the expert's model, courts will not exclude the opinion, recognizing that the "identification of such flaws in generally reliable scientific evidence is precisely the role of cross-examination." *Quiet Tech. DC-8, Inc. v. Hurel-Dubois UK Ltd.*, 326 F.3d 1333, 1344-45 (11th Cir. 2003). "As a general rule, the factual basis of an expert opinion goes to the credibility of the testimony, not the admissibility, and it is up to the opposing party to examine the factual basis for the opinion in cross-examination." *Hose v. Chicago Northwestern Transp. Co.*, 70 F.3d 968, 974 (8th Cir. 1995) (quoting *Loudermill v. Dow Chem. Co.*, 863 F.2d 566, 570 (8th Cir. 1988)). It is *only* if "an expert's opinion is 'so fundamentally unsupported that it can offer no assistance to the jury'" that an opinion may be excluded rather than subjected to cross-examination. *Id.* (quoting *Loudermill*, 863 F.2d at 570). When, as here, the party opposing admission of expert testimony is "arguing with [the expert's] conclusions, not his methodology in arriving at certain opinions," the proper outcome is to allow that party to "attack [the expert's] inclusion or exclusion of certain possibilities upon cross-examination at trial." *Smith v. Ford Motor Co.*, 882 F. Supp. 770, 775 (N.D. Ind. 1995). This is especially true when the party attacking the expert's conclusions "received a copy of [the] report" well before trial. *International Adhesive Coating Co. v. Bolton Emerson Int'l, Inc.*, 851 F.2d 540, 545 (1st Cir. 1988). Because opposing counsel has an opportunity to review and critique assumptions made in the expert report, the "burden is on opposing counsel through cross-examination to explore and expose any weaknesses in the underpinnings of the expert's opinion," and if "the factual

underpinning of an expert's opinion in weak, it is a matter affecting the weight and credibility of the testimony – a question to be resolved by the jury." *Id.* at 544.

1. NCRIC's first and primary argument drives the point home. NCRIC complains that Ben Ezra erred in selecting the fiscal year 2000 data, the year before NCRIC's tortious conduct, as a benchmark for measuring damages. Mot. at 6-7.

But NCRIC does not dispute that the fiscal year 2000 data is the "most current" data available prior to NCRIC's tortious activity – and thus the very best evidence of Columbia's revenue unaffected by NCRIC's wrongdoing. *Id.* at 7. NCRIC also ignores Ben Ezra's testimony that he checked and confirmed that fiscal year 2000 was "not an extraordinary year for the hospital with regard to volumes or utilization," but a good representation of Columbia's revenue stream in a normal year, unaffected by NCRIC's tortious conduct. Ben Ezra Decl. ¶ 32. And contrary to NCRIC's insinuation that Ben Ezra chose not to use data from prior years because they did not fit his model, *see* Mot. at 7, Ben Ezra's comment about the unutilized data "not looking right" was a reference to the fact that Columbia's data from previous years was incomplete and unavailable. *See* Ben Ezra Decl. ¶¶ 26 & 31; *supra* n. 1. Indeed, NCRIC does not identify any other available benchmark evidence that Ben Ezra could have, but did not, use.[4]

Tellingly, NCRIC does not cite a *single* case excluding expert damages testimony in remotely analogous circumstances. To the contrary, the cases it cites *undermine* its cause. As previously explained, *In re Melton* not only upheld admission of the expert testimony at issue, but it also has nothing to do with damages, while *Davis* involved factual discrepancies unlike

[4] Nor is an expert to do anything more than rely on the data that *is* available. A party cannot preclude a plaintiff from recovering by complaining that they did not use data that doesn't exist. *See, e.g., Migerobe, Inc. v. Certina USA, Inc.*, 924 F.2d 1330, 1339 (5th Cir. 1991) (rejecting challenge to damages awarded to retailer based on corollary sales from a loss leader as being too speculative: "Certina is not entitled to complain about Migerobe's inability to provide a more precise estimate when such precision has been made all but impossible because of Certina's own breach").

anything that NCRIC alleges. *Carter v. Shoppers Food Warehouse*, 727 A.2d 958 (Md. App. 1999), likewise has nothing to do with damages. There, the investigator that wished to present expert testimony on causation for plaintiff did not so much as examine the type of floor mat that caused the accident at issue. *See id.* at 157. Unlike that expert, Ben Ezra is personally familiar with the finances of Columbia both before and after NCRIC's torts.[5] In fact, court after court has permitted exactly the sort of before-and-after damages testimony Ben Ezra offers here. *See, e.g.*, *Conwood Co., L.P. v. United States Tobacco Co.*, 290 F.3d 768, 793 (6th Cir. 2002) (declaring the before-and-after methodology to be "generally accepted"); *Lehrman v. Gulf Oil Corp.*, 500 F.2d 659, 667 (5th Cir. 1974) (noting that the "before and after theory" is a "generally recognized method[] of proving lost profits"); *In re Cardizem CD Antitrust Litig.*, 200 F.R.D. 297, 323 (E.D. Mich. 2001) ("[I]t is not disputed that the 'before and after' method is a commonly used economic methodology."). The jury is entitled to give NCRIC's criticism the weight it feels appropriate, but that critique is not a basis for barring Ben Ezra's testimony.

2. Although NCRIC attacks Ben Ezra's use of a 30% marginal cost figure, NCRIC does not dispute that Columbia lacks accounting records from which Ben Ezra could derive its actual marginal cost rate. Ben Ezra Decl. ¶ 26. In the absence of such records, an expert is plainly permitted to make a "reasonable estimate," especially in the damages context. *See, e.g.*, *A.W.G. Farms, Inc. v. Federal Crop Ins. Corp.*, 757 F.2d 720, 729 (8th Cir. 1985) ("Experts routinely testify on many aspects of damage claims notwithstanding the fact that valuation

[5] The remainder of NCRIC's cases are likewise inapt. The decision in *Keranan v. National R.R. Passenger Corp.*, 743 A.2d 703 (D.C. 2000), noted that none of plaintiff's witnesses had testified as to the predicate acts by Amtrak necessary to demonstrate negligence, and thus lay a foundation for liability and damages. *See id.* at 717. Here, Columbia will have a great deal of lay testimony to demonstrate that it was injured by NCRIC. *Anderson v. Whittaker Corp.*, 692 F. Supp. 764 (W.D. Mich. 1988), rejected as incredible the assumption that decedents' earnings would have increased by 9 to 10 percent annually for the remainder of their work lives. *See id.* at 769. Here, Ben Ezra's conservative methodology makes no such assumption. Indeed, Ben Ezra even refuses to take into account changes that *have in fact* occurred that would increase the amount of Columbia's damages, and makes a host of assumptions in *NCRIC's* favor. *See* Ben Ezra Decl. ¶ 10.

estimates oftentimes are based on physical evidence that is no longer available. The use of such expert testimony rests on the settled rule that once the fact of damage is determined to exist, reasonable estimates may suffice to prove the damage."); *Body Rustproofing, Inc. v. Michigan Bell Tel. Co.*, 149 Mich. App. 385, 391 (1986) ("[W]hen the nature of a case permits only an estimation of damages or a part of the damages with certainty, it is proper to place before the jury all the facts and circumstances which have a tendency to show their probably amount."). Indeed, courts have even upheld the award of damages to startup companies with no proven track record, as opposed to established concerns like Columbia, based on expert testimony. *See Central Telecomms., Inc. v. TCI Cablevision, Inc.*, 800 F.2d 711, 730 (8th Cir. 1986) (allowing damages "where the damage award was based on the best evidence available, and where the estimate of loss is reasonable"). *See also* pp. 4-6, *supra* (discussing lightened burden applicable to admissibility of damages evidence).

Nor does NCRIC remotely dispute that a 30% marginal cost rate is, in fact, a "reasonable estimate" of Columbia's marginal costs. Ben Ezra employed his experience in the accounting profession for 25 years, his service on the Board of Directors at Columbia, and a widely used managerial accounting textbook – and Ben Ezra deliberately chose to employ a marginal cost rate at "the high end" of any plausible range, to ensure that his damages calculation was conservative and any question was resolved in NCRIC's favor. *See* p. 3, *supra*. NCRIC disputes none of this. In fact, a year after Ben Ezra's report containing his calculation of marginal costs was made available to them and two years after discovery commenced, NCRIC still offers no alternative estimate of Columbia's marginal cost rate and supplies no evidence suggesting that Ben Ezra's estimate was anything other than a conservative figure favoring NCRIC, just as Ben Ezra testified. *See id.* ¶¶ 26-28. The reasonableness of Ben Ezra's estimate is only further

confirmed by *Coventry Health Care of Kansas, Inc. v. Via Christi Health Sys., Inc.*, 176 F. Supp. 2d 1207 (D. Kan. 2001), which found as a fact that "[g]enerally, 70% of a hospital's costs are viewed as fixed costs." *Id.* at 1224. Again, Ben Ezra arrived at a reasonable estimate based on the best available evidence; NCRIC can ask for no more than that.[6]

3. NCRIC seeks to take Ben Ezra to task for not independently verifying that each of the doctors who left in October 2000 did so because of NCRIC's actions. *See* Mot. at 10. But NCRIC's objection holds no traction: whether the NCRIC doctors left as a result of NCRIC's torts is and will be a central and hotly contested issue of fact at trial, and this Court has already found that multiple issues of material fact exist in this regard. *See* Opinion Denying NCRIC's Motion for Summary Judgment at 19 (Apr. 10, 2003). If the jury credits Columbia's testimony that doctors left because of NCRIC, Ben Ezra's calculation will permit them a means for ascertaining damages with the requisite "reasonable certainty." *See Diversey Corp. v. Chem-Source Corp.*, 125 N.M. 748, 756 (1998) ("[I]t is permissible for non-experts in cases like the instant one to lay the foundation for an expert's testimony."); *Ryan v. Kansas Power & Light Co.*, 249 Kan. 1, 9 (1991) ("[A] non-expert qualified witness may corroborate and provide foundation testimony for the expert testimony on damages."); *Coal Res., Inc. v. Gulf & W. Indus., Inc.*, 954 F.2d 1263, 1265-66 (6th Cir. 1992) (upholding admission of expert testimony on damages in retrial, even though it had been excluded in earlier trial, because new testimony at

[6] Nor is there any similarity between any of the expert testimony excluded in the cases cited by NCRIC and the well-supported testimony Ben Ezra will give at trial. *Skrabak v. Skrabak*, 673 A.2d 732 (Md. App. 1996), involved the bizarre assumption on the part of the expert that the four nurses employed in a doctor's practice were responsible for creating the same amount of institutional goodwill as the doctor himself. *See id.* at 739. No such counterintuitive assumptions are present in the Ben Ezra report. In *K.W. Plastics v. United States Can Co.*, 131 F. Supp. 2d 1289 (M.D. Ala. 2001), the expert did not so much as *investigate* the cost to purchase the equipment he claimed was needed. *See id.* at 1293. Here, it is undisputed that Ben Ezra investigated all of the data and assumptions on which he relied.

retrial had established a factual basis for testimony). And, once again, NCRIC cites not a single contrary authority excluding evidence on the basis it now proffers.[7]

4. NCRIC attacks Ben Ezra's second damages model for its assumption that doctors will retire at age 65, but this unremarkable assumption is based on Ben Ezra's own investigation and working knowledge of Columbia's physicians, *see* Ben Ezra Decl. ¶¶ 22-23, and is confirmed by other record evidence. *See* Rifka Decl. ¶ 11; Ben Ezra Dep. at 153-55. Again, in calculating damages, exactitude is not required and an expert is permitted to use reasonable inferences in estimating damages. *See, e.g.*, *A.W.G. Farms*, *supra*; *Body Rustproofing*, *supra*. NCRIC provides no argument, and cites absolutely no authority, suggesting that Ben Ezra's use of an age 65 retirement assumption remotely warrants exclusion.[8]

5. NCRIC claims that the jury will be unduly influenced by Ben Ezra's expert accounting opinion because he is an outside director and chairman of the board of Columbia. NCRIC neglects to mention that Ben Ezra volunteers his services to Columbia and "receive[s] no monetary compensation" for the time he spends on behalf of Columbia. Ben Ezra Decl. ¶ 9. And, in any event, such claims of bias are for the jury to resolve and are not the basis for exclusion. If interested individuals were not permitted to testify on damages, as NCRIC seems

---

[7] *Shaw v. Strackhouse*, 920 F.2d 1135 (3d Cir. 1992), dealt not with damages, but with whether experts correctly assessed the professional reasonableness of restrictions placed on the movement of a person who was institutionalized. Because the experts operated under the factually incorrect premise that plaintiff could not leave his chair, their opinions were disregarded. *See id.* at 1142. *Pennsylvania Dental Ass'n v. Med. Serv. Ass'n*, 745 F.2d 248 (3d Cir. 1984), likewise excluded the report of a non-damages expert who provided no factual support whatsoever for his proposed market definition, *see id.* at 262, while *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039 (8th Cir. 2000), involved an expert whose model failed to account for *undisputed* facts and events in the relevant market, *see id.* at 1057. NCRIC has pointed to no assumptions in Ben Ezra's report that are contradicted by undisputed facts. Indeed, Ben Ezra's second damages model is set up in such a way that once a jury determines which doctors left as a result of NCRIC's torts, Ben Ezra's calculations can be applied to ascertain the damages attributable to the departure of each individual doctor. *See* Ben Ezra Decl. ¶ 19.

[8] Moreover, this baseline assumption is in no way critical to Ben Ezra's report. His first damages analysis does not depend on any assumption about physicians' retirement age. And his second analysis is put together in a transparent manner, such that the damages suffered by Columbia with respect to each individual physician can be adjusted to yield a new damages number based upon the year in which that physician retires or is expected to retire. *See* Ben Ezra Decl. ¶ 24.

to suggest (without a shred of supporting authority), reams of case law would have to be tossed out the window. *See, e.g., Cates v. Morgan Portable Building Corp.*, 591 F.2d 17, 22 (7th Cir. 1979) (instructing that opinion testimony of plaintiff motel owner on damages was entitled to weight "because of his prior knowledge of and experience in the motel business"); *Static Control Components, Inc. v. Darkprint Imaging, Inc.*, 240 F. Supp. 2d 465, 481 (M.D.N.C. 2002) (instructing that official of litigant should be permitted to testify on damages issues at retrial on damages); *Harmon Cable Communications of Nebraska L.P. v. Scope Cable Television, Inc.*, 237 Neb. 871, 887-88 (1991) (holding opinion testimony on damages by chairman of the board of plaintiff's predecessor company should be considered: "The fact that Harmon was a person having an interest in the outcome of the cases goes only to the weight of his testimony, not to its admissibility"); *McCrory v. State*, 67 Ohio St. 99, 104 n.2 (1981) (allowing testimony of expert for defendant despite the fact that his employer manufactured drug at issue, because "this should not render him incompetent to testify, but rather, should be taken into account in giving weight to his testimony"); *Conde v. Vesicol Chem. Corp.*, 804 F. Supp. 972, 984-86 (S.D. Ohio 1992) (refusing to bar expert testimony by witness who was also plaintiff), *aff'd*, 24 F.3d 809 (6th Cir. 1994).[9] Plainly, NCRIC is free to cross-examine Ben Ezra, elicit his relationship with Columbia, and seek to argue bias – but, again, it has supplied no basis for his *exclusion*.

In sum, NCRIC does nothing more than repeat its failed arguments from summary judgment. It does not, and cannot, dispute that Ben Ezra's qualifications and methodology satisfy *Dyas*. NCRIC likewise continues to ignore the reasonable certainty standard applicable to

[9] The cases NCRIC cites here do not purport to deal with bias by a witness. Instead, *United States v. Carswell*, 922 F2d 876 (D.C. Cir. 1991), held that it was not an abuse of discretion for a trial court to exclude purported expert testimony by a witness whose experience only "probably gave him at least somewhat greater knowledge" of the issues than the average juror. *Id.* at 879. By contrast, NCRIC does not challenge the qualifications of Ben Ezra under *Dyas*. *City of New York v. Pullman Inc.*, 662 F.2d 910 (2d Cir. 1981), did not even deal with expert testimony: instead, it affirmed the exclusion, as hearsay, of a report that contained "the tentative results of an incomplete investigation." *Id.* at 915.

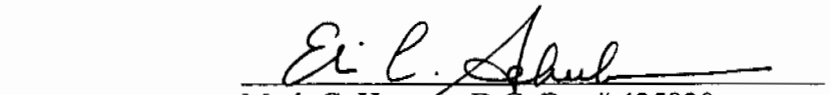
damages evidence. And it cannot point to any case where damages studies remotely analogous to the one performed by Ben Ezra were excluded.

Conclusion

For the foregoing reasons, NCRIC's motion to exclude the opinions and testimony of Columbia's designated damages expert should be denied.

DATED: July 24, 2003

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-002411

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion To Exclude The Opinions and Testimony of Columbia's Designated Damages Expert*, and opposition thereto, it is hereby ORDERED, that the motion is DENIED.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

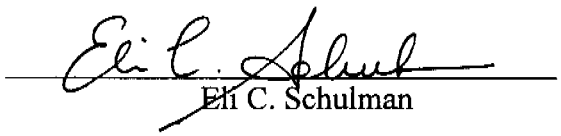
Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 24th day of July, 2003, a copy of the foregoing *Columbia's Opposition to NCRIC's Motion to Exclude the Opinions and Testimony of Columbia's Designated Damages Expert* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on this 24th day of July, 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.



Eli C. Schulman

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
JUL 24 2003
Superior Court of the
District of Columbia
Washington, D.C.

ADMINISTRATIVE DIVISION
JUL 24 11 03 AM '03
RECEIVED

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference, July 31, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S OPPOSITION TO NCRIC'S MOTION TO EXCLUDE CERTAIN DOCUMENTS AND CALCULATIONS

NCRIC's motion to exclude certain of Columbia's exhibits seeks to deprive the jury of the opportunity to see a number of charts that would be helpful in understanding the disputed calculations central to the parties' contract dispute. Much of the parties' respective breach of contract claims revolves around the calculations contained in a single spreadsheet, compiled by NCRIC, that purports to summarize the status of claims in the contract. That spreadsheet contains NCRIC's disputed calculations alone, and the jury will certainly see that spreadsheet. Without also seeing Columbia's proffered exhibits, it will be difficult for the jury to perform the contract's calculations using the numbers that Columbia will argue should apply.

Hoping to prevent the jury from seeing Columbia's calculations, NCRIC argues that the exhibits are hearsay. But the exhibits fall under the well-established hearsay exception for admissible summaries, and NCRIC cites no authority to the contrary. Because at trial Columbia will have a chance to support the summaries with admissible evidence and to spell out for the jury the assumptions underlying the charts, these exhibits are admissible. Any questions that

NCRIC wishes to raise regarding the exhibits can be raised on cross-examination, obviating any possible prejudice from admission of the exhibits. NCRIC's motion should be denied.

Background

When NCRIC brought this suit, it grounded its interpretation of the parties' agreement (the "Retro Plan" or "Plan") in a September 2000 reconciliation spreadsheet, which summarized the status of the claims at issue under the Plan. *See* Exh. 1, at 2.[1] Columbia disputes the accuracy of NCRIC's spreadsheet because, Columbia believes it can show, NCRIC misapplied three material terms of the contract: the Minimum Premium Factor, the Deposit Premium Factor, and the Development Factors. Just as NCRIC's September 2000 reconciliation spreadsheet summarizes the status of the claims at issue in the Plan as of September 2000 on the basis of NCRIC's inputs, Columbia's Exhibits 82-85 and 93 summarize the status of the claims at issue in the Plan as of September 2000 on the basis of Columbia's inputs. Specifically, the exhibits offer the following summaries:

- Exhibit 82 consists of a spreadsheet summarizing the September 2000 reconciliation calculations – but utilizing what Columbia believes to be the correct Minimum Premium Factor (60%) based on the express language of the Plan. *See* Retro Plan Addendum B ¶ 7, at 7 (defining Minimum Premium as "sixty percent (60%) of the Subject Premium"); *see also* Columbia Statement of Material Facts Not in Dispute ("SMF") ¶¶ 32, 34 (citing Fargis Dep. at 454-55).

- Exhibit 83 consists of a spreadsheet summarizing the September 2000 reconciliation calculations – but utilizing what Columbia believes to be the correct Deposit Premium Factor (67%) based on the express language of the Plan. *See* Retro Plan Addendum B ¶ 7, at 6 (defining Deposit Premium as "the Subject Premium multiplied by sixty-seven (67%)"); *see also* SMF ¶¶ 24, 29 (citing Fargis Dep. at 452) & SMF Exh. 19 (Letter from Stephen S. Fargis to Anne D. Gaffey (Mar. 29, 2000)) (acknowledging that "the current contract reflects a deposit premium of 67%").

[1] Making plain the centrality of the spreadsheet, days after filing suit NCRIC served upon Columbia a Request for Admissions asking Columbia to admit the accuracy of each amount shown on the spreadsheet.

- Exhibit 84 consists of a spreadsheet summarizing the September 2000 reconciliation calculations – but utilizing what Columbia believes to be the correct Development Factors based on the clear application of Exhibit E of the Plan. *See* Retro Plan Exh. E ("Example of Plan Operation"); *see also* SMF ¶¶ 46-47 (citing Fargis Dep. at 706-07).

- Exhibit 85 consists of a spreadsheet summarizing the September 2000 reconciliation calculations – but utilizing what Columbia believes to be the correct Minimum Premium Factor (60%), Deposit Premium Factor (67%), *and* Development Factors. In other words, Exhibit 85 is itself a summary of Exhibits 82-84.

- Exhibit 93 walks through the calculations contained in Exhibit 85 in step-by-step fashion, summarizing the September 2000 reconciliation on the basis of NCRIC's admissions.

Each of the exhibits at issue thus serves as a useful summary of the calculations at issue in this litigation.

Discussion

The rules of evidence permit a party to introduce summary exhibits so long as those exhibits are supported by admissible evidence. *See R.S. Willard Co. v. Columbia Van Lines Moving & Storage Co.*, 253 A.2d 454, 456-57 (D.C. 1969) ("This court has recognized that a witness may be allowed to give an abstract or summary from voluminous records if the source material is available to the other party."); Fed. R. Evid. 1006 ("The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation.").

Exhibits 82-85 and 93 are all supported by admissible documentary evidence and witness testimony. *See supra* (citing relevant provisions of Plan and NCRIC concessions in documents and deposition testimony). Nor could NCRIC seriously argue otherwise: many of the figures on the summary exhibits are those provided to Columbia by NCRIC, representing the compilation of numerous claim reports for different periods that NCRIC furnished to Columbia multiple times each year. *See* Exh. 1, at 3-10. Not only are the documents supporting each of these payments admissible under Rule 801(d)(2)(A) as non-hearsay admissions by a party opponent

and already in the possession of NCRIC, but documents supporting the compilation of each of these payments were prepared by NCRIC and provided to Columbia, as well. *See id.* (correspondence from NCRIC Vice President David Osborn to Columbia President and CEO Larry Wilson, attaching reconciliation spreadsheet together with back-up documentation contained in claims reports from 1993-94 to 1998-99). The figures provided by NCRIC in these compilations are represented in the summary exhibits and form the basis for the calculations presented in these exhibits.

Because Columbia will present evidence supporting the summaries, the summaries are admissible evidence; the mere fact that the summary exhibits illustrate what the September 2000 reconciliation spreadsheet would look like under Columbia's interpretation of the contract, rather than NCRIC's interpretation, is, contrary to NCRIC's intimations, simply no reason to exclude the exhibits. *See Martin v. Funtime, Inc.*, 963 F.2d 110, 116 (6th Cir. 1992) (summary exhibits properly admitted when records forming the basis for the exhibits were summarized by witnesses and opposing party was in possession of originals enabling party to evaluate exhibits' accuracy); *McDaniel v. United States*, 343 F.2d 785, 789 (5th Cir. 1965) ("It is perfectly proper that litigants be permitted the use of illustrative charts to summarize varying computations and to thus make the primary proof upon which such charts must be based more enlightening to the jury."); *Roberts v. United States*, 508 A.2d 110, 112 (D.C. 1986) ("Abstracts or summaries made from 'voluminous records' are admissible if the original source material is available for verification of the summary's accuracy."); *United States v. Lemire*, 720 F.2d 1327, 1347 (D.C. Cir. 1983) (even aside from Rule 1006, a summary of evidence can be put before the jury so long as it summarizes the testimony of witnesses or documents offered previously); *R.S. Willard*, 253 A.2d at 456-57 (permitting summary evidence of "numerous pages" of timesheets); *United*

States v. Foley, 598 F.2d 1323, 1338 (4th Cir. 1979) (summary data admissible because underlying data used in summary charts came from party opposing summary).

Indeed, this case fits comfortably among those that have permitted summaries of data where relevant assumptions, such as a disputed multiplier, are presented to the jury. *See, e.g., United States v. Jennings*, 724 F.2d 436, 442 (5th Cir. 1984) (permitting use of summary exhibits to illustrate calculation of formula for reimbursement using disputed multiplier; even though "certain of the conclusions in the summary charts [were] undoubtedly the product of assumptions," exhibits admissible "so long as supporting evidence has been presented previously to the jury") (internal quotation marks omitted); *see also, e.g., United States v. Richardson*, 233 F.3d 1285, 1293-94 (11th Cir. 2000) ("[T]his court will permit the use of summary charts incorporating certain assumptions 'so long as supporting evidence has been presented previously to the jury . . . and where the court has "made it clear that the ultimate decision should be made by the jury as to what weight should be given to the evidence."'") (quoting *United States v. Francis*, 131 F.3d 1452, 1458 (11th Cir. 1997)), *cert. denied*, 532 U.S. 913 (2001).

Any concerns that NCRIC may have about Columbia's summaries, moreover, can, just as with NCRIC's own summary, be handled through cross-examination. *See McDaniel*, 343 F.2d at 789 ("The rule is that a summary of books and records is admissible, provided cross-examination is allowed and the original records are available."). NCRIC is of course entitled both to cross-examine Columbia's witnesses about the calculations in the charts and to present evidence supporting its contrary interpretation of the Plan. But NCRIC is not permitted to exclude relevant summary evidence from the jury's consideration simply because it disagrees with its content and wishes to have its own summary displayed without contest.[2]

[2] Though Columbia's exhibits are fully admissible evidence, they may also be used at

Conclusion

For the reasons stated above, *NCRIC's Motion to Exclude Certain Documents and Calculations* should be denied. A proposed order is attached.

DATED: July 24, 2003

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

---

trial as demonstrative aids. *See Pierce v. Ramsey Winch Co.*, 753 F.2d 416, 431 (5th Cir. 1985) (holding that a trial court "has the discretion to permit the parties to show to the jury charts and other visual aids that summarize or organize testimony or documents that have already been admitted in evidence" even if the charts themselves are not admitted as evidence).

16d-002420

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion to Exclude Certain Documents and Calculations*, and opposition thereto, it is hereby ORDERED that the motion is DENIED.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

EXHIBIT 1

NCRIC Group, Inc.

September 1, 2000

Mr. Larry Wilson, Jr.
President & CEO
Columbia Hospital for Women Medical Center
2425 L Street, NW
Washington, D.C. 20037

Re: Physicians' Professional Liability Retrospective Rating Plan Agreement
Reconciliation Statement for Years 1994-1995 through 1998-1999

Dear Larry:

In accordance with the above-mentioned Retrospective Rating Plan Agreement between NCRIC, Inc. and Columbia, attached is the reconciliation calculation for the years 1994-1995, 1995-1996, 1996-1997, 1997-1998, and 1998-1999. This calculation utilizes loss information valued as of August 31, 2000.

The balance of $1,286,525 is due and payable on or before October 01, 2000.

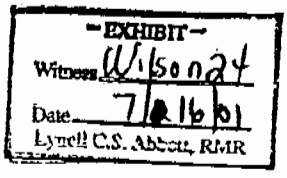
Should you have any questions regarding this calculation, please contact me at (202) 969-3145.

Sincerely,

Dave Osborn
Vice President

cc: R.Ray Pate, Jr.

Enclosure



Sep..oer 1, 2000
At 4th Qtr 2000 Plan Year

COLUMBIA HOSPITAL FOR WOMEN
RETRO-PROGRAM
Years : Sept 01,1993 - August 31,2000

	Y 94-95	Y 95-96	Y96-97	Y97-98	Y98-99	Cumulative 1994 - 1999
PREMIUM						
Subject (1st 500 Layer)	$ 2,844,913	$ 3,288,170	$ 3,495,306	$ 3,340,590	$ 3,609,667	$ 16,578,646
Deposit	$ 2,311,491	$ 2,045,242	$ 2,174,080	$ 2,077,847	$ 2,245,213	$ 10,853,873
Basic Premium Chg.	16.84%	16.84%	16.84%	16.84%	16.84%	
Basic	$ 479,083	$ 553,728	$ 588,609	$ 562,555	$ 607,868	$ 2,791,844
LOSSES						
Indemnity Reserves	$ -	$ 725,000	$ 1,070,000	*$ 800,000*	*$ 3,125,000*	$ 5,720,000
ALAE Reserves	$ -	*$ 460,000*	*$ 282,000*	*$ 240,000*	*$ 440,000*	$ 1,422,000
Total Reserves	$ -	$ 1,185,000	$ 1,352,000	$ 1,040,000	$ 3,565,000	$ 7,142,000
Indemnity Paid	$ 1,375,000	$ 600,000	$ 1,050,000	*$ 500,000*	$ 500,000	$ 4,025,000
Expense Paid	$ 341,454	$ 452,447	*$ 735,648*	*$ 148,723*	*$ 81,307*	$ 1,759,579
Total Paid	$ 1,716,454	$ 1,052,447	$ 1,785,648	$ 648,723	$ 581,307	$ 5,784,579
Total Losses	$ 1,716,454	$ 2,237,447	$ 3,137,648	$ 1,688,723	$ 4,146,307	$ 12,926,579
Development Factor	105.00%	105.00%	105.00%	80%	65%	
	capped at MIN			*capped at MIN*		
Retro Premium	**$ 1,960,898**	**$ 2,536,466**	**$ 3,355,700**	**$ 1,840,863**	**$ 3,110,192**	$ 13,140,397
(Refund)/Due	**$ (177,806)**	**$ 491,225**	**$ 1,181,620**	**$ (73,493)**	**$ 864,979**	**$ 2,286,525**
Columbia Payment						***$ (1,000,000)***
Net (Refund)/Due						***$ 1,286,525***
Max. Premium	$ 3,271,650	$ 4,373,266	$ 4,648,756	$ 4,442,984	$ 4,800,858	$ 21,537,514
Min. Premium	$ 2,133,685	$ 1,972,902	$ 2,097,183	$ 2,004,354	$ 2,165,800	$ 10,373,924
Max. Factor	1.15	1.33	1.33	1.33	1.33	
Min. Factor	0.75	0.60	0.60	0.60	0.60	

16d-002425

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000

Claims Report

Claims Experience Period:
September 1, 1993 to September 1, 1994

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
2414-1	Virginia Thompson	6	19-Jul-93	10-Nov-93	0.00	12,847.04
2451-1	Sylvester Booker	6	16-Nov-93	23-Dec-93	0.00	3,110.31
2472-1	Douglas Kalesh	6	13-Jul-92	01-Mar-94	0.00	75.00
2476-1	John Bressette	6	27-Jul-93	21-Jan-94	0.00	0.00
2489-1	Kathleen Bis	6	17-Mar-94	22-Mar-94	0.00	7.00
2499-1	Robert Bridges	6	23-Jan-94	09-Mar-94	0.00	0.00
2515-1	Cesare Santangelo	6	21-May-91	24-May-94	0.00	94,391.41
2528-1	Robert Bridges	6	15-May-94	03-Jun-94	0.00	1,940.22
[illegible]-1	Rebecca Busch	6	01-Aug-92	06-Jul-94	75,000.00	90,425.11
[illegible]-1	Marciana Wilkerson	6	09-Aug-93	22-Jul-94	500,000.00	77,444.31 +
2591-1	Stanley Marinoff	6	09-Mar-94	13-Apr-94	40,000.00	17.44
2601-1	Linwood Turner	6	21-Jul-93	08-Jun-94	20,000.00	45,109.78
	Total:				635,000.00	325,367.62

Indemnity Reserve Open Files (0) (Pro-Rated)	$	0.00
Indemnity Reserve Closed Files (12) (Pro-Rated)	$	1,490,000.00
Indemnity Reserve Total:	$	1,490,000.00
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	$	0.00
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	$	441,500.00
Allocated Loss Adjustment Expense Reserve Total:	$	441,500.00
Allocated Loss Adjustment Expense Reserve Applied to Retro Plan	$	0.00
Allocated Loss Adjustment Expense Paid Applied to Retro Plan	$	325,367.62

ile: Columbia.sheet1(3 of 3)(A)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1994 to September 1, 1995

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
2737-1	Richard Guy	6	17-May-95	14-Jul-95	390,000.00	31,899.47
2754-1	Sylvester Booker	6	07-Aug-94	20-Jan-95	0.00	82.00
2778-1	Sylvester Booker	6	18-Jun-95	20-Jun-95	0.00	75.00
2746-1	Robert Greenfield	6	12-Sep-94	01-Mar-95	0.00	75.00
2740-1	Richard Flax	6	06-Jun-95	23-Aug-95	0.00	0.00
2654-1	Rebecca Douglas	6	09-Jan-95	03-Feb-95	0.00	0.00
2655-1	Rebecca Douglas	6	19-Jan-95	03-Feb-95	0.00	82.40
2760-1	Raymond Cutts, Jr.	6	12-Jul-93	03-Apr-95	0.00	75.00
2715-1	Nancy Sanders	6	28-Nov-94	09-Jun-95	0.00	75.00
2693-1	Morton Roberts	6	01-Apr-94	03-Apr-95	0.00	75.00
1966-2	Katherine Alley	6	12-Feb-92	07-Apr-95	0.00	57,604.35
2631-1	Katherine Alley	6	03-May-94	28-Nov-94	0.00	0.00
2738-1	Julian Safran	6	23-Jul-92	18-Aug-95	0.00	0.00
2657-1	John Niles	6	27-Jun-94	16-Jan-95	475,000.00	101,193.10
2684-1	John Niles	6	01-May-89	27-Sep-94	0.00	0.00
2[illegible]	John Berryman	6	10-Mar-92	09-Mar-95	500,000.00	142,816.90 +
26[illegible]-1	Janet Schaffel	6	30-Nov-94	06-Dec-94	0.00	0.00
2662-2	Heather Johnson	6	30-Nov-94	06-Dec-94	0.00	0.00
2714-1	Gideon Kioko	6	05-Jun-92	09-Jun-95	0.00	1,358.10
2688-1	George Samman	6	11-Jul-94	20-Mar-95	0.00	44.90
2594-1	Douglas Kalesh	6	07-Sep-94	28-Sep-94	0.00	0.00
2622-1	Conrad Hicks	6	14-Dec-93	17-Nov-94	0.00	82.40
2732-1	Conrad Hicks	6	11-Nov-94	11-Aug-95	10,000.00	5,833.05
2695-1	April Rubin	6	11-Mar-95	26-Apr-95	0.00	82.50
	Total:				**1,375,000.00**	**341,454.17**

ıdemnity Reserve Open files (0) (Pro-Rated)	**$**	**0.00**
ıdemnity Reserve Closed Files (24) (Pro-Rated)	**$**	**3,230,000.00**
ıdemnity Reserve Total:	**$**	**3,230,000.00**
ıllocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**0.00**
ıllocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**433,430.00**
ıllocated Loss Adjustment Expense Reserve Total:	**$**	**433,430.00**
ıllocated Loss Adjustment Expense Reserve Applied to Retro Plan	**$**	**0.00**
ıllocated Loss Adjustment Expense Paid Applied to Retro Plan	**$**	**341,454.17**

le: C a.sheet2.(3 of 3)(B)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000
Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1995 to September 1, 1996

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
2756-1	Florie Hirsch	4	30-Aug-95	11-Sep-95	0.00	176,414.34
2773-1	Nancy Sanders	4	14-Sep-95	11-Oct-95	0.00	52,176.51
2836-1	Joan Redfearn	4	10-Oct-94	15-Apr-96	0.00	46,223.48
2894-1	Richard Peters	4	21-Jul-88	17-Jun-96	0.00	97,554.37
2488-2	Joseph Afram	6	14-Feb-94	10-Jan-96	225,000.00	29,305.94
2758-1	Janet Schaffel	6	29-Sep-92	29-Sep-95	0.00	25,991.80
2767-3	Lewis Townsend	6	01-Aug-95	16-Nov-95	0.00	148,466.40
2777-1	George Samman	6	28-Apr-95	06-Dec-96	0.00	75.00
2786-1	Steele Stewart Jr.	6	25-Aug-95	26-Dec-95	0.00	75.00
2796-1	Martin Dukes	6	08-Dec-95	22-Jan-96	0.00	110,517.86
2807-1	Lewis Townsend	6	25-Jan-96	29-Jan-96	0.00	0.00
2813-1	Norman Neches	6	04-Feb-93	21-Feb-96	0.00	1,142.00
2815-1	Katherine Alley	6	02-Mar-94	19-Jan-96	0.00	0.00
2815-2	Richard Flax	6	02-Mar-94	19-Jan-96	0.00	0.00
2818-1	Norman Neches	6	07-Jul-95	14-Feb-96	0.00	375.00
2819-1	Marciana Wilkerson	6	08-Nov-93	27-Feb-96	375,000.00	72,590.12
282[illegible]	John H. Niles, Jr.	6	08-Nov-94	14-Feb-96	0.00	17,801.98
28[illegible]	Sara L. Imershein	6	26-Feb-96	07-Mar-96	0.00	0.00
2824-1	Alan Bimkrant	6	15-Aug-95	05-Mar-96	0.00	75.00
2824-3	Sara L. Imershein	6	15-Aug-95	05-Mar-96	0.00	0.00
2839-2	Joan Redfearn	6	11-Apr-93	26-Apr-96	0.00	2,523.17
2842-1	Conrad Duncan	6	13-Jun-94	30-Apr-96	0.00	33,897.35
2858-1	Steve Dixon	6	10-May-94	23-Apr-96	0.00	0.00
2897-1	Richard Newman	6	05-Jul-93	08-Jul-96	0.00	4,308.15
2897-2	Stephen Horwitz	6	05-Jul-93	08-Jul-96	0.00	4,308.14
2898-1	Joseph Afram	6	24-Jan-96	10-Jul-96	0.00	12.00
2902-1	Shen-Tso Tseng	6	03-Dec-95	19-Jul-96	0.00	0.00
2905-1	Richard Flax	6	05-Jun-96	18-Jul-96	0.00	345.00
2908-1	Deena Kleinerman	6	19-Sep-95	06-Jun-96	0.00	75.00
2918-1	Deena Kleinerman	6	30-May-96	06-Jun-96	0.00	0.00
2922-1	Pamela Coleman	6	09-Feb-96	25-Mar-96	0.00	562.50
2926-1	Sylvester Booker	6	07-Aug-96	21-Aug-96	0.00	0.00
2950-1	Marcianna Wilkerson	6	19-June-96	27-Jun-96	0.00	0.00 +
	Total:				**600,000.00**	**824,816.11**

Indemnity Reserve Open Files (4) (Pro-Rated)	**$**	**725,000.00**
Indemnity Reserve Closed Files (29) (Pro-Rated)	**$**	**4,707,000.00**
Indemnity Reserve Total:	**$**	**5,432,000.00**
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**460,000.00**
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**769,667.00**
Allocated Loss Adjustment Expense Reserve Total:	**$**	**1,229,667.00**
Allocated Loss Adjustment Expense Reserve Applied To Retro Plan	**$**	**460,000.00**
Allocated Loss Adjustment Expense Paid Applied To Retro Plan	**$**	**452,447.41**

s: Columbia.sheet3(3 of 3)(C)

16d-002428

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000

Claims Report
Claims Experience Period:
September 1, 1996 to September 1, 1997

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
3077/1	Sylvester Booker	3	08-Jul-97	22-Aug-97	0.00	0.00
2961/1	Rebecca Douglas	4	20-Nov-96	03-Dec-96	0.00	12,920.07
2989/1	Stanley Marinoff	4	23-Aug-96	22-Jan-97	0.00	18,635.58
3057/2	Joseph Gutierez	4	24-Jan-97	13-Jun-97	0.00	7,382.39
3067/1	Marciana Wilkerson	4	20-Sep-96	14-Aug-97	0.00	29,649.79
3076/1	Norman Neches	4	30-May-97	09-Jul-97	0.00	3,547.50
2948/1	Lewis Townsend	6	14-Dec-95	11-Nov-96	0.00	75.00
2951/1	Gideon Kioko	6	19-Jan-96	20-Sep-96	0.00	0.00
2972/1	Gideon Kioko	6	05-Feb-93	03-Jan-97	300,000.00	38,390.69
2973/1	Kenneth Blank	6	14-Nov-94	28-Jan-97	50,000.00	91,009.44
2973/2	Julian Safran	6	14-Nov-94	28-Jan-97	0.00	16,704.99
2988/2	Janet Schaffel	6	01-Mar-97	03-Mar-97	0.00	75.00
2988/3	Nancy Sanders	6	01-Mar-97	03-Mar-97	0.00	75.00
2988/4	Heather Johnson	6	01-Mar-97	03-Mar-97	0.00	75.00
2993/1	David Powers	6	29-Apr-94	17-Mar-97	0.00	91,038.60
2998/1	Richard Footer	6	24-Mar-97	31-Mar-97	0.00	0.00
17/1	Peter Gross	6	10-Oct-95	02-May-97	0.00	0.00
3030/1	Israel Kogan	6	25-Jul-94	05-Jun-97	250,000.00	87,263.47
3031/1	Margaret Byrne	6	22-Jan-97	10-Jun-97	0.00	0.00
3034/1	Steven Dixon	6	11-Jun-97	17-Jun-97	0.00	0.00
3035/1	Steven Dixon	6	16-Jun-97	17-Jun-97	0.00	11,218.64
3035/4	Alan Birnkrant	6	16-Jun-97	28-Jul-97	0.00	12,871.87
3037/1	Linwood Turner	6	23-Feb-94	02-Jun-97	0.00	4,563.27
3047/1	Morton Roberts	6	07-Aug-95	25-Jun-97	0.00	0.00
3051/1	Linwood Turner	6	06-Jul-96	10-Jul-97	0.00	3,030.78
3057/1	Katherine Alley	6	18-Dec-96	16-Jul-97	0.00	37.50
3059/1	Marciana Wilkerson	6	18-Sep-96	28-Jul-97	0.00	77,433.15
3061/1	Stanley Knoll	6	25-Jul-97	06-Aug-97	450,000.00	301,700.45
3120/1	John Niles, Jr.	6	30-Oct-96	29-Jan-97	0.00	85.50
		Total:			**1,050,000.00**	**807,783.68**

Indemnity Reserve Open Files (6) (Pro-Rated)	**$ 1,070,000.00**
Indemnity Reserve Closed file (23) (Pro-Rated)	**$ 3,230,000.00**
Indemnity Reserve Total:	**$ 4,300,000.00**
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$ 282,000.00**
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$ 839,500.00**
Allocated Loss Adjustment Expense Reserve Total:	**$ 1,121,500.00**
A" ated Loss Adjustment Expense Reserve Applied To Retro Plan	**$ 282,000.00**
A ted Loss Adjustment Expense Paid Applied To Retro Plan	**$ 735,648.35**

File: Columbia.sheet 4.(3of 3)(D)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1997 to September 1, 1998

ase/File	Physician	Status	Inc.Dt.	Rept.Dt.	Ind.Pd.	Exp.Pd.
3138/1	Norman Neches	4	01-Jan-97	07-Jan-98	0.00	23,981.24
3185/1	Marciana Wilkerson	4	18-Jul-96	21-May-98	0.00	50,915.34
3206/1	Deena Kleinerman	4	08-Jul-95	10-Jul-98	0.00	16,201.92
3217/1	Richard Peters	4	02-Jul-98	18-Aug-98	0.00	32,651.08
2773/4	Constance Bohon	6	21-Sep-95	10-Dec-97	0.00	7,337.12
2773/5	Nancy Ripp	6	18-Sep-95	10-Dec-97	0.00	7,337.14
3075/1	Robert Greenfield	6	11-Jul-94	04-Sep-97	0.00	4,551.54
3078/1	Rufus Rosser, Jr.	6	28-Apr-97	02-Sep-97	0.00	1,068.40
3143/1	Steven Dixon	6	12-Apr-93	27-Jan-98	0.00	5,625.39
3145/1	Richard Falk	6	09-Nov-95	06-Feb-98	0.00	19,100.46
3155/1	Lorraine Gillian	6	02-Oct-96	05-Mar-98	0.00	2,250.89
3156/1	Deena Kleinerman	6	31-Jan-98	12-Mar-98	0.00	0.00
3186/1	Israel Kogan	6	27-Jan-96	28-May-98	500,000.00	98,163.80 +
32	Florie Hirsch	6	05-May-97	17-Aug-98	0.00	3,288.60
	Total:				**500,000.00**	**272,472.92**

demnity Reserve Open Files (4) (Pro-Rated)	$	800,000.00
demnity Reserve Closed Files (10) (Pro-Rated)	$	1,145,000.00
demnity Reserve Total:	$	1,945,000.00

located Loss Adjustment Expense Reserve Open Files (Pro-Rated)	$	240,000.00
located Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	$	312,500.00
located Loss Adjustment Expense Reserve	$	552,500.00

located Loss Adjustment Expense Reserve Applied to Retro Plan	$	240,000.00
located Loss Adjustment Expense Paid Applied to Retro Plan	$	148,723.34

Capped at $500,000

Colu[illegible]sheet 5. (3 of 3)(E)

COLUMI HOSPITAL FOR WOMEN RETROSPEC[illegible]E RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1998 to September 1, 1999

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
3325-1	Nancy Sanders	2	03-Mar-99	26-Jul-99	0.00	37.50
3325-3	Janet Schaffel	2	03-Mar-99	19-Jul-99	0.00	28.00
3367-1	Joseph Afram	3	11-May-98	07-Jul-99	0.00	0.00
3275-1	David Powers	3	15-Apr-98	07-Jan-99	0.00	75.00
3340-1	Marciana Wilkerson	3	03-Sep-98	02-Jun-99	0.00	119.50
3381-1	Pamela Coleman	3	01-Apr-99	23-Aug-99	0.00	261.50
3277-1	Nabil Asterbadi	4	07-Jun-97	20-Jun-99	0.00	26,834.73
3277-2	Hrant Semerjian	4	07-Jun-97	21-Jan-99	0.00	6,857.49
3288-2	Joseph Afram	4	10-Jan-99	27-Apr-99	0.00	19,142.90
3335-1	Nabil Asterbadi	4	22-May-98	25-Feb-99	0.00	12,374.81
3365-1	Joseph Gutierrez	4	23-Oct-98	26-Jul-99	0.00	16,079.56
3360-1	Kenneth Blank	4	20-Nov-97	09-Jul-99	0.00	3.17
2989-2	Joseph Gutierrez	6	23-Aug-96	21-Jul-99	0.00	9,570.82
3226-1	Robert Greenfield	6	03-Nov-97	03-Sep-98	0.00	44.50
3226-2	Sylvester Booker	6	03-Nov-97	03-Sep-98	0.00	37.50
3236-1	Deena Kleinerman	6	10-Sep-98	14-Oct-98	0.00	0.00
3[illegible]-1	Kenneth Blank	6	24-Oct-95	03-Nov-98	500,000.00	16,608.42 +
[illegible]-2	Richard Newman	6	24-Oct-95	03-Nov-98	0.00	18,348.75
3247-3	Stephen Horwitz	6	24-Oct-95	03-Nov-98	0.00	18,348.75
3247-4	Julian Safran	6	24-Oct-95	03-Nov-98	0.00	18,348.22
3266-1	George Samman	6	16-Dec-98	23-Dec-98	0.00	0.00
3283-1	Earl Horton	6	10-Nov-98	28-Jan-99	0.00	0.00
3287-1	Rebecca Douglas	6	02-Nov-98	05-Feb-99	0.00	0.00
3322-1	Safa Rifka	6	29-Oct-98	07-Apr-99	0.00	0.00
	Total:				**0.00**	**163,121.12**

Indemnity Reserve Open Files (12) (Pro-Rated)	**$**	**3,125,000.00**
Indemnity Reserve Closed file (12) (Pro-Rated)	**$**	**2,345,000.00**
Indemnity Reserve Total:	**$**	**5,470,000.00**
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**440,000.00**
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**245,798.00**
Allocated Loss Adjustment Expense Reserve Total:	**$**	**685,798.00**
Allocated Loss Adjustment Expense Reserve Applied To Retro Plan	**$**	**440,000.00**
Allocated Loss Adjustment Expense Paid Applied To Retro Plan	**$**	**81,306.96**

File: Columbia.sheet 6.(3 of 3)(F)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1999 to September 1, 2000

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
3506-1	Kathleen Bis	2	26-Jun-00	23-Jun-00	0.00	0.00
3510-1	Russell Bridges	2	01-Jun-00	27-Jun-00	0.00	0.00
3536-1	Richard Footer	2	19-Aug-00	22-Aug-00	0.00	0.00
3522-1	George Bronsky	3	15-Nov-99	04-Aug-00	0.00	0.00
3417-1	Joseph Afram	4	12-Oct-99	22-Nov-99	0.00	0.00
3417-2	Elena Tilly	4	13-Oct-99	18-Aug-00	0.00	0.00
3425-1	Nabil Asterbadi	4	02-Sep-84	29-Nov-99	0.00	29,640.07
3535-1	Rebecca Busch	4	09-May-93	17-Aug-00	0.00	0.00
3[illegible]-1	Richard Footer	4	01-Aug-97	24-Aug-00	0.00	0.00
3 1	Norman Neches	4	18-Jan-98	28-Feb-00	0.00	2,814.78
3498-1	Cynthia Drogula	4	16-Sep-99	21-Jun-00	0.00	0.00
		Total:			0.00	32,454.85

ndemnity Reserve Open Files (11) (Pro-Rated)	$	1,775,000.00
ndemnity Reserve Closed file (0) (Pro-Rated)	$	0.00
ndemnity Reserve Total:	$	1,775,000.00
llocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	$	292,500.00
llocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	$	0.00
llocated Adjustment Expense Reserve Total:	$	292,500.00
llocated Loss Adjustment Expense Reserve Applied To Retro Plan	$	292,500.00
llocated Loss Adjustment Expense Paid Applied To Retro Plan	$	0.00

ile: C a.sheet 7 (3 of 3)(G)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1993 to September 1, 2000

SUMMARY

Indemnity Paid To Date: (Pro-Rated)	$ 4,660,000.00
Allocated Loss Adjustment Expenses Paid To Date: (Pro-Rated)	$ 2,767,470.47
Total Allocated Loss Adjustment Expense **Paid** Applied To Retro Plan	$ 2,084,947.85
Total Allocated Loss Adjustment Expense **Reserves** Applied To Retro Plan	$ 1,714,500.00

Indemnity Reserve Totals For Contract Period

Open Files: (37 Files)	$ 7,495,000.00
Closed Files: (110 Files)	$ 16,147,000.00
Total: (147 Files)	$ 23,642,000.00

Allocated Loss Adjustment Expense Reserve Totals For Contract Period

Open Files: (37 Files)	$ 1,714,500.00
Closed Files: (110 Files)	$ 3,042,395.00
Total: (147 Files)	$ 4,756,895.00

NCRIC Status Key and Footnotes:

+Loss Capped at $500,000 and Expenses Pro-Rated

NCRIC Status Key:
1. **Incident Reported**
2. **Possible Claim**
3. **Formal Claim Submitted**
4. **Case in Suit--Lawsuit or Arbitration Panel Filing**
5. **Case on Appeal**
6. **Case Closed**

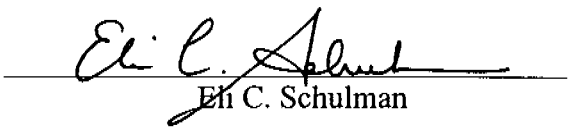
File: Columbia.sheet8.(1 of 1)(I)

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that, on this 24th day of July 2003, a copy of the foregoing *Columbia's Opposition to NCRIC's Motion to Exclude Certain Documents and Calculations* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 24th day of July 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.



Eli C. Schulman

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference – July 31, 2003**
Defendant.	

NCRIC'S OPPOSITION TO DEFENDANT'S MOTION TO CHANGE THE ORDER OF THE PROOF AT TRIAL

Pursuant to D.C. Superior Court Rule of Civil Procedure 12-I(e), Plaintiff NCRIC Inc. ("NCRIC") submits this Memorandum in Opposition to the motion of Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") to reverse the order of proof at trial.[1]

I. Introduction

While relying on cases from other jurisdictions for the wholly unremarkable proposition that decisions concerning the presentation of evidence rests within the sound discretion of the trial court, Columbia offers no compelling (or even substantive) basis for its argument that it should be permitted to upset the usual order of a trial and present its evidence first. In fact, the crux of Columbia's argument seems to be that it should go first simply because

[1] Columbia's motion also requested a pre-trial hearing resolving the issue of admissibility of documents. On June 5, 2003, NCRIC filed (and requested oral argument on) a motion to exclude a number of Columbia's proposed documentary exhibits because they were prepared and solely authenticated by counsel for Columbia. As detailed in NCRIC's motion, many of those documents are the only "evidence" Columbia has in support of many of its claims in this lawsuit. Given the fundamental issues raised by these purported exhibits, NCRIC seeks the Court's resolution of these matters as well.

its claims outnumber NCRIC's claims and that the jury will be confused if NCRIC goes first. Columbia's argument is unpersuasive and should be rejected.

II. Argument

A. The Number of Columbia's Claims Does Not Justify Changing the Order of Presentation of Evidence

Columbia's position is that because it bears the burden of proof on its counterclaims, Columbia should proceed with its presentation of evidence first, noting that "[n]ormally the party with the burden of proof has the right to open and close the argument to the jury." Columbia's argument, however, lacks merit and should be rejected.[2]

Columbia's motion ignores the fact that NCRIC has the burden of proof on its claim of breach of contract against the hospital. While this Court certainly has discretion as to the order of presentation of evidence, in almost all cases discussing the point, the order of the trial is switched because the defendant has the burden of proof on the *only* issue remaining in the case, or when a plaintiff would be automatically awarded judgment if the defendant failed to prove an affirmative defense. *See, e.g., Dishman v. American Gen. Assurance Co.*, 193 F. Supp. 2d 1119, 1127-28 (N.D. Iowa 2002) (holding that order of trial would be switched because plaintiff would automatically prevail if defendant failed to prove affirmative defense, which was only issue remaining for trial); *Johnson v. Mortham*, 915 F. Supp. 1574, 1582 (N.D. Fla. 1996) (holding that defendant would be permitted to present evidence first because the only remaining trial issue was whether defendants' race-conscious reasons for drawing congressional district

[2] In fact, the legal authority cited by Columbia is either inapposite or does not support Columbia's position. *See, e.g., Anheuser-Busch, Inc. v. John Labatt Ltd.*, 89 F.3d 1339, 1344 (8th Cir. 1996) (holding that trial court did not abuse its discretion in refusing to change the order of presentation of proof at trial); *Martin v. Chesebrough-Pond's, Inc.*, 614 F.2d 498, 501 (5th Cir. 1980) (holding that the trial court has discretion over whether two counter-defendants would be able to rebut each other's closing arguments); *Control Data Corp. v. Babcock & Wilcox Co.*, No. C6-93-472, 1993 Minn. App. Lexis 989, at *18 (Minn. Ct. App. Oct. 12, 1993) (holding that Minnesota statute required changing order of presentation of evidence at trial).

16d-002436

passed strict scrutiny); *Sweet Jan Joint Venture v. FDIC*, 809 F. Supp. 1253, 1258 (N.D. Tex. 1992) (holding that defendant FDIC would present evidence first because unless it could prove it had right to recover on notes plaintiffs would automatically prevail).

Such facts are obviously not present here. NCRIC's multi-million dollar breach of contract claim — incorrectly characterized by Columbia as a "relatively minor issue" — remains at the focal point of this case. There is no reason to alter the order of presentation of the evidence. In fact, one of the cases cited by Columbia support's NCRIC's position on this point.

In *Anheuser-Busch, Inc. v. John Labatt Ltd.*, 89 F.3d 1339 (8th Cir. 1996), the defendant moved to set the order of proof to conform to the evidence because it bore the burden of proof on one of the plaintiff's claims. The trail court denied the motion. After the defendant was found liable on all counts, it appealed the court's denial of its motion to set the order of proof. The Eighth Circuit held that as both parties bore the burden of proof on distinct counts of their causes of action, the defendant's routine burden did not justify altering the order of presentation of the evidence because the district court "understandably chose to allow the actual plaintiff, the party that filed the lawsuit, to proceed first." *Id.* at 1344. The instant case presents a similar situation: both parties bear the burden of proof on distinct causes of action. The number of causes of action put forth by both parties is not dispositive or controlling. Unlike cases where the defendant bears the *only* remaining burden, the circumstances here do not warrant a change of the order of presentation at trial. *Cf. Johnson*, 915 F. Supp. at 1582. Instead, NCRIC as the plaintiff and the party that initially filed the lawsuit should present its evidence first.

B. Denying Columbia's Motion Will Not Confuse the Jury

Columbia next argues that the sheer number of its counterclaims dictates that Columbia alone can present the totality of the case to the jury and NCRIC perforce will only

present evidence of "a sliver" of the case. Columbia mischaracterizes NCRIC's case-in-chief illustrating how Columbia has breached the Retrospective Ratings Plan (the "Retro Plan") entered into between the parties. Although NCRIC has one claim, that claim is fundamental to this case and must be placed in the context of the entire history of the relationship between the parties for the jury's comprehension to the same extent as Columbia's ten remaining counterclaims. NCRIC will not be presenting a tiny slice of the facts surrounding the parties' claims. Notably, in its motion, Columbia itself agrees that both parties' claims involve similar evidence. *See* Columbia's Motion at 3. Rejecting Columbia's motion will not hamper the jury's ability to evaluate the parties' claims, as Columbia will still be presented the opportunities available to all defendants to introduce any facts it believes are omitted from NCRIC's presentation of evidence through cross-examination and its own presentation of witnesses.

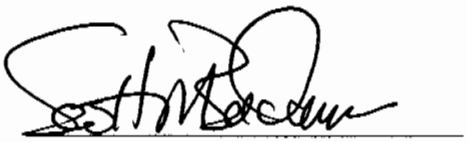
III. Conclusion

For the foregoing reasons, Columbia's effort to place itself in the role of the plaintiff and altering the order of the evidence at trial should be rejected. Columbia has provided this Court with no factual or legal authority in support of such a fundamental trial change. NCRIC does, however, request that the Court set an oral hearing concerning the documents proffered by Columbia as exhibits in this case.

16d-002438

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: July 24, 2003

16d-002439

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Columbia's Motion to Change the Order of Proof was served this 24 day of July 2003, via hand delivery to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

16d-002440

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
JUL 24 2003
Superior Court of the
District of Columbia
Washington, D.C.
ADMINISTRATIVE DIVISION
JUL 24 11 04 PM '03

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference, July 31, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S OPPOSITION TO NCRIC'S MOTION FOR REFERENCE TO A SPECIAL MASTER

After nearly three years of litigation, and on the eve of trial, NCRIC seeks to have a critical issue affecting liability – the "specific methodology and calculations which are proper under the Retro Plan," *see* Mot. at 8 – taken from the jury and decided by a special master. NCRIC's proposal for a special master is unsupported by Rule 53 or the pertinent case law. Indeed, courts that have addressed requests similar to NCRIC's have so rejected almost identical requests. (Point A, *infra.*) Such a referral would also violate Columbia's right to a jury trial by effectively asking a special master to decide liability on the parties' competing breach of contract claims. (Point B, *infra*). Finally, NCRIC's request would waste time and judicial resources because Columbia has numerous tort counterclaims that will, in any event, require presentation to a jury. (Point C, *infra.*) The motion should be denied.

Discussion

A. There Is No Reason for Reference to a Special Master

A special master may be appointed only in "unusual" or "exceptional" circumstances involving "complicated" issues. *See* SCR 53(b); *La Buy v. Howes Leather Co.*, 352 U.S. 249,

258 (1957) (referral to special master "should seldom be made, and if at all only when unusual circumstances exist") (internal quotation marks omitted); *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 478 n.18 (1962) (same); *Hiern v. Sarpy*, 161 F.R.D. 332, 334-35 (E.D. La. 1995) ("'The minimum required is a demonstration that over and beyond a mere numerical quantitative analysis, the case is intrinsically complex.'") (quoting *In re Watkins*, 271 F.2d 771, 774 (5th Cir. 1959)).

NCRIC concedes that reference to a special master under Rule 53 is the "'exception and not the rule.'" Mot. at 6 (quoting SCR 53(b)). Nevertheless, NCRIC argues that this case is too "complicated" to be understood by a jury. It is not. As a court addressing an almost identical request held, determinations like those under the Retro Plan are not "complicated" within the meaning of Rule 53, "but instead, merely require[] a close reading of the Agreement and a precise calculation." *Home Indem. Co. v. Farm House Foods Corp.*, 770 F. Supp. 1339, 1347 (E.D. Wis. 1991) (refusing to appoint special master in retrospective insurance premium case). Far more complex issues are routinely decided by juries in the District of Columbia and elsewhere. *See, e.g., Clark v. Weisberg*, No. 98 C 6214, 1999 WL 543191, at *4 (N.D. Ill. July 23, 1999) (finding case not complex enough to warrant appointment of special master despite allegations that millions of dollars were at issue and case involved over 436 transactions – and potentially 1,000 additional transactions – over a five year period, all of which would have to be verified with supporting documentation and analyzed under several operative partnership documents).

NCRIC has failed to demonstrate any reason to depart here from this settled conclusion. NCRIC describes the decisive issues in the case to be the determination of "the proper values of [the Retro Plan] factors and how these factors were or were not changed during the subsequent

amendments to the 1993 Retro Plan." Mot. at 5. But "what numerical values should be used for the various factors included in the formula" is not a "complex[]" matter but "a question of material fact which should be decided by the jury." *Home Indem.*, 770 F. Supp. at 1347-48 (rejecting suggestion that "calculation of the retrospective premium . . . is a complex matter and ill suited for determination by a jury"). NCRIC concedes that "there does not appear to be any published opinion in D.C. where a Special Master was appointed for a[n] insurance premiums calculation case." Mot. at 7. And its arguments illustrate why no special master is needed: several of NCRIC's arguments are simply efforts to read the parties' contract, using parole evidence, that conflict with its plain written terms. Columbia contends, for example, that the Deposit Premium Factor is 67% because the Plan expressly so states; NCRIC, meanwhile, argues that the Deposit Premium Factor is 62% notwithstanding the Plan's plain language. *Compare*, *e.g.*, Columbia Summ. J. Reply at 6-8 (Columbia contending that Deposit Premium Factor is 67% because Plan states 67%) *with* NCRIC Summ. J. Opp'n at 16-17 & n.5 (NCRIC contending that Deposit Premium Factor is 62% notwithstanding that Plan states 67%) *and* Statement of Material Facts Not in Dispute ¶ 29 (citing NCRIC testimony conceding that Deposit Premium Factor stated in Plan is 67%). A jury's decision whether to read a contract as written or to accept parol evidence is not a "complicated" matter at all. *See supra*. Plainly, reference to a special master is not warranted here.

B. Reference to a Special Master Would Interfere with Columbia's Right to a Jury Trial by Effectively Deciding Liability on the Parties' Breach of Contract Claims

Even if this case were sufficiently unusual and complex to otherwise warrant referral to a special master, doing so here would violate Columbia's right to trial by jury on all issues pertaining to liability. *See, e.g.*, SCR 38, 39; *New York v. Microsoft Corp.*, 224 F. Supp. 2d 76,

179 (D.D.C. 2002) ("references to special masters are improper where the master is called upon to determine the rights of the parties, rather than to enforce such rights") (citing *United States v. Microsoft Corp.*, 147 F.3d 935, 954 (D.C. Cir. 1998)); *id.* at 180 ("[t]o empower the special master to engage in a determination of rights and obligations contravenes the parameters of appropriate use of a special master").

As then-Judge Ruth Bader Ginsburg explained in granting a petition for mandamus, it is not permissible to "impose on the parties, over the objection of at least one of them, a magistrate or master as 'a surrogate judge' to try the controversy and determine liability." *In re Bituminous Coal Operators' Ass'n*, 949 F.2d 1165, 1169 (D.C. Cir. 1991). *See also La Buy*, 352 U.S. at 259 (reference to master appropriate "after the court has determined the over-all liability of defendants, provided the circumstances indicate that the use of the court's time is not warranted in receiving the proof and making the tabulation"); *Wheeler v. Shoemaker*, 78 F.R.D. 218, 223 (D.R.I. 1978) ("[T]ypically, in a jury trial, the master will review only complicated accounts for damages and not liability issues, no matter how complex.") (citing cases).

But that is precisely what NCRIC seeks here. According to NCRIC, "[t]he crux of the dispute in this case is that the parties differ as to their interpretation of the Retro Plan and the appropriate use of the various factors." Mot. at 7. Therefore, NCRIC suggests, a special master should be able to "make factual findings as to the specific methodology and calculations which are proper under the Retro Plan" and then "issue a finding of fact as to the final amount of Additional or Return Premium due at this time under the proper methodology." *Id.* at 8. Such a procedure would not, as NCRIC claims, merely "*simplify* the presentation of evidence and conduct of trial," *id.* (emphasis added); it would altogether eviscerate the trial on the parties' competing breach of contract claims: rather than preserving a meaningful role for the jury in

determining liability on the breach of contract claims, the special master would make findings as to the very "crux of the dispute in this case."

For example, Columbia maintains that the Deposit Premium Factor is 67%, while NCRIC contends that it is 62%. *See, e.g.*, April 2, 2003 Order at 6. If the special master makes a factual finding that 67% is the correct figure, then that would effectively constitute a finding that NCRIC breached the contract by applying a factor of 62%. And, once the special master makes findings not only as to the "proper" methodology but also as to "the final amount of Additional or Return Premium due," he will have ended the breach of contract inquiry altogether. NCRIC is not entitled to so undermine the jury's role as trier of fact. *See Cadwell Indus., Inc. v. New York Hosp.-Cornell Med. Ctr.*, No. 88 Civ. 7307 (LMM), 1993 WL 60604, at *3 (S.D.N.Y. Feb. 26, 1993) ("The Court is unable to justify the unacceptable risk, which the requested reference would necessarily realize, of having significant and dispositive issues taken away from the jury."). *See also, e.g., In re Bituminous Coal Operators' Ass'n*, 949 F.2d at 1169 (explaining that it is unacceptable to "impose on the parties, over the objection of at least one of them," a special master); *Stauble v. Warrob, Inc.*, 977 F.2d 690, 695 (1st Cir. 1992) ("[T]he Constitution prohibits us from allowing the nonconsensual reference of a fundamental issue of liability to an adjudicator who does not possess the attributes that Article III demands."); *Watkins*, 271 F.2d at 775 (granting writ of mandamus and vacating order of reference to master because referral without consent "nullifies the right to an effective trial before a constitutional court").

The cases cited by NCRIC are grossly inapt: each case involved either use of a special master for an accounting of damages *after* liability had already been determined or was not at issue,[1] or a situation in which the parties *consented* to resolution of an issue by a special master.[2]

[1] *In re Estate of Elkins*, 692 A.2d 910, 911 (D.C. 1995) (court appointment of auditor-master to

Only two of the cases identified by NCRIC involved a reference to a special master in the context of a jury trial. In one case, the parties consented to the referral, and the court specifically noted that the referral was not for issues of liability but for damages only. *See Beckmam*, 579 A.2d at 657. In the other case, the Court of Appeals expressed concern that in addressing matters of liability the master had gone beyond his appointed task of performing an accounting – but the court ultimately did not decide the issue because the appellant had not adequately preserved the objection (thereby, in effect, consenting to the reference). *See House of Wines, Inc. v. Sumter*, 510 A.2d 492, 498 (D.C. 1986). NCRIC has cited no case in which a non-consenting party, which has invoked its right to a jury trial on both its defenses and its counterclaims, was subjected to a special master for determinations regarding liability.

C. Reference to a Special Master Would Not Aid the Efficient Resolution of This Case, But Would Waste the Parties Time and Judicial Resources

Contrary to NCRIC's suggestion that appointment of a special master would "simplify the presentation of evidence" and "conserve judicial resources," Mot. at 8, 9, the opposite is true: appointment of a special master would result in needless redundancy in the presentation of proof and waste both judicial and the litigants' resources.

Columbia's tort counterclaims, which are not part of NCRIC's special master referral request, are intimately intertwined with the contract issues that are subjects of NCRIC's request. In order to reach a verdict on Columbia's counterclaims, the jury will have to consider much, if

---

perform accounting of estate); *Quarles v. Quarles*, 353 A.2d 285, 286 (D.C. 1976) (per curiam) (auditor-master appointed to evaluate parties' ability to pay child support).

[2] *Kentucky Carbon Corp. v. Tennessee Valley Auth.*, No. 88-5708, 1989 WL 46982, at *2 (6th Cir. May 8, 1989) (per curiam) (noting special master was magistrate judge, who can act as special master only with parties' consent); *Beckmam v. Farmer*, 579 A.2d 618, 633 (D.C. 1990) ("[T]he parties agreed that the next phase of the case – the accounting – would require appointment of a special master.").

not all, of the same issues, evidence, and testimony as that which would be presented to the special master; this would result in substantial and needless duplication of effort and resources. For instance, Columbia has pleaded a claim for breach of implied covenant of good faith and fair dealing, alleging that NCRIC willfully rendered imperfect performance by, *inter alia*, performing reconciliations inaccurately. *See* Am. Answer and Counterclaims ¶¶ 111-117. Columbia also alleges that NCRIC unlawfully converted $1 million of Columbia's money as a condition for renewing the Plan. *See id.* Likewise, Columbia alleges that NCRIC breached its fiduciary duty to Columbia by, *inter alia*, failing to perform reconciliations honestly and accurately. *See id.* ¶¶ 118-122. All of these issues would, under NCRIC's proposal, be tried both to the special master, for breach of contract purposes, and to the jury, for tort purposes.

Court after court has refused referrals to special masters in circumstances, like here, where doing so would likely result in a duplication of effort and expense. *See, e.g., Adventures in Good Eating, Inc. v. Best Places to Eat, Inc.*, 131 F.2d 809, 815 (7th Cir. 1942) ("It is a matter of common knowledge that references greatly increase the cost of litigation and delay and postpone the end of litigation."); *United States v. Hooker Chems. & Plastics Corp.*, 123 F.R.D. 62, 63 (W.D.N.Y. 1988) (reference to special master "is likely to result in additional delay and expense"); *Clark*, 1999 WL 543191, at *4 (rejecting argument that "special master could increase the efficiency of the proceedings" in light of the "recognized . . . increased cost and delay associated with the use of special masters"); *Cadwell Indus.*, 1993 WL 60604, at *3 (noting that "reference to a master would compromise Cadwell's right to a jury trial and would likely result in additional expense and delay").[3]

[3] In addition, one of Columbia's counterclaims is for fraud – including for false representations as to the amount of Additional or Return Premium due, *see* Am. Answer and Counterclaims ¶ 142, the very things that NCRIC would have the special master consider – and "actions for

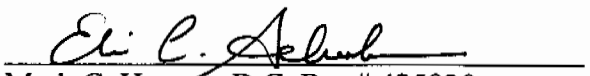
NCRIC has cited no case in which there was a reference to a special master notwithstanding that counterclaims implicating the same issues as those referenced to the special master would need to be presented to the jury after being presented to the special master. For this reason, too, this case does not present appropriate circumstances for appointment of a special master.

Conclusion

For the reasons stated above, *NCRIC's Motion for Reference to a Special Master* should be denied. A proposed order is attached.

DATED: July 24, 2003

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

---

fraud are 'particularly inappropriate for reference to a special master.'" *Hiern*, 161 F.R.D. at 335 n.3 (quoting *Bradshaw v. Thompson*, 454 F.2d 75, 80 (6th Cir. 1972)).

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion for Reference to a Special Master*, and the opposition thereto, it is hereby ORDERED that the motion is DENIED.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that, on this 24th day of July 2003, a copy of the foregoing *Columbia's Opposition to NCRIC's Motion for Reference to a Special Master* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 24th day of July 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Eli C. Schulman

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
JUL 24 2003
Superior Court of the
District of Columbia
Washington, D.C.

ADMINISTRATIVE DIVISION
JUL 24 11 03 PM '03
RECEIVED

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference, July 31, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S OPPOSITION TO NCRIC'S MOTION TO EXCLUDE CERTAIN DOCUMENTS AND CALCULATIONS

NCRIC's motion to exclude certain of Columbia's exhibits seeks to deprive the jury of the opportunity to see a number of charts that would be helpful in understanding the disputed calculations central to the parties' contract dispute. Much of the parties' respective breach of contract claims revolves around the calculations contained in a single spreadsheet, compiled by NCRIC, that purports to summarize the status of claims in the contract. That spreadsheet contains NCRIC's disputed calculations alone, and the jury will certainly see that spreadsheet. Without also seeing Columbia's proffered exhibits, it will be difficult for the jury to perform the contract's calculations using the numbers that Columbia will argue should apply.

Hoping to prevent the jury from seeing Columbia's calculations, NCRIC argues that the exhibits are hearsay. But the exhibits fall under the well-established hearsay exception for admissible summaries, and NCRIC cites no authority to the contrary. Because at trial Columbia will have a chance to support the summaries with admissible evidence and to spell out for the jury the assumptions underlying the charts, these exhibits are admissible. Any questions that

NCRIC wishes to raise regarding the exhibits can be raised on cross-examination, obviating any possible prejudice from admission of the exhibits. NCRIC's motion should be denied.

Background

When NCRIC brought this suit, it grounded its interpretation of the parties' agreement (the "Retro Plan" or "Plan") in a September 2000 reconciliation spreadsheet, which summarized the status of the claims at issue under the Plan. *See* Exh. 1, at 2.[1] Columbia disputes the accuracy of NCRIC's spreadsheet because, Columbia believes it can show, NCRIC misapplied three material terms of the contract: the Minimum Premium Factor, the Deposit Premium Factor, and the Development Factors. Just as NCRIC's September 2000 reconciliation spreadsheet summarizes the status of the claims at issue in the Plan as of September 2000 on the basis of NCRIC's inputs, Columbia's Exhibits 82-85 and 93 summarize the status of the claims at issue in the Plan as of September 2000 on the basis of Columbia's inputs. Specifically, the exhibits offer the following summaries:

- Exhibit 82 consists of a spreadsheet summarizing the September 2000 reconciliation calculations – but utilizing what Columbia believes to be the correct Minimum Premium Factor (60%) based on the express language of the Plan. *See* Retro Plan Addendum B ¶ 7, at 7 (defining Minimum Premium as "sixty percent (60%) of the Subject Premium"); *see also* Columbia Statement of Material Facts Not in Dispute ("SMF") ¶¶ 32, 34 (citing Fargis Dep. at 454-55).

- Exhibit 83 consists of a spreadsheet summarizing the September 2000 reconciliation calculations – but utilizing what Columbia believes to be the correct Deposit Premium Factor (67%) based on the express language of the Plan. *See* Retro Plan Addendum B ¶ 7, at 6 (defining Deposit Premium as "the Subject Premium multiplied by sixty-seven (67%)"); *see also* SMF ¶¶ 24, 29 (citing Fargis Dep. at 452) & SMF Exh. 19 (Letter from Stephen S. Fargis to Anne D. Gaffey (Mar. 29, 2000)) (acknowledging that "the current contract reflects a deposit premium of 67%").

[1] Making plain the centrality of the spreadsheet, days after filing suit NCRIC served upon Columbia a Request for Admissions asking Columbia to admit the accuracy of each amount shown on the spreadsheet.

- Exhibit 84 consists of a spreadsheet summarizing the September 2000 reconciliation calculations – but utilizing what Columbia believes to be the correct Development Factors based on the clear application of Exhibit E of the Plan. *See* Retro Plan Exh. E ("Example of Plan Operation"); *see also* SMF ¶¶ 46-47 (citing Fargis Dep. at 706-07).

- Exhibit 85 consists of a spreadsheet summarizing the September 2000 reconciliation calculations – but utilizing what Columbia believes to be the correct Minimum Premium Factor (60%), Deposit Premium Factor (67%), *and* Development Factors. In other words, Exhibit 85 is itself a summary of Exhibits 82-84.

- Exhibit 93 walks through the calculations contained in Exhibit 85 in step-by-step fashion, summarizing the September 2000 reconciliation on the basis of NCRIC's admissions.

Each of the exhibits at issue thus serves as a useful summary of the calculations at issue in this litigation.

Discussion

The rules of evidence permit a party to introduce summary exhibits so long as those exhibits are supported by admissible evidence. *See R.S. Willard Co. v. Columbia Van Lines Moving & Storage Co.*, 253 A.2d 454, 456-57 (D.C. 1969) ("This court has recognized that a witness may be allowed to give an abstract or summary from voluminous records if the source material is available to the other party."); Fed. R. Evid. 1006 ("The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation.").

Exhibits 82-85 and 93 are all supported by admissible documentary evidence and witness testimony. *See supra* (citing relevant provisions of Plan and NCRIC concessions in documents and deposition testimony). Nor could NCRIC seriously argue otherwise: many of the figures on the summary exhibits are those provided to Columbia by NCRIC, representing the compilation of numerous claim reports for different periods that NCRIC furnished to Columbia multiple times each year. *See* Exh. 1, at 3-10. Not only are the documents supporting each of these payments admissible under Rule 801(d)(2)(A) as non-hearsay admissions by a party opponent

and already in the possession of NCRIC, but documents supporting the compilation of each of these payments were prepared by NCRIC and provided to Columbia, as well. *See id.* (correspondence from NCRIC Vice President David Osborn to Columbia President and CEO Larry Wilson, attaching reconciliation spreadsheet together with back-up documentation contained in claims reports from 1993-94 to 1998-99). The figures provided by NCRIC in these compilations are represented in the summary exhibits and form the basis for the calculations presented in these exhibits.

Because Columbia will present evidence supporting the summaries, the summaries are admissible evidence; the mere fact that the summary exhibits illustrate what the September 2000 reconciliation spreadsheet would look like under Columbia's interpretation of the contract, rather than NCRIC's interpretation, is, contrary to NCRIC's intimations, simply no reason to exclude the exhibits. *See Martin v. Funtime, Inc.*, 963 F.2d 110, 116 (6th Cir. 1992) (summary exhibits properly admitted when records forming the basis for the exhibits were summarized by witnesses and opposing party was in possession of originals enabling party to evaluate exhibits' accuracy); *McDaniel v. United States*, 343 F.2d 785, 789 (5th Cir. 1965) ("It is perfectly proper that litigants be permitted the use of illustrative charts to summarize varying computations and to thus make the primary proof upon which such charts must be based more enlightening to the jury."); *Roberts v. United States*, 508 A.2d 110, 112 (D.C. 1986) ("Abstracts or summaries made from 'voluminous records' are admissible if the original source material is available for verification of the summary's accuracy."); *United States v. Lemire*, 720 F.2d 1327, 1347 (D.C. Cir. 1983) (even aside from Rule 1006, a summary of evidence can be put before the jury so long as it summarizes the testimony of witnesses or documents offered previously); *R.S. Willard*, 253 A.2d at 456-57 (permitting summary evidence of "numerous pages" of timesheets); *United*

States v. Foley, 598 F.2d 1323, 1338 (4th Cir. 1979) (summary data admissible because underlying data used in summary charts came from party opposing summary).

Indeed, this case fits comfortably among those that have permitted summaries of data where relevant assumptions, such as a disputed multiplier, are presented to the jury. *See, e.g., United States v. Jennings*, 724 F.2d 436, 442 (5th Cir. 1984) (permitting use of summary exhibits to illustrate calculation of formula for reimbursement using disputed multiplier; even though "certain of the conclusions in the summary charts [were] undoubtedly the product of assumptions," exhibits admissible "so long as supporting evidence has been presented previously to the jury") (internal quotation marks omitted); *see also, e.g., United States v. Richardson*, 233 F.3d 1285, 1293-94 (11th Cir. 2000) ("[T]his court will permit the use of summary charts incorporating certain assumptions 'so long as supporting evidence has been presented previously to the jury . . . and where the court has "made it clear that the ultimate decision should be made by the jury as to what weight should be given to the evidence."'") (quoting *United States v. Francis*, 131 F.3d 1452, 1458 (11th Cir. 1997)), *cert. denied*, 532 U.S. 913 (2001).

Any concerns that NCRIC may have about Columbia's summaries, moreover, can, just as with NCRIC's own summary, be handled through cross-examination. *See McDaniel*, 343 F.2d at 789 ("The rule is that a summary of books and records is admissible, provided cross-examination is allowed and the original records are available."). NCRIC is of course entitled both to cross-examine Columbia's witnesses about the calculations in the charts and to present evidence supporting its contrary interpretation of the Plan. But NCRIC is not permitted to exclude relevant summary evidence from the jury's consideration simply because it disagrees with its content and wishes to have its own summary displayed without contest.[2]

[2] Though Columbia's exhibits are fully admissible evidence, they may also be used at

Conclusion

For the reasons stated above, *NCRIC's Motion to Exclude Certain Documents and Calculations* should be denied. A proposed order is attached.

DATED: July 24, 2003

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

---

trial as demonstrative aids. *See Pierce v. Ramsey Winch Co.*, 753 F.2d 416, 431 (5th Cir. 1985) (holding that a trial court "has the discretion to permit the parties to show to the jury charts and other visual aids that summarize or organize testimony or documents that have already been admitted in evidence" even if the charts themselves are not admitted as evidence).

16d-002457

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion to Exclude Certain Documents and Calculations*, and opposition thereto, it is hereby ORDERED that the motion is DENIED.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

EXHIBIT 1

NCRIC Group, Inc.

September 1, 2000

Mr. Larry Wilson, Jr.
President & CEO
Columbia Hospital for Women Medical Center
2425 L Street, NW
Washington, D.C. 20037

Re: Physicians' Professional Liability Retrospective Rating Plan Agreement
Reconciliation Statement for Years 1994-1995 through 1998-1999

Dear Larry:

In accordance with the above-mentioned Retrospective Rating Plan Agreement between NCRIC, Inc. and Columbia, attached is the reconciliation calculation for the years 1994-1995, 1995-1996, 1996-1997, 1997-1998, and 1998-1999. This calculation utilizes loss information valued as of August 31, 2000.

The balance of $1,286,525 is due and payable on or before October 01, 2000.

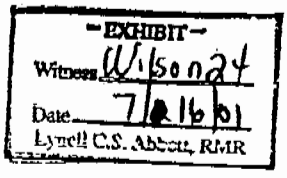
Should you have any questions regarding this calculation, please contact me at (202) 969-3145.

Sincerely,

Dave Osborn
Vice President

cc: R.Ray Pate, Jr.

Enclosure



Sep..oer 1, 2000
At 4th Qtr 2000 Plan Year

COLUMBIA HOSPITAL FOR WOMEN
RETRO-PROGRAM
Years : Sept 01,1993 - August 31,2000

	Y 94-95	Y 95-96	Y96-97	Y97-98	Y98-99	Cumulative 1994 - 1999
PREMIUM						
Subject (1st 500 Layer)	$ 2,844,913	$ 3,288,170	$ 3,495,306	$ 3,340,590	$ 3,609,667	$ 16,578,646
Deposit	$ 2,311,491	$ 2,045,242	$ 2,174,080	$ 2,077,847	$ 2,245,213	$ 10,853,873
Basic Premium Chg.	16.84%	16.84%	16.84%	16.84%	16.84%	
Basic	$ 479,083	$ 553,728	$ 588,609	$ 562,555	$ 607,868	$ 2,791,844
LOSSES						
Indemnity Reserves	$ -	$ 725,000	$ 1,070,000	*$ 800,000*	*$ 3,125,000*	$ 5,720,000
ALAE Reserves	$ -	*$ 460,000*	*$ 282,000*	*$ 240,000*	*$ 440,000*	$ 1,422,000
Total Reserves	$ -	$ 1,185,000	$ 1,352,000	$ 1,040,000	$ 3,565,000	$ 7,142,000
Indemnity Paid	$ 1,375,000	$ 600,000	$ 1,050,000	*$ 500,000*	$ 500,000	$ 4,025,000
Expense Paid	$ 341,454	$ 452,447	*$ 735,648*	*$ 148,723*	*$ 81,307*	$ 1,759,579
Total Paid	$ 1,716,454	$ 1,052,447	$ 1,785,648	$ 648,723	$ 581,307	$ 5,784,579
Total Losses	$ 1,716,454	$ 2,237,447	$ 3,137,648	$ 1,688,723	$ 4,146,307	$ 12,926,579
Development Factor	105.00%	105.00%	105.00%	80%	65%	
	capped at MIN			*capped at MIN*		
Retro Premium	**$ 1,960,898**	**$ 2,536,466**	**$ 3,355,700**	**$ 1,840,863**	**$ 3,110,192**	$ 13,140,397
(Refund)/Due	**$ (177,806)**	**$ 491,225**	**$ 1,181,620**	**$ (73,493)**	**$ 864,979**	**$ 2,286,525**
Columbia Payment						***$ (1,000,000)***
Net (Refund)/Due						***$ 1,286,525***
Max. Premium	$ 3,271,650	$ 4,373,266	$ 4,648,756	$ 4,442,984	$ 4,800,858	$ 21,537,514
Min. Premium	$ 2,133,685	$ 1,972,902	$ 2,097,183	$ 2,004,354	$ 2,165,800	$ 10,373,924
Max. Factor	1.15	1.33	1.33	1.33	1.33	
Min. Factor	0.75	0.60	0.60	0.60	0.60	

16d-002462

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000

Claims Report

Claims Experience Period:
September 1, 1993 to September 1, 1994

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
2414-1	Virginia Thompson	6	19-Jul-93	10-Nov-93	0.00	12,847.04
2451-1	Sylvester Booker	6	16-Nov-93	23-Dec-93	0.00	3,110.31
2472-1	Douglas Kalesh	6	13-Jul-92	01-Mar-94	0.00	75.00
2476-1	John Bressette	6	27-Jul-93	21-Jan-94	0.00	0.00
2489-1	Kathleen Bis	6	17-Mar-94	22-Mar-94	0.00	7.00
2499-1	Robert Bridges	6	23-Jan-94	09-Mar-94	0.00	0.00
2515-1	Cesare Santangelo	6	21-May-91	24-May-94	0.00	94,391.41
2528-1	Robert Bridges	6	15-May-94	03-Jun-94	0.00	1,940.22
[illegible]-1	Rebecca Busch	6	01-Aug-92	06-Jul-94	75,000.00	90,425.11
[illegible]-1	Marciana Wilkerson	6	09-Aug-93	22-Jul-94	500,000.00	77,444.31 +
2591-1	Stanley Marinoff	6	09-Mar-94	13-Apr-94	40,000.00	17.44
2601-1	Linwood Turner	6	21-Jul-93	08-Jun-94	20,000.00	45,109.78
	Total:				635,000.00	325,367.62

Indemnity Reserve Open Files (0) (Pro-Rated)	$	0.00
Indemnity Reserve Closed Files (12) (Pro-Rated)	$	1,490,000.00
Indemnity Reserve Total:	$	1,490,000.00
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	$	0.00
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	$	441,500.00
Allocated Loss Adjustment Expense Reserve Total:	$	441,500.00
Allocated Loss Adjustment Expense Reserve Applied to Retro Plan	$	0.00
Allocated Loss Adjustment Expense Paid Applied to Retro Plan	$	325,367.62

ile: Columbia.sheet1(3 of 3)(A)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1994 to September 1, 1995

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
2737-1	Richard Guy	6	17-May-95	14-Jul-95	390,000.00	31,899.47
2754-1	Sylvester Booker	6	07-Aug-94	20-Jan-95	0.00	82.00
2778-1	Sylvester Booker	6	18-Jun-95	20-Jun-95	0.00	75.00
2746-1	Robert Greenfield	6	12-Sep-94	01-Mar-95	0.00	75.00
2740-1	Richard Flax	6	06-Jun-95	23-Aug-95	0.00	0.00
2654-1	Rebecca Douglas	6	09-Jan-95	03-Feb-95	0.00	0.00
2655-1	Rebecca Douglas	6	19-Jan-95	03-Feb-95	0.00	82.40
2760-1	Raymond Cutts, Jr.	6	12-Jul-93	03-Apr-95	0.00	75.00
2715-1	Nancy Sanders	6	28-Nov-94	09-Jun-95	0.00	75.00
2693-1	Morton Roberts	6	01-Apr-94	03-Apr-95	0.00	75.00
1966-2	Katherine Alley	6	12-Feb-92	07-Apr-95	0.00	57,604.35
2631-1	Katherine Alley	6	03-May-94	28-Nov-94	0.00	0.00
2738-1	Julian Safran	6	23-Jul-92	18-Aug-95	0.00	0.00
2657-1	John Niles	6	27-Jun-94	16-Jan-95	475,000.00	101,193.10
2684-1	John Niles	6	01-May-89	27-Sep-94	0.00	0.00
2[illegible]	John Berryman	6	10-Mar-92	09-Mar-95	500,000.00	142,816.90 +
26[illegible]-1	Janet Schaffel	6	30-Nov-94	06-Dec-94	0.00	0.00
2662-2	Heather Johnson	6	30-Nov-94	06-Dec-94	0.00	0.00
2714-1	Gideon Kioko	6	05-Jun-92	09-Jun-95	0.00	1,358.10
2688-1	George Samman	6	11-Jul-94	20-Mar-95	0.00	44.90
2594-1	Douglas Kalesh	6	07-Sep-94	28-Sep-94	0.00	0.00
2622-1	Conrad Hicks	6	14-Dec-93	17-Nov-94	0.00	82.40
2732-1	Conrad Hicks	6	11-Nov-94	11-Aug-95	10,000.00	5,833.05
2695-1	April Rubin	6	11-Mar-95	26-Apr-95	0.00	82.50
	Total:				**1,375,000.00**	**341,454.17**

ıdemnity Reserve Open files (0) (Pro-Rated)	**$**	**0.00**
ıdemnity Reserve Closed Files (24) (Pro-Rated)	**$**	**3,230,000.00**
ıdemnity Reserve Total:	**$**	**3,230,000.00**
ıllocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**0.00**
ıllocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**433,430.00**
ıllocated Loss Adjustment Expense Reserve Total:	**$**	**433,430.00**
ıllocated Loss Adjustment Expense Reserve Applied to Retro Plan	**$**	**0.00**
ıllocated Loss Adjustment Expense Paid Applied to Retro Plan	**$**	**341,454.17**

le: C a.sheet2.(3 of 3)(B)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000
Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1995 to September 1, 1996

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
2756-1	Florie Hirsch	4	30-Aug-95	11-Sep-95	0.00	176,414.34
2773-1	Nancy Sanders	4	14-Sep-95	11-Oct-95	0.00	52,176.51
2836-1	Joan Redfearn	4	10-Oct-94	15-Apr-96	0.00	46,223.48
2894-1	Richard Peters	4	21-Jul-88	17-Jun-96	0.00	97,554.37
2488-2	Joseph Afram	6	14-Feb-94	10-Jan-96	225,000.00	29,305.94
2758-1	Janet Schaffel	6	29-Sep-92	29-Sep-95	0.00	25,991.80
2767-3	Lewis Townsend	6	01-Aug-95	16-Nov-95	0.00	148,466.40
2777-1	George Samman	6	28-Apr-95	06-Dec-96	0.00	75.00
2786-1	Steele Stewart Jr.	6	25-Aug-95	26-Dec-95	0.00	75.00
2796-1	Martin Dukes	6	08-Dec-95	22-Jan-96	0.00	110,517.86
2807-1	Lewis Townsend	6	25-Jan-96	29-Jan-96	0.00	0.00
2813-1	Norman Neches	6	04-Feb-93	21-Feb-96	0.00	1,142.00
2815-1	Katherine Alley	6	02-Mar-94	19-Jan-96	0.00	0.00
2815-2	Richard Flax	6	02-Mar-94	19-Jan-96	0.00	0.00
2818-1	Norman Neches	6	07-Jul-95	14-Feb-96	0.00	375.00
2819-1	Marciana Wilkerson	6	08-Nov-93	27-Feb-96	375,000.00	72,590.12
282[illegible]	John H. Niles, Jr.	6	08-Nov-94	14-Feb-96	0.00	17,801.98
28[illegible]	Sara L. Imershein	6	26-Feb-96	07-Mar-96	0.00	0.00
2824-1	Alan Bimkrant	6	15-Aug-95	05-Mar-96	0.00	75.00
2824-3	Sara L. Imershein	6	15-Aug-95	05-Mar-96	0.00	0.00
2839-2	Joan Redfearn	6	11-Apr-93	26-Apr-96	0.00	2,523.17
2842-1	Conrad Duncan	6	13-Jun-94	30-Apr-96	0.00	33,897.35
2858-1	Steve Dixon	6	10-May-94	23-Apr-96	0.00	0.00
2897-1	Richard Newman	6	05-Jul-93	08-Jul-96	0.00	4,308.15
2897-2	Stephen Horwitz	6	05-Jul-93	08-Jul-96	0.00	4,308.14
2898-1	Joseph Afram	6	24-Jan-96	10-Jul-96	0.00	12.00
2902-1	Shen-Tso Tseng	6	03-Dec-95	19-Jul-96	0.00	0.00
2905-1	Richard Flax	6	05-Jun-96	18-Jul-96	0.00	345.00
2908-1	Deena Kleinerman	6	19-Sep-95	06-Jun-96	0.00	75.00
2918-1	Deena Kleinerman	6	30-May-96	06-Jun-96	0.00	0.00
2922-1	Pamela Coleman	6	09-Feb-96	25-Mar-96	0.00	562.50
2926-1	Sylvester Booker	6	07-Aug-96	21-Aug-96	0.00	0.00
2950-1	Marcianna Wilkerson	6	19-June-96	27-Jun-96	0.00	0.00 +
	Total:				**600,000.00**	**824,816.11**

Indemnity Reserve Open Files (4) (Pro-Rated)	**$**	**725,000.00**
Indemnity Reserve Closed Files (29) (Pro-Rated)	**$**	**4,707,000.00**
Indemnity Reserve Total:	**$**	**5,432,000.00**
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**460,000.00**
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**769,667.00**
Allocated Loss Adjustment Expense Reserve Total:	**$**	**1,229,667.00**
Allocated Loss Adjustment Expense Reserve Applied To Retro Plan	**$**	**460,000.00**
Allocated Loss Adjustment Expense Paid Applied To Retro Plan	**$**	**452,447.41**

s: Columbia.sheet3(3 of 3)(C)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000

Claims Report
Claims Experience Period:
September 1, 1996 to September 1, 1997

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
3077/1	Sylvester Booker	3	08-Jul-97	22-Aug-97	0.00	0.00
2961/1	Rebecca Douglas	4	20-Nov-96	03-Dec-96	0.00	12,920.07
2989/1	Stanley Marinoff	4	23-Aug-96	22-Jan-97	0.00	18,635.58
3057/2	Joseph Gutierez	4	24-Jan-97	13-Jun-97	0.00	7,382.39
3067/1	Marciana Wilkerson	4	20-Sep-96	14-Aug-97	0.00	29,649.79
3076/1	Norman Neches	4	30-May-97	09-Jul-97	0.00	3,547.50
2948/1	Lewis Townsend	6	14-Dec-95	11-Nov-96	0.00	75.00
2951/1	Gideon Kioko	6	19-Jan-96	20-Sep-96	0.00	0.00
2972/1	Gideon Kioko	6	05-Feb-93	03-Jan-97	300,000.00	38,390.69
2973/1	Kenneth Blank	6	14-Nov-94	28-Jan-97	50,000.00	91,009.44
2973/2	Julian Safran	6	14-Nov-94	28-Jan-97	0.00	16,704.99
2988/2	Janet Schaffel	6	01-Mar-97	03-Mar-97	0.00	75.00
2988/3	Nancy Sanders	6	01-Mar-97	03-Mar-97	0.00	75.00
2988/4	Heather Johnson	6	01-Mar-97	03-Mar-97	0.00	75.00
2993/1	David Powers	6	29-Apr-94	17-Mar-97	0.00	91,038.60
2998/1	Richard Footer	6	24-Mar-97	31-Mar-97	0.00	0.00
17/1	Peter Gross	6	10-Oct-95	02-May-97	0.00	0.00
3030/1	Israel Kogan	6	25-Jul-94	05-Jun-97	250,000.00	87,263.47
3031/1	Margaret Byrne	6	22-Jan-97	10-Jun-97	0.00	0.00
3034/1	Steven Dixon	6	11-Jun-97	17-Jun-97	0.00	0.00
3035/1	Steven Dixon	6	16-Jun-97	17-Jun-97	0.00	11,218.64
3035/4	Alan Birnkrant	6	16-Jun-97	28-Jul-97	0.00	12,871.87
3037/1	Linwood Turner	6	23-Feb-94	02-Jun-97	0.00	4,563.27
3047/1	Morton Roberts	6	07-Aug-95	25-Jun-97	0.00	0.00
3051/1	Linwood Turner	6	06-Jul-96	10-Jul-97	0.00	3,030.78
3057/1	Katherine Alley	6	18-Dec-96	16-Jul-97	0.00	37.50
3059/1	Marciana Wilkerson	6	18-Sep-96	28-Jul-97	0.00	77,433.15
3061/1	Stanley Knoll	6	25-Jul-97	06-Aug-97	450,000.00	301,700.45
3120/1	John Niles, Jr.	6	30-Oct-96	29-Jan-97	0.00	85.50
		Total:			**1,050,000.00**	**807,783.68**

Indemnity Reserve Open Files (6) (Pro-Rated)	**$ 1,070,000.00**
Indemnity Reserve Closed file (23) (Pro-Rated)	**$ 3,230,000.00**
Indemnity Reserve Total:	**$ 4,300,000.00**
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$ 282,000.00**
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$ 839,500.00**
Allocated Loss Adjustment Expense Reserve Total:	**$ 1,121,500.00**
A" ated Loss Adjustment Expense Reserve Applied To Retro Plan	**$ 282,000.00**
A ted Loss Adjustment Expense Paid Applied To Retro Plan	**$ 735,648.35**

File: Columbia.sheet 4.(3of 3)(D)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLAN
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1997 to September 1, 1998

ase/File	Physician	Status	Inc.Dt.	Rept.Dt.	Ind.Pd.	Exp.Pd.
3138/1	Norman Neches	4	01-Jan-97	07-Jan-98	0.00	23,981.24
3185/1	Marciana Wilkerson	4	18-Jul-96	21-May-98	0.00	50,915.34
3206/1	Deena Kleinerman	4	08-Jul-95	10-Jul-98	0.00	16,201.92
3217/1	Richard Peters	4	02-Jul-98	18-Aug-98	0.00	32,651.08
2773/4	Constance Bohon	6	21-Sep-95	10-Dec-97	0.00	7,337.12
2773/5	Nancy Ripp	6	18-Sep-95	10-Dec-97	0.00	7,337.14
3075/1	Robert Greenfield	6	11-Jul-94	04-Sep-97	0.00	4,551.54
3078/1	Rufus Rosser, Jr.	6	28-Apr-97	02-Sep-97	0.00	1,068.40
3143/1	Steven Dixon	6	12-Apr-93	27-Jan-98	0.00	5,625.39
3145/1	Richard Falk	6	09-Nov-95	06-Feb-98	0.00	19,100.46
3155/1	Lorraine Gillian	6	02-Oct-96	05-Mar-98	0.00	2,250.89
3156/1	Deena Kleinerman	6	31-Jan-98	12-Mar-98	0.00	0.00
3186/1	Israel Kogan	6	27-Jan-96	28-May-98	500,000.00	98,163.80 +
32	Florie Hirsch	6	05-May-97	17-Aug-98	0.00	3,288.60
	Total:				**500,000.00**	**272,472.92**

demnity Reserve Open Files (4) (Pro-Rated)	**$**	**800,000.00**
demnity Reserve Closed Files (10) (Pro-Rated)	**$**	**1,145,000.00**
demnity Reserve Total:	**$**	**1,945,000.00**

located Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**240,000.00**
located Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**312,500.00**
located Loss Adjustment Expense Reserve	**$**	**552,500.00**

located Loss Adjustment Expense Reserve Applied to Retro Plan	**$**	**240,000.00**
located Loss Adjustment Expense Paid Applied to Retro Plan	**$**	**148,723.34**

Capped at $500,000

Colu[illegible].sheet 5. (3 of 3)(E)

COLUMI HOSPITAL FOR WOMEN RETROSPEC[illegible]E RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1998 to September 1, 1999

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
3325-1	Nancy Sanders	2	03-Mar-99	26-Jul-99	0.00	37.50
3325-3	Janet Schaffel	2	03-Mar-99	19-Jul-99	0.00	28.00
3367-1	Joseph Afram	3	11-May-98	07-Jul-99	0.00	0.00
3275-1	David Powers	3	15-Apr-98	07-Jan-99	0.00	75.00
3340-1	Marciana Wilkerson	3	03-Sep-98	02-Jun-99	0.00	119.50
3381-1	Pamela Coleman	3	01-Apr-99	23-Aug-99	0.00	261.50
3277-1	Nabil Asterbadi	4	07-Jun-97	20-Jun-99	0.00	26,834.73
3277-2	Hrant Semerjian	4	07-Jun-97	21-Jan-99	0.00	6,857.49
3288-2	Joseph Afram	4	10-Jan-99	27-Apr-99	0.00	19,142.90
3335-1	Nabil Asterbadi	4	22-May-98	25-Feb-99	0.00	12,374.81
3365-1	Joseph Gutierrez	4	23-Oct-98	26-Jul-99	0.00	16,079.56
3360-1	Kenneth Blank	4	20-Nov-97	09-Jul-99	0.00	3.17
2989-2	Joseph Gutierrez	6	23-Aug-96	21-Jul-99	0.00	9,570.82
3226-1	Robert Greenfield	6	03-Nov-97	03-Sep-98	0.00	44.50
3226-2	Sylvester Booker	6	03-Nov-97	03-Sep-98	0.00	37.50
3236-1	Deena Kleinerman	6	10-Sep-98	14-Oct-98	0.00	0.00
3[illegible]-1	Kenneth Blank	6	24-Oct-95	03-Nov-98	500,000.00	16,608.42 +
[illegible]-2	Richard Newman	6	24-Oct-95	03-Nov-98	0.00	18,348.75
3247-3	Stephen Horwitz	6	24-Oct-95	03-Nov-98	0.00	18,348.75
3247-4	Julian Safran	6	24-Oct-95	03-Nov-98	0.00	18,348.22
3266-1	George Samman	6	16-Dec-98	23-Dec-98	0.00	0.00
3283-1	Earl Horton	6	10-Nov-98	28-Jan-99	0.00	0.00
3287-1	Rebecca Douglas	6	02-Nov-98	05-Feb-99	0.00	0.00
3322-1	Safa Rifka	6	29-Oct-98	07-Apr-99	0.00	0.00
	Total:				**0.00**	**163,121.12**

Indemnity Reserve Open Files (12) (Pro-Rated)	**$**	**3,125,000.00**
Indemnity Reserve Closed file (12) (Pro-Rated)	**$**	**2,345,000.00**
Indemnity Reserve Total:	**$**	**5,470,000.00**
Allocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	**$**	**440,000.00**
Allocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	**$**	**245,798.00**
Allocated Loss Adjustment Expense Reserve Total:	**$**	**685,798.00**
Allocated Loss Adjustment Expense Reserve Applied To Retro Plan	**$**	**440,000.00**
Allocated Loss Adjustment Expense Paid Applied To Retro Plan	**$**	**81,306.96**

File: Columbia.sheet 6.(3 of 3)(F)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1999 to September 1, 2000

Case/File	Physician	Status	Inc. Dt.	Rept. Dt.	Ind. Pd.	Exp. Pd.
3506-1	Kathleen Bis	2	26-Jun-00	23-Jun-00	0.00	0.00
3510-1	Russell Bridges	2	01-Jun-00	27-Jun-00	0.00	0.00
3536-1	Richard Footer	2	19-Aug-00	22-Aug-00	0.00	0.00
3522-1	George Bronsky	3	15-Nov-99	04-Aug-00	0.00	0.00
3417-1	Joseph Afram	4	12-Oct-99	22-Nov-99	0.00	0.00
3417-2	Elena Tilly	4	13-Oct-99	18-Aug-00	0.00	0.00
3425-1	Nabil Asterbadi	4	02-Sep-84	29-Nov-99	0.00	29,640.07
3535-1	Rebecca Busch	4	09-May-93	17-Aug-00	0.00	0.00
3[illegible]-1	Richard Footer	4	01-Aug-97	24-Aug-00	0.00	0.00
3 1	Norman Neches	4	18-Jan-98	28-Feb-00	0.00	2,814.78
3498-1	Cynthia Drogula	4	16-Sep-99	21-Jun-00	0.00	0.00
		Total:			0.00	32,454.85

ndemnity Reserve Open Files (11) (Pro-Rated)	$	1,775,000.00
ndemnity Reserve Closed file (0) (Pro-Rated)	$	0.00
ndemnity Reserve Total:	$	1,775,000.00
llocated Loss Adjustment Expense Reserve Open Files (Pro-Rated)	$	292,500.00
llocated Loss Adjustment Expense Reserve Closed Files (Pro-Rated)	$	0.00
llocated Adjustment Expense Reserve Total:	$	292,500.00
llocated Loss Adjustment Expense Reserve Applied To Retro Plan	$	292,500.00
llocated Loss Adjustment Expense Paid Applied To Retro Plan	$	0.00

ile: C a.sheet 7 (3 of 3)(G)

COLUMBIA HOSPITAL FOR WOMEN RETROSPECTIVE RATING PLANS
EXPERIENCE UPDATE - AUGUST 31, 2000

Contract Period - September 1, 1993 to September 1, 2000
Claims Report

Claims Experience Period:
September 1, 1993 to September 1, 2000

SUMMARY

Indemnity Paid To Date: (Pro-Rated)	$ 4,660,000.00
Allocated Loss Adjustment Expenses Paid To Date: (Pro-Rated)	$ 2,767,470.47
Total Allocated Loss Adjustment Expense **Paid** Applied To Retro Plan	$ 2,084,947.85
Total Allocated Loss Adjustment Expense **Reserves** Applied To Retro Plan	$ 1,714,500.00

Indemnity Reserve Totals For Contract Period

Open Files: (37 Files)	$ 7,495,000.00
Closed Files: (110 Files)	$ 16,147,000.00
Total: (147 Files)	$ 23,642,000.00

Allocated Loss Adjustment Expense Reserve Totals For Contract Period

Open Files: (37 Files)	$ 1,714,500.00
Closed Files: (110 Files)	$ 3,042,395.00
Total: (147 Files)	$ 4,756,895.00

NCRIC Status Key and Footnotes:

+Loss Capped at $500,000 and Expenses Pro-Rated

NCRIC Status Key:
1. **Incident Reported**
2. **Possible Claim**
3. **Formal Claim Submitted**
4. **Case in Suit--Lawsuit or Arbitration Panel Filing**
5. **Case on Appeal**
6. **Case Closed**

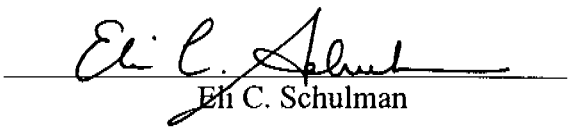
File: Columbia.sheet8.(1 of 1)(I)

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that, on this 24th day of July 2003, a copy of the foregoing *Columbia's Opposition to NCRIC's Motion to Exclude Certain Documents and Calculations* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 24th day of July 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.



Eli C. Schulman

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
JUL 24 2003
Superior Court of the
District of Columbia
Washington, D.C.

RECEIVED
ADMINISTRATIVE
DIVISION
JUL 21 11 03 PM '03

NCRIC, INC.,

Plaintiff/Counter-Defendant,

v.

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant/Counter-Plaintiff.

Civil Action No. 00-0007308
Calendar 8 – Judge Blackburne-Rigsby
Next Event: Pretrial Conference, July 31, 2003

COLUMBIA'S OPPOSITION TO NCRIC'S MOTION TO EXCLUDE EVIDENCE OF CERTAIN COUNTERCLAIM DAMAGES

NCRIC has moved to exclude the testimony of both Columbia's damages expert, Peter Ben Ezra, and any other Columbia witnesses who are prepared to give factual evidence regarding the damages incurred by Columbia as a result of NCRIC's tortious misconduct. In essence, NCRIC wants a trial without evidence regarding the damages it caused. However, District of Columbia law squarely permits a witness to present lay as well as expert testimony concerning damages. And a plethora of precedent from the District of Columbia and elsewhere confirms the common-sense notion that people intimately involved in running a business are competent to offer testimony as to the effects of various events upon that business. Plainly, Columbia should be permitted to adduce evidence of the damage it suffered. NCRIC's motion should be denied.

Factual Background

The damages Columbia will seek at trial are substantial and well-known to NCRIC.

First, Columbia will seek $20 million in lost profits resulting from business lost as a result of NCRIC's tortious conduct. In support of this claim, Columbia will present the expert testimony of Professor Peter Ben Ezra. *See* Expert Report of Peter Ben Ezra (Jan. 22, 2002).

Second, Columbia will show that NCRIC's conduct resulted in the cancellation of its annual fundraising galas; fact witnesses will explain that this resulted in a loss of approximately $1.5 million *per year*, based on actual, historical experience. *E.g.*, Rifka Dep. at 77, 79; Wilson Dep. at 166.

Third, fact witnesses will explain that, as a result of NCRIC's conduct, Columbia lost a $35 million HUD loan from the government that had an exceptionally low interest rate (4.5%) compared with Columbia's commercial borrowing rate (then, 10.5%). Columbia's board members will explain from their personal knowledge and participation in the process that the lost HUD loan would have meant reduced interest payments to Columbia of approximately $2.1 million per year. *See, e.g.*, Wilson Dep. at 260-261.

Fourth, Columbia will seek to recover administrative expenses associated with its declaration of bankruptcy that resulted from NCRIC's misconduct, expenses that were specifically disclosed to NCRC two years ago, on July 23, 2001. Indeed, NCRIC has been on notice since the outset of this case in January 2001 that Columbia would claim such damages. *See* Columbia Hospital for Women Medical Center, Inc.'s Amended Answer and Counterclaims ("Counterclaims") ¶ 63 ("In February 1998, Medical Center filed for bankruptcy, and remained in bankruptcy until early 1999. During this time, Medical Center incurred additional expenses as a result of its bankruptcy"); *id.* ¶¶ 62, 109, 116, 138, 146, 153 (alleging that NCRIC's misdeeds proximately and directly caused Columbia's insolvency); *see also* CHWMC 00002511 (attached as Exhibit A) (document produced to NCRIC in July of 2001 summarizing Columbia's costs incurred in bankruptcy).

Finally, Columbia has indicated that it will seek appropriate pre-judgment interest and punitive damages. *See* Counterclaims, "Relief Requested"; Defendant's Objections and Responses to Plaintiff's Supplemental Interrogatories (May 14, 2003).

Discussion

In this motion, NCRIC seeks to limit the scope of Ben Ezra's testimony, as well as preclude *any* testimony regarding the losses Columbia suffered from the cancellation of its annual gala, the forgone HUD loan, and its bankruptcy expenses. NCRIC's extraordinary request lacks legal authority and misstates the factual record.

A. Ben Ezra May Testify As An Expert Within the Scope of His Report and As a Lay Witness Otherwise

NCRIC's request with respect to Ben Ezra is not at all clear. NCRIC says it wants a ruling that Ben Ezra may not "testify beyond the scope of his report." Mot. at 3. Plainly, his expert testimony will be based on the report he issued. But, simply by virtue of issuing an expert report, Ben Ezra may not be precluded from giving lay testimony on other issues as NCRIC seems to suggest. District of Columbia law on this score is unequivocal. *See, e.g.*, *Eason v. United States*, 704 A.2d 284 (D.C. 1997) (en banc) (holding that a witness can testify as both an expert witness and a lay witness); *Glorious Food, Inc. v. Georgetown Prospect Place Assocs.*, 648 A.2d 946, 949 (D.C. 1994) (holding that trial court abused its discretion in refusing to allow witness who had previously been designated as an expert to give fact testimony). Indeed, as a member of Columbia's Board of Directors through the relevant period, Ben Ezra has significant personal knowledge of the facts and will, accordingly, be a significant lay witness on many issues in dispute. Notable, NCRIC cites not a single authority for excluding such lay testimony.[1]

[1] This case is nothing at all like *District of Columbia v. Kora & Williams Corp.*, 743 A.2d 682 (D.C. 1999), in which the experts being deposed repudiated many of the expert opinions that had been provided in their expert reports. *See id.* at 689. Nor does *Mizrahi v. Schwarzmann*, 741 A.2d 399, 405 (D.C. 1999), in which the plaintiff was unable to

B. The "Other Damages" Identified by NCRIC Do Not Require Expert Testimony – and NCRIC Cites No Case For Its Contrary Suggestion

NCRIC argues that three "other" categories of Columbia's damages *require* expert proof: those pertaining to reputational harm, lost gala proceeds, and the lost HUD financing. Mot. at 5-7. As to the first category, Columbia *is* offering expert proof: Ben Ezra will testify regarding Columbia's lost profits that flowed from NCRIC's tortious conduct, including its defamatory statements. As to the other two categories, NCRIC is simply wrong that expert testimony is required as a matter of law.

It is long-settled that, once the "fact of damage" is established, a party faces a "lightened burden" in proving the *amount* of damages and need "prove damages only with reasonable certainty." *Affordable Elegance Travel, Inc. v. Worldspan, L.P.*, 774 A.2d 320, 329 (D.C. 2001) (quoting *Edmund J. Flynn Co. v. LaVay*, 431 A.2d 543, 550 (D.C. 1981)). Thus, the damages claimed by a plaintiff "need not be susceptible of computation with exactitude" in order to permit their award. *District of Columbia v. Gandy*, 450 A.2d 896, 901 (D.C. 1982), *modified on other grounds*, 458 A.2d 414 (D.C. 1983). An award of damages "will be upheld . . . even if it is not proven with mathematical exactitude." *Affordable Elegance Travel*, 774 A.2d at 329. A party should not "be deprived of compensatory damages merely because they cannot be computed with exactitude." *Spar v. Obwoya*, 369 A.2d 173, 180 (D.C. 1977).

Lay witnesses are clearly capable of providing the factual basis for a reasonable estimate of damages. With respect to the gala, lay witnesses will offer evidence regarding gala receipts actually obtained by Columbia immediately before and after NCRIC's tortious conduct. Such

---

depose the defendant's experts because of the discovery schedule, bear any resemblance to this case. Mr. Ben Ezra was timely presented for deposition, and NCRIC does not suggest otherwise. Finally, *Johnson v. United States*, 683 A.2d 1087, 1099 (D.C. 1996), which did no more than adopt the familiar balancing principle of Federal Rule of Evidence 403 into District of Columbia law, has no relevance here, as NCRIC never indicates what would be prejudicial about allowing businesspeople to testify about the damages that their business suffered.

before-and-after testimony from fact witnesses is routinely permitted to establish damages. Indeed, the Court of Appeals specifically stated in *Columbus Properties, Inc. v. O'Connell*, 644 A.2d 444 (D.C. 1994), explained that a lay witness was perfectly competent to testify that "her ability to use her [own] office had decreased between thirty-three and fifty percent" after defendants' substandard maintenance. *Id.* at 446. "[I]t was not necessary for O'Connell to introduce [expert] testimony in order to establish her claim" because her own testimony "provided 'some reasonable basis on which to estimate damages.'" *Id.* at 447 (quoting *Bedell v. Inver Housing, Inc.*, 506 A.2d 202, 205 (D.C. 1986)). *See also Sears, Roebuck & Co. v. Goudie*, 290 A.2d 826, 833 (D.C. 1972) (allowing owner of coffeehouse to prove damages caused by inadequate air conditioning through her "extensive testimony" that "included calculations as to the average amount spent by customers" as well as "personal observations" of "the number of customers who left the coffeehouse because of the heat"); *Hartford Accident and Indemnity Co. v. District of Columbia*, 441 A.2d 969, 974 & n.7 (D.C. 1982) (upholding damages award for items as diverse as "delay damages" and "vandalism damages" based on "detailed testimony" from the litigant's "president and job supervisor"); *cf. Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1346 (D.C. 1994) (holding that testimony of the property manager and vice president of a litigant, based on, among other things, "previous experiences" of the vice president "clearly was sufficient" to sustain damages awarded by a jury of $2.5 million).

Likewise, Columbia personnel who were involved in the process of attempting to secure the HUD loan will testify as to the effect that a change in interest rate would have had on Columbia's debt service. This is no more complicated than a homeowner testifying to the savings he or she would achieve in refinancing his or her home. Indeed, courts have permitted lay witnesses to testify to damages issues far more complex than these. *See, e.g., Columbus*

Properties, 644 A.2d 444 (business person testifying as to damages suffered as a result of loss of ability to use office space due to many different defects in the conditions of upkeep); *Sears, Roebuck*, 290 A.2d at 833 (coffeehouse owner testifying as to damages based on estimates of number of customers who were driven away by heat, "number of 'hot' days during the periods in question" and calculations of dollar amounts spent by customers); *Hartford Accident*, 441 A.2d 974 (president and job supervisor testifying as to "delay damages" and "vandalism damages"). *See also Conwood Co., L.P. v. United States Tobacco Co.*, 290 F.3d 768, 780 (6th Cir. 2002) (affirming $350 million jury award, trebled to $1.5 billion, based in part on testimony by chairman of plaintiff corporation regarding profits lost as a result of defendants' antitrust misconduct); *Mississippi Chemical Corp. v. Dresser-Rand Co.*, 287 F.3d 359, 373 (5th Cir. 2002) (collecting cases in which courts "have allowed lost profit testimony by a layperson witness [when] the witness has direct knowledge of the business accounts underlying the profit calculation"); *Shane v. Shane*, 891 F.2d 976, 982 (1st Cir. 1989) (allowing owner of stock to testify to the company's worth because he was "intimately aware of the business operations" of the company); *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1174 (3d Cir. 1993) (allowing lay testimony on "how well Lightning Lube could have been expected to do" when the witness possessed "experience in the quick-lube business"); *Omni Outdoor Advertising, Inc. v. Columbia Outdoor Advertising Inc.*, 891 F.2d 1127, 1144-45 (4th Cir. 1989), *rev'd on other grounds*, 499 U.S. 365 (1991) (upholding damages based on testimony of plaintiff's owner, who had an "extensive background in the billboard industry," with respect to the discrepancy in projected income before and after the alleged anticompetitive acts, as well as the change in value of plaintiff's billboards before and after the alleged anticompetitive acts); *State Office Sys., Inc. v. Olivetti Corp.*, 762 F.2d 843, 845-46 (10th Cir. 1985) (permitting testimony on lost future profits

in light of witness's "position as president and treasurer of the company," "lengthy experience in marketing and selling Olivetti computers in Kansas," and personal knowledge of the company's operations).

C. NCRIC Has Long Been On Notice Regarding The Damages Suffered From Columbia Being Pushed Into Bankruptcy

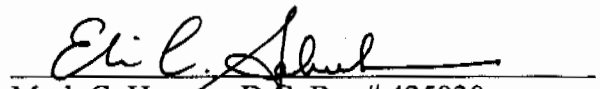
NCRIC claims to be surprised that it will be held answerable for costs Columbia incurred after being pushed into bankruptcy by NCRIC's actions. Mot. at 9. But this has been part of Columbia's case for *years*. The factual allegations in support of this claim for damages can be found in Columbia's amended counterclaims -- dated January 5, 2001 – at paragraphs 62, 63, 109, 116, 138, 146, and 153. Moreover, although NCRIC contends that it did not receive any documents supporting this claim from Columbia, in fact, Columbia's plan of reorganization was produced to NCRIC on *July 23, 2001*. That document contained, at page 8 (CHWMC 0002511), the bankruptcy expenses that Columbia will utilize here to demonstrate its damages: Columbia noted that it would incur "approximately $1,500,000.00" in payments approved by the Bankruptcy Court. NCRIC's claim that Columbia has failed to produce "a single document relating to these expenses," Mot. at 9, is thus simply incorrect. NCRIC has been on notice since the outset of the case that Columbia holds it responsible for the costs Columbia incurred by being pushed into bankruptcy, and the documents showing those precise costs were produced to NCRIC long ago. There is no basis for precluding the jury from hearing this testimony.

Conclusion

For the foregoing reasons, NCRIC's motion to exclude evidence of certain counterclaim damages should be denied. A proposed order is attached.

DATED: July 24, 2003

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-002479

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion To Exclude Evidence of Certain Counterclaim Damages*, and opposition thereto, it is hereby ORDERED, that the motion is DENIED.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

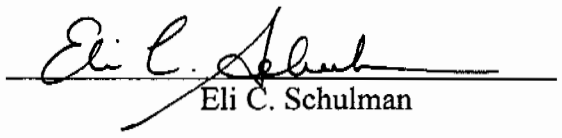
Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 24th day of July, 2003, a copy of the foregoing *Columbia's Opposition to NCRIC's Motion To Exclude Evidence of Certain Counterclaim Damages* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on this 24th day of July, 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.



Eli C. Schulman

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
JUL 24 2003
Superior Court of the
District of Columbia
Washington, DC
ADMINISTRATIVE
DIVISION
JUL 24 11 03 AM '03

NCRIC, INC.,

Plaintiff/Counter-Defendant,

v.

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant/Counter-Plaintiff.

Civil Action No. 00-0007308
Calendar 8, Judge Blackburne-Rigsby
Next Event: Pretrial Conference, July 31, 2003

COLUMBIA'S OPPOSITION TO NCRIC'S MOTION TO REQUIRE "SECURITY FOR 'COSTS AND FEES'"

Itself faced with the possibility of a significant adverse judgment, NCRIC argues that Columbia should be required to post a bond to cover $35,000 worth of NCRIC's (unspecified) "costs and fees" *before* being entitled to proceed to trial. But NCRIC cites no legal authority for such extraordinary relief, and its purpose is plain: like its demand for a $1 million deposit on threat of discontinuing Columbia's insurance coverage, NCRIC, a $160 million malpractice insurance monopolist, again seeks to turn Columbia's strapped financial condition into its own advantage – this time as a way to preclude Columbia from obtaining a trial that will expose NCRIC's tortious misconduct.

Rule 54, upon which NCRIC purportedly relies, allows the imposition of costs only when a party has "prevail[ed]." Nowhere does NCRIC explain how that Rule applies here, *before* judgment. *See Johnson v. Edgewoord Mgmt. Corp.*, 512 A.2d 287, 289-90 (D.C. 1986) ("The procedure for taxing costs followed in [the] District of Columbia . . . entails the filing of a bill of costs with the court clerk after the entry of judgment."). NCRIC points to absolutely nothing in Rule 54 – or in any other statute, rule, or case – that requires or authorizes a bond to cover an

opposing party's costs prior to a determination of liability. In apparent recognition of the absence of any such authority, NCRIC alludes to the "inherent equitable power" of the Court, but once again fails to cite any legal authority to justify its position. *See In re National Student Mktg. Litig.*, 445 F. Supp. 157, 168 (S.D.N.Y.1978) (denying "the initial motion to require plaintiffs to provide security for costs" as without any authority).

NCRIC's motion is another patent attempt to bully Columbia and obstruct its right to trial. The motion should be denied. A proposed order is attached.

DATED: July 24, 2003

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-002484

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion To Require "Security for 'Costs and Fees,'"* and opposition thereto, it is hereby ORDERED, that the motion is DENIED.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

16d-002485

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

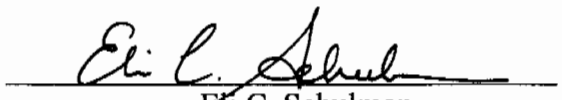
Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 24th day of July, 2003, a copy of the foregoing *Columbia's Opposition to NCRIC's Motion to Require "Security for 'Costs and Fees'"* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on this 24th day of July, 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.



Eli C. Schulman

16d-002487

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff/Counter-Defendant,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference – October 15, 2003**
Defendant/Counter-Plaintiff.	

NCRIC'S MOTION TO JOIN PARTIES AS DEFENDANTS/COUNTER-PLAINTIFFS

Pursuant to D.C. Superior Court Rules 21 and 25(c), Plaintiff/Counter-Defendant NCRIC, Inc. ("NCRIC") moves the Court to exercise its discretion under the rules to add the liquidating trustees for Columbia Hospital for Women Medical Center, Inc. ("Columbia"), Michael M. Barch and Robin C. Newton, M.D., as named Defendants/ Counter-Plaintiffs in the above captioned matter. Now that Columbia is in the process of dissolving its corporation and winding up the corporate affairs, these liquidating trustees are the proper real parties in interest and should be joined in this suit for the reasons contained in the supporting Statement of Points and Authorities. Pursuant to D. C. Superior Court Rule 12-I(e), a Proposed Order is also attached.

Oral Hearing Requested.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: August 20, 2003

CERTIFICATION REQUIRED BY D.C. SUPERIOR COURT RULE 12-I

Counsel for Plaintiff NCRIC, Inc. certifies pursuant to Rule 12-I that counsel for the parties discussed the issues addressed in this motion via telephone conferences on August 13, 19 and 20, 2003 but could not resolve this matter. Accordingly, this motion is necessary for Plaintiff NCRIC, Inc. to obtain the relief it seeks.

16d-002489

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Pretrial Conference – October 15, 2003
Defendant.	

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF NCRIC'S MOTION TO JOIN PARTIES AS DEFENDANTS/COUNTER-PLAINTIFFS

Pursuant to D.C. Superior Court Rules 21 and 25(c), Plaintiff/Counter-Defendant NCRIC, Inc. ("NCRIC") moves the Court to exercise its discretion to add the liquidating trustees for Columbia Hospital for Women Medical Center, Inc. ("Columbia"), Michael M. Barch and Robin C. Newton, M.D., as named Defendants/Counter-Plaintiffs in the above captioned matter. Now that Columbia is in the process of dissolving its corporation and winding up the corporate affairs, these liquidating trustees are the proper real parties in interest under D.C. Superior Court Rule 17(a) and should be joined as Defendants/ Counter-Plaintiffs. The addition of these parties will not impose any delay or prejudice to Defendants/ Counter-Plaintiffs and will instead facilitate prompt resolution of this dispute by including the proper parties in the resolution of claims at trial.

BACKGROUND

The relationship between NCRIC and Columbia has been extensively briefed in the numerous submissions to this Court. The following facts are relevant to the instant motion.

In October 2000 NCRIC filed a simple breach of contract claim against Columbia contending that Columbia refused to pay the Additional Premium due under the Retrospective Rating Plan ("the Retro Plan"), a contract between the parties, when the Retro Plan expired on September 1, 2000. Columbia responded to the claim with an eleven count Counterclaim against NCRIC, seeking compensatory and punitive damages and alleging, *inter alia*, breach of contract, breach of fiduciary duty, defamation, and numerous other business torts.

In May 2002, following the close of discovery and the briefing on the motions for summary judgment (but before the resolution of those motions by the Court), Columbia publicly announced that the hospital had suspended operations and abruptly closed its facility. In September 2002, Columbia announced that it was in the process of selling, or indeed had sold, its real estate assets and that it would shortly dissolve and distribute any remaining assets it may have to "charity." Upon information and belief, the Columbia Board of Directors resigned effective September 30, 2002. During this time, NCRIC repeatedly contacted Columbia's counsel to obtain information about the dissolution of the corporation and how the corporate dissolution and winding up process would affect this litigation. Columbia refused to provide any meaningful information.

In the course of winding up its affairs, Columbia sent letters to other creditors of the hospital in which Columbia requested that pending litigation by such creditors be ceased and that no additional litigation be initiated because the corporation did not have funds available to pay any judgments obtained. *See* Columbia's October 15, 2002 Letter at 1, attached as Exhibit A. This letter is signed by Michael M. Barch and Robin C. Newton, M.D. who identify themselves as Liquidating Trustees of Columbia. *Id.* To date, NCRIC has not received a copy of this letter from Columbia.

ARGUMENT

Columbia has ceased operations and liquidating trustees have been appointed to wind up the corporate affairs and dissolve the corporation. These trustees are the actual real party in interest as NCRIC believes that the liquidating trustees of Columbia are responsible for the prosecution of this suit and ultimately responsible for any satisfaction of any judgment entered against Columbia on NCRIC's claim. The benefits of joining the real party in interest before trial on the merits far outweighs the possibility of any prejudice to Columbia as the addition of the liquidating trustees does not require any additional discovery or any delay in the scheduling of this trial. The Court should exercise its discretion to add these parties as proper Defendants/Counter-Plaintiffs in this matter.

D.C. Superior Court Rule 17(a) states, in relevant part:

> **(a) Real Party in Interest**. Every action shall be prosecuted in the name of the real party in interest. . . . . No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonably time has been allowed after objection for ratification of commencement of the action by, *or joinder or substitution of*, the real party in interest.

D.C. Sup. Ct. R. Civ. P. 17(a) (emphasis added).

Based on the information NCRIC has been able to obtain from third parties, as Columbia has refused to be forthcoming with the details of its closure and dissolution, the Board of Directors of Columbia has resigned and all decision-making power, obligations and responsibility rests with the liquidating trustees. Although it is possible for a dissolved corporation to continue to prosecute claims in the corporate name, *c.f.* D.C. Code § 29-301.63, it is preferable for the real party in interest, where available, to be involved in the suit.[1/]

1/ D.C. Code § 29-301.63 provides for survival of remedies for and against a dissolved corporation. Under this statute a corporation may continue to prosecute and/or defend a suit in its corporate name after

Therefore, these trustees should be joined as Defendants/Counter-Plaintiffs to prosecute Columbia's counterclaims and assert its defenses at trial. The rules contemplate such an action and provide a mechanism for the Court to add such parties without disruption to the underlying case or scheduling of the trial. D.C. Superior Court Rule of Civil Procedure 21 provides, in relevant part:

> Parties may be dropped or added by order of the court on motion of any party or of its own initiative *at any stage of the action* and on such terms as are just.

D.C. Sup. Ct. R. Civ. P. 21 (emphasis added). In addition, Rule 25 regarding the substitution of parties provides, in relevant part:

> **(c) Transfer of Interest.** In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred *to be substituted in the action or joined with the original party.*

D.C. Sup. Ct. R. Civ. P. 25(c) (emphasis added).

Under Rules 21 and 25, the Court is authorized to join the liquidating trustees as additional defendants. *C.f. Eskridge v. Jackson*, 401 A.2d 986 (D.C. 1979) (orders under Rule 21 to add a party lie within the court's discretion). These parties could not have been named when the litigation was filed because Columbia's closure and dissolution occurred in Fall 2002. Moreover, the timing of this motion is proper as Rule 21 explicitly authorizes the joinder of such parties "at any stage of the action." *See Mullaney v. Anderson*, 342 U.S. 415, 417 (1952) (considering motion to add real party in interest under Rule 21 raised for the first time on appeal).

---

dissolution. However, this statute appears to contemplate a situation where the directors and officers are still acting on behalf of the corporation. In contrast, Columbia here chose to assign all management rights to the liquidating trustees and the Board has resigned.

No prejudice will be suffered by Columbia by the granting of this motion and the liquidating trustees joinder as Defendants/Counter-Plaintiffs. No additional claims or defenses will be asserted by NCRIC, and no additional discovery will be required. There is no reason why the addition of these parties would delay the scheduling of the pretrial conference and trial on the merits. *See Link Aviation, Inc. v. Downs*, 325 F.2d 613, 615, 117 U.S. App. D.C. 40, 42 (D.C. Cir. 1963) (joining of real part in interest is proper where cause of action is not changed and substance of claims are not affected) (citing *Kansas Elec. Power Co v. Janis*, 194 F.2d 942, 944 (10th Cir. 1952)). As the U.S. Supreme Court stated in *Mullaney* when granting a Rule 21 motion to add real parties in interest as named parties:

> The addition of these two parties plaintiff can in no wise [sic] embarrass the defendant. Nor would their earlier joinder have in any way affected the course of the litigation.

342 U.S. at 417.

Indeed, addition of these liquidating trustees at this time will facilitate prompt resolution of the matter and possibly obviate the need for post-trial motions because the proper parties in interest responsible for any judgment obtained will be involved in the trial on the merits of this case. The liquidating trustees are the proper parties to this litigation, and the benefit of adding these parties before the trial on the merits outweighs the minor, if any, prejudice which Columbia might suffer from this change.

CONCLUSION

For the reasons set forth above, the Court should grant NCRIC's motion and join Michael M. Barch and Robin C. Newton, M.D as Liquidating Trustees for Columbia Hospital of Women Medical Center, Inc., as Defendants/Counter-Plaintiffs in this matter.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: August 20, 2003

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference – October 15, 2003**
Defendant.	

ORDER

Upon Consideration of NCRIC's Motion to Join Parties as Defendants/Counter-Plaintiffs and any opposition thereto, it is this _____ day of _____, 2003 hereby

ORDERED, that NCRIC's Motion to Join Parties as Defendants/Counter-Plaintiffs is GRANTED. The following parties are hereby added to the caption of the case as additional Defendants/Counter-Plaintiffs:

Michael M. Barch and Robin C. Newton, M.D, as Liquidating Trustees for Columbia Hospital for Women Medical Center, Inc.

_____

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

16d-002497

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion, Statement of Points and Authorities in Support, and Proposed Order were served this 20th day of August 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center

Margaret G. Perl

EXHIBIT A

COLUMBIA HOSPITAL FOR WOMEN & MEDICAL CENTER

October 15, 2002

Brault, Graham, Scott &
Brault, L.L.C.
1140 Connecticut Avenue - Suite 250
Washington, DC 20036

RE: Columbia Hospital for Women Medical Center, Inc., (the "Hospital")

Dear Sir/Madam:

The records of the Hospital indicate that you may be a creditor of or claimant against the Hospital, and this letter is being forwarded to you pursuant to §29-301.47 of the District of Columbia Code in order to advise you of the status of the Hospital's financial affairs.

The Hospital's assets included its real estate located at 2425 L Street, NW., Washington, DC 20037 (the "Real Estate"), accounts receivable (the "Receivables") and equipment (the "Equipment"). As you may know, these assets have been encumbered by indebtedness, which exceeds the Collective value of these assets. The Real Estate and much of the Equipment has been sold to unrelated and unaffiliated third parties, and the proceeds of such sales were substantially less than the indebted secured thereby. The Receivables have been placed in the hands of a third party for collection, and after payment if amounts outstanding to the Hospital's accounts receivable lender (including, interest, late charges, etc.), and costs of collection, it is unlikely that any significant amount will be available for unsecured creditors. In light of these circumstances, the Hospital will be unable to pay you any additional amounts or satisfy any claims you may now or hereafter have against the Hospital. Unfortunately, there are no remaining assets available to satisfy these debts and claims.

Although the Hospital has pursued an orderly liquidation of its assets, the debts of and claims against the Hospital far exceed its assets. Regretfully, there is no further action the Hospital can take to alter this situation.

The undersigned have been appointed as Liquidating Trustees, to continue the wind-down of the affairs of the Hospital. We expect the continuing wind-down will take between 90 to 120 days, during which time we will be addressing any remaining medical-related or business issues that may arise. You may contact us at (202)293-6512, but please understand that the Hospital has virtually no remaining assets, and no additional payments are expected to be made to you or your organization. In light of the unavailability of any assets for recovery, we would hope that pending litigation would be ceased and no additional litigation initiated, but of course, that is in your discretion. We would like to make it clear, however, that the Hospital's operations have ceased, and no funds are available to pay debts owed or judgments obtained.

Again, we regret having to advise you of this situation, and more importantly, we regret the loss of Columbia Hospital for Women, which has served our community well for more than 100 years.

Very truly yours,

Michael M. Barch, Liquidating Trustee

Robin C. Newton, M.D., Liquidating Trustee

CONFIDENTIAL
NCRIC 005246

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference October 15, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S OPPOSITION TO NCRIC'S MOTION TO JOIN PARTIES AS DEFENDANTS/COUNTER-PLAINTIFFS

NCRIC's motion to join Columbia's liquidating trustees as parties to this action, ostensibly because of Columbia's supposed dissolution, is meritless. The D.C. Code expressly provides that a dissolved corporation remains suable in this jurisdiction under its own name, not those of its liquidating trustees. Regardless, a trip to the office of D.C.'s Department of Consumer and Regulatory Affairs would have revealed that Columbia has not dissolved. The motion is therefore without *any* legal or factual basis.

NCRIC's attempt to add individuals as parties is but another obvious effort to derail Columbia's enforcement of its rights at trial by harassing individuals associated with Columbia into capitulation. In the face of an imminent trial, NCRIC ignores the Court's prior denial of NCRIC's attempt to gain discovery into the liquidation of Columbia's assets, dusts off an eleven-month-old letter on the subject, and asks the Court to permit joinder of individuals hired some two years after the events giving rise to this suit with no alleged personal involvement in the challenged contract – and does so without any legal or factual basis. The motion should be denied.

Discussion

A. THE MOTION IGNORES EXPRESS D.C. STATUTORY LAW

The purported basis for NCRIC's motion to join Columbia's liquidating trustees as parties to this litigation is Columbia's "dissolution." *See, e.g.*, Mot. at 1. But express D.C. statutory law makes clear that there is no need to join trustees to this litigation: even if Columbia had dissolved as a corporate entity, under D.C. law the corporation remains fully able to prosecute this lawsuit.

As the Supreme Court has explained, "a time-honored feature of the corporate device is that a corporate entity may be utterly dead for most purposes, yet have enough life remaining to litigate its actions. All that is necessary is a statute so providing." *Defense Supplies Corp. v. Lawrence Warehouse Co.*, 336 U.S. 631, 634-35 (1949) (holding that dissolution of Defense Supplies Corporation by Congress did not abate the action because the relevant statute expressly provided that "no action shall abate").[1] The D.C. Code includes precisely such a statute. D.C. statutory law expressly provides that dissolution of a corporation does not abate a proceeding pending by or against that corporation, and actions involving the corporation may proceed using the corporate name:

> No action pending in favor of or against any corporation shall be discontinued or abate by the dissolution of the corporation, whether such dissolution occur by the

[1] *See also Sedgwick v. Beasley*, 173 F.2d 918, 920 (D.C. Cir. 1949) (holding that whether a corporation may maintain a lawsuit after dissolution turns on the law of the state in which the corporation was organized); *Beasley v. Fox*, 173 F.2d 920, 921 (D.C. Cir. 1949) (referring to this rule as "the settled law as stated in *Sedgwick v. Beasley*"); *York Blouse Corp. v. Kaplowitz Bros.*, 97 A.2d 465, 468 (D.C. 1953) (same); 6A Charles Alan Wright et al., *Federal Practice and Procedure*, § 1563 (1990 & supp. 2003) (same); *see also Ripalda v. American Operations Corp.*, 977 F.2d 1464 (D.C. Cir. 1992) (applying Delaware statute in concluding that proper to continue litigation involving dissolved Delaware corporation); *Lyman v. Knickerbocker Theatre Co.*, 5 F.2d 538 (D.C. Cir. 1925) (holding action correctly brought in corporation's name, even assuming it had lawfully dissolved).

16d-002503

> expiration of its charter or otherwise, but all such actions may be prosecuted to final judgment in its corporate name; and on all judgments so obtained, whether before or after its dissolution, execution may be had and satisfaction enforced in such corporate name.

D.C. Code § 29-221.16.

In this case, the entity that is Defendant and Counter-Plaintiff – Columbia Hospital for Women Medical Center, Inc. – is a registered D.C. corporation. *See* Columbia's Amended Answer and Counterclaims ¶ 11. Accordingly, application of section 29-221.16 could not be clearer: dissolution of the hospital, if it occurred, would have no impact on the continuation of this lawsuit. *See* D.C. Code § 29-221.16 (directing that "[n]o action pending in favor of or against any corporation shall be discontinued or abate by the dissolution of the corporation," and that "all such actions may be prosecuted to final judgment in its corporate name").[2] NCRIC's claimed "need" to name the trustees as parties is therefore completely without legal merit: Columbia remains the proper party in this case.[3]

B. THE MOTION IGNORES FACTS IN THE PUBLIC RECORD

Much as NCRIC is wrong on the law, so it is mistaken on the facts: Columbia has not dissolved, but instead remains a corporation in good standing. NCRIC assumes otherwise on the

---

[2] *Cf. Clover Dairy Co., Inc., to Use of Bettar Ice Cream Co., Inc. v. Misler*, 85 A.2d 914, 915-16 (D.C. 1952) ("it was not necessary for the trustees to be substituted . . ., and [] the [] company could continue as the plaintiff . . ., notwithstanding that its interest had been transferred to its directors as trustees by operation of law.") (applying analogous Maryland statute); *cf. also Ripalda v. American Operations Corp.*, 977 F.2d 1464, 1486 (D.C. Cir. 1992) (applying similar Delaware statute).

[3] While ignoring § 29-221.16, NCRIC concedes that *another* provision, D.C. Code § 29-301.63, expressly provides that "[a]ny suit or proceeding by or against [a dissolved] corporation may be prosecuted or defended by the corporation in its corporate name." NCRIC tries to avoid the obvious import of this provision, suggesting that it "appears to contemplate a situation where the directors and officers are still acting on behalf of the corporation." Mot. at 3-4 n.1. This reading is dreamed up out of thin air. Section 29-221.16, which does not even mention officers or directors, plainly is not susceptible of such a limited reading.

basis of "information NCRIC has been able to obtain from third parties." Mot. at 3. But NCRIC does not offer any evidence that Columbia has dissolved beyond this reference to unsupported hearsay from unidentified "third parties." Had NCRIC taken the time to consult the public records maintained by the District's Department of Consumer and Regulatory Affairs, NCRIC would have found that Columbia remains a corporation in good standing. *See* Exh. 1 (attaching certificate). Because Columbia's supposed dissolution is the sole factual predicate for NCRIC's motion and that predicate is demonstrably incorrect, there remains no basis for the motion.[4]

C. THE MOTION SEEKS TO FURTHER ULTERIOR PURPOSES

In the face of an imminent trial, NCRIC suddenly seeks to join two individuals on the basis of a letter that issued 11 months ago and NCRIC itself identified as a trial exhibit when the parties met back in May 2003. (NCRIC's pretrial submissions include the letter as proposed Exhibit 162.) NCRIC has thus sat on the letter for months, belying any suggestion that its motion merits consideration at this late date. Given this conduct – and the complete absence of any legal or factual foundation for its motion – the only plausible explanation for NCRIC's current motion comes clear: it is nothing more than an effort to use intimidation against individuals associated with Columbia to forestall an inevitable trial, hoping that the threat of adding individuals as parties will lead Columbia to drop the litigation altogether or settle on NCRIC's terms. NCRIC's latest attempt to bully Columbia and those associated with it should be rejected.

---

[4] Additionally, NCRIC's unsupported factual assertion that Mr. Barch and Dr. Newton "are responsible for the prosecution of this suit," Mot. at 3, is also incorrect. Indeed, they were hired by Columbia some *two years* after the events giving rise to this suit and have had no personal involvement in managing this litigation. Accordingly, their inclusion in this suit at any point – but especially after the close of discovery – would plainly be prejudicial to them.

Conclusion

For the foregoing reasons, *NCRIC's Motion To Join Parties as Defendants/Counter-Plaintiffs* should be denied. A proposed order is attached.

DATED: September 4, 2003

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-002506

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Pretrial Conference
MEDICAL CENTER, INC.,	)	October 15, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion To Join Parties as Defendants/Counter-Plaintiffs*, and opposition thereto, it is hereby ORDERED that the motion is DENIED.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that, on this 4th day of September 2003, a copy of the foregoing *Columbia's Opposition to NCRIC's Motion To Join Parties as Defendants/Counter-Plaintiffs* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 4th day of September 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

_____
Eli C. Schulman

EXHIBIT 1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

CERTIFICATE

THIS IS TO CERTIFY that there were received and accepted for record in the Department of Consumer and Regulatory Affairs, Corporations Division, on the **30th** day of **June , 1983** ***Articles of Incorporation of:***

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

The above named corporation is duly incorporated and existing pursuant to and by virtue of the Nonprofit Corporation Act of the District of Columbia and authorized to **conduct its affairs** in the District of Columbia as of the date mentioned above.

WE FURTHER CERTIFY that the above entitled corporation is at the time of issuance of this certificate in **Good Standing** , according to the records of the Corporations Division, having filed all reports required by the District of Columbia Nonprofit Corporation Act.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of this office to be affixed this **27th** day of **August , 2003** .

David Clark
DIRECTOR

John T. Drann
Acting Administrator
Business Regulation Administration

Patricia E. Grays/mrt

Patricia E. Grays
Superintendent of Corporations
Corporations Division

Anthony A. Williams
Mayor

16d-002511

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion To Exclude Evidence of Certain Counterclaim Damages*, and opposition thereto, it is hereby ORDERED, that the motion is DENIED.

ENTERED this 6th day of October, 2003.

A. Blackburne-Rigsby

Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

DOCKETED OCT 7 2003

MAILED OCT 7 2003

16d-002512

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	*	
Plaintiff,	*	**C.A. No. 00-7308**
	*	**Calendar 8**
v.	*	**Judge Blackburne-Rigsby**
	*	
Columbian Hospital for Women Medical Center, Inc.,	*	
	*	
Defendants.	*	
	*	
	*	

ORDER DENYING MOTION *IN LIMINE* OF DEFENDANT TO EXCLUDE TESTIMONY OF NCRIC'S PURPORTED EXPERT WINTESSES

Upon consideration of defendant's Motion *In Limine* to Exclude Testimony of NCRIC's Purported Expert Witnesses, and the opposition thereto, it is this 6th day of October, 2003, hereby,

ORDERED, that the Motion is **DENIED.** Plaintiff's R. 26(b)(4) statements were timely submitted on August 9, 2001 and supplemented on February 2, 2002. Defendant's did not object to the inclusion of the experts in question until nearly two years after the R.26(b)(4) statements were filed; and it is,

FURTHER ORDERED that Mary A. Woodford meets the standards for expert witnesses pursuant to the controlling law in this jurisdicton.

G. Blackburne-Rigsby

Judge A. Blackburne-Rigsby

DOCKETED OCT 7 2003

MAILED OCT 7 2003

16d-002514

Copies To:
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, NW, Suite 400
Washington D.C. 20036
Rodney F. Page
Scott M. Badami
Margaret G. Perl
700 Thirteenth Street, NW
Suite 600
Washington D.C. 20005-3960

Roy I. Niedermayer
3 Bethesday Metro Center
Suite 430
Bethesda, MD 20814

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion To Compel and for Sanctions Pursuant to Rules 33(b) and 37(a)*, it is hereby ORDERED, that the motion is DENIED.

ENTERED this 6th day of Oct, 2003.

A. Blackburne-Rigsby

Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

DOCKETED OCT 7 2003
MAILED OCT 7 2003

16d-002516

Copies to:

Mark C. Hansen, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion To Exclude The Opinions and Testimony of Columbia's Designated Damages Expert*, and opposition thereto, it is hereby ORDERED, that the motion is DENIED.

ENTERED this 6th day of Oct., 2003.

A. Blackburne-Rigsby

Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

DOCKETED OCT 7 2003

MAILED OCT 7 2003

16d-002518

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	*	
Plaintiff,	*	**C.A. No. 00-7308**
	*	**Calendar 8**
v.	*	**Judge Blackburne-Rigsby**
	*	
Columbian Hospital for Women Medical Center, Inc.,	*	
	*	
Defendants.	*	
	*	
	*	

ORDER DENYING MOTION *IN LIMINE* OF DEFENDANT TO EXCLUDE TESTIMONY OF NCRIC'S PURPORTED EXPERT WINTESSES

Upon consideration of defendant's Motion *In Limine* to Exclude Testimony of NCRIC's Purported Expert Witnesses, and the opposition thereto, it is this 6th day of October, 2003, hereby,

ORDERED, that the Motion is **DENIED.** Plaintiff's R. 26(b)(4) statements were timely submitted on August 9, 2001 and supplemented on February 2, 2002. Defendant's did not object to the inclusion of the experts in question until nearly two years after the R.26(b)(4) statements were filed; and it is,

FURTHER ORDERED that Mary A. Woodford meets the standards for expert witnesses pursuant to the controlling law in this jurisdicton.

G. Blackburne-Rigsby

Judge A. Blackburne-Rigsby

DOCKETED OCT 7 2003

MAILED OCT 7 2003

16d-002520

Copies To:
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, NW, Suite 400
Washington D.C. 20036
Rodney F. Page
Scott M. Badami
Margaret G. Perl
700 Thirteenth Street, NW
Suite 600
Washington D.C. 20005-3960

Roy I. Niedermayer
3 Bethesday Metro Center
Suite 430
Bethesda, MD 20814

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion for Reference to a Special Master*, and the opposition thereto, it is hereby ORDERED that the motion is DENIED.

ENTERED this 6th day of October, 2003.

A. Blackburne-Rigsby

Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

DOCKETED OCT 7 2003

MAILED OCT 7 2003

16d-002522

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion to Exclude Certain Documents and Calculations*, and opposition thereto, it is hereby ORDERED that the motion is DENIED.

ENTERED this 6th day of Oct, 2003.

A. Blackburne-Rigsby

Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

DOCKETED OCT 7 2003
MAILED OCT 7 2003

16d-002524

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Pretrial Conference
MEDICAL CENTER, INC.,	)	October 15, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion To Join Parties as Defendants/Counter-Plaintiffs*, and opposition thereto, it is hereby ORDERED that the motion is DENIED.

ENTERED this 6th day of Oct., 2003.

A. Blackburne-Rigsby

Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

DOCKETED OCT 7 2003

MAILED OCT 7 2003

16d-002526

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Motion To Require "Security for 'Costs and Fees,'"* and opposition thereto, it is hereby ORDERED, that the motion is DENIED.

ENTERED this 6th day of Oct, 2003.

A. Blackburne-Rig

Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

DOCKETED OCT 7 2003

MAILED OCT 7 2003

16d-002528

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

RECEIVED
Civil Clerk's Office
OCT 0 8 2003
Superior Court of the
District of Columbia
Washington, D.C.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 – Judge Blackburne-Rigsby Next Event: Pretrial Conference October 15, 2003

NOTICE OF COLUMBIA'S AMENDED LIST OF WITNESSES FOR TRIAL

PLEASE TAKE NOTICE that, pursuant to Rule 16(e) of the District of Columbia Superior Court Rules of Civil Procedure, Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby submits its Amended List of Witnesses for Trial. The remainder of Columbia's pretrial submissions remain unchanged.

DATED: October 8, 2003

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Pretrial Conference -- October 15, 2003.
Defendant	

NCRIC'S AMENDED TRIAL WITNESS LIST

Pursuant to Rule 16 of the District of Columbia Superior Court Rules of Civil Procedure, Plaintiff NCRIC, Inc. ("NCRIC") presents the following witness list for use at trial in the above-captioned action.

In the absence of reasonable notice to opposing counsel to the contrary, NCRIC intends to call, or will have available to call, at trial:

1. R. Ray Pate
   NCRIC, Inc.
   1115 30th Street, NW
   Washington, DC 20007

2. Stephen S. Fargis
   NCRIC, Inc.
   1115 30th Street, NW
   Washington, DC 20007

3. William Burgess
   NCRIC, Inc.
   1115 30th Street, NW
   Washington, DC 20007

4. Grant Sohm
   NCRIC, Inc.
   1115 30th Street, NW
   Washington, DC 2000

5. Stephen Horowitz, M.D.
   2141 K Street, NW, Suite 808
   Washington, DC 20037
   (202) 331-9293

6. Nabil Asterbadi, M.D.
   2440 M Street, NW, Suite 703
   Washington, DC 20037
   (202) 822-8368

16d-002531

7. W. McKay Henderson
Pricewaterhouse Coopers LLP
Suite 900
1900 K Street, NW
Washington, DC 20006-1110
(202) 822-4035

8. Steven Moore
PWC LLP
Suite 800W
1301 K Street, NW
Washington, DC 20005-3333

9. Edward Koch, M.D.
2501 N. Glebe Road, Suite 301
Arlington, VA 22207
(703) 527-5155

10. Arthur Becker, M.D.
2440 M Street, NW, Suite 510
Washington, DC 20037
(202) 835-8363

11. Ken Blank, M.D.
2141 K Street, NW, Suite 808
Washington, DC 20037
(202) 331-9293

12. David Powers
2440 M Street, NW, Suite 510
Washington, DC 20037
(202) 835-8363

13. Nancy Ripp, M.D.
16220 Frederick Road., Suite 419
Gaithersburg, MD 20877
(301) 258-0680

14. Elnora Johnson
11808 Earnshaw Court
Brandywine, MD 20613

15. Larry Wilson
12120 Old Colony Drive
Upper Marlboro, MD 20772

16. Safa Rifka, M.D.
2440 M. Street, N.W., Suite 401
Washington, DC 20037
(202) 293-2042

17. Leonard Glassman, MD
2141 K Street, N.W.
Suite 900
Washington, DC 20037
(202) 223-9722

18. Representative(s) of the D.C. Department of Insurance and Securities Regulation of the District of Columbia.

In the absence of reasonable notice to opposing counsel to the contrary, NCRIC may call, or may have available to call, at trial:

1. Mary Woodford
Cornerstone Research
1301 K Street, NW
Suite 350 E
Washington, DC 20005

2. Eric Hempleman
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

3. David Little
13 Alto Court
Placitas, NM 87043
(505) 867-7991

4. David Osborn
Oklahoma City, OK

5. James McGuire
750 Seventh Avenue
New York, NY 10019-6829

6. Jeffrey Marsh
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

7. Eric Anderson
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

8. James Hurley
Tillinghast-Towers Perrin
One Atlanta Plaza
950 East Paces Ferry Road
Atlanta, GA 30326-1119

9. Morton Roberts, M.D.
2112 F Street, N.W., Suite 509
Washington, DC 20037
(202) 298-8322

10. Melinda Murray
3331 Stuyvesant Place
Washington DC 20015

11. Ann Gaffey
1937 N. Utah Street
Arlington, VA 22207
(703) 841-5122

12. Susan Hansen
6925 Scotforth Rd.
Philadelphia, PA 19119

13. Gerald Beaulieu
1639 Park Road, NW
Washington, DC 20010
(202) 216-2347

14. Thomas Foley
{Current address unknown}

15. Patrick Kane
1806 Merrifields Drive
Silver Spring, MD 20906
(301) 598-6422

16. Len Peterson
{Current address unknown}

17. David Bickerstaff
Bickerstaff & Whatley
Indian Wells, CA

18. Diana Winter
{Current address unknown}

19. Nancy Catalano
{Current address unknown}

20. Rebecca Crunk
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

21. Christina Culp
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

22. Brian Jordan
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

23. Brian Nash, Esq.
809 Gleneagles Court, Suite 201
Towson, MD 21286

24. Nicholas McConnell, Esq.
1120 20th St., NW
Washington, DC 20036

25. Sharon Starks (Spinks)
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

26. Steve Seitzman
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

27. Terry Rutkowski
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

28. Joyce Adams
NCRIC, Inc.
1115 30th Street, NW
Washington, DC 20007

29. T. Todd Sullivan
Atlanta, GA

30. Beverly Sanders
Palm Beach, Florida

31. Michael Barch
Liquidating Trustee of Columbia
Hospital for Women Medical Center
2141 K Street, NW, Suite 808
Washington, DC 20037

32. Robin Newton, M.D.
Liquidating Trustee of Columbia
Hospital for Women Medical Center
2141 K Street, NW, Suite 808
Washington, DC 20037

33. Any current or former members of the Attending Faculty at Columbia and/or the Columbia Physicians Group.

34. Any witness needed to authenticate documents or other evidence offered at trial.

35. Any witness listed on Defendant Columbia's witness list.

36. Any witness required for rebuttal.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, DC 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center
Suite 430
Bethesda, MD 20814

Counsel for Plaintiff NCRIC, Inc.

Date: October 8, 2003

16d-002535

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Trial Witness List was served this 8th day of October 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center

Margaret G. Perl

16d-002536

#5

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- June 19, 2003**
Defendant.	

ORDER

UPON CONSIDERATION of NCRIC's Motion to Exclude the Testimony of Columbia's Newly Named Witnesses and the grounds stated in the Memorandum in Support thereof, it is this 8th day of Oct. 2003 hereby

ORDERED, that NCRIC's Motion to Exclude the Testimony of Columbia's Newly Named Witnesses is **GRANTED**. The names of the following persons are stricken from the witness list of Columbia:

Elizabeth Jackson

Francis Renee Perkins

Gideon Kioko

Jerome O'Connell

David Young

A. Blackburne-Rigsby

Judge Anna Blackburne-Rigsby
District of Columbia Superior Court Judge

DOCKETED OCT - 8 2003

16d-002537

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

16d-002538

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	*	
Plaintiff,	*	**C.A. No. 00-7308**
	*	**Calendar 8**
v.	*	**Judge Blackburne-Rigsby**
	*	
Columbian Hospital for Women Medical Center, Inc.,	*	
	*	
Defendants.	*	
	*	
	*	

ORDER DENYING MOTION FOR LEAVE TO AMEND THE COMPLAINT

This motion comes before the Court on plaintiff NCRIC, Inc.'s Motion For Leave to Amend the Complaint. Pursuant to D.C. Superior Court Rule 15(a), the plaintiff seeks to amend the complaint so that it may include recovery of reasonable attorney's fees as provided for in the contracted Retro Plan. As discussed more fully below, the plaintiff's Motion For Leave to Amend the Complaint is **denied.**

This lawsuit was initiated in October 2000, and has been pending for three years. Discovery closed in January 2002, and dispositive motions were fully briefed by March 2002. The plaintiff has had three years to request leave to amend the complaint, and did so in January of 2001. The plaintiff should have contemplated its need for attorney's fees pursuant to the Retro Plan much earlier in this litigation, and at least prior to the close of discovery or when they sought leave to amend the complaint in January 2001. As stated in the plaintiff's Motion, the "provision for attorneys' fees in the Retro Plan should come as no surprise..." Pls. Motion at 4. As such, plaintiff admits that the issue was evident from the inception of this litigation, but has not asserted a valid reason for the delay in requesting leave to amend their complaint.

Leave to amend a complaint is within the discretion of the Court, and it is granted freely "when justice so requires." See *Johnson v. Fairfax Village Condominium Owners Assoc.*, 641 A.2d 495, 501 (D.C. 1994); Sup. Ct. R. 15(a). However, a policy favoring the resolution of cases on their merits creates a presumption that a court should grant leave to amend liberally, and so long as no good reason appears to the contrary. *Bennet v. Fun & Fitness of Silver Hill, Inc.*, 434 A.2d 895, 898 (D.C. 1999); *Johnson,* 641 A.2d at 501; *Bennet,* 434 A.2d 478-479. The D.C. Court of Appeals has recently held "that liberalism does not mean amendments must be granted automatically; a refusal to allow an amendment is to be upheld if predicated on some valid ground." *Sherman v. Adoption Ctr. Of Washington,* 741 A.2d 1031, 1038 (D.C. 1999). A decision to deny leave to amend will be reviewed only for abuse of discretion. *Id.*

In considering a Motion to Amend the Complaint, the Court evaluates five factors: (1) the number of requests to amend; (2) the length of time that the trial has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amended pleading; and (5) any prejudice to the non-moving party. *Gaeten v. Weber,* 729 A.2d 895, 898 (D.C. 1999); *Johnson*, 641 A.2d at 501; *Bennet,* 434 A.2d 478-479. Of these factors, the Court finds the "length of time that the trial has been pending," and "prejudice to the non-moving party" reason to deny the plaintiff's motion.

The Court of Appeals has held that the trial court's denial of a motion to amend on the basis of undue delay is only warranted "if that delay…caused substantial prejudice." See *District of Columbia v. Tinker,* 691 A.2d 57, 61 (D.C. 1997). In the instant case, discovery will inevitably need to be reopened and the trial delayed should the Court grant the plaintiff's motion. As the Court of Appeals opined in *Sherman,* the

denial of a motion to amend is correct where "the trial would have to be delayed and discovery reopened." *Sherman,* 741 A.2d at 1039. The court further held that "prejudice caused by delays and postponements of this type affect not only the individual litigants but the court system as a whole and others who invoke its aid in dispute resolution." *Id.*

The Court finds that the plaintiff's delay will cause prejudice to the defendant, because amendment of the complaint at this time will necessarily require further discovery regarding the issue of attorney's fees. See generally *Sherman,* 741 A.2d 1031 (Holding that it was not an abuse of discretion for the trial judge to deny a motion to amend where the appellant's motion came one year and eight months after she filed her initial complaint and two full months after discovery.) Furthermore, in addition to costs associated with additional discovery, the reopening of discovery will delay the case, which is currently set for a pre-trial conference on October 15, 2003 and for trial on January 24, 2004.

Accordingly, on this 8th day of October, 2003, it is ordered that the plaintiff's Motion For Leave to Amend the Complaint is hereby **DENIED.**

A. Blackburne Rigsby

Judge A. Blackburne-Rigsby

DOCKETED OCT 08 2003

MAILED OCT 08 2003

16d-002541

Copies To:
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, NW, Suite 400
Washington D.C. 20036

Rodney F. Page
Scott M. Badami
Margaret G. Perl
700 Thirteenth Street, NW
Suite 600
Washington D.C. 20005-3960

Roy I. Niedermayer
3 Bethesday Metro Center
Suite 430
Bethesda, MD 20814

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

MAR 14 2003

COLUMBIA'S MEMORANDUM IN SUPPORT OF OBJECTIONS TO NCRIC'S PROPOSED TRIAL EXHIBITS

NCRIC's attempt to have an array of its own documents – correspondence, calculation spreadsheets, drafts of agreements, internal memoranda, meeting minutes, and others – admitted as business records vastly overreaches as a matter of law. As courts have explained, business records are excepted from the hearsay rule because they are the types of documents that must be kept accurately in order for businesses to function properly. Consequently, it is settled under D.C. law that business records encompass those documents that are "the routine product of an efficient clerical system" and thus possess clear-cut indicia of reliability. NCRIC's documents at issue are nothing like such documents but instead reflect NCRIC's opinions and judgments – including NCRIC's self-serving pre-litigation posturing in its dealings with Columbia.

Moreover, NCRIC repeatedly admitted in deposition testimony that the documents here at issue were *not* kept by NCRIC "in [the] regular course of business," SCR 43-I, but rather were created on an ad-hoc basis. And in other instances, NCRIC's witnesses conceded that they simply did not know whether particular documents were drafts or final copies. These admissions conclusively remove any possibility that such documents could be deemed admissible business

records. Accordingly, the Court should find NCRIC's hearsay documents inadmissible under the business records exception.

Discussion

I. THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE IS NARROWLY DEFINED

In the seminal D.C. case construing the business records exception to the hearsay rule, the court in *New York Life Ins. Co. v. Taylor*, 147 F.2d 297 (D.C. Cir. 1944) explained that to qualify as a business record, a document must be "the routine product of an efficient clerical system" – that is, something with an "internal check on the reliability of the records," not something whose accuracy . . . is affected by bias, judgment, and memory." *Id.* at 300. In concluding that hospital records were *not* admissible business records, the court elaborated:

> [The hospital] records are not offered to prove routine facts such as the date of admission to the hospital, the names of attending physicians, etc. They are offered to prove the truth of accounts of events and of complicated medical and psychiatric diagnosis. The accuracy of such accounts is affected by bias, judgment, and memory; they are not the routine product of an efficient clerical system. There is here lacking any internal check on the reliability of the records in this respect such as that provided for payrolls, accounts receivable, accounts payable, bills of lading and the like.

Id. (emphasis added) (internal quotation marks omitted).

Applying *New York Life Insurance* and its progeny, the court in *Adkins v. Morton*, 494 A.2d 652 (D.C. 1985) likewise found that regularly recorded facts as to patient's condition were admissible business records – but records that contained an *opinion* were not. *Id.* at 661-62. Applying these principles, D.C. courts have deemed admissible per the business records exception a list of ATM transactions compiled from a bank's computerized transaction records, *see Roberts v. United States*, 508 A.2d 110, 112 (D.C. 1986), and hotel registration cards indicating when the defendant checked in and checked out, *see Taylor v. United States*, 323 F.2d

283 (D.C. Cir. 1963). Such documents are similar to records of payroll, accounts receivable, accounts payable, bills of lading, and the like, which *New York Life Insurance* recognized as business records, and which stand in stark contrast to the opinion-filled and self-serving documents whose admission NCRIC seeks.

Indeed, courts have explained that the rationale supporting the business-records exception to the hearsay rule is that certain documents can be regarded as having a high degree of reliability because businesses have strong incentives to keep accurate records, and because such documents are often checked for objective correctness. *See, e.g., United States v. Baker*, 693 F.2d 183, 188 (D.C. Cir. 1982) ("The justification for this [business records] exception is that business records have a high degree of accuracy because the nation's business demands it, because the records are customarily checked for correctness, and because recordkeepers are trained in habits of precision.") (citing McCormick, *Evidence* § 306, at 720 (2d ed. 1972)); *Timberlake Constr. Co. v. U.S. Fidelity & Guar. Co.*, 71 F.3d 335, 341 (10th Cir. 1995) ("The rationale behind the business records exception is that such documents have a high degree of reliability because businesses have incentives to keep accurate records."); *id.* ("The business records exception is based on a presumption of accuracy, accorded because the information is part of a regularly conducted activity, kept by those trained in the habits of precision, and customarily checked for correctness, and because of the accuracy demanded in the conduct of the nation's business") (internal quotation marks omitted). In contrast, documents that reflect a business's opinions or posturing in its dealings with other companies lack the indicia of reliability that would justify treatment as business records. *See Timberlake*, 71 F.3d at 342.

16d-002545

II. NCRIC VASTLY OVERREADS THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE

A. Correspondence

NCRIC seeks to admit numerous letters that were not kept in the ordinary course of business but rather were created on an ad-hoc basis to address particular situations that arose from time to time. Such correspondence reflects self-serving characterizations that set forth NCRIC's positions concerning its dealings with Columbia and lacks any indicia of reliability. *See Allstate Ins. Co. v. Curtis*, 781 A.2d 725, 726-27 (D.C. 2001) (reversible error where trial court ruled that insurance company's letters were business records); *Timberlake*, 71 F.3d at 342 (holding inadmissible "self-serving" letters "written during the period of controversy" which had "the earmarks of being motivated and generated to further [the plaintiff's] interest"); *see also United States v. Smith*, 521 F.2d 957, 964 n.16 (D.C. Cir. 1975) (Skelly Wright, J.) ("The mere fact that recordation . . . is routine . . . imports no guaranty of the truth of the statements themselves.").

For instance, NCRIC Exhibit 173 is an unsigned, unaddressed, and undated letter, which NCRIC Senior Vice President Stephen Fargis admitted he did not believe was ever sent. *See* Fargis Tr. at 835 (Q. Was it ever sent? A. I don't think so.").[1] Similarly, NCRIC Exhibit 128 includes a letter and attachment obviously not kept as regular business records, for there is no addressee; NCRIC Exhibit 129, like NCRIC Exhibit 60, includes a series of unsigned letters that also may not have been sent. NCRIC Exhibit 108 further demonstrates the ad-hoc nature of these letters: that exhibit consists of a fax cover page, plus a letter sent in response to an isolated question by a physician; such ad-hoc correspondence is not a record regularly kept by a business

[1] Excerpts of the deposition transcripts cited in this memorandum are attached as Exhibit A.

16d-002546

but rather a document created to address a specific situation. *See United States v. Kim*, 595 F.2d 755, 762 (D.C. Cir. 1979) (holding telex inadmissible because not made for regular business purpose; "[t]he critical factor in determining whether the document satisfie[s] the 'business purpose' requirement lies in the reason that the message was prepared and sent"). The remaining letters designated by NCRIC are likewise objectionable, for they reflect nothing more than NCRIC's characterizations, not objective records. *See* NCRIC Exhs. 2,[2] 9, 12, 17, 33, 43, 46, 47, 50, 56, 59, 60, 62, 63, 66, 68, 69, 70, 82, 89,[3] 93, 97, 103, 104, 106, 107, 108, 109,[4] 113, 116, 117, 119, 122, 123, 125, 126,[5] 128, 129, 130, 132, 137, 152, 155, 161, 163, 164, & 173.

B. Calculations

At any given time, NCRIC was able to, and did, run calculations purporting to tally the status of the Retro Plan. But NCRIC admitted that many of these calculations were ad-hoc creations rather than regularly produced business records. For instance, Fargis admitted that the spreadsheet that is Exhibit 152 did not represent calculations kept in the ordinary course but rather may have been adjusted to reflect "settlement discussions" between the parties. *See* Fargis Tr. at 656-57 ("Mr. Wilson and I were in discussions about settlement. And there were during those discussions iterations and assumptions made to try to reach settlement on worksheets . . . . I'm not sure if this spreadsheet contains some of those assumptions."). Thus, the calculations

---

[2] Columbia has also objected to NCRIC Exhibit 2 – and to other NCRIC exhibits, including Exhibits 6, 18, 48, 56, 68, 112, 149, and 176 – to the extent that they are incomplete. *See Butler v. United States*, 614 A.2d 875, 882 (D.C. 1992).

[3] In NCRIC Exhibit 89, Columbia objects to the fax cover sheet plus attachments, though not to the letter from Columbia.

[4] In NCRIC Exhibit 109, Columbia does not object to the first page, which is from Columbia, but does object to the second page, which is from NCRIC.

[5] In NCRIC Exhibit 126, Columbia objects to the letter only.

16d-002547

concededly cannot be said to reflect regularly kept records and, as the product of settlement talks, are patently inadmissible in any event. *See Beckman v. Farmer*, 579 A.2d 618, 647 (D.C. 1990) (evidence of conduct or statements made in compromise negotiations inadmissible; such evidence "[of] minimal probative value"). Moreover, Fargis testified that Exhibits 40, 41, 77, and 78, were not created in the ordinary course of NCRIC's business but rather were produced on an ad-hoc basis – in that instance, at his request:

> Q. So, he wouldn't have just generated them on a particular regular basis; it was an ad hoc, as needed, basis?
>
> A. Yes.

Fargis Tr. at 516. As to Exhibit 85, Fargis was unable even to say whether it was a working draft or a final copy. *See* Fargis Tr. at 646 ("I don't know if it's the final or working draft."). Fargis likewise admitted that Exhibit 170 was an ad-hoc creation that NCRIC presented to the Finance Committee, not a reconciliation sent to Columbia. *See* Fargis Tr. at 255 ("This is a reconciliation but this seems to me more like what we presented to the finance committee"). Similarly, the upper-left corner of the second and third pages of Exhibit 171 designated the numbers on those pages as "preliminary," making it clear that the numbers were not reliable calculations created as part of a regular schedule. *See* Fargis Tr. at 515-24. And NCRIC's counsel represented that he wrote the headings on Exhibit 176. *See* Wilson Tr. at 408. In short, NCRIC's calculations, including versions that were admittedly "preliminary" drafts or otherwise performed with concededly inaccurate numbers, are not reliable business records.[6] *See* NCRIC Exhs. 5, 19, 38, 39, 40, 41, 66, 77, 78, 85, 91, 127, 152, 155, 161, 163, 164, 170, 171, 176.

---

[6] Indeed, the admission that NCRIC's calculation spreadsheets cannot be taken at face value – including concessions that NCRIC's spreadsheets were sometimes altered for such purposes as settlement discussions, or on other occasions were merely drafts created using "preliminary" rather than final, correct numbers – casts doubt upon the reliability of NCRIC's spreadsheets

1. NCRIC Demand Letters and Accompanying Calculations

NCRIC's purported Retro Plan calculations contained in Exhibits 155, 161, 163, and 164 – letters sent by NCRIC to Columbia demanding payment for an amount purportedly detailed in accompanying calculation charts – are particularly objectionable. First, these proposed exhibits are self-serving calculations served on Columbia purely for litigation purposes. It is well-established that one who prepares a document in anticipation of litigation, such as a demand letter, is engaged in an act of posturing and not acting in the regular course of business. *See, e.g.*, *Timberlake*, 71 F.3d at 342; *see also Palmer v. Hoffman*, 318 U.S. 109, 113-14 (1943) (denying application of business records exception to documents prepared with eye toward litigation when offered by party responsible for creating document); *id.* (affirming decision to exclude document directed at subject matter of case because, as court of appeals explained, *Palmer v. Hoffman*, 129 F.2d 976, 991 (2d Cir. 1942), document was "dripping with motivations to misrepresent"). Documents sent to an opposing party after the initiation of litigation simply cannot be deemed reliable business records, particularly when they concern the very subject of dispute between the parties. *See Timberlake*, 71 F.3d at 342. In short, NCRIC's demand letters and numbers "are calculated for use essentially in the court, not in the business." *Palmer*, 318 U.S. at 114.

Moreover, these documents are little more than an effort by NCRIC to amend its complaint by letter. NCRIC's amended complaint identifies the sum sought by NCRIC in this litigation. NCRIC cannot attempt essentially to amend that complaint via purported "supplemental document productions" sent to Columbia. The Court rejected as untimely NCRIC's explicit attempt to amend its complaint to seek increased damages from Columbia, and NCRIC cannot avoid the impact of that ruling by seeking to amend its complaint *sub silentio*.

---

more generally.

See Exh. B (Letter from Schulman to Perl of 10/29/03, objecting to NCRIC's most recent attempt to do so).

Moreover, NCRIC's desire to rely on figures produced to Columbia after the close of discovery (such as those in Exhibit 164, dated June 19, 2003) plainly would prejudice Columbia. The need for discovery concerning the accuracy of NCRIC's numbers is particularly acute in light of NCRIC's repeated admissions in discovery that similar reconciliation charts were filled with errors.

In any event, even by the contract's own terms, quarterly updates like those in Exhibits 155, 161, 163, and 164 are not authoritative and therefore lack the reliability required of business records. Under the terms of the Retro Plan, the date for performing the calculations known as a "Reconciliation" is September 1 of each year. *See, e.g.*, Columbia Exh. 72 (Retro Plan) at 2 ¶ 5. Within 60 days of that date, NCRIC is obligated to notify Columbia in writing of any amount owed; "[a]ny amounts due either to or from" Columbia are then "due and payable within thirty (30) days" after Columbia receives notice from NCRIC. *See id.* Though the Retro Plan also provides for NCRIC's performance of quarterly updates, those calculations are not controlling for the exchange of premium but are updates for informational purposes only. *See* Columbia Exh. 76 (Addendum B) at 1 ¶ 10 (describing interim calculations as update regarding "status of the . . . Plan"). Because of the constant changes taking place with claims covered by the Plan, and therefore with the Plan calculations themselves, it would be impossible to tell how much premium was due in September of a given year on the basis of a quarterly update calculated months earlier or later. Indeed, even these four documents themselves demonstrate noticeable fluctuation in calculation of amounts that NCRIC claims are due. The operation of the Plan itself thus makes clear that NCRIC's quarterly updates lack the reliability necessary to qualify as

16d-002550

business records. Exhibits 155, 161, 163, and 164 are inadmissible for these additional reasons, as well.

C. Drafts/Business Proposals

Documents such as NCRIC Exhibits 9 and 12 constitute business proposals by NCRIC. They are solicitations of future business, not part of a final agreement. Exhibit 47 is an unsigned promissory note, and Exhibit 113 is an unsigned "fund management agreement." Exhibit 65 is special presentation to Columbia identified as a "preliminary proposal," and Exhibit 110 is also a presentation, apparently for a particular event or meeting. Exhibits 25, 26, 35, 50, 65, and 70 also are drafts or proposals. The unreliability of these proposals or presentations by NCRIC is underscored by the Retro Plan itself, which has a merger clause expressing that the contract represents the parties' entire agreement. *See, e.g.*, Columbia Exh. 72 (Retro Plan) at 5 ¶ 18 ("This agreement constitutes the entire agreement between the parties and no modifications, amendments or additions thereto shall be binding unless in writing and executed by all the parties hereto."). Consequently, only the final, consummated contract is material; proposals and presentations are unreliable and irrelevant, and introducing them in evidence would waste the jury's time. *See, e.g., Boca Investerings Partnership v. United States*, 128 F. Supp. 2d 16, 18-22 (D.D.C. 2000) (finding document detailing proposed transaction not admissible as business record).

D. NCRIC Minutes

Exhibits 16, 18, 42,[7] 45, 48, and 53 are minutes from NCRIC meetings.[8] These, too, are filled with opinion and judgment, not the facts that comprise business records. In addition, their

[7] NCRIC Exhibit 42, professing to record particular individuals' comments made at the meeting at issue (*e.g.*, "Mr. Pate stated . . ."), contains hearsay within hearsay that is doubly inadmissible. *See, e.g., Boca Investerings Partnership*, 128 F. Supp. 2d at 21 (hearsay in business record not

very purpose is self-serving: to record deliberations and decisions in a manner designed to protect the company's officers and directors from potential liability. It is no surprise, then, that minutes have been held not to be business records. *See, e.g., United States v. Beasley*, 513 F.2d 309 (5th Cir. 1975). Indeed, the self-serving characterizations made in minutes are much like the statements regarding corporate performance contained in a corporation's Form 10-K filing, and such statements have been held to be inadmissible hearsay. *See, e.g., White Indus. v. Cessna Aircraft Co.*, 611 F. Supp. 1049, 1068-69 (W.D. Mo. 1985).

E. Internal Memoranda

Exhibits 27, 51, 88,[9] 91,[10] 92, 94, and 98[11] are all self-serving internal NCRIC memoranda, as opposed to objectively reliable business records. Such memoranda are recorded for the protection of employees, not to ensure the workings of the business. *See United States v. Lemire*, 720 F.2d 1327, 1350-51 (D.C. Cir. 1983) (holding internal memos inadmissible because not prepared for regular business purpose).

---

admissible under business records exception but only if satisfies some other exception to hearsay rule).

[8] NCRIC Exhibit 20, minutes from a Columbia finance committee meeting, contains the hearsay statements of NCRIC representatives.

[9] NCRIC Exhibit 88 contains hearsay within hearsay, as it purports to detail what certain people allegedly said at a meeting.

[10] NCRIC Exhibit 91 contains hearsay within hearsay: the memorandum includes hearsay accounts of what allegedly was said at a meeting, and hearsay spreadsheets are attached, as well.

[11] NCRIC Exhibit 98 contains hearsay within hearsay: a self-serving memorandum to the file, it reflects hearsay statements regarding the comments allegedly made by a NCRIC representative to a Columbia representative.

16d-002552

F. Insurance Commissioner

NCRIC's correspondence to and from the insurance commissioner cannot be deemed business records. The correspondence is self-consciously the product of a dispute between the parties and essentially the precursor to litigation. Because these documents are self-consciously written with an eye toward litigation, they are inherently suspect and lack the reliability necessary to qualify as business records. *See Palmer*, 318 U.S. at 113-14; *Timberlake*, 71 F.3d at 342.

Nor are such documents admissible as official records. An official record is something that "may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record." SCR 44(a)(1). For example, an automobile registration is an official public record. *District Motor Co. v. Rodill*, 88 A.2d 489 (D.C. 1952); *Curry v. Stevenson*, 26 F.2d 534 (D.C. Cir. 1928). Correspondence seeking or describing an administrative decision is nothing of the sort. As run-of-the-mill letters to and from the insurance commissioner, these exhibits are not official records evidenced by an official publication or by a copy attested by an officer keeping its legal custody. Exhibits 112, 132, 133, 138, and 141 are therefore inadmissible.

G. Documents Created By Third Parties

Exhibits 15, 31, 49, 51, and 81, though found in NCRIC's files, were all created by third parties, such as NCRIC's consultants, and thus are not *NCRIC*'s business records. Though documents prepared by a firm may or may not qualify as business records, documents received – as opposed to prepared – by a business are not that firm's business record. *See United States v. Santos*, 201 F.3d 953, 963 (7th Cir. 2000) (so holding).

16d-002553

H. Newspaper Articles

NCRIC Exhibits 52, 57, 74, and 136 are newspaper articles. Similarly, Exhibit 167 consists of an excerpt from a textbook. These proposed exhibits are plainly hearsay, and there is no tenable argument that they could be business records. *See, e.g., Hutira v. Islamic Republic of Iran*, 211 F. Supp. 2d 115, 123 (D.D.C. 2002) ("no doubt" that newspaper article is hearsay).

I. Objections Withdrawn

Finally, Columbia withdraws its objections to NCRIC Exhibits 80, 114, and 172.

Conclusion

For the foregoing reasons, the Court should rule that the exhibits listed in the attached proposed order are inadmissible hearsay not subject to any exception raised by NCRIC.

DATED: November 14, 2003

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-002554

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of Columbia's objections to NCRIC's proposed trial exhibits, and response thereto, it is hereby ORDERED that the following NCRIC exhibits are inadmissible:

Exhibits 2, 5, 9, 12, 15, 16, 17, 18, 19, 20, 25, 26, 27, 31, 33, 35, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 56, 57, 59, 60, 62, 63, 65, 66, 68, 69, 70, 74, 77, 78, 81, 82, 85, 88, 89, 91, 92, 93, 94, 97, 98, 103, 104, 106, 107, 108, 109, 110, 112, 113, 116, 117, 119, 122, 123, 125, 126, 127, 128, 129, 130, 132, 133, 136, 137, 138, 139, 141, 149, 152, 155, 161, 163, 164, 167, 170, 171, 173, & 176.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that, on this 14th day of November 2003, a copy of the foregoing *Columbia's Memorandum in Support of Objections to NCRIC's Proposed Trial Exhibits* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 14th day of November 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Eli C. Schulman

EXHIBIT A

Civil Division

NCRIC, INC.	:	
	:	
Plaintiff	:	
	:	
vs.	:	Civil Action No.
	:	00-007308
	:	Calendar 8
COLUMBIA HOSPITAL FOR WOMEN	:	Judge Davis
MEDICAL CENTER, INC.	:	
	:	
Defendant	:	

Washington, D.C.
Monday, July 30, 2001

Deposition of:

STEPHEN S. FARGIS

called for oral examination by counsel for Defendant, pursuant to notice, at the offices of Kellogg, Huber, Hansen, Todd & Evans, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036, before Renee A Feder, CSR, a Notary Public in and for the District of Columbia, beginning at 8:45 a.m., when were present on behalf of the respective parties:

you can see, have any column under deposit, reflects 5.5 million to be paid to NCRIC over a three year period. Does it?

A. I don't see 5.5 million in here.

Q. And this is dated October 1, 1996. Correct?

A. Right.

(Document referred to marked Deposition Exhibit No. 14 for identification.)

BY MR. LEAHY:

Q. I will now show you what is marked as Exhibit 14, which is another spreadsheet. Do you recognize that spreadsheet?

A. Yes.

Q. What is that?

A. This is a reconciliation but this seems to me more like what we presented to the finance committee.

Q. Do you see, is that your handwriting on the top right hand corner?

A. Yes.

Q. It says "through." Can you see what

CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge
Davis

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,
Defendant.

VOLUME II

Washington, D.C.
July 31, 2001

Deposition of:

STEPHEN S. FARGIS - Resumed

a witness, called for examination by counsel for the Defendant, pursuant to notice, held at the Columbia Hospital for Women, 2425 L Street, N.W., Washington, D.C., beginning at 10:16 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

Spreadsheet.)

(Marked, Exhibit # 48-D, Spreadsheet.)

(Marked, Exhibit # 49, Spreadsheets.)

BY MR. LEAHY:

Q. Mr. Fargis, I'm asking you to take a look very quickly at what we've marked as Deposition Exhibit 48-A, B, C and D. Do you know what these spreadsheets are?

A. Yes.

Q. What are they?

A. They're spreadsheets to reflect the premium paid out by the physicians.

Q. Who produces these spreadsheets at NCRIC?

A. Ed Livingston produced this.

Q. Are these also Excel spreadsheets?

A. They're produced out of our Plus system and Ed, I think, then downloads them into Excel.

Q. So this data is actually stored in

the Plus system.

A. That's correct.

Q. I know he's gone, but do you know where these would be kept if they exist at NCRIC today?

A. These documents?

Q. Strike that. Do you know how regularly spreadsheets like this were created during the term of the Retro plan?

A. At my request of Ed to produce them.

Q. So he wouldn't have just generated them on a particular regular basis; it was an ad hoc, as needed, basis.

A. Yes.

Q. Do you know once he created a spreadsheet where he kept them in Excel?

A. No, I don't.

Q. We've only received these. I'm going to ask that NCRIC produce whatever other ones it has like this on a computer. We received hard copies of these. And I'll put

that in writing. Let me ask one more question.

You don't know of any reason that these would have been destroyed, the computer programs by him?

A. I don't know of any reason why Ed would have destroyed those.

Q. He didn't, you know, clean off his entire hard drive and delete the files on it when he left, did he?

A. I don't know.

Q. Now, I'm going to show you what's marked as Deposition Exhibit 49. I'm going to take the clip off because it's many different spreadsheets. We've just marked it as one exhibit for ease of reference. And I just want to go through very briefly with you and just start with the first one. Do you recognize that spreadsheet?

A. Yes, I do.

Q. Do you know when you produced it? Did you produce it?

A. What's the question?

Q. The second question, sorry. Did you produce the spreadsheet?

A. Yes.

Q. Do you know when you produced it?

A. At or around October 15th of 1998.

Q. So when you have a date up in the left-hand corner, you mean that was the date of the creation of the spreadsheet. Correct?

A. I would believe so.

Q. Whereas, the "as of" date would be with regard to the plan years, that's referring to the plan years. Correct?

A. Correct.

Q. Can you just turn to the second page of the exhibit. See how it says Preliminary, August 27th, 1998?

A. Yes.

Q. Is that about on the day that you created that spreadsheet?

A. Yes.

Q. Did you generally when doing

these, doing reconciliations, create preliminary drafts before creating the final draft?

A. It would depend. I may have.

Q. Did you regularly?

A. Not regularly, no.

Q. For what reasons might you have done a preliminary draft?

A. I don't know. I mean it could have been to do a first run draft, just have people check the math. It may have been as a request of where the program stood. I mean I don't know all the reasons why a preliminary would have been done.

Q. Do you know with regard to this preliminary why it was done, August 27th, 1998?

A. No, I don't.

Q. Now, when you said you showed it to people to check the math, was it your regular practice to show the spreadsheet to people at NCRIC to check the math?

MR. NIEDERMAYER: Objection. His testimony was not that he showed it to people. He was speculating as to what the possibility is. He did not testify he did that. Your question assumes what his speculation was as a fact. So I'm objecting to the form.

BY MR. LEAHY:

Q. Mr. Fargis, I understood you to be testifying that at least on one occasion you have shown a spreadsheet to someone at NCRIC to check the math. Is that correct?

A. Yes.

Q. Do you know on what occasion that was and what the date was?

A. No.

Q. Do you remember who the person was you showed the spreadsheet to to check the math?

A. No.

Q. Have you done that more than once during the term of the plan?

A. Yes.

Q. Have you done that on a regular basis?
A. No.
Q. Have NCRIC's reconciliations of the plan ever been audited by an outside person?
A. No.
Q. Do you ever, do you know if you've ever shown your reconciliations to Jim Hurley?
A. Yes.
Q. You have.
A. Yes.
Q. Do you remember which ones you've shown to him?
A. No.
Q. Was it reconciliations performed in the past year?
A. No.
Q. Do you remember the year in which you showed reconciliations to Mr. Hurley?
A. No. I can't recall.
Q. Did he check the math, is that his

function?

A. No, it's not his function.

Q. For what reason did you give him the spreadsheets?

A. To review the impact of the program against our total company reserves.

Q. Can you turn to Page 3 of this exhibit. You see that there's the words "Worksheet No. 2 for Years '93-97" up at the top left-hand corner under preliminary August 27, 1998. Do you know what that means?

A. I'm sorry. Can I just ask for my own clarification? All of these are under one exhibit.

Q. These are all one exhibit.

A. Okay.

Q. They were all produced to Columbia in a big batch. I'm not saying they are one document. They look like they're individual spreadsheets, is my representation.

A. But I'm looking at it as one single exhibit.

Q. To save the court reporter time of marking each.

A. I didn't know if I missed an exhibit number.

Q. Now, I'm asking you to look at I guess it's Exhibit 49, Page 3, although it doesn't say that anywhere, just the next page.

A. Right, okay.

Q. Do you know what that worksheet No. 3 for years '93 to '97 means?

A. The way the development factor is highlighted, it would be looking at August 27th and after September 1, '98 what the change in the development factors would do versus maybe this prior one had the -- yes. The prior one had -- see, and this is one of the reasons we requested and Columbia agreed that we would change the development factors on a quarterly basis so you don't have this all of a sudden one-time bump. And this is exactly a good example of what happens with it. All of a sudden with these changes in

development factors there's an increase or decrease, there's a swing. There can be a big swing in there based on the losses.

Q. That change in development factors was essentially a smoothing device.

A. That's correct.

Q. Let's just go to the next spreadsheet then. Do you recognize this spreadsheet?

A. Yes.

Q. Did you produce it?

A. Yes.

Q. Do you see how that spreadsheet says, again, the COL_93-96.XLS on the bottom?

A. Yes.

Q. Is that the same computer spreadsheet as the one we previously saw with that indicator on the bottom, the Exhibit 46?

A. It could have been amended. I will state that this particular spreadsheet, Exhibit 46, is not one that we felt was -- it was almost too much information, I guess.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

VOLUME III

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR
WOMEN MEDICAL CENTER,
INC.,
Defendant.

****

Washington, D.C.
January 10, 2002

Deposition of:
STEPHEN S. FARGIS
a witness, called for further examination by counsel for the Defendant, pursuant to recess, held at the offices of Kellogg, Huber, Hansen, Todd & Evans, 1615 M Street, N.W., Suite 400, Washington, D.C., beginning at 10:09 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

area. And part of his responsibilities were related to Columbia Hospital for Women.

Q. But he didn't have anything to do with performing the calculations on the Retro Plan, did he?

A. I can't recall if Mr. Marsh did any calculations on the plan.

Q. If you could turn to Exhibit 66 now, you see it's a spreadsheet with a date of October 11, 1999.

A. Yes.

Q. Do you recognize this to be the fall 1999 reconciliation?

A. I don't know if it's the final or working draft.

Q. Does NCRIC know, is your information, as NCRIC's representative?

A. Looking at this one sheet of paper, I can't state that. I would have to review my files to try to determine the sequence of orders in my files.

Q. If I represented to you that this

MR. PAGE: What do you remember this being?

THE WITNESS: This is a reconciliation on the plan, I believe, as it stood through the end of August 31st, 2001.

MR. LEAHY: Okay. Do you want to talk with your counsel?

THE WITNESS: Yes.

MR. LEAHY: Go ahead.

(Recessed from 12:39 to 12:41 p.m.)

THE WITNESS: Exhibit 68 was developed during settlement discussions with Mr. Wilson. I would need to take a look and see within this spreadsheet if we were making certain assumptions to try to reach settlement. So I'm not certain that this spreadsheet in and of itself contains certain assumptions outside of the way that we had settled and ended the Retro Plan.

The reason I state that is that Mr. Wilson was provided a reconciliation at this period that was also accompanied with a

letter requesting payment of an amount. That's not what is presented here. This is something that was presented during settlement.

BY MR. LEAHY:

Q. Let me just make a representation to you. My understanding was he did not receive that, and I will check with my client to make sure I'm not wrong; the "that" being what you have described, which is a letter requesting payment. So this was the only thing that we had as the September 1st, 2001 reconciliation.

Do you have any reason to believe that this is not, being that it was sent on September 5, that this does not actually accurately reflect the August 31, 2001 reconciliation?

A. Again, Mr. Wilson and I were in discussions about settlement. And there were during those discussions iterations and assumptions made to try to reach settlement on

worksheets. And since this cover letter refers to the settlement and a counteroffer from Mr. Wilson, I'm not sure if this spreadsheet contains some of those assumptions.

Q. What I want to represent to you is, I didn't mean to present you with the spreadsheet. There were others where I know you made assumptions. So I thought this was your reconciliation. I will not ask you about this any further then until I get word from my client whether or not he got an actual reconciliation from you. But that was my understanding. So I just want to put your mind to ease there that we weren't trying to catch you on something. We're not going to talk about 68 any more. Let's come back to some of these other ones. Okay.

If you can just refer back to 66. 65, I'm sorry.

A. 65?

Q. Page 2. The top column there is

more as a result -- I mean it was a financial decision based on --

A. It was a business decision, yes.

Q. Let's go now to that next one I marked. Was it 91? Do you have it? Do you recognize this letter that is drafted for your signature but not signed?

A. Vaguely.

Q. Was it ever sent?

A. I don't think so. It looks like a draft.

Q. Do you know who drafted it?

A. I believe I drafted it.

Q. Was the point of this letter to, if Columbia ended up not renewing, to suggest alternatives to Columbia's physicians?

A. Yes.

Q. Did NCRIC end up telling any physicians in '98 verbally about Sibley's program, do you recall?

A. Did we tell any physicians -- I'm sorry, can you read that back?

CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR
WOMEN MEDICAL CENTER,
INC.,
Defendant.

****

Washington, D.C.
July 16, 2001

Resumed Deposition of:
LARRY WILSON, JR.
called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 10:00 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

BY MR. NIEDERMAYER:

Q. Mr. Wilson, do you know whether among the records maintained by Columbia Hospital there are records that show the actual amount of monies that are collected for each patient that is admitted to Columbia Hospital?

A. Yes.

(Marked, Exhibit # 25, Spreadsheet, 1995.)

BY MR. NIEDERMAYER:

Q. I'd like to show you Exhibit 25, which I'm going to represent to you is a printout of a portion of a spreadsheet provided to me on CHW-CD1 for 1995. And I have written at the top of it the headings that had been provided to me by counsel.

Can you tell me whether the information that is shown on this page for the patient numbers in the column that's entitled Total Payments reflect the total amount that was received from the patient for the charges

EXHIBIT B

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

October 29, 2003

By Facsimile and U.S. Mail

Margaret G. Perl, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Peg:

I have received NCRIC's "document production" bates-numbered NCRIC 005278 to NCRIC 005288, which purports to include revised reconciliation calculations. NCRIC should not expect Columbia to agree to the admission of this document in evidence at trial. Indeed, this document is even more objectionable than the purported calculations to which Columbia has already objected.

NCRIC's amended complaint sets forth the amount that NCRIC seeks in this litigation. NCRIC cannot seek, in effect, to amend its complaint by a "supplemental document production" on the eve of trial. Indeed, the Court rejected as untimely an open attempt by NCRIC to amend its complaint four months ago; this covert attempt to amend is even more untimely and inappropriate. NCRIC's late production, moreover, leaves Columbia with no opportunity to conduct discovery regarding the accuracy of the new chart and the calculations that support it. I note in this regard that, during discovery, NCRIC repeatedly admitted that comparable reconciliation charts were replete with inaccuracies.

Sincerely,

Eli C. Schulman

Eli C. Schulman

cc: Neil M. Gorsuch

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Status Hearing – December 19, 2003**
Defendant/Counter-Claimant.	

NCRIC'S REVISED EXHIBIT LIST

Pursuant to this Court's Pretrial Order dated October 15, 2003, Plaintiff NCRIC Inc. ("NCRIC") submits the attached Exhibit Summary Form listing the exhibits which NCRIC intends to use at trial. One additional exhibit has been added to the list previously submitted on July 24, 2003. Exhibit 178 is the most recent of the periodic reconciliations under the Retrospective Rating Plan (the "Retro Plan"), which was prepared and sent to Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") in the normal course of business after the pretrial conference.

As explained in NCRIC's complaint, NCRIC's demand for damages in this case fluctuates as it is based upon "calendar quarterly recalculations of premium pursuant to the contract between the parties." Compl. ¶ 8. Throughout this litigation, NCRIC has continued to provide such updates to Columbia Hospital in the normal course of business pursuant to the contract. Exhibit 178 is merely the latest of these periodic calculations which could not have been included earlier as an exhibit by NCRIC as it did not yet exist. As such, the addition of

Exhibit 178 at this time is not prejudicial to Columbia and is not precluded by D.C. Superior Court Rule of Civil Procedure 16. The original and a copy of Exhibit 178 are submitted to the Court with the Chambers copy of this filing.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: November 14, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copies of the foregoing Revised Exhibit List and attachments thereto were served this 14 day of November 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center

Scott M. Badami

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty.	Rodney F. Page & Scott M. Badami	Judge	Judge Blackburne-Rigsby
Deft./Resp. Atty.	Eli C. Schulman	Clerk	
Case No.	00-0007308	Date	July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	1		NCRIC Primary Premium Tables					
	2		1993 signed Retro Plan					
	3		NCRIC Primary Premium Tables					
	4		NCRIC Territory DC at 1/1/95 Premium Rates					
	5		Retro Plan Calculations					
	6		Columbia Retro Rating Plan Experience Update					
	7		Letter from J. Rogers to D. Little					
	8		Letter from D. Little to J. Rogers					
	9		Letter from D. Little to S. Hansen					
	10		Facsimile from J. Rogers to S. Fargis					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

16d-002586

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page and Scott M. Badami

Judge Judge Balckburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman

Clerk

Case No. 00-0007308

Date July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	11		Letter from S. Hansen to S. Fargis					
	12		Amendment A to Retro Rating Plan Agreement					
	13		Letter from J. Rodgers to S. Hansen					
	14		NCRIC Executive Committee Meeting Minutes					
	15		Letter from W. Wong to J. Marsh					
	16		NCRIC Executive Committee Meeting Minutes					
	17		Letter from S. Fargis to S. Hansen					
	18		NCRIC Board of Directors Meeting Minutes					
	19		Columbia Retro Plan Calcs. & Experience Update					
	20		CHW Foundation Finance Comm Meeting Minutes					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

16d-002587

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami — Judge: Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman — Clerk:

Case No. 00-0007308 — Date: July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	21		Memorandum from L. Petersons to S. Fargis					
	22		Memorandum from L. Petersons to S. Fargis					
	23		CHW Foundation Finance Comm.Meeting Minutes					
	24		CHWMC Meeting Minutes of Regular Meeting					
	25		Draft Retro Rating Plan Agreement					
	26		Draft Retro Rating Plan Agreement					
	27		Memorandum from S. Fargis to T. Hill					
	28		Memorandum from L. Petersons to S. Fargis					
	29		Memorandum from L. Petersons to S. Fargis					
	30		Memorandum from L. Petersons to S. Fargis					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

16d-002588

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott Badami

Judge Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman

Clerk

Case No. 00-0007308

Date July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	31		Memorandum from T. Hill to S. Fargis					
	32		CHWMC Finance Committee Meeting Minutes					
	33		Memorandum from S. Fargis to L. Peterson					
	34		NCRIC Professional Liability Policy Summary					
	35		Retro Rating Plan Agreement (unsigned)					
	36		CHW Found Bd Finance Comm. Meeting Minutes					
	37		Facsimile from L. Petersons to S. Fargis					
	38		CHW Retro-Program Years 1993-1996 3d Qtr					
	39		CHW Retro-Program Years 1993-1996 3d Qtr					
	40		Columbia Plan Premium Calculation					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

16d-002589

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital For Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami

Judge Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman

Clerk

Case No. 00-0007308

Date July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	41		Columbia Plan Premium Calculation					
	42		NCRIC Bd. of Directors Meeting Minutes					
	43		Letter from S. Fargis to G. Beaulieu					
	44		NCRIC Territory D.C. at 1/1/98 Premium Rates					
	45		NCRIC Bd. of Directors Meeting Minutes					
	46		Letter from S. Fargis to G. Beaulieu					
	47		Letter from S. Fargis to G. Beaulieu					
	48		NCRIC Bd. of Directors Meeting Minutes					
	49		Facsimile from J. Hurley to S. Fargis					
	50		Addendum to Retro Rating Plan Agreement					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

16d-002590

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott Badami — Judge: Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman — Clerk:

Case No. 00-0007308 — Date: July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	51		Facsimile from T. Hampton to J. Marsh					
	52		CHW files for Chapter 11 Protection, Wash. Post					
	53		NCRIC Bd. of Directors Meeting Minutes					
	54		CHWMC Quarterly Staff Meeting Minutes					
	55		CHWMC Executive Committee Meeting Minutes					
	56		Memorandum from S. Fargis to G. Beaulieu					
	57		General Hostility, City Paper article					
	58		CHW Foundation Bd. of Director Meeting Minutes					
	59		Letter from S. Fargis to M. Dukes					
	60		Letter from R. Pate to G. Beaulieu					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

16d-002591

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami — Judge: Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman — Clerk:

Case No. 00-0007308 — Date: July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	61		Letter from G. Beaulieu to R. Pate					
	62		Letter from S. Fargis to N. Asterbadi					
	63		Letter from J. Marsh to A. Gaffey					
	64		CHW Found. Bd. of Directors Meeting Minutes					
	65		Prelim Proposal for Med. Prof. Liab. Coverage					
	66		Letter from J. Marsh to A. Gaffey					
	67		Facsimile from A. Gaffey to R. Pate					
	68		Letter from J. Marsh to A. Gaffey					
	69		Letter from J. Marsh to G. Beaulieu					
	70		Letter from J. Marsh to A. Gaffey					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

16d-002592

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami — Judge: Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman — Clerk:

Case No. 00-0007308 — Date: July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	71		NCRIC's Conf Working Rpt of Retro Plan for CHW					
	72		NCRIC Medical Entity Policy					
	73		Addendum B to Retro Rating Plan Agreeement					
	74		CHW Exits Chapter 11, Washington Post article					
	75		CHWMC Executive Committee Meeting Minutes					
	76		CHWMC Executive Committee Meeting Minutes					
	77		Columbia Plan Premium Calculation					
	78		Columbia Plan Premium Calculation					
	79		CHW Retro Rating Plan Quarterly Report					
	80		List of Columbia Retro Plan insureds					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

16d-002593

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami

Judge Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman

Clerk

Case No. 00-0007308

Date July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	81		Facsimile from J. Huley to S. Fargis					
	82		Addendum B-1999 to Retro Rating Plan Agrmt					
	83		Memorandum from A. Gaffey to L. Wilson					
	84		CHW Retro Rating Plan Experience Update Rpt					
	85		Retro Plan Calculations 9/1/93-8/3/99					
	86		Draft Actuarial Funding Analysis					
	87		NCRIC's Conf. Working Rpt of Retro Rating Plan					
	88		Memorandum from D. Osborn to File					
	89		Facsimile from S. Fargis to A. Gaffey					
	90		CHW Retro Rating Plan Experience Update Rpt					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

16d-002594

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami — Judge: Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman — Clerk:

Case No. 00-0007308 — Date: July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	91		Memorandum from D. Osborn to file					
	92		Memorandum from B. Burgess to NCRIC Case					
	93		Facsimile from D. Osborn to M. Feldman					
	94		Email from Osborn to Pate, Crunk, Fargis, Burges					
	95		Facsimile from M. Feldman to Fargis & Osborn					
	96		Memorandum from J. Hughes to L. Wilson					
	97		Letter from D. Osborn to M. Feldman					
	98		Memorandum from D. Osborn to file					
	99		CHWMC Executive Committee Meeting Minutes					
	100		CHW Financial Info for June 2000-June 2003					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

16d-002595

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami

Judge Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman

Clerk

Case No. 00-0007308

Date July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	101		Letter from M. Feldman to D. Osborn					
	102		Draft Actuarial Funding Analysis Columbia					
	103		Letter from D. Osborn to M. Feldman					
	104		Letter from D. Osborn to L. Wilson					
	105		CHWMC Meeting Minutes					
	106		Letter from D. Osborn to L. Wilson					
	107		Letter from G. Sohm to L. Wilson					
	108		Facsimile from D. Osborn to R. Greenfield					
	109		Letter from L. Wilson to G. Sohm					
	110		NCRIC Group Audit Committee Agenda					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

Person Rec. Exhibits

Office

Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

Person Rec. Exhibits

Office

Date

16d-002596

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami — Judge: Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman — Clerk:

Case No. 00-0007308 — Date: July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	111		CHWMC Executive Committee Meeting Minutes					
	112		Letter from L. Wilson to L. Mirel					
	113		Letter from D. Osborn to L. Wilson					
	114		Letter from L. Wilson to D. Osborn					
	115		Facsimile from L. Wilson to D. Osborn					
	116		Facsimile from D. Osborn to L. Wilson					
	117		Letter from G. Sohm to L. Wilson					
	118		Letter from L. Wilson to D. Osborn					
	119		Letter from D. Osborn to L. Wilson					
	120		CHWMC Executive Committee Meeting Minutes					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

16d-002597

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami — Judge: Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman — Clerk:

Case No. 00-0007308 — Date: July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	121		Letter from L. Wilson to D. Osborn					
	122		Facsimile from D. Osborn to L. Wilson					
	123		Facsimile from D. Osborn to M. Feldman					
	124		Letter from L. Wilson to N. Asterbadi					
	125		Letter from N. Trujillo to Physicians Participants					
	126		Retro Plan Reconciliation Calculation					
	127		CHW Retro-Program Calculations					
	128		Letter from G. Sohm					
	129		Various letters from G. Sohm					
	130		Letter from G. Sohm to V. Taleon					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

16d-002598

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami

Judge Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman

Clerk

Case No. 00-0007308

Date July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	131		NCRIC Territory D.C. at 1/1/00 Premium Rates					
	132		Facsimile from S. Fargis					
	133		Insurance Commission Ruling					
	134		Def's Objs & Resps to Pl 1st Req for Admissions					
	135		NCRIC Conf Working Rpt of Retro Rating Plan					
	136		Defections Hurt D.C. Hospital, Washington Post					
	137		Letter from S. Fargis to T. Hampton					
	138		Insurance Commission Ruling					
	139		NCRIC's Conf Working Rpt of Retro Rating Plan					
	140		Memorandum from Carmen to Ed					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

_____
Person Rec. Exhibits

_____ _____
Office Date

16d-002599

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami

Judge Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman

Clerk

Case No. 00-0007308

Date July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	141		Insurance Commission Ruling					
	142		NCRIC's Conf Working Rpt.of Retro Rating Plan					
	143		Revised 1995 Printout					
	144		Document					
	145		Revised 2000 Printout					
	146		Exp 1998 File Printout					
	147		Exp 2000 File Printout					
	148		Schedule of Expenses					
	149		Def's Rule 26(B)(4) Statement (excerpts)					
	150		Resume of Peter Ben Ezra					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

Person Rec. Exhibits

Office

Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

Person Rec. Exhibits

Office

Date

16d-002600

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty.	Rodney F. Page & Scott M. Badami	Judge	Judge Blackburne-Rigsby
Deft./Resp. Atty.	Eli C. Schulman	Clerk	
Case No.	00-0007308	Date	July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	151		Charges Printout					
	152		Sept. 1, 2001 Reconciliation under Retro Plan					
	153		Patient Billing Report					
	154		NCRIC Conf Working Rpt of Retro Rating Plan					
	155		Retro Plan Reconciliation Calc as of 11/30/01					
	156		FY 1997-1998 Doctor Bill Report					
	157		List of Adjunct & Part time faculty for Elliott School					
	158		NCRIC Case Summary Report					
	159		Report of Claims relating to policies w/ Columbia					
	160		Report of Peter Ben Ezra					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

16d-002601

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami — Judge: Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman — Clerk:

Case No. 00-0007308 — Date: July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	161		Retro Plan Reconciliation Calc as of 2/28/02					
	162		Letter from M. Barch & R. Newton					
	163		Retro Plan Reconciliation Calc as of 2/28/03					
	164		Retro Plan Reconcilation as of 5/31/03					
	165		Columbia Hospital's Chronology					
	166		List of Physicians					
	167		Section 2-32 from textbook					
	168		Reports of Births, Admisssions & Surgery					
	169		CHW Retro Rating Plan Experience Updates					
	170		Retro Rating Program Years: 1993-1996 Calcs.					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

Person Rec. Exhibits

Office _____ Date _____

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

Person Rec. Exhibits

Office _____ Date _____

16d-002602

You must print five copies of this form.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Exhibit Summary

NCRIC, Inc.

vs.

Columbia Hospital for Women Medical Center, Inc.

"E" No.

Govt./Pltf. Atty. Rodney F. Page & Scott M. Badami — Judge: Judge Blackburne-Rigsby

Deft./Resp. Atty. Eli C. Schulman — Clerk:

Case No. 00-0007308 — Date: July 24, 2003 (amended 11/14/03)

Court Exh. No.	Govt. Pltf. Exh.	Deft. Resp. Exh.	Item Description	Qt.	ID	Adm.	Over Obj.	No. Obj.
	171		Retro Plan calculations as of various dates					
	172		Spreadsheet of Prem Calcs under NCRIC & MIIX					
	173		Draft letter from S. Fargis					
	174		CHW Physician Listing					
	175		Charge 1995 Printout					
	176		Spreadsheet regarding Patient Billing					
	177		Calculations Chart created by Defense Counsel					
	178		Retro Plan Reconciliation Calc as of 8/31/03					

(Use this section only when exhibits are returned in open court.)

I hereby acknowledge Receipt of Govt./Pltf. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

I hereby acknowledge Receipt of Deft./Resp. Exhibits No. _____ through _____

Person Rec. Exhibits

Office Date

16d-002603

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Status Hearing – December 19, 2003**
Defendant/Counter-Claimant.	

NCRIC'S SUPPLEMENTAL OBJECTIONS TO COLUMBIA'S TRIAL EXHIBITS

Pursuant to this Court's order given to the parties at the October 15, 2003 pretrial conference, Plaintiff NCRIC Inc. ("NCRIC") submits this supplemental brief with regard to NCRIC's objections to Defendant Columbia Hospital for Women Medical Center, Inc.'s ("Columbia") trial exhibits as submitted with the Joint Pretrial Statement on July 24, 2003. NCRIC reasserts all of its objections stated and provided to counsel for Columbia at the meetings required by Rule 16, the objections contained in the pretrial submissions, as well as the objections raised during the pretrial conference. This brief does not attempt to detail every objectionable exhibit submitted by Columbia, but instead focuses on specific documents to which NCRIC objects on admissibility and/or authenticity grounds.

As a preliminary matter, NCRIC notes that it was agreed at the pretrial conference on October 15, 2003 that the parties would confer and attempt to resolve amongst themselves a number of objections raised by both sides with respect to certain identified trial exhibits. NCRIC restates its willingness to work with Columbia in a good faith effort to resolve these issues.

A. Objections to Documents Created by Columbia's Counsel

NCRIC specifically objects to Columbia's proposal to introduce as substantive evidence numerous charts created by Columbia's former trial counsel, Joseph Leahy. Specifically, NCRIC's objection is directed to Columbia's trial exhibits numbered 8, 82-86, and 93. These exhibits should be excluded before the start of trial. Columbia cannot offer any witness with personal knowledge regarding the creation of these documents and who can lay an adequate foundation for admission of these exhibits into evidence. They are merely argument of counsel and cannot be elevated into admissible "evidence."

The background of these exhibits is this: Each time NCRIC has requested factual evidence to support Columbia's allegations of "miscalculations" by NCRIC and the "correct" calculations under the Retro Plan, Columbia has failed to provide a substantive response. First, Columbia refused to allow its designated Rule 30(b)(6) witnesses, such as Columbia's then-CEO, Larry Wilson, to testify regarding the alleged miscalculations and proper calculations because Columbia reserved such testimony to its designated expert witnesses. *See* Wilson Dep. at 139-141; 162-164, attached as Exhibit A. Columbia then withdrew its expert witness designation on this topic before any such analysis was presented to NCRIC. At this point, Columbia was left without any evidence in the record supporting its allegations against NCRIC and claims of damages.

Columbia finally provided its purported "evidence" of alleged miscalculations and counter-calculations under the Retrospective Ratings Plan (the "Retro Plan") by submitting a series of spreadsheets accompanied by a sworn declaration from Columbia's lawyer, Joseph Leahy, in support of its motion for summary judgment on the contract claims. As explained in his declaration, Columbia's lawyer created these spreadsheets specifically for the purposes of the

summary judgment motion. In addition, Columbia attached another new piece of "evidence" – a memorandum entitled "Performing a Proper Reconciliation of the Retrospective Rating Plan Agreement" – to its reply brief, without any declaration as to its authorship. It appears that this document was also prepared by Columbia's lawyer during the litigation. Columbia has now designated these same spreadsheets and summary as exhibits to be used at trial, as if they are evidence rather than lawyer briefing and argument.

These exhibits are spreadsheets purporting to illustrate the "proper" calculations under the Retro Plan first surfaced as exhibits to Columbia's motion seeking summary judgment on the contract claims. The Declaration of Joseph Leahy submitted with those documents clearly reveals their origin:

> In addition, attached as exhibits to Defendant's Motion for Summary Judgment are several spreadsheets created by persons in my office, on behalf of Defendant, for the purpose of this motion.
>
> *See* Leahy Decl. ¶ 5, attached as Exhibit B.

Based on counsel's own sworn statement, these proposed exhibits are inadmissible hearsay created by Columbia's legal team. These documents are not factual evidence created at or near the time of the events in question, nor an expert's analysis to accompany expert testimony at trial. There is no witness whom NCRIC could cross-examine at trial about the reliability of the assertions in these documents. Mr. Leahy has since left the Kellogg, Huber, Hansen, Todd & Evans firm, and he is not listed as a potential witness on Columbia's trial witness list. Columbia cannot now state that these spreadsheets were created by another witness, as Mr. Leahy's declaration clearly establishes that counsel's office was the author and creator.

The author of the summary listed as Trial Exhibit 93 is not identified. Columbia cannot dispute that this document was first produced to NCRIC as an exhibit to Columbia's

Reply Brief in Support of its Motion for Summary Judgment. Columbia did not include any declaration attesting to the authorship of this document. Because Columbia has withdrawn its expert witnesses previously designated to testify about the Retro Plan calculations, and no other witness has testified to creating such an explanatory document, it is clear that this summary was also the work of Mr. Leahy's office for the purposes of the summary judgment briefing.

There is simply no way for Columbia to authenticate and lay a foundation for admissibility of these documents. Moreover, these spreadsheets and summary serve no other purpose than as evidence to prove the truth of the matter asserted therein, and are therefore inadmissible hearsay.

B. Objections to Documents Regarding Mr. Ben Ezra's Testimony

NCRIC also objects to the admission of Peter Ben Ezra's report and testimony as an "expert opinion" in this case. Specifically, NCRIC objects to Columbia's trial exhibits numbered 103 and 104. The testimony of this alleged expert is inherently defective, speculative, and inadmissible. Columbia cannot be permitted to put forward and rely upon a witness: (1) who without independent verification accepted Columbia's counsel's representations concerning the group of physicians who allegedly stopped (or reduced) admitting patients at Columbia, a fact upon which his entire damage analysis is premised; (2) who used unaudited and speculative data having no reliable support; (3) who simply presumed causation of damages; (4) who performed no analysis or investigation related to the other factors which may have been involved in a physician's decision to leave or reduce the number of patients he or she admitted to Columbia; and (5) who cannot be independent or objective because he was the Chairman of the Board of Columbia – and indeed as admitted by Columbia's counsel during the pretrial

conference – who is still designated as a responsible individual with decision making authority on behalf of the hospital with regard to this litigation.

With respect to the single damage claim for which he attempted to establish a damage number (estimated lost cash flow), Mr. Ben Ezra: (a) simply accepted as true the representation of counsel with respect to the doctors who allegedly left Columbia (Ben Ezra Dep. at 140); (b) did no analysis or investigation why doctors left Columbia (Ben Ezra Dep. at 140); (c) used unaudited data (Ben Ezra Dep. at 164); (d) did no analysis or research to determine causation (Ben Ezra Dep. at 133);[1] (e) presumed that each doctor would work until he or she turned age 65 without reviewing any studies or analysis concerning the retirement age of physicians (Ben Ezra Dep. at 154-55); and (f) simply assumed a 20 year damage projection without offering any facts as to why he selected that time period (Ben Ezra Dep. at 151-153). *See* Ben Ezra Dep. at 133, 140, 151-55, 164, attached as Exhibit C. Based upon these "facts," Columbia seeks to have Mr. Ben Ezra opine that Columbia will incur over $20 million in damages over the next 20 years based on the conduct of NCRIC. Mr. Ben Ezra's report is fundamentally flawed, prejudicial and must be excluded as a matter of law.

Mr. Ben Ezra's report and its findings are based on unreliable data, which is not the type reasonably relied upon by experts calculating damages. *See Dyas v. United States,* 376 A.2d 827, 832 (D.C. 1977); *In re Melton,* 597 A.2d 892, 901 n.10 (D.C. 1991) *(en banc).* Mr. Ben Ezra's opinion fails to satisfy even the minimal standard for admissibility of expert opinion testimony imposed by District of Columbia courts. *See Washington Metro. Area Transit Auth. v.*

---

1 "Question: 'I just want to make clear, you don't have any information with respect to causation? You're not here for that purpose, are you?' Answer: 'No. I was just given a list and ran my analysis.' " (Ben Ezra Dep. at 133).

16d-002608

Davis, 606 A.2d 165, 177-78 (D.C. 1992) (holding that speculative expert testimony about lost earnings should be excluded where unsupported by sufficient facts); *Toy v. District of Columbia*, 549 A.2d 1, 7-8 (D.C. 1988) (finding that expert testimony lacked a sufficient factual basis to establish national standard of care for police departments). To be admissible, expert opinion testimony must be based on facts or data "of a type reasonably relied upon by experts in the particular field," although "the facts or data need not be admissible in evidence." *Melton,* 597 A.2d at 901-02 (adopting Federal Rule of Evidence 703 in the District of Columbia). While Mr. Ben Ezra purported to use a "scientifically valid methodology"-- a discounted cash flow analysis -- his application of this method warrants exclusion because: (1) there is no evidence that the underlying benchmark data he used was statistically meaningful or appropriate; (2) he applied a marginal cost percentage strictly (and literally) based on an accounting textbook example with no assurance that such percentage approximates Columbia's true variable costs; and (3) he relied upon a list of doctors provided by Columbia counsel which finds no support in the record.

Although a discounted cash flow analysis may well in theory be based on sound economic principles, Mr. Ben Ezra's application of this methodology here is unreasonable and unreliable. *See K.W. Plastics v. United States Can Co.*, 131 F. Supp. 2d 1289, 1292 (M.D. Ala. 2001) (excluding expert's calculation of lost profits, which was based on "impermissibly flawed" application of "sound economic principles").

The reasons for excluding the proffered expert testimony here are magnified by the involvement of the witness as a Board Member of Columbia, and the recent disclosure *at the pretrial conference that Mr. Ben Ezra is a designated representative of Columbia with regard to decisions made in this litigation.* Counsel for Columbia identified Mr. Ben Ezra as the person with settlement authority for the hospital's board. Mr. Ben Ezra is far from a disinterested expert

witness in this matter. By claiming he is an expert, Columbia and its counsel hope to dress up their speculative damage claim and pass it off in front of a jury as if it has a sound economic or scientific basis. The unfair prejudice to NCRIC and very real possibility of misleading the jury are cause to exclude these exhibits regarding Mr. Ben Ezra's "expert" testimony.

Finally, Columbia's counsel indicated at the pretrial conference that Columbia would not be actually be introducing all the exhibits listed in the Joint Pretrial Statement. As provided in the Joint Pretrial Statement, both parties reserved the right "to offer all exhibits listed on the opposing party's exhibit list, as well as all deposition exhibits and rebuttal exhibits that have not been identified herein." *See* Joint Pretrial Statement at 20. As such, NCRIC reserves the right to introduce and use at trial any exhibit identified by Columbia in the Joint Pretrial Statement, regardless of whether or not that exhibit is contained on Columbia's revised exhibit list to be submitted to the court on November 14, 2003.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: November 14, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of NCRIC's Supplemental Objections to Columbia's Trial Exhibits was served this 14 day of November 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center

Scott M. Badami

EXHIBIT A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,
Plaintiff,

vs. C.A. No. 00-007308
Cal. 8 - Judge Davis

COLUMBIA HOSPITAL FOR
WOMEN MEDICAL CENTER,
INC.,
Defendant.

****

Washington, D.C.
June 27, 2001

Deposition of
LARRY WILSON, JR.
a witness, called for examination by counsel for the Plaintiff, pursuant to notice, held at the offices of NCRIC, 1115 30th Street, N.W., Washington, D.C., beginning at 11:34 a.m., before Lynell C.S. Abbott, a Notary Public, RMR.

Page 139

the hospital that it didn't have to do something under the plan that it was obligated to do?

MR. LEAHY: Object to the extent it calls for a legal conclusion.

MR. NIEDERMAYER: It does not because it is a report of another person to him saying "you don't have to do something you're obligated under the plan to do."

MR. LEAHY: It calls for him to make a judgment with regard to whether or not the plan calls for something and whether he was told not to. I'm going to object. It's just an objection. You can answer.

THE WITNESS: No.

BY MR. NIEDERMAYER:

Q. Are you able to describe for me what damages that the hospital suffered that are being claimed under Count One of the counterclaims?

MR. LEAHY: I'm going to object and instruct you not to answer to the extent

Page 140

any of your knowledge might come from your attorney and be otherwise solely your attorney's knowledge and not be knowledge of the hospital. I'm also going to object to the extent that any knowledge might come from the expert, because you're not designated as an expert. You may speak to the hospital's knowledge only.

MR. NIEDERMAYER: Let's go off the record a second.

(Discussion off the record.)

BY MR. NIEDERMAYER:

Q. Mr. Wilson, may I have your answer, please?

A. State the question again.

Q. Are you able to describe for me the damages that the hospital is claiming under Count One, breach of contract, in its counterclaims?

MR. LEAHY: I'm going to instruct you not to answer to the extent that there's knowledge that is from your attorney or that's

Page 141

expert knowledge. You may answer to the extent that Columbia knows what its damages are.

THE WITNESS: I can give you an example of damages.

BY MR. NIEDERMAYER:

Q. Why don't you do that to start with.

A. Okay. Well, in my opinion we've suffered damages in the tens of millions of dollars to the extent that our reputation has been damaged, we've lost volume, we've lost face in the community, and I could go on just as an example of a few.

Q. Some of those have to do with reputation, they are in later counts. This says breach of contract. I just want to know what damages you claim the hospital claims have been suffered as a result of NCRIC's breach of contract. Can you tell me that?

A. Yes. The part of the reputation that goes back to that dim day in August when

Page 142

our physicians came in one morning to go to work in the clinic and they didn't go as a result of information that some physicians claim they got from NCRIC. It was that morning that I talked with at least Mike Feldman and spoke with Dave Osborne to pass the word on to our physicians that it was in fact okay for them to go to work. That did a heck of a lot of damage to the reputation of Columbia Hospital for Women. It probably did a lot of damage to patient care, a possibility of damages in patient care.

Q. When did that happen?

A. It was on the 31st of August if that was a Friday. Or September 1st, to be more specific. Friday, September 1st.

Q. Which physicians said these things to you?

A. I could tell you physicians that was reported to me that was said, not heard by myself.

Q. Tell me their names.

Page 159

individual doctor's policy. We only assume part of the risk in exchange for a discount. So to the extent that there are special provisions in a doctor's policy, I don't know.

Q. Do you contend that NCRIC offers insurance programs at other hospitals that it doesn't offer at Columbia Hospital for Women?

A. That's what it appears to me.

Q. Why does it appear that way to you?

A. Because I have not heard of any other hospital with a clinic that excluded, where the physicians were excluded.

Q. Do you contend that NCRIC offers a Retro program at other hospitals but won't offer one to Columbia?

A. Not on the terms and conditions that I wanted or the hospital wanted. I mean you can get anything for a price. In my opinion, the Retro plan as constituted with NCRIC was a bad business deal for the hospital. I think NCRIC agreed to that.

Page 160

Q. My question was, let me make it more pointed, do you think that NCRIC offers an insurance program at Sibley Hospital that's not available to be implemented at Columbia Hospital?

A. I don't know what the plan is at Sibley.

Q. Do you contend that NCRIC offers an insurance plan at George Washington Hospital that's not available to be implemented to Columbia Hospital for Women?

A. I don't know the specifics of that plan. I have heard that the plans at Sibley and George Washington are subsidized plans.

Q. Isn't it true that the plan that is currently in effect at Columbia Hospital is less expensive than the plan offered by NCRIC?

MR. LEAHY: Object to the form. It assumes a fact not in the record.

MR. NIEDERMAYER: What fact?

MR. LEAHY: That there is a plan in effect.

Page 161

BY MR. NIEDERMAYER:

Q. Mr. Wilson, is there a plan in effect at Columbia Hospital for Women for physicians?

A. No. We don't have an attending faculty plan.

Q. Do you have insurance coverage for physicians at Columbia Hospital?

A. The hospital does not have coverage for attending faculty.

Q. Does it have a plan whereby it offers a discount to physicians at Columbia Hospital through some plan with an insurance company?

A. It does not offer a discount, not for the plan. We offer a discount for risk management incentives.

Q. Do you know whether the premiums being paid by doctors who practice at Columbia Hospital are the same or less than doctors practicing at Sibley or George Washington Hospital?

Page 162

A. I think the premiums at Columbia are less.

Q. Let's see if we can go back --

A. That's how we made our comparisons and the rates that were quoted by NCRIC were certainly higher than the ones we had at the time.

Q. Let's go back to Count One. Can you describe for me each type of damage that you claim under Count One has been incurred by the hospital?

MR. LEAHY: I'm going to object and instruct you not to answer to the extent that you got knowledge from work product of your attorney, that it's not Columbia's knowledge. If you have information that's Columbia Hospital's, give it.

THE WITNESS: As you know, this has been discussed with attorneys. So maybe I should not answer that.

MR. NIEDERMAYER: This witness has been proffered as being able to answer these

Page 163

questions. Are you telling me he can't answer any of these questions?
MR. LEAHY: He's not our expert. To the extent the party has knowledge, the party can answer. To the extent the knowledge is the party's lawyer's knowledge or the expert witness' knowledge, you'll have to depose those people. To the extent the party has information, go ahead and answer. I'm sure the party has some information. But don't answer about what your lawyer knows.
THE WITNESS: Yeah. We contend there were damages as a result. Damage to reputation, damage to lost opportunities, damage to loss of volume.
BY MR. NIEDERMAYER:
Q. Those aren't breach of contract, but tell me how much is the damages for loss of reputation.
A. We haven't been able to quantify that. Considerable.
Q. Who is going to quantify it?

Page 164

A. Our damage expert.
Q. When will that be done?
MR. LEAHY: You can answer to the extent you know.
THE WITNESS: We're working on it now.
BY MR. NIEDERMAYER:
Q. What's the basis on which he's quantifying it?
A. The best information we have available, whatever that is.
Q. Did you provide any information to that expert?
A. We've provided some information.
Q. What information have you provided?
A. We had discussions about inflammatory remarks that were made that caused damage to the hospital. We are trying to quantify or will quantify the loss of opportunities as a result of physicians not coming to, physicians leaving the clinic that day; damages to the extent that we may have exposure through future lawsuits because of inadequate coverage in the clinic that day, as an example.

Page 165

Q. What are the inflammatory comments that you referred to in your testimony?
A. Inflammatory remarks like the clinic is an unsafe place to work.
Q. You contend that someone at NCRIC said that?
A. It was reported to me that someone at -- let me see. It was third-hand, but I heard something to that effect. I don't recall exactly.
Q. Who at NCRIC said that?
A. The comment was not made to me directly, I can say that.
Q. Who was it made to?
A. That was anecdotal comments I heard all along.
Q. Are they from the people other than Dr. Cook and Dr. Glassman?

Page 166

A. Not from NCRIC. I can't tell you I heard anyone from NCRIC make that statement.
Q. So if I understand your testimony, you cannot identify any person at NCRIC that made the statement that had been attributed to NCRIC.
A. Not firsthand, no, I cannot.
Q. Do you know of anyone other than Drs. Cook and Glassman who have firsthand knowledge that NCRIC made any inflammatory statements about the hospital?
A. No.
MR. LEAHY: What was that answer?
(Record read by the reporter.)
BY MR. NIEDERMAYER:
Q. Can you tell me what facts you have provided to your experts for their calculation of damages to the reputation of the hospital?
A. We provided facts to substantiate that our foundation board did in fact cancel a gala that we had planned; provided the fact to

CERTIFICATE FOR READING AND SIGNING

I hereby certify that I have read and examined the within transcript and the same is a true and accurate record of the testimony given by me.

Any corrections I have listed on the separate errata sheet enclosed, indicating the page and line number of each correction.

Larry Wilson, Jr.

08-06-01

Date

District of Columbia) ss.

Subscribed and sworn to before me this 6th day of August, 2001.

Sylena L. Slaughter, Notary Public

My Commission Expires: January 31, 2002

EXHIBIT B

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburn-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Oppositions to Dispositive Motions Filed, February 28, 2002
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DECLARATION OF JOSEPH K. LEAHY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

JOSEPH K. LEAHY, an attorney admitted to practice before this Court, affirms the following under penalty of perjury:

1. I am an associate with the firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., which is counsel for Defendant in the above-captioned case. I submit this declaration in support of Defendant's Motion for Summary Judgment.

September 1, 2001 Reconciliation

2. In January, at the deposition of Stephen Fargis, I learned that NCRIC, Inc. had not provided Columbia Hospital for Women Medical Center ("Columbia") with a September 1, 2001 Reconciliation of the Retrospective Rating Plan Agreement ("Retro Plan"). Mr. Fargis testified that a September 5, 2001 spreadsheet it had provided to Columbia was, in all likelihood, not the Reconciliation.

3. I followed up with Columbia after that, in an attempt to locate the Reconciliation. The client was unable to locate any Reconciliation it received during the relevant time, except

the September 5, 2001 document, which Mr. Fargis testified probably was not the Reconciliation.

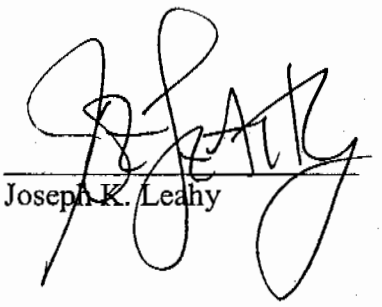
4. In addition, I repeatedly contacted opposing counsel to determine whether we had received the Reconciliation, but to no avail. For example, I called counsel on January 31, 2002, and sent at least one follow-up email during this week, in an attempt to find out the status of the Reconciliation. I never heard back from opposing counsel about the matter, even though I had asked counsel to get back to me on an expedited basis – even if the answer was that the spreadsheet did not exist or had been produced. Due to my inability to obtain the Reconciliation from opposing counsel, I must assume that it does not exist.

Reconciliation Spreadsheets

5. In addition, attached as exhibits to Defendant's Motion for Summary are several spreadsheets that were created by my office, on behalf of Defendant, for the purpose of this motion. To the best of my knowledge, these spreadsheets are exactly what they purport to be: reproductions of NCRIC's Reconciliations, but with one or more multipliers changed.

6. I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, DC
February 11, 2002



Joseph K. Leahy

CERTIFICATE OF SERVICE

I, Joseph K. Leahy, hereby certify that on this 12th day of February, 2002, a copy of Defendant's Praecipe was served upon the following by facsimile and first class United States mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on the same date, a courtesy copy of the aforementioned Praecipe was served upon the Chambers for Judge Anna Blackburne-Rigsby by hand delivery.

Joseph K. Leahy/SLS
Joseph K. Leahy

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion, Statement of Points and Authorities in Support and Proposed Order were served this 5th day of June 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

EXHIBIT C

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

NCRIC, INC., :

:

Plaintiff, :

:

vs. : CA No. 00-0007308

: Calendar # 8

COLUMBIA HOSPITAL FOR WOMEN : Judge Davis

MEDICAL CENTER, INC., :

:

Defendant. :

January 24, 2002

Washington, D.C.

Deposition of:

PETER BEN EZRA

called for examination by counsel for the Plaintiff, pursuant to Agreement, taken at the offices of Bryan Cave, LLP, 700 Thirteenth Street, N.W., Suite 700, Washington, D.C. 20005-3960, before John W. Whitman, RMR, Notary Public in and for the District of Columbia, commencing at 10:04 a.m., when were present on behalf of the respective parties:

MR. LEAHY: Do you want a representation?
MR. BADAMI: If you can tell me when he talked to you about the counterclaim, sure.
MR. LEAHY: My representation is that my recollection with regard to when I spoke with Mr. Ben Ezra is sometime shortly before the 26(b)(4) Statement in which the tens of millions of dollars figure that he used was drafted and filed, at about that time.
MR. BADAMI: I'll accept that representation.
BY MR. BADAMI:
Q. But you haven't read the counterclaim that was filed by Columbia against NCRIC in this case?
A. I haven't read it. We did discuss that particular wording.
Q. How did you come up with the tens of millions figure that you used in your Rule 26(b)(4) Statement?
A. I'm not even sure. If you're going to represent that's where it was.
Q. That's what Mr. Leahy just represented to

us.
MR. LEAHY: I represented on the record that is what a pleading filed in this action to summarize what it is expected the expert will testify to, Mr. Ben Ezra was consulted with regard to, although he didn't have the data at the time, what it was he expected he would testify to. That's my representation.
THE WITNESS: That is correct.
BY MR. BADAMI:
Q. Can you tell me how you estimated at that time the tens of millions of dollars?
A. That was an educated guess.
Q. What's on what data?
A. I didn't have data. I had a feeling or belief.
Q. Where did you get the feeling or belief?
A. Based upon my knowledge of the hospital and what was going on and its financial condition.
Q. There is nothing specific you can point to?
A. No.

MR. BADAMI: I would like to show you the 26(b)(4) Statement, if I might. I would ask the court reporter to mark it as Ben Ezra Exhibit No. 11.
(Ben Ezra Exhibit 11 was marked for identification.)
MR. BADAMI: Mr. Ben Ezra, I'm showing you what's been marked as Ben Ezra Exhibit No. 11, and I'll ask you, sir, if you have ever seen it. I'll represent to you that it's two pages long. The document was originally longer, but No. 1 on the first two pages references you, which is what's been copied, which is what identifies you, and what's been copied.
MR. LEAHY: Are you going to represent who this has been signed by?
MR. BADAMI: Off the record.
(Discussion off the record.)
MR. LEAHY: This document was signed by myself, I believe if this is, in fact, the document counsel purports it to be.
MR. BADAMI: I believe it is.
THE WITNESS: I have received Exhibit No.

11. I have not seen Exhibit 11 before.
BY MR. BADAMI:
Q. Can I ask you to look at the paragraph closest to the bottom on Page 1 where it talks about the substance of the facts and opinions to which Mr. Ben Ezra is expected to testify is, and then it talks about as a proximate result of NCRIC's torts, do you see that?
A. Yes.
Q. I want to just make clear, you don't have any information with respect to causation? You're not here for that purpose, are you?
A. No. I was just given a list and ran my analysis.
Q. Have you reviewed any other pleadings or filings in this case?
A. No, I have not.
Q. Have you reviewed any deposition transcripts in this case?
A. No, I have not.
Q. Have you done any interviews or had any

to show the model and the procedure I used to generate those estimates.

Q. But with the exception, then, of that one, I guess, group, or one line in your report, was the rest of your report the same?

A. It was basically the same, yes.

Q. When you say basically the same, I don't mean to split hairs with you, what else?

A. Basically, the model was there. It may have had a couple of typos, but, basically, what you see is that model.

Q. You mentioned this draft report. Were there other previous drafts of your report?

A. No.

Q. So you consider what you produced to us today Version 2?

A. I would say this would be Version 1.

Q. What do you --

A. The draft was, basically, a working paper, a draft of this version.

MR. BADAMI: Off the record.

(Discussion off the record.)

BY MR. BADAMI:

Q. Mr. Ben Ezra, I'd like to focus your attention now on your report.

A. Yes.

Q. On the first page of your report, which is marked 8708, you refer to the NCRIC group of doctors?

A. That's correct.

Q. We've talked about this a little bit, but I would like to confirm again who the NCRIC group of doctors is.

A. The NCRIC group of doctors are the physicians that are listed on Page 8713.

Q. Right.

A. Where I defined the NCRIC group of doctors by their physician name and their number.

Q. Did you determine if any of these doctors maintained hospital privileges at any other District of Columbia hospital?

A. No, I did not.

Q. Did you determine if any of these

physicians maintained hospital admitting privileges in either Suburban Maryland or Northern Virginia?

A. No, I did not. However, I know from my own knowledge that Dr. Edward G. Koch does maintain an office in, I guess it is, Virginia.

Q. We also briefly touched upon this, but I like to focus on the first page with respect to leaving or cutting back. Obviously, leaving means they stopped referring patients at all to Columbia, is that correct?

A. That's correct.

Q. And tell me how you defined cutting back.

A. That the amount of business they brought to the hospital was less than the previous year.

Q. But, again, you made no analysis or investigation into why those doctors may have cut back or left Columbia?

A. No. It was from -- this is a subset of the list that was furnished to me by counsel, which is Exhibit No. 8.

Q. In doing your analysis, Mr. Ben Ezra, did

you take into account that some of these doctors might switch back to Columbia Hospital in the future?

A. It's my hope that they will.

Q. Is that included anywhere in your report?

A. No, it is not.

Q. So if a doctor made the decision two years from now to go back to Columbia your numbers would be in error?

A. That's correct. Without saying error, if you would tell me which doctors are going to return, I could run the numbers accordingly and determine the net economic lost.

Q. You indicated a moment ago it is your hope, I believe is your word, that these doctors would return to Columbia. Why is it your hope?

A. So we would not have the scope and magnitude of damages, that the hospital would have their business.

Q. I asked you earlier a little bit about insurance. Do you have any knowledge with respect to the effective dates or the insurance coverages of the

breakdown?
A. No, I did not break it down into a subset.
Q. Would that have been helpful to do that analysis?
A. Probably not.
Q. Why not?
A. We don't have the data available. That's part of -- I would like to break it down between inpatient and outpatient, major procedure, minor procedure, even mix of payers, but I don't have that data.
Q. But you'd like to do that if you had the data?
A. If the data was available I certainly would like to do that analysis.
Q. But your testimony is Columbia has not provided you that data?
A. That is correct, has not provided me with the data.
Q. Have you asked for that data?
A. Yes, I have.

Q. Do you know if they have that data?
A. As late as yesterday evening, no, they did not.
Q. You did a projection over the next 20 years?
A. Two different ways.
Q. I'm trying to -- I would like to start, I guess, with how you picked 20 years out in the way you did your analysis?
A. The reason I did 20 years was when you look at the present value of future cash flow, and I draw your attention to the column 20 years will be on Page 8712.
Q. Right.
A. As you go further and further out in time that discount rate eventually goes to zero. So if I had done it for a hundred years the result would not have been much different.
I did it for 20 years in this analysis. I, also, did it by expected age of retirement, which we presumed or I presumed to be 65, and actually I took

the month in which the doctor would turn 65.
Q. We'll get to that. Let's start with the 20 years, first.
A. This analysis shows the present value of future cash flow over a 20-year period, but if you were to say, for example -- let's do only ten years, then I have the results for ten years. So for 20 years, using this approach the present value of the lost cash flows would be approximately $22 million. If you were to say, "What if it's only ten," the answer would be a little over $16.5 million.
Q. I recognize that. I recognize that you picked 20 years as the front page of your report.
A. That's correct.
Q. I'm trying to figure out what facts led you to take that 20-year period?
A. That was my experience. I assumed, and this is an assumption, that the lost cash flow would be over a period of 20 years. If you want to say, well, we think ten is better than 20, then the answer would be different, but that answer is disclosed in

this report.
Q. Again, you just assumed it. You didn't do any further investigative analysis with respect to why the 20-year number works?
MR. LEAHY: Objection to form.
THE WITNESS: My initial approach was to do it for the 20 years. Then when I did it based on the age of the physician, the result was not much different than the 20 years. Actually, the first approach I used was the 20 years. Then, when I found I could get the data for how old they were and when I could presume, that's an assumption that they would retire on their 65th birthday, I ran those numbers. The results are not materially different between the two.
BY MR. BADAMI:
Q. You mentioned the age 65 issue and I was going to come to that. How did you make the decision to choose 65 as the date that the physician would retire?
A. Okay, again, that's a presumption. My

16d-002627

Page 154

experience has been many doctors work past 65. At the Columbia Hospital there is a Dr. Savarese who I believe is still working, but has worked into his 70s.

At the World Bank, where I'm also a consultant, there is a mandatory retirement around that happens to be 65.

I have a client that found he was separated at age 65 and he had about four days' notice.

Q. I appreciate that. Have you done any studies or analysis with respect to what the average retirement date of a physician in the District of Columbia is?

A. No, I have not.

Q. Do you know what that number would be?

A. No, I do not.

Q. Sixty-five is your presumption?

A. That is a presumption, yes.

Q. Specifically, with respect to OB/GYN doctors, do you know if there is a -- let me start the question over.

With respect to OB/GYN physicians, do you

Page 155

know if they typically practice longer, in other words, years, an opposed to, say, surgeons?

A. No, I have not done any formal analysis, but, however, Dr. Savarese, I believe was an OB/GYN that has practiced into his 70s.

Q. But do certain OB/GYNs retire when they are 50?

A. I would assume that some do.

Q. Some retire in their early 60s?

A. I assume that there would be a continuum. I assume it's going to be some sort of a bell-shaped curve.

Q. You did no analysis as to when the doctors retire?

A. No. However, when you do the present value of future cash flows as the years go out the value that's contributing to that present value declines tremendously. So even if I was off by one year that present value is way off in time, as you can see in the analysis. So the dollar today is worth a lot more than, let's say, a dollar 20 years from now.

Page 156

Q. We talked about this a little bit in the beginning, we're back to Page 8710, the 94.22 percentage?

A. Right.

Q. Did you do any analysis with respect to hospitals and their collection rates here in the District of Columbia?

A. No, I did not.

Q. Why not?

A. It's not necessary for this analysis.

Q. If other hospitals collected, say, 60 percent, wouldn't that be relevant to your analysis?

A. Negative.

Q. Why not?

A. I'd like to refer you to Page 8715.

Q. Sure.

A. This is why I felt very comfortable with this model. I had from the printouts, and let's look under total NCRIC doctors group.

Q. That's the top of the chart?

A. The top of the chart. I point your

Page 157

direction to that top third --

Q. Okay.

A. -- which represents a year ago. Okay, my presumption is if I take the total charges, subtract total adjustments, I will arrive at total charges less adjustments; okay.

I was given by the hospital the total charges and the total adjustments. I imputed mathematically the difference, okay, then I compared the actual payments against that difference and found that they had collected about 94.22 percent, okay, and I still know that they still have about another six percent to collect, and maybe they won't collect all that six percent, so in my analysis I'm trying to be objective and free from bias. I used the conservative 94.22 percent, what they have actually collected to date, in imputing the net realizable value.

So your question is why didn't I look at anybody else's. I see that I've got a good indicator here of the difference between total charges and total adjustments as to the amount that is collectable, and

16d-002628

MR. BADAMI: It's a good time for a lunch break.

(Whereupon, at 1:10 p.m. a luncheon recess was taken until 2:05 p.m. that same day.)

AFTERNOON SESSION.

BY MR. BADAMI:

Q. Mr. Ben Ezra, when we left off I had asked you some questions about data which you said did not look right. I believe that is the data for 1997 and 1998?

A. Right, it's data I did not use. It appeared to me to be a subset of the entire file. It did not appear to me to be the entire file.

Q. To your knowledge, does audited data for 1997 and 1998 exist?

A. I'm not sure.

Q. Should it exist? Let me try it that way.

MR. LEAHY: Object to the form of the question.

THE WITNESS: I'm not sure. I know that there were audits that were performed. Whether there is an actual audit report, I don't recall. Was it furnished for the record, here?

MR. LEAHY: Let me just ask, are you asking audited financial status or this type of data that has

actually been produced to him?

MR. BADAMI: Data that was produced to him that he would have relied on for his report.

MR. LEAHY: We produced audited financial statements. I'm not aware of anything else, but if you are, ask for it and he'll produce it.

THE WITNESS: To my knowledge, this data has not been audited.

BY MR. BADAMI:

Q. Would it have been helpful to your analysis to have data for 1997 and 1998, as well?

MR. LEAHY: Object to the form.

THE WITNESS: No, not for this purpose.

BY MR. BADAMI:

Q. Why not?

A. The most current data was the most useful data. I don't have audited data. I don't think I would have utilized it.

Q. I guess where I'm trying to go is you chose one year as your benchmark where you had the data, correct?

A. Correct.

Q. What if that year was a particularly good year or a particularly bad year, away from the mean, wouldn't that skew your result?

MR. LEAHY: Object to the form.

THE WITNESS: That year's data was the most current data, and then the next year we have the comparable results. I'm not sure what a good year or a bad year would be. What I'm trying to do is find that delta, that change.

Basically, I came up with the difference and tried to quantify that in terms of cash. I need to caution, when you're talking about audited financial data you're talking about the accrual basis of accounting.

I used the cash basis. I'm looking for cash collections, not what they earned on the accrual basis, how much cash did they collect, how much cash will they collect.

BY MR. BADAMI:

Q. Could I turn now to Page 8710, Section 2?

16d-002629

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff/Counter-Defendant,	**Civil Action No. 00-0007308** **Calendar #8**
v.	**Judge Blackburne-Rigsby**
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Status Hearing - December 19, 2003**
Defendant/Counter-Plaintiff.	

NCRIC'S MEMORANDUM IN OPPOSITION TO COLUMBIA'S OBJECTIONS TO NCRIC'S PROPOSED TRIAL EXHIBITS

Pursuant to this Court's scheduling order given during the October 15, 2003 Pretrial Conference, Plaintiff NCRIC, Inc. ("NCRIC") submits this Memorandum in Opposition to the objections to NCRIC's trial exhibits filed by Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"). Renewing objections raised orally at the Pretrial Conference, Columbia seeks to limit NCRIC's trial exhibits through specious and untimely hearsay objections. Indeed, in its zeal to keep NCRIC's relevant evidence away from the jury, Columbia has taken a number of positions which directly contradict its arguments on the merits of this case made throughout the litigation.

As an initial matter, as NCRIC stated during the Pretrial Conference and the Court agreed, since the determination of whether documentary evidence is excludable as hearsay depends upon: (1) whether the document is offered for the truth of the matter asserted; and (2) whether a proper foundation is laid through testimony to meet a recognized hearsay exception, it is premature to consider Columbia's hearsay objections prior to trial. The proper time to

consider any hearsay objections is when a foundation has been offered and a party moves for admission of the document. Consideration of Columbia's objections at this time requires theoretical discussions regarding how the documents might be used at trial, what witness might testify as to foundational elements, and which hearsay exception might be used for each document. Indeed, Columbia has failed to consider the possibility that many of these exhibits are, in fact, not hearsay at all because NCRIC will not be using them to prove the truth of the matter asserted in the document, but for other valid and admissible purposes. Such shear speculation and conjecture is a waste of judicial time and resources. As the Court ruled in October, the Court should again reserve judgment on all of Columbia's hearsay objections until such time as the exhibits in question are offered into evidence at trial.

Nevertheless, in the event that the Court chooses to consider Columbia's hearsay objections at this time, those objections fail as a matter of law and NCRIC's exhibits should be deemed admissible for the reasons described in this memorandum.

I. INTRODUCTION

Columbia seeks to exclude 94 of NCRIC's proposed exhibits on the ground that they do not fall within the business records exception to the hearsay rule. At the outset, it should be noted that the District of Columbia recognizes a number of exceptions to the hearsay rule in addition to the business records exception,[1] and at no time has NCRIC indicated that the business records exception is the only justification for admission of its exhibits. Further, Columbia is under the mistaken impression that the business records exception codified in Federal Rule of Evidence 803, and the case law interpreting that exception, are controlling in this case. The

[1] See D.C. Sup. Ct. R. Civ. P. 44 (official documents exception to the hearsay rule) and Pratt v. District of Columbia, 407 A.2d 612, 616 (D.C. 1979) (recognizing hearsay exception for admissions by an agent or employee of a party-opponent) are two such exceptions that may be relevant in this case.

Federal Rules of Evidence are generally inapplicable in D.C. Superior Court. Goldsberry v. United States, 598 A.2d 376, 379 (D.C. 1991). As this Court is well aware, the District of Columbia has adopted a distinct business records exception to the hearsay rule, which is codified in D.C. Sup. Ct. R. Civ. P. 43-I. That exception provides that:

> Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. *All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility....*

D.C. Sup. Ct. R. Civ. P. 43-I (emphasis added). The federal business records exception as codified in 28 U.S.C. § 1732(a) (1970) before the adoption of the Federal Rules of Evidence, contained the exact language which concludes the D.C. exception. When the Federal Rules of Evidence were adopted by Congress, that language was omitted in favor of language which allows admission of documents kept in the course of business "unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." Fed. R. Evid. 803(6); see D.C. Sup. Ct. R. Civ. P. 43-II (noting that Rule 43 "does not refer to the Federal Rules of Evidence or to rules adopted by the Supreme Court, and it contains its own evidentiary rules"). The District of Columbia's business records exception is thus substantially (and unmistakably) broader than Federal Rule of Evidence 803(6). Because Superior Court Rule 43-I is not "virtually identical" to Federal Rule of Evidence 803(6), decisions by federal courts construing the federal rule should not be given special weight. Cf. Beckwith v. Beckwith, 379 A.2d 955, 959 (D.C. 1977) (ruling that, where a Superior Court rule is "virtually identical" to a

federal rule, it should be "construed in light of cases ...which have involved the federal counterpart"). Columbia's constant reliance on federal cases interpreting the federal business records exception is therefore misplaced. Columbia's motion to exclude NCRIC's proposed trial exhibits should be denied.

II. COLUMBIA INACCURATELY DEFINES THE D.C. BUSINESS RECORDS EXCEPTION

Columbia cites New York Life Insurance Co. v. Taylor, 147 F.2d 297, 79 U.S. App. D.C. 66 (D.C. Cir. 1944), which it characterizes as "the seminal D.C. case construing the business records exception to the hearsay rule," for the unfounded proposition that documents containing opinion do not fall within the business records exception. Columbia is flat wrong. New York Life concerned the admissibility of documents under the Federal Shop Book Act (a precursor to Federal Rule of Evidence 803), and is thus inapplicable here. Further, even if this Court were inclined to weigh federal court interpretations of Rule 803, New York Life does not support exclusion of any of NCRIC's exhibits. In New York Life, the court merely held that certain hospital records were inadmissible where they were unaccompanied by custodial witnesses subject to cross-examination. The court noted that: "these records, or at least a large portion of them, would have been admissible in connection with the testimony of witnesses to the events *or opinions* contained in [them]." New York Life, 147 F.2d at 300, 79 U.S. App. D.C. at 99 (emphasis added).

Columbia also cites Adkins v. Morton, 494 A.2d 652 (D.C. 1985), for the proposition that only regularly recorded facts, and not opinions, are admissible under the business records exception. In Adkins, as in New York Life, hospital records were offered unaccompanied by a witness who could testify to the "conjectural or ... complex technical character" of the assertions contained within them. Adkins, 494 A.2d at 662 (quoting

16d-002633

Christensen v. Gammons, 197 A.2d 450, 453 (D.C. 1964)). As NCRIC noted at the Pretrial Conference, NCRIC intends to have live testimony at trial, subject to cross examination by Columbia, supporting the foundation for admission of its exhibits. Thus, the concerns of the New York Life and Adkins courts are simply not present in this case.

Columbia further relies on another federal circuit case, Timberlake Construction Co. v. U.S. Fidelity & Guaranty Co., 71 F.3d 335, 342 (10th Cir. 1995), to support its assertion that documents containing opinion "lack the indicia of reliability that would justify treatment as business records." (Columbia's Memorandum in Support of Objections to NCRIC's Proposed Exs. ("Col. Mem.") at 3). Even if Timberlake were controlling authority, it does nothing to bolster Columbia's argument. As discussed above, the plain language of Federal Rule 803 differs dramatically from D.C.'s business records exception, which indicates that the circumstances surrounding the creation of a record affect weight but not admissibility. See D.C. Sup. Ct. R. 43-I. Further, even Columbia does not contend, nor could it, that NCRIC seeks to admit business records prepared by individuals acting in anything other than the regular course of business.[2]

Columbia does not object to the authenticity of any of the challenged exhibits, and is well aware of the deposition testimony in this case regarding the authorship and use of the documents in question. As shown below with regard to each category of exhibits questioned, Columbia's hearsay objections are without merit, premature, and should be overruled.

---

[2] Elsewhere in its brief, Columbia asserts that Timberlake and United States v. Smith, 521 F.2d 957, 964 n.16 (D.C. Cir. 1975), support exclusion of certain correspondence. As in Timberlake, in Smith the D.C. Circuit merely held that the federal business records exception allows admission of hearsay only "if it was reported to the maker…by one who is himself acting in the regular course of business, and who has personal knowledge." Id. at 964. NCRIC will satisfy the "regular course of business" requirement of D.C.'s business records exception when it lays a foundation for the admission of any business records at trial. As stated above, in D.C. "personal knowledge" is not a requirement for admissibility. Cf. Clyburn v. District of Columbia, 741 A.2d 395, 397-99 (D.C. 1999) (recognizing some personal knowledge requirement in the context of medical records).

16d-002634

III. COLUMBIA'S OBJECTIONS TO SPECIFIC EXHIBITS ARE WITHOUT MERIT

A. Correspondence

Columbia objects to a number of letters on NCRIC's proposed exhibit list because it claims they were "created on an ad-hoc basis" and are thus inadmissible as business records. (Col. Mem. at 4). Columbia cites Allstate Insurance Co. v. Curtis, 781 A.2d 725, 726-27 (D.C. 2001), for the holding of "reversible error where [the] trial court ruled that [an] insurance company's letters were business records." In fact, in Allstate the court merely ruled that admission of documents cannot be based on counsel's unsupported assertion that they qualify as business records. Id. As stated above, provided a party lays a proper foundation at trial for the admission of all exhibits which it seeks to admit under the business records exception, a hearsay objection will fail.

As "proof" that certain NCRIC letters were not kept in the ordinary course of business, Columbia relies on the following alleged facts: (1) some letters were never mailed; (2) some letters contained no addressees; (3) one document responded to an "isolated" question from a doctor; and (4) a number of letters "reflect nothing more than NCRIC's characterizations." (Col. Mem. at 4-5). In making such arguments, Columbia blatantly ignores D.C. precedent which holds that "'insofar as irregularities such as inconsistencies, inaccuracies, *or omissions* are concerned, these matters bear on the weight to be given...[business records] and not on their admissibility.'" Pryor v. United States, 503 A.2d 678, 681 (D.C. 1986) (emphasis added), citing Petworth Pharmacy, Inc. v. District of Columbia, 335 A.2d 256, 258 (D.C. 1975) (admitting daily cash reports, cash register tapes, and summary book under the D.C. business records exception even though the records were not verifiable by the bookkeeper). The fact that some letters were not sent or that they omit addressees, clearly does not affect their admissibility.

16d-002635

Further, Columbia does not attempt to show that it was not within the regular course of NCRIC's business to answer doctors' questions, nor does it attempt to show that NCRIC's "characterizations" were not made in the ordinary course of business. Based on the untimely and incomplete showing made by Columbia, its objections to NCRIC's correspondence exhibits must fail.

B. Calculations and Demand Letters

Columbia next asserts that proposed NCRIC exhibits containing calculations related to the Retrospective Ratings Plan (the "Retro Plan") are inadmissible under the business records exception because: (1) NCRIC's proposed Exhibit 152 (containing calculations) was part of settlement discussions; (2) calculations were not generated according to a specific timetable; (3) one reconciliation was presented to the finance committee; and (4) some calculations were preliminary. (Col. Mem. at 5-6.) As detailed below, none of these arguments support exclusion of any exhibit.

Columbia cites Beckman v. Farmer, 579 A.2d 618, 647 (D.C. 1990) for the wholly unremarkable proposition that evidence of settlement talks "is patently inadmissible." (Col. Mem. at 6.) In Beckman, the court held that under Federal Rule of Evidence 408, "[e]vidence of conduct or statements made in compromise negotiations" is inadmissible at trial. Beyond the fact that Federal Rule of Evidence 408 is inapplicable here, NCRIC's proposed exhibit 152 does not contain such statements. Rather, that exhibit includes one snap-shot of a regularly maintained spreadsheet used to calculate the status of the Retro Plan. The fact that this spreadsheet was submitted to Columbia does not merit its exclusion.

Columbia's other objections to NCRIC's proposed calculations exhibits are also meritless. Under applicable law, as long as NCRIC's calculations were made "in the regular

course of business," it is immaterial that they were not made according to a set timetable, that they were presented to the finance committee, or that they were preliminary. Before offering any calculation under the business records exception at trial, NCRIC will show what is already quite obvious: it was within the ordinary course of NCRIC's business, and indeed a contractual obligation, to regularly calculate the status of the Retro Plan. Columbia's attempt to exclude these calculations is premature and inappropriate.

Columbia also seeks to exclude exhibits containing demand letters and quarterly reconciliation calculations for the Retro Plan.[3] Columbia asserts that these letters, and their accompanying calculations, are particularly unreliable because they were prepared "purely for litigation purposes." (Col. Mem. at 7.) Columbia admits, as it must, that the Retro Plan called for "NCRIC's performance of quarterly updates." Therefore, Columbia cannot legitimately claim that these required updates were made purely in anticipation of litigation; nor can Columbia claim that the updates were not prepared "in the regular course of business." Indeed, NCRIC's performance of these calculations and transmittal of demand letters fulfills explicit contractual obligations under the Retro Plan. It is simply inconsistent for Columbia to simultaneously argue that it is entitled to damages for NCRIC's improper performance of calculations under the Retro Plan, but that the calculations and transmittal letters sent to Columbia over the years of that plan are inadmissible and prepared purely for litigation.[4]

Likewise, it is wholly disingenuous for Columbia to argue that any reconciliation calculations prepared and sent to Columbia pursuant to the Retro Plan after this litigation began

---

[3] Columbia refers to Exhibits 155, 161, 163, and 164 alternatively as "letters sent by NCRIC to Columbia demanding payment for an amount purportedly detailed in accompanying charts," and as "quarterly updates."

[4] Indeed, one basis for Columbia's summary judgment motion was the alleged failure of NCRIC to send a reconciliation calculation and demand for payment in 2000 and 2001 – clearly after the litigation began. Yet, now Columbia argues such documents are inadmissible.

is an attempt for NCRIC to improperly amend its Complaint or use documents produced after the close of discovery. (Col. Mem. at 7). Contrary to Columbia's characterization, it is clear from the face of NCRIC's Complaint that the amount sought by NCRIC would fluctuate based on continuous reconciliations as the periods close out. The Complaint states that the amount due is based upon "calendar quarterly recalculations of premium pursuant to the contract between the parties." (Compl. ¶ 8). Moreover, as Columbia has argued consistently in this litigation that the Retro Plan cannot end and all contractual obligations continue until all claims are closed out, NCRIC is required to continue to perform its contractual duty to calculate and send updated reconciliations to Columbia notwithstanding this litigation. The reconciliations and demand letters from 1996 to the present all were prepared "in the regular course of business" pursuant to contractual obligations and should are not subject to exclusion months before being offered at trial.

Finally, Columbia argues for exclusion based on the fact that each update contains a different "amount due" and the fluctuation and alleged unreliability of the quarterly updates. Throughout this litigation, Columbia's case has largely rested upon its allegedly *reasonable reliance* on quarterly updates provided by NCRIC to support its fraud, negligent misrepresentation, breach of fiduciary duty, and breach of good faith and fair dealing claims. In a radical shift, Columbia now argues that it is plainly clear that such calculations were unreliable and interim only. If this is Columbia's position, it casts a fatal blow to Columbia's contract-based counterclaims. Columbia cannot be allowed to vacillate its position throughout this litigation.

C. Business Proposals and Presentations

Columbia claims that certain NCRIC exhibits containing business proposals and presentations are inadmissible under the business records exception because they were not

incorporated into the final Retro Plan entered into by Columbia and NCRIC. Columbia cites Boca Investerings Partnership v. United States, 128 F. Supp. 2d 16, 18-22 (D.D.C. 2000), for the proposition that business proposals are inadmissible under the business records exception. However, Boca only dealt with the personal knowledge requirement of Federal Rule of Evidence 803(6). Not only has Columbia failed to show (or assert) that NCRIC's business proposals and presentations were created by individuals without personal knowledge, but as stated above, personal knowledge is not required for admissibility under D.C.'s business records exception to the hearsay rule. Thus, Columbia's argument has no relevance to NCRIC's exhibits in this case.

Moreover, the fact that NCRIC's business proposals and presentations were not incorporated into the final Retro Plan does not warrant their exclusion, as this fact has no bearing on whether these documents were created in the ordinary course of business – for which NCRIC will provide adequate foundational testimony at trial. The Retro Plan's merger clause is only relevant if NCRIC attempts to use a document to illustrate an inconsistent term of the contract. In a case where Columbia targets NCRIC with baseless charges of tortuous interference and defamation regarding NCRIC's alleged statements, and breach of contract claims regarding NCRIC's handling of the contract negotiations, these documents are clearly relevant – some of which are not hearsay at all because they will be not offered for the truth of the matter asserted therein. Exclusion of these exhibits is not warranted.

D. NCRIC Minutes

In yet another example of Columbia's attempt to stretch the business records rules in order to keep probative evidence from the jury, Columbia cites a Fifth Circuit case from almost 30 years ago for the incredible proposition that the regularly recorded minutes of NCRIC board meetings do not fall within the business records exception to the hearsay rule. (Col. Mem. at 10 citing United States v. Beasley, 513 F.2d 309 (5th Cir. 1975)). The Fifth Circuit, however,

has not issued a blanket ruling denying the admissibility of board minutes. Rather, Beasley held that the federal business records exception could not be used to "facilitate the introduction of hearsay as to which the reporter, if he appeared in person, would not be allowed to testify." Id. at 314. NCRIC is not attempting to use the D.C. business records exception as a back-door in order to introduce otherwise inadmissible evidence. It is undeniable that the minutes of NCRIC's board meetings were maintained in the ordinary course of business. With proper foundational testimony by NCRIC officials as to the taking and keeping of board meeting minutes, it is clear that such documents are the quintessential "business record" admissible under the rule. Indeed, Columbia's trial exhibit list includes minutes of various Columbia board meetings as well. This argument is nothing more than spurious.

E. Internal Memoranda

Columbia cites United States v. Lemire, 720 F.2d 1327, 1350-51 (D.C. Cir. 1983), for the proposition that internal memoranda are inadmissible under the business records exception because they are not "objectively reliable." The Lemire court, applying Federal Rule of Evidence 803(6), excluded memoranda that it found to be untimely recorded and not prepared for a regular business purpose. Columbia fails to allege what characteristics of NCRIC's internal memoranda make them unreliable, and it cannot allege that memoranda sent within NCRIC on its dealings with Columbia were not maintained in the ordinary course of business – as testimony offered by NCRIC at trial will show. Exclusion of these exhibits is inappropriate.

F. Insurance Commission Rulings

Columbia seeks the exclusion of five exhibits based on its claim that "correspondence to and from the insurance commissioner cannot be deemed business records" as such correspondence was created in anticipation of litigation. First and foremost, of the five letters Columbia seeks to exclude, three were written by personnel in the commissioner's office,

and one was authored by Columbia itself. It can hardly be argued that the insurance commissioner "self-consciously [drafted letters] with an eye toward litigation," nor can Columbia seek exclusion of its own admissions. Further, Columbia characterizes these documents as "run-of-the-mill letters." Routine, regularly sent letters between the insurance commissioner and NCRIC fall squarely within D.C.'s business records exception. The real reason, of course, that Columbia seeks to exclude these materials is because it shows, contrary to Columbia's claims in this case, that NCRIC's conduct with respect to its handling of the Retro Plan was specifically approved by the D.C. Insurance Commission and is prejudicial to Columbia's case. Exclusion is not warranted.

G. Documents Created By Third Parties

Columbia alleges that certain documents are inadmissible as business records because they contain the statements of third parties, such as NCRIC consultants. According to Columbia, the Seventh Circuit held in United States v. Santos, 201 F.3d 953, 963 (7th Cir. 2000), that "documents received—as opposed to prepared—by a business are not that firm's business record." To the contrary, Santos actually held that, under Federal Rule of Evidence 803(6), statements by outside parties do not become part of a business' records *unless the business verifies or adopts the statements*. Id. Columbia does not allege that NCRIC failed to adopt or verify the statements contained in these documents, nor has the time come for NCRIC to prove such adoption. Exclusion at this juncture is premature and inappropriate.

H. Newspaper Articles/Textbook Excerpt

Columbia is correct that neither the newspaper articles, nor the textbook excerpt included on NCRIC's proposed exhibit list, qualify as records kept in the ordinary course of NCRIC's business. Columbia incorrectly assumes, however, that NCRIC seeks admission of these documents based on the business records exception to the hearsay rule. There are

legitimate non-hearsay uses of these newspaper articles in this case where Columbia alleges damages to its reputation and defamation by NCRIC. Moreover, as this Court noted at the Pretrial Conference, to the extent Columbia officials are quoted in newspaper articles, these statements are properly admitted as party admissions. Thus, these documents are admissible.

It is ironic that Columbia objects to the admissibility of the textbook excerpt identified as NCRIC Exhibit 136 as this document was offered by Peter Ben Ezra, Columbia's alleged expert witness, to support the margin calculations in his purported expert analysis. Thus, this document has many non-hearsay uses for NCRIC – not the least of which impeachment of Mr. Ben Ezra. Indeed, NCRIC will most definitely *not* be using this document to prove the truth of the matter asserted therein – but indeed the opposite. Thus, the document is not hearsay and it is admissible.

IV. CONCLUSION

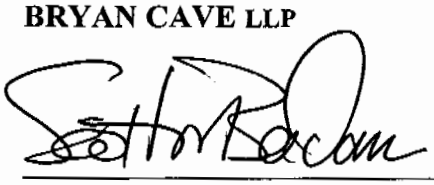
As the Court noted when declining Columbia's initial efforts at excluding these materials during the Pretrial Conference, Columbia's supplemental objections to NCRIC's proposed exhibits are untimely and wholly without merit. In an apparent effort to bolster a weak case, Columbia is attempting to limit the damaging evidence that will be offered against it by making objections that are not appropriate until trial. Columbia cannot be permitted to state the basis upon which it believes NCRIC will offer an exhibit and then move to exclude based on its own speculation and conjecture. This litigation tactic must not be permitted to succeed.

As detailed above, Columbia seeks exclusion of more than half of NCRIC's exhibits based on Federal Rule of Evidence 803(6), which is markedly more narrow than the applicable exception adopted in the District of Columbia. Moreover, Columbia has refused to consider the possibility that NCRIC will use these documents for non-hearsay purposes, or lay foundations for other exceptions to hearsay outside of the business records exception. As

illustrated by Columbia's flawed speculation as to what NCRIC intends to present at trial, Columbia's objections are entirely premature. To exclude any of NCRIC's exhibits at this time based on Columbia's obvious bias would be inappropriate. For the foregoing reasons, the Court should overrule Columbia's objections to NCRIC's exhibits, or in the alternative, reserve judgment until NCRIC has presented foundation testimony at trial.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: November 26, 2003

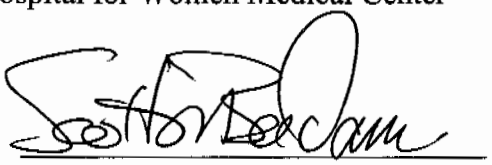
16d-002643

CERTIFICATE OF SERVICE

I hereby certify that pursuant to a telephone discussion between counsel on November 26, 2003, it is NCRIC's understanding that Columbia will file and serve its submission on Monday, December 1, 2003. Therefore, a true and correct copy of the foregoing Notice Regarding Columbia's Withdrawal of Trial Exhibits will be served on December 1, 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center



Scott M. Badami

16d-002644

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Status Hearing – December 19, 2003**
Defendant/Counter-Claimant.	

NCRIC'S NOTICE REGARDING COLUMBIA'S PURPORTED WITHDRAWAL OF TRIAL EXHIBITS

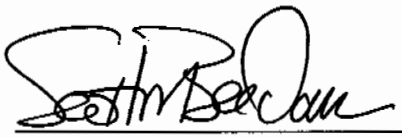
Pursuant to the scheduling order entered in this case, Plaintiff NCRIC, Inc. ("NCRIC") and Defendant Columbia Hospital for Women Medical Center Inc. ("Columbia") first exchanged exhibit lists on May 30, 2003 and submitted those exhibits to the Court on July 24, 2003. On November 14, 2003, Columbia filed a Revised List of Trial Exhibits. This revised list purported to withdraw 28 exhibits which were previously submitted with the Joint Pretrial Statement on July 24, 2003. (See Columbia Exhibits 2, 3, 4, 12, 20, 21, 24, 27, 28, 31-33, 48-51, 55, 59, 63, 66, 68, 73, 87, 88, 91, 92, 94, 101).

However, as provided in the Joint Pretrial Statement, both parties reserved the right "to offer all exhibits listed on the opposing party's exhibit list, as well as all deposition exhibits and rebuttal exhibits that have not been identified herein." *See* Joint Pretrial Statement at 20. Both parties agreed to this language and reservation of rights when drafting and submitting the Joint Pretrial Statement.

Therefore, NCRIC specifically reserves the right to introduce and use at trial any of the above exhibits which were previously identified by Columbia in the Joint Pretrial Statement, notwithstanding the fact that Columbia subsequently attempted to withdraw the exhibits.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: November 26, 2003

16d-002646

CERTIFICATE OF SERVICE

I hereby certify that pursuant to a telephone discussion between counsel on November 26, 2003, it is NCRIC's understanding that Columbia will file and serve its submission on Monday, December 1, 2003. Therefore, a true and correct copy of the foregoing Notice Regarding Columbia's Withdrawal of Trial Exhibits will be served on December 1, 2003, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center

Scott M. Badami

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
DEC 1 2003
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S RESPONSE TO NCRIC'S OBJECTIONS REGARDING COLUMBIA'S PROPOSED TRIAL EXHIBITS

In one more attempt to derail trial of this case, NCRIC now wastefully attempts to re-litigate two issues already settled by the Court. Cutting and pasting – virtually word for word – from two of its motions *in limine*, NCRIC again challenges Columbia's exhibits that detail the correct calculations under the Retro Plan, and NCRIC seeks to exclude the report of Columbia's damages expert, Peter Ben Ezra. But NCRIC adds nothing to the arguments that the Court rejected just last month when the Court denied NCRIC's *in limine* motions. Those rulings were unequivocal, and at the pretrial conference NCRIC itself expressly conceded that they disposed of its stated objections to these exhibits. (Point I, *infra*.)

Tellingly, NCRIC has chosen *not* to brief the only objection raised by NCRIC on which the Court did seek briefing. That objection was NCRIC's flawed suggestion at the pretrial conference that the Court's summary-judgment ruling, which found that certain 1998 statements made by NCRIC were not "of and concerning" Columbia and therefore were not actionable for defamation by Columbia, somehow barred Columbia from introducing certain exhibits dating from 1998 to support other Columbia claims apart from defamation. Apparently realizing that

this suggestion lacks any good-faith basis, NCRIC now appears to have abandoned the objection. And with good reason: evidence from 1998, even if not probative of defamation, remains admissible to prove other claims. Indeed, the 1998 exhibits are particularly relevant to illustrate the pattern of NCRIC's heavy-handed, tortious conduct of threatening to take Columbia's doctors to other hospitals if Columbia did not renew the Retro Plan on NCRIC's terms. (Point II, *infra*.)

Finally, NCRIC proposes to add as its Exhibit 178 a recent demand letter enclosing purported Retro Plan calculations, but that document is inadmissible hearsay created specifically for litigation purposes, and it therefore cannot qualify as a business record. It also represents, in effect, a stealth attempt to amend NCRIC's complaint to seek greater damages on NCRIC's contract claim. The Court, however, denied an express attempt by NCRIC to amend its complaint filed almost six months ago. This attempt is even more untimely and would prejudice Columbia by allowing NCRIC to try its case on the basis of calculations not subjected to the scrutiny of discovery, when discovery revealed similar calculations performed by NCRIC to be replete with errors. (Point III, *infra*.)

Columbia respectfully suggests that the Court should (again) overrule NCRIC's objections, should find Columbia's exhibits from 1998 relevant and admissible, and should hold NCRIC's proposed Exhibit 178 inadmissible.

Discussion

I. NCRIC'S OBJECTIONS HAVE ALREADY BEEN OVERRULED BY THE COURT

A. Summaries

NCRIC objects to Columbia Exhibits 8, 82-85, and 93. But the status of these summary exhibits has already been resolved by a motion *in limine* that NCRIC filed nearly *six months ago*.

NCRIC expressly objected to the admission of Exhibits 82-85 and 93 in its *Motion to Exclude Certain Documents and Calculations* (filed June 5, 2003). NCRIC's present "[s]upplemental" objections simply cut and paste almost entirely verbatim from this earlier motion. Refusing to accept NCRIC's suggestion that these exhibits be excluded, the Court on October 6, 2003 denied NCRIC's motion *in limine*. At the pretrial conference a week later, the Court reiterated that it would not prevent Columbia from having an opportunity to lay the proper foundation for admission of these documents at trial. The Court pointed out that the same conclusion – that NCRIC's objection would be resolved at trial – applied to Exhibit 8, as well.

Ironically, NCRIC now adds to its list of supposedly objectionable summaries Exhibit 86, arguing that it, too, is an "inadmissible creation of [Columbia's] counsel." But that document was not created by Columbia or its counsel. Rather, as NCRIC Senior Vice President Stephen Fargis explained in his deposition, that document was created by *NCRIC*, *see* Fargis Tr. at 255, and thus is plainly admissible as an admission of a party opponent.

B. Ben Ezra Report and Declaration

NCRIC seeks now – for the first time – to exclude Exhibit 104, the declaration of Columbia's expert, Peter Ben Ezra. But under Superior Court rules, any objection to this document was required *months* ago. *See* SCR 16(e)(5) ("Objections, if any, by a party to the exhibits submitted by any other party also must be made . . . as part of the joint pretrial statement. . . . The Court will not consider any objection or alternate language which is filed beyond the time frames prescribed by this Rule unless the party making the objection or suggestion can establish that the objection or suggestion could not, for reasons beyond that party's control, be timely filed."). NCRIC chose not to object at the appropriate time, and therefore it cannot be heard to complain now.

As for Ben Ezra's expert report, Exh. 103, NCRIC objected in the Joint Pretrial Statement as follows: "Objection – *see motion to exclude testimony of Columbia's expert.*" Joint Pretrial Statement Exh. L-4 at 14 (emphasis added). That is, the only basis for objecting to Ben Ezra's report was set out in NCRIC's motion *in limine* to exclude his testimony altogether, *NCRIC's Motion to Exclude the Statements and Testimony of Columbia's Designated Damages Expert*, filed on June 5, 2003. But that motion, like the summaries motion addressed above, was denied by the Court on October 6, 2003, and the Court at the pretrial reiterated that its ruling was dispositive of NCRIC's objection to Exhibit 103. In short, NCRIC offers nothing new here, but instead regurgitates stale arguments that the Court already has rejected.[1]

II. COLUMBIA'S EXHIBITS DATING FROM 1998 ARE RELEVANT AND SHOULD BE ADMITTED IN EVIDENCE

At the pretrial conference, NCRIC objected to certain Columbia exhibits dating from 1998 – Exhibits 18, 19, 22, 23, and 25 (the "1998 Exhibits") – on the ground that these exhibits were "irrelevant." According to NCRIC, the Court's summary judgment ruling, which held that statements made in 1998 by NCRIC were not actionable by Columbia for defamation, purportedly meant that no evidence from 1998 remained relevant to any of Columbia's claims.

This is plainly wrong. Indeed, NCRIC (tellingly) does not even press the point in its papers now, despite the Court's express invitation to do so. It is well-established that "the test

[1] NCRIC also suggests that it should be allowed to rely on documents that Columbia has withdrawn per Columbia's revised list of trial exhibits. But the Court provided an opportunity to narrow exhibit lists in order to *streamline* the presentation of proof at trial. NCRIC's suggestion would render that effort a wholesale waste of time. Moreover, because NCRIC never designated those exhibits as NCRIC exhibits, under Rule 16 NCRIC has waived the chance to do so. *See* SCR 16(e)(5). And, indeed, a document admissible when offered by one party may be entirely inadmissible when offered by another party: A document authored by NCRIC and proffered by Columbia, for instance, is admissible against NCRIC as an admission of a party opponent; when proffered by NCRIC, however, the same document is inadmissible hearsay. Accordingly, NCRIC should not be entitled to utilize exhibits that it has not designated.

16d-002651

for relevance is not a particularly stringent one." *Street v. United States*, 602 A.2d 141, 143 (D.C. 1992). "[E]vidence is relevant if it could reasonably show that a fact is slightly more probable than it would appear without that evidence." *Id.* (citing E. Cleary, *McCormick on Evidence* § 185, at 542 (3d ed. 1984)) (internal quotation marks omitted); *see also* Fed. R. Evid. 401 (evidence is relevant if the evidence has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"). The trial court enjoys broad discretion to determine whether an item of evidence is relevant. *See, e.g., Hamling v. United States*, 418 U.S. 87, 124-25 (1974).

Columbia's complaint alleges, and the evidence adduced in discovery shows, that well-before 2000, NCRIC devised a two-pronged plan for its dealings with Columbia. Aware of Columbia's tenuous financial situation and of Columbia's need to retain its doctors in order to continue functioning as a viable hospital, NCRIC sought to exploit that leverage over Columbia to force Columbia to renew the Retro Plan on NCRIC's terms. In the event that NCRIC did not get what it wanted through that route, NCRIC had a back-up plan: to take Columbia's doctors to competitor hospitals with which NCRIC had arrangements that it preferred to its deal with Columbia. Though NCRIC's intentional interference with the relationship between Columbia and its doctors climaxed in 2000, when NCRIC broke off its relationship with Columbia and lured Columbia's doctors to other hospitals, those events were but the culmination of a plan that was hatched much earlier and that included a pattern of NCRIC conduct exposed by the 1998 Exhibits. The 1998 evidence is therefore admissible to show a pattern of conduct probative of NCRIC's tortious plan and intent.

That evidence is compelling. While in bankruptcy in August 1998, Columbia determined that it could not afford to continue the Retro Plan. Columbia therefore explored other options

and succeeded in working out a deal with Medical Inter-Insurance Exchange ("MIIX"), a national insurance company. The MIIX proposal offered significant advantages over the NCRIC plan, as detailed in the chart included in Columbia Exhibit 19. The chart, which compares the two proposals, illustrates that Columbia's doctors collectively stood to save $500,000 in premium payments by using MIIX rather than NCRIC, with the hospital saving *another* $500,000. The chart also notes that MIIX enjoyed a higher rating than NCRIC, and that MIIX's assets were worth about ten times as much as NCRIC's. Notably, Exhibit 19 was produced by NCRIC to Columbia in this litigation, demonstrating NCRIC's awareness of the MIIX proposal's superiority to NCRIC's plan – though NCRIC communicated precisely the opposite to Columbia's doctors.

NCRIC's awareness of the advantages of the MIIX proposal is also evident from an internal NCRIC memorandum in which NCRIC acknowledged that MIIX could in fact offer a plan as attractive as its proposal to Columbia (Columbia Exhibit 23), despite NCRIC's apparent hope that the MIIX proposal would not be tenable. *See* Exh. 23 at 1 ("Ray [*i.e.*, Ray Pate, NCRIC's CEO,] has twice inquired as to whether the MIIX program currently on file with the DC Insurance Commissioner allows sufficient discounts to permit the rates quoted in their proposal to Columbia Hospital's OB's. The simple answer is, yes it does.").

Unable to compete with MIIX's proposal, NCRIC resolved to find an alternate way to pressure Columbia to renew its plan with NCRIC – by threatening to take Columbia's doctors to other hospitals with which NCRIC did business. In an August 28, 1998 letter (Columbia Exhibit 18), NCRIC President and CEO Ray Pate informed Gerald Beaulieu, Columbia's Acting President and CEO, that NCRIC had learned Columbia was exploring an alternative to NCRIC's Retro Plan. Pate unabashedly threatened Columbia: "You should understand that NCRIC

intends to continue providing its much needed insurance protection to the physicians in this program with or without the support of CHW." Exh. 18 at 1.

Next, NCRIC called secret meetings of the Attending Faculty at which NCRIC urged the physicians to leave Columbia if the Retro Plan was not renewed. In a PowerPoint presentation made by NCRIC to Columbia physicians on October 1, 1998 (Columbia Exhibit 22), NCRIC straightforwardly suggested that the doctors had three "[a]vailable options":

- "MIIX proposal"
- "NCRIC retro plan"
- "*If hospital does not want to continue relationship with NCRIC, your coverage is portable to other programs.*"

Exh. 22 at 3 (emphasis added). Seeking to ensure that only the second or third options came to pass, Mr. Pate and NCRIC Senior Vice President Stephen Fargis misled Columbia's doctors about MIIX's proposal to Columbia, claiming, among other things:

> (1) that MIIX was an unreliable insurance company that would not remain in the District of Columbia insurance market; (2) that MIIX would not stand by its guarantee not to raise premiums for two years; (3) that the MIIX proposal was the result of cronyism that would benefit members of Columbia's Board rather than the Attending Faculty; and (4) that Columbia had lied to the Attending Faculty by stating that it could not afford to continue the Plan.

Statement of Material Facts in Dispute ¶¶ 149-52.

NCRIC followed up on these meetings with letters to the doctors. In an October 28, 1998 "Dear Doctor" letter from Fargis (Columbia Exhibit 25), NCRIC again pressed doctors to leave Columbia in the event that Columbia chose not to renew the Retro Plan on NCRIC's terms. The letter began: "As you are aware, NCRIC has proposed the continuation of our Retrospective Rating Program with CHW . . . . Unfortunately, we have not received yet agreement from CHW that it desires to continue this program for you." *Id.* Therefore, the letter encouraged the

doctors, "you may have the opportunity to participate with a NCRIC-sponsored plan at Sibley Memorial Hospital, or, The George Washington University Hospital." *Id.*

Just as NCRIC hoped and planned, many Attending Faculty members threatened to move their practices to other hospitals if Columbia proceeded with the MIIX program instead of renewing the Retro Plan. Among those who threatened to move were several large groups of OB/GYNs, who together referred nearly one-third of the hospital's total patients. Faced with the prospect of losing one-third of its revenue, Columbia had no choice but to accept NCRIC's dictated terms and decline the MIIX proposal.

NCRIC's conduct in 1998 revealed a plan that it deployed in 2000, when again it pushed its renew-the-Retro-Plan-on-NCRIC's-terms-or-NCRIC-will-take-your-doctors-elsewhere plan. *See generally* Statement of Material Facts in Dispute ¶¶ 160-228. In June 2000, Columbia and NCRIC negotiated the possibility of closing out the Retro Plan. When Columbia indicated that it could not afford NCRIC's close-out proposal, NCRIC informed Columbia that the Plan was "terminated" effective September 1, 2000. Two days later, without any warning, NCRIC cancelled an entirely separate NCRIC group insurance policy that covered Columbia's clinic. When, however, certain physicians continued to practice at the clinic under their individual malpractice policies, NCRIC issued an unprecedented exclusionary endorsement under which the doctors' individual policies specifically excluded care provided at Columbia's clinic.

Meanwhile, with Columbia's Retro Plan set to expire as of September 1, 2000, NCRIC contacted Attending Faculty physicians over the summer of 2000 and encouraged them to leave Columbia for other hospitals at which NCRIC had existing plans. NCRIC already had a plan in place at Sibley, and NCRIC developed a similar plan for GW – to take effect on the date that Columbia's Retro Plan ended. NCRIC began processing the paperwork necessary for the doctors

to begin practicing at these other locations. NCRIC representatives made false and defamatory statements about Columbia that led doctors to believe they should leave Columbia, including the spurious assertion that Columbia was imminently to close.

Columbia continued to negotiate a possible deal with NCRIC over the summer, but the negotiations turned out to be a sham. When Columbia refused to accede to NCRIC's terms, NCRIC went forward with its "Plan B" of taking the doctors away from Columbia. With no deal in place on September 1, 2000 to continue the Retro Plan, nearly 30 Attending faculty physicians moved their practices to other hospitals, particularly Sibley or GW, where NCRIC had its plans in place.[2]

Thus, the evidence from 1998 – and specifically from Columbia Exhibits 18, 19, 22, 23, and 25 – is directly relevant to establishing NCRIC's tortious intent in 2000, including for claims of fraud, breach of NCRIC's fiduciary duty to Columbia, and tortious interference with Columbia's existing and expected business relationships. NCRIC engaged in the same pattern of conduct in 1998 and 2000, in both instances following a plan of demanding that Columbia agree to NCRIC's terms for renewing the Retro Plan, or face the consequences of NCRIC's taking away Columbia's doctors. In 1998, Columbia gave in to NCRIC's threats and assented to its unreasonable demands; in 2000, Columbia refused to give in, and NCRIC carried out its threats to take Columbia's doctors to competitor hospitals.

---

[2] Further demonstrating NCRIC's pattern of tortious conduct before, as well as after, September 1998, NCRIC acted in a similar fashion when the parties negotiated a renewal in January 1998. At that time, NCRIC presented Columbia with a bill for $1.7 million in Additional Premium, together with an ultimatum: pay up immediately or the Retro Plan would not be renewed. Even though no payment was due under the terms of the parties' agreement because claims remained open, Columbia had no reasonable alternative but to pay NCRIC. Had Columbia not paid at least $1 million, the Plan would have ended and, with no alternative in place, a large percentage of the Attending Faculty would have transferred to competing hospitals. *See, e.g.*, Statement of Material Facts in Dispute ¶ 35.

16d-002656

Courts have routinely admitted evidence of such prior acts to prove motive or intent. Indeed, far more attenuated evidence has been deemed admissible by court after court. *See, e.g., Curry v. United States*, 793 A.2d 479 (D.C. 2002) (in trial for second-degree murder where defendant's dump truck overturned, killing occupant of another vehicle, trial court properly admitted evidence regarding defendant's prior convictions for mere speeding and for traffic-signal violations to prove intent – namely, that defendant acted with wanton and willful disregard for known, unreasonable risk to human life); *Riley v. United States*, 790 A.2d 538 (D.C. 2000) (in trial for aiding and abetting armed robbery by driving getaway car, trial court properly admitted evidence regarding prior incident in which defendant and co-defendant were stopped together in a car shortly after a store robbery, as relevant to proof of intent in face of defendant's claim that he did not know co-defendant was going to rob store and force him to drive); *Flores v. United States*, 698 A.2d 474 (D.C. 1997) (in trial for assault on defendant's former girlfriend, trial judge correctly admitted evidence of two prior assaults defendant committed against her to demonstrate motive in face of his claim that he acted in self-defense). *See also United States v. Bowie*, 232 F.3d 923, 930-31 (D.C. Cir. 2000) (in trial for possession of counterfeit currency, defendant's prior possession of such currency probative of his knowledge and intent to defraud); *United States v. Washington*, 969 F.2d 1073, 1080-81 (D.C. Cir. 1992) (drug sale preceding charged transaction admissible to show intent, knowledge, and plan, as similarity and timing of events suggests that "prior act is highly probative"); *Miller v. Poretsky*, 595 F.2d 780, 784 (D.C. Cir. 1978) (in action alleging racial discrimination by landlord, evidence of past acts of discrimination involving other tenants relevant to prove landlord's motive in action toward appellant); *Ansell v. Green Acres Contracting Co.*, No. 02-3251, 2003 U.S. App. LEXIS 22275, at *7-18 (3d Cir. Oct. 28, 2003) (in age-discrimination suit, evidence that defendant employer

invited older employee to stay with company on prior occasion was relevant to establish employer's intent when terminating plaintiff); *id.* at *13 ("other acts are admissible under Rule 404(b) in the employment discrimination context for the proper purpose of establishing or negating discriminatory intent"); *Northview Motors, Inc. v. Chrysler Motors Corp.*, 227 F.3d 78, 85-86 (3d Cir. 2000) (noting in affirmance that district court admitted evidence of certain business conduct to show intent with respect to a claim for bad-faith termination of franchises – "*i.e.*, that Chrysler terminated the [sales and service agreements] in July 1991 to force [franchisee] out of business in furtherance of its business plan to terminate stand alone Jeep and Eagle dealerships and replace them with dealerships selling other Chrysler lines"); *Union Carbide Corp. v. Montell N.V.*, 28 F. Supp. 2d 833, 842 (S.D.N.Y. 1998) (deeming evidence of price-fixing agreement that occurred years before conspiracy at issue admissible "to give historical background to [party's] continuing course of behavior in order to prove motive [its] for anti-competitive conduct"); Fed. R. Evid. 404(b).

NCRIC's suggestion that the Court's summary-judgment ruling precludes the admissibility of evidence from 1998 cannot be squared with that very ruling. In its decision, the Court found that "the 1998 statements can not be defamatory to Columbia as a matter of law because the alleged statements were not concerning Columbia." Apr. 10, 2003 Order at 15. NCRIC makes two erroneous extrapolations from this holding. First, NCRIC incorrectly assumes the 1998 statements themselves were relevant only to defamation and not to Columbia's other tort claims. Second, NCRIC incorrectly assumes that if the 1998 statements could not establish defamation of Columbia, then no other evidence from 1998 apart from those statements could be relevant to Columbia's remaining tort claims. But both assumptions are baseless. The Court merely held that the 1998 statements could not be deemed to be about Columbia for

defamation purposes. The Court did *not* exclude the 1998 statements as irrelevant to claims *other* than defamation, and even if it had excluded the 1998 statements entirely, the Court certainly did not exclude *other* evidence from 1998 as irrelevant to non-defamation torts.

NCRIC's false statements, even if not relevant to prove defamation, remain probative of NCRIC's other tortious conduct. *See* Restatement (Second) of Torts § 767 cmt. c, at 30 (1977) ("one may be subject to liability for intentional interference even when his fraudulent representation is not of such a character as to subject him to liability for the other torts [such as defamation]"); *Browning v. Clinton*, 292 F.3d 235, 244 (D.C. Cir. 2002) (affirming dismissal of plaintiff's defamation claim against former President Clinton but permitting her tortious interference claim to proceed where she "allege[d] that Clinton and his unidentified 'agents' intentionally interfered with her business opportunity through conduct other than defamation"). In short, though defamation may be *one* type of "egregious" behavior that supports a claim for tortious interference, *see Genetic Sys. Corp.*, 691 F. Supp. at 423, it is hardly the *only* type, *see Browning*, 292 F.3d at 244. Because the only basis for NCRIC's objection to the 1998 Exhibits is relevance, and that objection cannot survive scrutiny, the objection should be overruled and the exhibits should be admitted in evidence.

III. NCRIC'S PROPOSED EXHIBIT 178 IS INADMISSIBLE HEARSAY

Finally, NCRIC proposes to add as its Exhibit 178 another self-serving demand letter enclosing inaccurate reconciliation calculations. This hearsay exhibit is inadmissible much like NCRIC Exhibits 155, 161, 163, and 164, as Columbia explained in its recent submission. *See Memorandum in Support of Objections to NCRIC's Proposed Trial Exhibits* at 7-9 (filed Nov. 14, 2003).

First, this hearsay document – sent by NCRIC after the pretrial conference and mere weeks before trial – does not fall under the business records exception, SCR 43-I, because it plainly was prepared for litigation purposes and thus cannot be deemed reliable. *See, e.g.*, *Timberlake Constr. Co. v. U.S. Fidelity & Guar. Co.*, 71 F.3d 335, 342 (10th Cir. 1995); *Palmer v. Hoffman*, 318 U.S. 109, 113-14 (1943). As *Palmer* put it, the document is "calculated for use essentially in the court, not in the business." *Palmer*, 318 U.S. at 114. In fact, given the current interactions between the parties, plainly the document was created for *no purpose other than litigation*.

Second, by seeking via this document to change (substantially – by over $700,000) the amount that NCRIC claims in purported contract damages, this document constitutes, in effect, an effort by NCRIC to amend its complaint by letter. NCRIC's express attempt to amend its complaint was rejected by the Court, *see* Oct. 8, 2003 Memorandum and Order, and NCRIC certainly cannot covertly amend its complaint. *See* Exh. A (Letter from Schulman to Perl of 10/29/03). Moreover, as NCRIC's proposed amendment was untimely when sought in June 2003, NCRIC's present attempt months later – three years after the filing of NCRIC's complaint, and over twenty months after the close of discovery – most certainly comes too late. *See, e.g.*, *Gordon v. Raven Sys. & Research, Inc.*, 462 A.2d 10 (D.C. 1983) (affirming denial of leave to amend as untimely where sought 18 months after party's initial filing, and one month after close of discovery); *see also Gaetan v. Weber*, 729 A.2d 895, 898 (D.C. 1999) (denial of leave to amend appropriate because of, *inter alia*, "length of time that the trial has been pending"); *Eagle Wine and Liquor Co. v. Silverberg Elec. Co.*, 402 A.2d 31, 35 (D.C. 1979) (upholding denial of leave to amend where sought "two years after the initiation of the action").

Third, this document does not represent some sort of mechanical supplementation, but calculation of the precise numbers in dispute between the parties. The calculations contained in this version, however, were not examined in discovery, and their use plainly would prejudice Columbia – particularly because NCRIC repeatedly conceded in discovery that prior charts of this kind contained numerous errors. *See, e.g.*, Fargis Tr. at 325 ("Even looking at this [NCRIC calculation] sheet off the top of my head, the 258 was calculated incorrectly. But this is what we presented. Unfortunately, this is what we presented, even though our numbers were wrong.");[3] *id.* at 325-26 ("[T]he retrospective premium line on this sheet shows the cumulative is $6,422,396. It is not added up correctly. That is what I am saying is the mistake on this sheet, and, in fact, it is probably close to one million dollars. It is our mistake but when we presented this, we presented this and we should have checked our math."); *id.* at 477-79 (admitting to errors in other reconciliation spreadsheet); *id.* at 510-11 ("Q. Do you know why you used those deposit factors [for '94-95 and '95-96] in this spreadsheet? A. I could have made a mistake in the Excel spreadsheet. Q. But you don't recall any specific reason – A. No. This is not in agreement with the deposit factors that we had agreed to."); *id.* at 676 ("For '93-94, it does look like a mistake was made on the subject premium."); *id.* at 678 ("And it appears that that's just, that mathematically that can't be. . . . [T]here may be an explanation . . . . But this just looks like a calculation error [concerning subject premium].").

Admission of NCRIC's proposed Exhibit 178 a mere month before trial would leave Columbia with no opportunity to discover similar errors in this latest chart, absent the reopening of discovery and delay of trial. *See, e.g.*, *Gaetan*, 729 A.2d at 898-99 (affirming denial of leave to amend where sought one month before trial, because amendment "would have . . . severely

[3] Deposition excerpts cited here are attached as Exhibit B.

prejudiced the appellees who had spent significant time and expense during two years of litigation to defend against appellant's assertions"); *Sherman v. Adoption Ctr. of Washington*, 741 A.2d 1031, 1039 (D.C. 1999) (denial of leave to amend proper where "trial would have to be delayed and discovery reopened"); *Gordon*, 462 A.2d at 13 (same). After the investment of substantial resources, time, and money in litigating the figures identified in NCRIC's complaint, NCRIC is not entitled to a repeat of discovery so that it may use at trial the calculations that it prefers; nor, in the face of NCRIC's numerous admissions concerning the inaccuracy of its prior calculations, is NCRIC entitled to use its new numbers at trial without those numbers having been subjected to prior examination. Indeed, as with NCRIC's prior effort to amend its complaint, "prejudice caused by delays and postponements of this type affect not only the individual litigants but the court system as a whole and others who invoke its aid in dispute resolution." *Sherman*, 741 A.2d at 1039.

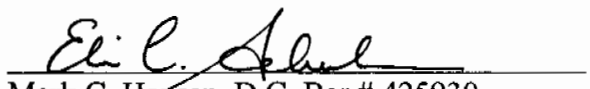
In sum, trial of this case must concern the case that NCRIC pleaded in its complaint and that the parties explored in discovery. NCRIC should not be permitted, on the eve of trial, to change the very case being litigated.

Conclusion

For the foregoing reasons, the Court should overrule NCRIC's objections to Columbia's Exhibits 8, 82-86, 93, 103, and 104; the Court should admit in evidence Columbia Exhibits 18, 19, 22, 23, and 25; and the Court should sustain Columbia's objection to NCRIC's proposed Exhibit 178.

DATED: December 1, 2003

Respectfully submitted,



Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-002663

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of NCRIC's objections to Columbia's proposed trial exhibits, and response thereto, it is hereby ORDERED that:

(1) NCRIC's objections to Columbia's Exhibits 8, 82-85, 93, 103, and 104 are MOOT in light of the Court's rulings of October 6, 2003 denying NCRIC's motions *in limine* with respect to these exhibits;

(2) NCRIC's objection to Columbia's Exhibit 85 is DENIED, as that document is admissible as an admission of a party opponent;

(3) NCRIC's relevancy objections to Columbia Exhibits 18, 19, 22, 23, and 25 are hereby OVERRULED, and these documents are hereby ADMITTED in evidence; and

(4) Columbia's objection to the admission of NCRIC's proposed Exhibit 178 is SUSTAINED.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that, on this 1st day of December 2003, a copy of the foregoing *Columbia's Response to NCRIC's Objections Regarding Columbia's Proposed Trial Exhibits* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 1st day of December 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Eli C. Schulman

EXHIBIT A

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

October 29, 2003

By Facsimile and U.S. Mail

Margaret G. Perl, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Peg:

I have received NCRIC's "document production" bates-numbered NCRIC 005278 to NCRIC 005288, which purports to include revised reconciliation calculations. NCRIC should not expect Columbia to agree to the admission of this document in evidence at trial. Indeed, this document is even more objectionable than the purported calculations to which Columbia has already objected.

NCRIC's amended complaint sets forth the amount that NCRIC seeks in this litigation. NCRIC cannot seek, in effect, to amend its complaint by a "supplemental document production" on the eve of trial. Indeed, the Court rejected as untimely an open attempt by NCRIC to amend its complaint four months ago; this covert attempt to amend is even more untimely and inappropriate. NCRIC's late production, moreover, leaves Columbia with no opportunity to conduct discovery regarding the accuracy of the new chart and the calculations that support it. I note in this regard that, during discovery, NCRIC repeatedly admitted that comparable reconciliation charts were replete with inaccuracies.

Sincerely,

Eli C. Schulman

cc: Neil M. Gorsuch

EXHIBIT B

Civil Division

NCRIC, INC.	:	
	:	
Plaintiff	:	
	:	
vs.	:	Civil Action No.
	:	00-007308
	:	Calendar 8
COLUMBIA HOSPITAL FOR WOMEN	:	Judge Davis
MEDICAL CENTER, INC.	:	
	:	
Defendant	:	

Washington, D.C.
Monday, July 30, 2001

Deposition of:

STEPHEN S. FARGIS

called for oral examination by counsel for Defendant, pursuant to notice, at the offices of Kellogg, Huber, Hansen, Todd & Evans, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036, before Renee A Feder, CSR, a Notary Public in and for the District of Columbia, beginning at 8:45 a.m., when were present on behalf of the respective parties:

you can see, have any column under deposit, reflects 5.5 million to be paid to NCRIC over a three year period. Does it?

A. I don't see 5.5 million in here.

Q. And this is dated October 1, 1996. Correct?

A. Right.

(Document referred to marked Deposition Exhibit No. 14 for identification.)

BY MR. LEAHY:

Q. I will now show you what is marked as Exhibit 14, which is another spreadsheet. Do you recognize that spreadsheet?

A. Yes.

Q. What is that?

A. This is a reconciliation but this seems to me more like what we presented to the finance committee.

Q. Do you see, is that your handwriting on the top right hand corner?

A. Yes.

Q. It says "through." Can you see what

says there is a one million shortfall. Do you recall going back and correcting some numbers for the finance committee?

A. No. Even looking at this sheet off the top of my head, the 258 was calculated incorrectly. But this is what we presented. Unfortunately, that is what we presented, even though our numbers were wrong.

Q. Do you understand what the sentence means, the two sentences mean -- the one starting with "as noted" and the next one "however," do you have an understanding regarding what they mean?

A. What I was referring to as noted is if you take each year on its own and add it up, what we talked about earlier it is a little more than one million dollars. If you roll the three years together it is only 258,016. But again the retrospective premium line on this sheet shows the cumulative is $6,422,396. It is not added up correctly. That is what I am saying is the mistake on

this sheet, and, in fact, it is probably close to one million dollars. It is our mistake but when we presented this, we presented this and we should have checked our math.

I would suspect you pretty much arrive at the same number.

Q. The next sentence, an example of a retro paid loss rating program, is that something that NCRIC presented?

A. It says we presented it. I don't recall it. If there are documents to possibly refresh my memory. I don't -- I don't recall doing an analysis for that. There is a possibility we did, but I just don't recall.

Q. How about the next sentence? And I am assuming here by consultants they mean their consultants. But, that is -- that is your -- I guess I am asking for your understanding. Is the next sentence true with regard to there was a recommendation by consultants that the plan be continued effective January 1, 1997?

in fact 75 percent, would you accept that or would you like to confirm for your own self whether or not 75 percent was used?

A. I'll confirm. Okay.

Q. So would you agree that on both spreadsheets 75 percent was used as the minimum factor for all three years?

A. Yes.

Q. If you could take a moment to look at Exhibit 10, in the row that says ALAE it says, "Per Loss Run." Earlier you testified that that means that comes from the loss run that's attached here. Is that correct?

A. I believe I testified that it would appear that it may come from this.

Q. Could I ask you to look at Page 2 of the loss run and see if you can determine if in fact it does come from there, referring you to the bottom three rows on that second page in the loss run. See how the total for ALAE, reserve total is 358,500? And that's the number that you have there for ALAE for

the '91-93 year. Is that correct? I mean the number is incorrect. Right?

MR. NIEDERMAYER: Objection. One question at a time, please.

BY MR. LEAHY:

Q. The first question is is it correct that 358,500 is the number that you have under ALAE in the first column?

A. Yes.

Q. But that's not the correct number to have in that column. Correct?

A. It should just be open files. This includes open and closed files as a total.

Q. So the 89,500 is the right number to have. Correct?

A. It would be, it should be.

Q. So if you refer to the other spreadsheet, Exhibit 18, that has the correct number. Right?

A. Yes.

Q. And if you turn to the next page

of the loss run, you see the same thing has been done for the '94-95 year?

A. That's correct.

Q. And the same thing for the '95-96 year.

A. Yes.

Q. So the ALAE factor row has been corrected on the Exhibit 18 from the Exhibit 10. Correct?

A. Correct.

Q. Just to make sure I understand, that's because you don't include closed years under ALAE reserves. Right?

A. No.

Q. No, you do not?

A. No, you do not.

Q. If we can take a look at the development factors on here, too, they're actually shown in their own individual row. These spreadsheets use different development factors. Correct?

A. Yes.

because I'm a lawyer not a mathematician.

A. I'm not a mathematician either.

Q. It's also possible I used Excel incorrectly. That's why I'm asking you to check it.

A. Okay.

Q. Have you confirmed what the actual subject -- strike that.

A. Your Row D divided by Row A, these are the same factors I get.

Q. So that means the deposit premium factor that you used in this spreadsheet for the year 1993-94 was approximately .78 or .77934.

A. Right.

Q. And for the year '94-95 it was .7392, et. cetera?

A. Right.

Q. And for the year 1995-96 it was .5533, et. cetera?

A. Yes.

Q. Do you know why you used those

deposit factors in this spreadsheet?

A. I could have made a mistake in the Excel spreadsheet.

Q. But you don't recall any specific reason--

A. No. This is not in agreement with the deposit factors that we had agreed to.

Q. Referring you down, at the bottom of Exhibit 45 and 46, there's a line that looks like the title -- does that look like the title of the name of that spreadsheet, COL93_96.XLS?

A. Yes.

Q. Do you know if you still have this spreadsheet on your computer on the NCRIC system?

A. I'm not sure. I can check again.

Q. The ."XLS" as part of this name indicates this is an Excel spreadsheet. Right?

A. Yes.

Q. I'm going to ask if you have that

you agree that the subject premium remains the same for that year in the latter three reconciliations among the four you're looking at right now?

A. Yes. It is less by about $27,000.

Q. Right, not very much. You also see though that for the '93-94 year it's the same in two consecutive spreadsheets. The subject premium on the '98 spreadsheet and the '99 spreadsheet are both $2,765,000 and change, and it's much higher on the '93-94. Does that fact lead you to conclude that the '97 spreadsheet is erroneous with regard to subject premium for '93-94?

A. For '93-94, it does look like a mistake was made on the subject premium. But in the calculation of this it gets capped at the minimum. All right?

Q. I'm not asking you whether it had any -- I'm just trying to figure out --

A. Yeah, I'm just trying to see what the implication is.

wait, for the past year I've been part time. Can you adjust my premium?"

Q. Retroactively?

A. Retroactively. And from time to time we would do that. Now, as I'm looking at this, and, again, I would have to look at this spreadsheet, but it seems to me Subject First 500 Layer is arrived at by deducting 4.6 and the three prior numbers.

Q. And you're referring to 45.

A. Yes. And it appears that that's just, that mathematically that can't be. You would arrive at 2.6. So when I look at the 2.6 and latter years of 2.765, again, there may be an explanation of some individual physicians' adjustments to premiums. But this just looks like a calculation error.

Q. It's too large an error.

A. Yes, it's too large.

Q. Maybe I should ask it this way: You see how the '97 spreadsheet, as you said, you were providing more information and in the

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

December 1, 2003

By Hand

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 3540
Washington, D.C. 20001

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.,***
Civil Action No. 0007308-00

Dear Judge Blackburne-Rigsby:

Enclosed is a courtesy copy of *Columbia's Response to NCRIC's Objections Regarding Columbia's Proposed Trial Exhibits*, which was filed today in the above-captioned matter.

If you have any questions, please feel free to contact me at (202) 326-7936.

Sincerely,

Eli C. Schulman

Enclosure

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
DEC 10 2003
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

CONSENT MOTION FOR ADMISSION PRO HAC VICE OF PRIYA R. AIYAR

The undersigned counsel, an active member in good standing of the Bar of the District of Columbia, respectfully moves, pursuant to SCR Civil 101, that Priya R. Aiyar be permitted to participate in the above-captioned matter *pro hac vice* as counsel for Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc., and states in support the following:

Ms. Aiyar is an associate of the firm Kellogg, Huber, Hansen, Todd & Evans, PLLC, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036-3209, telephone (202) 326-7900. She has been admitted to the bar of California and has not been disciplined by any bar. She has not previously been admitted *pro hac vice* in this Court, and she has filed an application for membership in the District of Columbia Bar.

Counsel for NCRIC, Inc. has represented to counsel for Columbia that NCRIC has no objection to Ms. Aiyar's admission *pro hac vice*.

Dated: December 10, 2003

Respectfully submitted,

Eli C. Schulman
DC Bar No. 472879
KELLOGG, HUBER, HANSEN,
TODD & EVANS, PLLC
1615 M Street, N.W.
Washington, D.C. 20036
(202) 326-7900 (telephone)
(202) 326-7999 (facsimile)

Counsel for Defendant/Counter-Plaintiff
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Dated: December 10, 2003

Respectfully submitted,

Priya R. Aiyar

Eli C. Schulman
DC Bar No. 472879
KELLOGG, HUBER, HANSEN,
TODD & EVANS, PLLC
1615 M Street, N.W.
Washington, D.C. 20036
(202) 326-7900 (telephone)
(202) 326-7999 (facsimile)

Counsel for Defendant/Counter-Plaintiff
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

Upon consideration of the *Consent Motion for Admission Pro Hac Vice of Priya R. Aiyar*, it is this ____ day of December 2003 hereby

ORDERED, that the motion is **GRANTED**.

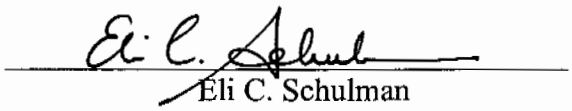
_____
Judge Anna Blackburne-Rigsby

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that, on this 10th day of December 2003, a copy of the foregoing *Consent Motion for Admission Pro Hac Vice of Priya R. Aiyar* was served upon the following by first-class mail:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 10th day of December 2003, courtesy copies of the aforementioned papers were served by hand delivery upon the Chambers of Judge Anna Blackburne-Rigsby and upon the District of Columbia Court of Appeals' Committee on Unauthorized Practice.



Eli C. Schulman

DISTRICT OF COLUMBIA
COURT OF APPEALS
or
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

Case No. 00-0007308

NCRIC, Inc.
Plaintiff/Appellant

v.

APPLICATION FOR ADMISSION
PRO HAC VICE

Columbia Hospital For Women Medical Center, Inc.
Defendant/Appellee

I, Priya R. Aiyar, under penalty of perjury:
Name of Attorney seeking admission

(1) That I have not applied for admission pro hac vice in more than five cases in courts of the District of Columbia this calendar year;

(2) That I am a member in good standing of the highest court(s) of the State(s) of California **(state all states);**

(3) That there are no disciplinary complaints pending against me for violation of the rules of the courts of those states;

(4) That I have not been suspended or disbarred for disciplinary reasons from practice in any court;

(5) That I am associated with Eli C. Schulman **(name the D.C. Bar member under S.C.R. Rule 101;** DC Bar No. 472879 **and give his/her D.C. Bar Number)**

(6) That I do not practice or hold out to practice law in the District of Columbia; and

(7) That I have read all of the rules of the relevant division of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, and have complied fully with District of Columbia Court of Appeals Rule 49 and, as applicable, Super. Ct. Civ. R. 101. The reason(s) I am applying for admission pro hac vice are as follows:

I am practicing law in D.C. pursuant to Rule 49(c)(8) during the pendency of my first application for admission to the D.C. Bar.

I acknowledge the jurisdiction of the courts of the District of Columbia over my professional conduct, and I agree to be bound by the District of Columbia Court of Appeals Rules of Professional Conduct, in this matter, if I am admitted pro hac vice. I have applied for admission pro hac vice in the courts of the District of Columbia Ø times previously in this calendar year.

I attach hereto the receipt issued by the District of Columbia Court of Appeals Committee on the Unauthorized Practice of law as proof of my prior payment of the pro hac vice fee.

Signature of Certifier 12/10/03 Date

Print or type: Name Priya R. Aiyar

Address Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036-3209

Phone (202) 326-7927

16d-002688

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

December 10, 2003

By Hand

Clerk of the Court
Civil Division Clerk's Office
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room JM170
Washington, D.C. 20001

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***
Civil Action No. 0007308-00

Dear Sir or Madam:

Enclosed for filing is the original and one copy of Columbia's *Consent Motion for Admission Pro Hac Vice of Priya R. Aiyar*. Please date-stamp one copy and return it to the messenger in the enclosed self-addressed envelope.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me at (202) 326-7936.

Sincerely,

Eli C. Schulman

Enclosures

16d-002689

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

December 10, 2003

By Hand

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 3540
Washington, D.C. 20001

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.,***
Civil Action No. 0007308-00

Dear Judge Blackburne-Rigsby:

Enclosed is a courtesy copy of Columbia's *Consent Motion for Admission Pro Hac Vice of Priya R. Aiyar*, which was filed today in the above-captioned matter.

If you have any questions, please feel free to contact me at (202) 326-7936.

Sincerely,

Eli C. Schulman

Enclosure

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

December 10, 2003

By Hand

District of Columbia Court of Appeals
Committee on Unauthorized Practice
500 Indiana Avenue, N.W.
Washington, D.C. 20001

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.,***
Civil Action No. 0007308-00

Dear Sir or Madam:

Enclosed is a copy of the *Consent Motion for Admission Pro Hac Vice for Priya R. Aiyar*, which will be filed today in the above-captioned matter.

If you have any questions, please feel free to contact me at (202) 326-7936.

Sincerely,

Eli C. Schulman

Enclosure

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

December 10, 2003

By U.S. Mail

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.*,**
Civil Action No. 0007308-00

Dear Scott:

Enclosed is a copy of Columbia's *Consent Motion for Admission Pro Hac Vice of Priya R. Aiyar*, which was filed today in the above-captioned matter.

Sincerely,

Eli C. Schulman

Enclosure

DEC 10 2003

DISTRICT OF COLUMBIA
COURT OF APPEALS
or
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

Case No. 00-0007308

NCRIC, Inc.
Plaintiff/Appellant

v.

APPLICATION FOR ADMISSION
PRO HAC VICE

Columbia Hospital For Women Medical Center, Inc.
Defendant/Appellee

I, Priya R. Aiyar, under penalty of perjury:
Name of Attorney seeking admission

(1) That I have not applied for admission pro hac vice in more than five cases in courts of the District of Columbia this calendar year;

(2) That I am a member in good standing of the highest court(s) of the State(s) of California **(state all states);**

(3) That there are no disciplinary complaints pending against me for violation of the rules of the courts of those states;

(4) That I have not been suspended or disbarred for disciplinary reasons from practice in any court;

(5) That I am associated with Eli C. Schulman **(name the D.C. Bar member** DC Bar No. 472879 **and give his/her D.C. Bar Number) under S.C.R. Rule 101;**

(6) That I do not practice or hold out to practice law in the District of Columbia; and

(7) That I have read all of the rules of the relevant division of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, and have complied fully with District of Columbia Court of Appeals Rule 49 and, as applicable, Super. Ct. Civ. R. 101. The reason(s) I am applying for admission pro hac vice are as follows:

I am practicing law in D.C. pursuant to Rule 49(c)(8) during the pendency of my first application for admission to the D.C. Bar.

16d-002693

YOUR RECEIPT

THANK YOU

D.C. COURT OF APPEALS
DA & UPL

DATE 12.10.'03 WED

PHV	$100.00
TOTAL	$100.00
CHECK	$100.00
CLERK 1	NO.009927
TIME 16:01	0001

District of Columbia Court of Appeals

Committee on Admissions
500 Indiana Avenue, N.W. — Room 4200
Washington, D. C. 20001
202 / 879-2710

R E C E I P T

MOTION TO APPEAR PRO HAC VICE

of **Priya R. Aiyar**
Name of Attorney

Case No. **00-0007308**

NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.

The District of Columbia Court of Appeals Committee on Unauthorized Practice of Law, in accordance with the provisions of **D.C. App. Rule 49 (c)(7) or (9)**, has received a copy of the motion to appear pro hac vice and the applicable filing fee. As of this date, the Committee's records indicate that the attorney is eligible to appear in the case identified above.

December 10, 2003
Date

for the
Committee on Unauthorized Practice of Law
Room 4200 -- 202/879-2777

16d-002694

D.C. SUPERIOR COURT
WASHINGTON, DC

12/10/2003 3:37 PM

Case #
2003CA007308

MOTION	20.00
Total	20.00
Cash	20.00
Change	0.00

Over MT 20593536 CREDIT #
Civil Action

Please Save This Receipt.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

Upon consideration of the *Consent Motion for Admission Pro Hac Vice of Priya R. Aiyar*, it is this 12th day of December 2003 hereby

ORDERED, that the motion is **GRANTED**.

Judge Anna Blackburne-Rigsby

DEC 12 2003

DEC 12

Copies to:
Eli Schulman
1615 M St., NW
Suite 400
Washington D.C. 20036-3209

Scott M. Badami
Bryan Cave LLP
700 13th St., NW
Washington D.C. 20005-3960

16d-002696

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S RESPONSE TO NCRIC'S ATTEMPT TO INTRODUCE INCOMPLETE DOCUMENTS AS TRIAL EXHIBITS

More than a full month after the deadline set by the Court to resolve objections to exhibits and less than 72 hours before the final status conference scheduled before trial, NCRIC served upon Columbia a letter purporting to "resolve certain outstanding issues" regarding nine of its trial exhibits that are manifestly – and by NCRIC's own admission – incomplete. NCRIC's letter, however, resolves nothing. First, it comes over a month late under the schedule set by the Court, and it therefore does not warrant the Court's or Columbia's attention. Regardless, NCRIC does not even try to fix the problem for two-thirds of the incomplete exhibits and ignores D.C. precedent recognizing the importance of requiring that trial evidence be complete to avoid the danger of misleading the jury. Finally, where NCRIC has in fact attempted to rectify the problem, its efforts do not suffice. Accordingly, the Court should sustain Columbia's objections to NCRIC's incomplete exhibits.

Background

At the October 15, 2003 pretrial conference, the Court set November 14, 2003 as the deadline for the parties to revise the exhibits to be used at trial. That procedure was expressly

designed to allow the parties to resolve, among other things, the many completeness objections raised in the July 24, 2003 Joint Pretrial Statement and at the Court's pretrial hearing. The parties were also to file by November 14, 2003 opening briefs regarding any objections to exhibits, and responses two weeks later. In accordance with this timetable set by the Court, Columbia served its revisions on NCRIC – including, prominently, revisions addressing all objections raised by NCRIC as to the completeness of Columbia's exhibits – and Columbia expressly solicited any remaining objections from NCRIC. *See* Letter from Schulman to Badami of 11/12/03 (attached as Exh. 2). NCRIC did not lodge any further objections, and Columbia filed its revised exhibits in accordance with the Court's November 14, 2003 deadline.

Well aware of the deadline, NCRIC sought to introduce an additional exhibit and filed that with the Court on November 14, 2003, as well. Notably, however, NCRIC made no effort to respond to Columbia's completeness objections to nine NCRIC exhibits: Nos. 2, 6, 18, 48, 56, 68, 112, 149, and 176. Surprisingly, on December 16, 2003, more than a full month after the Court's deadline and the parties' respective submissions of revised exhibits to the Court, NCRIC served upon Columbia a letter purporting to address nine additional NCRIC exhibits to which Columbia had objected as incomplete. *See* Letter from Perl to Schulman of 12/16/03 (attached as Exh. 1). NCRIC informed Columbia that it intended to submit its revised exhibits to the Court in advance of the December 19, 2003 status conference. *Id.* at 2.

Discussion

1. NCRIC is too late. The Court set a deadline of November 14, 2003 for revising the exhibits to be used at trial and resolving completeness objections, and both parties were aware of and acted in accordance with that deadline. NCRIC cannot come a month later, mere hours before the final status conference, when Columbia is busy preparing for trial, and seek to

remedy objections at its leisure – objections, moreover, it has known about since Columbia propounded them nearly *five months ago* in the July 24, 2003 Joint Pretrial Statement. This is not a procedure contemplated by Rule 16 or the Court's instructions at the pretrial conference, and it serves only to enmesh the parties and the Court in a side-show dispute at a time when the parties should be engaged in preparing for a trial that is just weeks off.

2. Even if NCRIC's letter had been timely, it does not resolve the objections to the documents at issue. The letter expressly concedes that NCRIC makes no attempt to remedy six of the nine incomplete documents – NCRIC Exhibits 2, 6, 18, 48, 56, and 176. *See* Exh. 1 at 1. Nonetheless, NCRIC suggests, the lack of completeness, "goes to the weight of the document[s] at trial, not admissibility." *Id.* at 1. NCRIC cites no authority for this assertion and, to the contrary, D.C. law recognizes the critical role of completeness in avoiding the possibility of misleading the trier of fact. *See Butler v. United States*, 614 A.2d 875, 882 (D.C. 1992) (applying "rule of completeness" designed to "secure for the tribunal a complete understanding of the total tenor and effect" of a recorded statement or document) (internal quotation marks omitted); *see also* Fed. R. Evid. 106 advisory committee's note (requiring completeness of documents avoids "the misleading impression created by taking matters out of context" and rectifies "the inadequacy of repair work when delayed to a point later in the trial"). Indeed, though NCRIC now claims that missing attachments do not affect the admissibility of minutes taken at its Board of Directors meetings, it argued precisely the opposite at the last pretrial conference when it objected to Columbia's exhibits, including the Columbia Board of Directors meeting minutes that comprise Columbia Exhibit 16. Columbia addressed the objection and supplied the missing pages, and did so in a timely manner, sending NCRIC a complete version of that exhibit more than a month ago and then filing the exhibit with the Court on November 14,

2003 in accordance with the Court's Pretrial Order. NCRIC chose not to follow suit – and still refuses to do so.

3. Apart from the six documents that NCRIC concedes are still incomplete, NCRIC has now sought to complete three other documents – NCRIC Exhibits 68, 112, and 149. Even if the supplementation of Exhibit 149 had been timely, however, it still would not suffice. As Columbia explained at the pretrial conference, that exhibit – Columbia's Rule 26(B)(4) Statement designating Peter Ben Ezra and Julia Brill as experts – is prejudicially incomplete in the absence of Ben Ezra's ultimate expert report: it is the substance of his actual report that is relevant, not his designation as an expert by Columbia. Further, inclusion of information about Brill, a second expert conditionally designated by Columbia and subsequently withdrawn, would be unduly prejudicial and in any event is not relevant. Though Columbia determined that expert testimony was not necessary from Brill because fact-witness testimony would suffice, the jury might be misled by NCRIC into drawing a negative inference against Columbia from her absence at trial, such as that Brill was excluded by the Court or that Columbia itself believed that it needed her expert testimony in order to prove its claims (when exactly the opposite is true). In sum, that to which Ben Ezra *has* testified is relevant, but that to which he has *not* testified is not relevant, and that to which another individual has *not* testified is likewise not relevant; admission of such irrelevant evidence would only serve to confuse the jury and prejudice Columbia. *See Eastern Natural Gas Corp. v. Aluminum Co. of Am.*, 126 F.3d 996, 1001 (7th Cir. 1997) (upholding district court's refusal to admit in evidence withdrawn pleading, because potential for jury confusion from consideration of withdrawn pleading outweighed any probative value).

Exhibit 68 fares no better. On its face, the cover letter that comprises part of the proposed exhibit purports to enclose at least four additional documents. NCRIC's "corrected"

version adds a single page that had been missing from one of the four enclosures, but still fails to supply *any* pages from three of the four enclosures. The document remains anything but "complete."

Conclusion

The Court should sustain Columbia's objections to NCRIC's incomplete Exhibits 2, 6, 18, 48, 56, 68, 112, 149, and 176.

DATED: December 18, 2003

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

UPON CONSIDERATION of Columbia's objections to NCRIC's proposed Exhibits 2, 6, 18, 48, 56, 68, 112, 149, and 176 as incomplete, and NCRIC's response thereto, it is hereby

ORDERED that Columbia's objections to these exhibits are SUSTAINED.

ENTERED this ____ day of _____, 2003.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that, on this 18th day of December 2003, a copy of the foregoing *Columbia's Response to NCRIC's Attempt To Introduce Incomplete Documents as Trial Exhibits* was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 18th day of December 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Eli C. Schulman

EXHIBIT 1

BRYAN CAVE

Margaret G. Perl
Direct: (202) 508-6094
mgperl@bryancave.com

December 16, 2003

BY HAND

Eli Schulman, Esq.
Kellogg, Huber, Hansen, Todd &
Evans, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington D.C. 20036-3209

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.

Dear Eli:

Pursuant to the parties' agreement at the pretrial conference to resolve certain outstanding issues involving the completeness of trial exhibits, NCRIC provides these responses to Columbia's objections.

First, Columbia objected that NCRIC Exhibits 2, 6, 18, 48, 56, and 176 were incomplete. Although these documents are excerpts of larger documents, they are still admissible. Indeed, these exhibits are documents which have been jointly used by the parties throughout this litigation without objection (e.g. NCRIC Ex. 2 – the 1993 signed Retro Plan, regardless that certain exhibits may not be attached to that agreement). Some of these exhibits, such as NCRIC Ex. 6 and 176, are sample pages of documents which are hundreds of pages in length. Finally, the absence of all referenced documents does not affect the admissibility of the Board of Directors meeting minutes in NCRIC Ex. 18 and 48. Any complaint Columbia has regarding missing attachments to these documents goes to weight of the document at trial, not admissibility. Therefore, particularly given the uncertainty surrounding why any such document will be offered at trial, NCRIC is not revising its submission of these exhibits at this time.

Columbia also objected that NCRIC Exhibits 68, 112 and 149 were incomplete. NCRIC has added the extra pages necessary to complete those exhibits, as they were omitted due to a copying error.

We believe this addresses all concerns regarding completeness of exhibits previously raised by Columbia. All other objections to NCRIC's exhibits have been addressed in NCRIC's opposition brief to Columbia's memorandum filed last month.

Bryan Cave LLP
700 Thirteenth Street NW
Washington, DC 20005-3960
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
Los Angeles
New York
Overland Park
Phoenix
Riyadh
Shanghai
St. Louis
United Arab Emirates
Abu Dhabi
Dubai
Washington, DC

In Association With Bryan Cave (Illinois)
Chicago

and Bryan Cave, A Multinational Partnership
London

We will also submit these revised exhibits to the Court prior to the status conference on Friday.

Sincerely,

Margaret Perl

Margaret G. Perl

MGP
Enclosures

National Capital Reciprocal Insurance Company
1115 30th Street, N.W. • Washington, D.C. 20007 • (202) 969-1866 • Fax: 969-1881

November 9, 1998

BY MESSENGER

RECEIVED
NOV 10 1998
Risk Management Legal Affairs
by messenger

Ms. Ann D. Gaffey
Risk Manager
Columbia Hospital for Women
2425 L Street, N.W.
Washington, D.C. 20037

Dear Ms. Gaffey:

Further to your letter dated November 6 and your meeting today with Mr. Fargis and Mr. Beaulieu, please find enclosed a revised proposed Addendum B to the Plan which amends the Plan and would extend the Plan for one year to September 1, 1999. As was discussed, this Addendum and Plan must be properly executed and approved by the United States Bankruptcy Court, or the Plan cannot be continued beyond January 1, 1999.

Additionally, please find enclosed a copy of the proposed preliminary quote for coverage for CPG physicians. This preliminary quote is based on those physicians previously identified by you, who render services to the Columbia Free Clinic and/or Columbia Teen Health Center under the Columbia Physicians Group (CPG).

As we have discussed this coverage would be provided through the issuance of an entity policy. Based on our discussions and information provided, this policy would be issued on the basis of FTE's resulting in 4.5 full time mature slots. These slots would provide prior acts from the date of hire for each physician so identified by CHWMC and would allow CHWMC to rotate physicians through the slots without having to purchase a reporting endorsement each time a physician leaves. I have enclosed a copy of a census developed from the information provided by you, and ask if you could please review this census for accuracy and advise me of any changes or corrections. Please also find a current listing of the physicians participating in the Plan.

Thank you for your assistance in gathering the data and information and should you have any questions, please do not hesitate to contact Steve or me at 202-969-1866. Thank you.

Sincerely,

Jeffrey Marsh
Vice President, Policyholder Services

c:
Stephen Fargis, Senior Vice President

KiPKa
EXHIBIT 5
CASE# 1:18-02

PLAINTIFF'S EXHIBIT 68

CHW MC 000768

16d-002708

ADDENDUM B TO
RETROSPECTIVE RATING PLAN AGREEMENT

This Addendum amends the Retrospective Rating Plan Agreement ("Agreement") and Exhibit A, attached, made and entered into effective the first day of September 1, 1993 and Addendum amending Agreement January 1, 1997, by and between National Capital Reciprocal Insurance Company, 2170 Wisconsin Avenue, N.W., Washington, D.C. 20007 ("NCRIC" or the "Company"), and Columbia Hospital for Women Medical Center, 2425 L Street, N.W., Washington, D.C. 20037 ("CHWMC").

This Addendum extends the Agreement, Addendum and Exhibit A from September 1, 1998 to September 1, 1999. For purposes of Modifications, only language amended in the Agreement is noted below and for purposes of Plan calculations in the Agreement, a full Exhibit A, with modifications is included.

Page 3, Item 10:

10. NCRIC, a Medical Center representative and a Physicians Claims Committee representative will meet quarterly to review the status of the operation of the Retrospective Rating Plan.

A. At such meetings, NCRIC will provide the following:

(I) for purposes of cross-reference and confirmation of participating or termination of participation in the Plan, a list of all Plan Participants participating in the Plan, together with their effective date of participation and termination date, as applicable;

(II) a loss run detailing the following information:

Date of Loss
Date Claim Made
Claimant's Name
Location of Claim (hospital, office)
Brief Description of Claim
Status (Claim/Suit)
Total Indemnity Reserve (in the aggregate only)
Total Expense Reserve (in the aggregate only)

(III) a review of Medical Center risk management activities and risk management issues presented by the claims.

CHW MC 000769

16d-002709

Page 5, Item 18.:

18. This Agreement shall not be assignable under any circumstances, whether in connection with the bankruptcy cases in which CHWMC are currently debtors or otherwise, by any party hereto without the express written consent of other parties, provided that the obligations of NCRIC hereunder shall be assigned to any admitted insurer which is a successor to NCRIC by reason of conversion, reorganization or merger approved by the District of Columbia Commissioner of Insurance. This agreement shall terminate (i) upon the conversion of the CHWMC case to Chapter 7 case, or (ii) if greater than 50% of Plan Participants resign their affiliation with CHWMC.

Page 5, New Item 19.:

19. This agreement is contingent upon CHWMC obtaining prior approval of all of its terms by the bankruptcy court in the currently pending bankruptcy cases of CHWMC, in a form of order acceptable to NCRIC, on or before November 18, 1998.

Page 5, Old Items 19 & 20 are renumbered 20 & 21.

CHW MC 000770

16d-002710

NATIONAL CAPITAL UNDERWRITERS, INC.
Attorney-in-Fact for
NATIONAL CAPITAL RECIPROCAL
INSURANCE COMPANY (NCRIC)

ATTEST:

_____ BY:_____

(Corporate Seal)

R. Ray Pate, Jr.
President and CEO

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER

ATTEST:

_____ BY:_____

(Corporate Seal)

Gerald Beaulieu
Acting President and CEO

CHW MC 000771

16d-002711

MODIFICATIONS TO

EXHIBIT A

SIX YEAR RETROSPECTIVE RATING PLAN

The National Capital Reciprocal Insurance Company Retrospective Rating Plan, hereinafter referred to as the "Plan," is available only to physicians insured by National Capital Reciprocal Insurance Company ("NCRIC") who are participants in the CHWMC's Attending Faculty Program ("AFP") referenced in the Retrospective Rating Plan Agreement between NCRIC and Medical Center first entered into on September 1, 1993 and subsequently amended January 1, 1997, and added to by this plan through September 1, 1999 (the "Agreement") and who have been issued a retrospective rating plan premium adjustment endorsement by NCRIC. The AFP has been established for the primary purpose of implementing practice protocols relating to delivery of patient health care. Individual medical professional liability policies issued to Plan Participants are subject to retrospective rating in accordance with the following terms and conditions:

1. Plan Term. The term of the Plan shall be six years, beginning on September 1, 1993 and ending on September 1, 1999. The Plan shall consist of six separate and distinct Experience Periods of:

Beginning 12:01 a.m. on	and Ending 12:01 a.m. on
September 1, 1993	September 1, 1994
September 1, 1994	September 1, 1995
September 1, 1995	September 1, 1996
September 1, 1996	September 1, 1997
September 1, 1997	September 1, 1998
September 1, 1998	September 1, 1999

2. Premiums Charged to Plan Participants. The premium charged to and paid by Plan Participants for coverage limits of $500,000 each claim for Coverage A, "Physicians and Surgeons Individual Professional Liability" shall be discounted by 19%of the otherwise applicable premium for such coverage in the first two years of the Plan and 33% of the otherwise applicable premium for such coverage in the remaining years of the Plan. Although that premium is subject to retrospective adjustment as set forth below, no Plan Participant shall be responsible for, or entitled to, any additional or return premium. The obligation to pay additional premium (if any), and the right to receive return (if any), shall be solely that of CHWMC.

3. Retrospective Rating Premium Formula. The retrospective premium for any Reconciliation will be calculated as follows:

Retrospective Premium (Subject to established Minimum and Maximum Premiums) = {[(Loss Reserves) x (Development Factor)] + Paid Losses] x Discount Factor}+Basic Premium.

Note: The amount of Losses included in the calculation of the retrospective premium is subject to the Loss Limitation as hereinafter defined.

4. Combination of Experience Periods. Each Experience Period shall be reconciled individually utilizing applicable premium amounts, plan factors and the retrospective rating premium formula. As reconciliations become due for each Experience Period, the completed, individually reconciled retrospective premiums for applicable Experience Periods shall be combined to determine the total Retrospective Premium.

5. Reconciliations. Reconciliations to determine additional or return premium amounts which may be due will be performed according to the following schedules:

Experience Period	First Reconciliation Date
September 1, 1993 to September 1, 1994	September 1, 1995
September 1, 1994 to September 1, 1995	September 1, 1996
September 1, 1995 to September 1, 1996	September 1, 1997
September 1, 1996 to September 1, 1997	September 1, 1998
September 1, 1997 to September 1, 1998	September 1, 1999
September 1, 1998 to September 1, 1999	September 1, 2000

Reconciliation calculations will continue to be conducted at subsequent twelve month intervals until all losses reported during the applicable Experience Period are finally closed. A reported loss shall not be deemed finally closed until the earlier of payment to the claimant and execution of a release by the claimant, or the expiration of the statute of limitations for the claim. Any claim closed without payment shall be not deemed finally closed; any claim closed without payment shall be subject to reopening, and any payments made on behalf of such reopened claims shall be subject to, and part of, the reconciliation process.

Within sixty (60) days of the end of an Experience Period, reconciliations will be performed by NCRIC and a report containing the Plan calculations and a statement reflecting amounts which are due to ("return premium") or due from ("additional premium") CHWMC under the terms of the Plan will be presented to CHWMC. Any amounts due either to or from CHWMC shall be due and payable within thirty (30) days of the date of the statement for same.

6. Determination of Additional or Return Premiums Due. The amount of additional or return premium due after each Reconciliation will be calculated by subtracting the retrospective premium from the applicable Deposit Premium for the subject Experience Period(s).

CHW MC 000773

16d-002713

7. Definitions. As used herein, the following terms shall have the meanings indicated:

"**Basic Premium**" means the combined amount of the administrative expense charge and the insurance charge due to NCRIC. The administrative expense charge shall be 14.04% of the Subject Premium; the insurance charge shall be calculated by multiplying the Subject Premium by the insurance charge factor set forth below:

Six (6) Year Subject Premium	Insurance Charge Factor
$1,539,000 - $2,565,999	20.7%
$2,566,000 - $3,591,999	13.2%
$ 3,592,000 - $ 4,617,999	8.4%
$ 4,618,000 - $ 5,643,999	6.9%
$ 5,644,000 - $ 6,669,999	5.7%
$ 6,670,000 - $ 7,696,999	5.0%
$ 7,697,000 - $ 8,722,999	4.3%
$ 8,723,000 - $ 9,748,999	3.9%
$ 9,749,000 - $10,774,999	3.5%
$10,775,000 - $11,800,999	3.1%
$11,801,000 - and over	2.8%

"**Deposit Premium**" means the Subject Premium multiplied by sixty-seven (67%). This percentage shall remain unchanged for the one year term of the Plan, unless both parties agree to a change and amend this Agreement hereunder.

"**Development Factor**" means the factors by which Loss Reserves are multiplied for purposes of determining developed losses. These factors shall apply as follows and all reconciliations applicable thereto, unless NCRIC claims trending, as actuarially noted, indicates otherwise development at which time applicable development factors of NCRIC will apply.

Year 1 Reconciliation	-	55.0%
Year 2 Reconciliation	-	65.0%
Year 3 Reconciliation	-	80.0%
Year 4 Reconciliation	-	105.0%
Year 5 Reconciliation	-	105.0%
All Subsequent Reconciliations	-	100.0%

"**Discount Factor**" means the factor currently used by NCRIC at the time of the reconciliation. At the time of this Agreement 86.33% will apply.

CHW MC 000774

16d-002714

"**Experience Period**" shall mean the initial twelve (12) month period commencing September 1, 1993 and each subsequent twelve (12) month period during which the Plan is in effect. Should the Plan be terminated prior to the end of any Experience Period, the prorated period involved shall be deemed to be an Experience Period.

"**Insurance Policy**" means the Company's Physicians and Surgeons Modified Claims-Made Medical Professional Liability Coverage Policy, Revised January 1, 1993, or any replacement policy subsequently issued, and any endorsements thereto.

"**Losses**" means the obligations assumed by the Company on behalf of Plan Participants in accordance with the terms and conditions contained in and applicable to Coverage A of Section I of the Insurance Policy.

"**Loss Limitation**" - for the purpose of application of the retrospective rating premium formula, losses shall be limited to Allocated Loss Adjustment Expenses plus the lower of (I) $500,000 in indemnity, or (ii) the actual amount of the loss. Notwithstanding the foregoing, however, for claim amounts in excess of $500,000, the amount Allocated Loss Adjustment Expenses shall be limited to a pro-rated amount equal to the ratio of $500,000 to the total indemnity amount applicable.

"**Loss Reserves**" means allocations to pay losses that have been incurred, or are likely to be incurred, and reported during the time the Plan is in effect, but that have not yet been paid.

"**Maximum Premium**" means the maximum retrospective premium which shall be due under the Plan. The Maximum Premium shall be equal to one hundred and thirty three percent (133%) of the Subject Premium amount.

"**Minimum Premium**" means the minimum retrospective premium which shall be due under the Plan. The Minimum Premium shall be equal to sixty percent (60%) of the Subject Premium amount.

"**Paid Losses**" means loss amounts paid by NCRIC on behalf of Plan Participants in accordance with Coverage A - Physicians and Surgeons Individual Professional Liability - Section I, Subsection 2 (Coverage Agreements) and Subsection 6 (Supplementary Payments) of the Insurance Policy. Paid losses are subject to Loss Limitation, defined above.

"**Plan Participants**" means those physicians insured by NCRIC pursuant to Insurance Policies endorsed with the retrospective rating plan premium adjustment endorsement and who are members of the AFP.

"**Subject Premium**" means the total of the undiscounted premiums that would be charged to physician-insureds for coverage limits of $500,000 each claim under Section I, Subsection 2, Coverage A, of the Insurance Policy if said physician-insured were not Plan Participants. For the second and third Experience Periods, the Subject Premium shall not exceed 85%, nor be less than 70% of the undiscounted premium charged for coverage limits of $1 million each claim/ $3 million aggregate.

CHW MC 000776

16d-002716

COLUMBIA HOSPITAL FOR WOMEN ❀ MEDICAL CENTER

July 13, 2000

Lawrence Mirel
Commissioner of Insurance
Insurance Administration
Department of Consumer & Regulatory Affairs
P.O. Box 37200
Washington, DC 20013

Re: Notice of Cancellation
NCRIC, Inc. Policy #700999
Columbia Hospital for Women -- Columbia Physicians Group

Dear Mr. Mirel:

I am attaching a Notice of Cancellation for the above referenced policy.

For your information, this policy provides medical malpractice insurance for a group of part-time physicians who provide medical services at the Columbia Hospital for Women.

We are hereby appealing this cancellation for the following reasons:

1. Our interpretation of the cancellation provisions of the policy (attached) indicates that "refusal to pay premium" is the only valid reason for a midterm policy cancellation. We have diligently paid the premium for this coverage.

2. The claim and loss history for this group is very good. There is no underwriting justification for this cancellation.

3. We do not believe that a 45-day notice is an adequate time period to find replacement coverage for medical malpractice in the District of Columbia.

4. Medical malpractice coverage is mandatory and critical for physicians and hospitals practicing in the District of Columbia. Cancellation of this coverage, on such a short notice, could prevent the delivery of needed healthcare to the citizens of the District of Columbia.

EXHIBIT
Witness Wilson II
Date 7/16/01
Lynell C.S. Abbott, RMR

Sincerely,

Larry Wilson
President and CEO

COLUMBIA HOSPITAL FOR WOMEN

PLAINTIFF'S EXHIBIT 112

Enclosure

CHW 000323

16d-002718

1115 30th Street, NW
Washington, DC
20007

800.613.3615
202.969.1866
202.969.1881 fax

June 30, 2000

NCRIC, Inc.

Mr. Larry Wilson
Columbia Physicians Group
2425 L St., NW
Washington, DC 20037

Dear Mr. Wilson:

In accordance with the enclosed Notice, your Medical Entity Policy is cancelled effective August 15, 2000.

To satisfy your obligation through the cancellation date of your policy, an outstanding balance of $3,956 exists on your account. Please remit no later than 7 days from the date of this letter.

Naturally, if you wish to terminate your coverage at an earlier date than August 15, please advise us accordingly. Your outstanding balance would diminish as your earned premium would be prorated to reflect an earlier cancellation date.

As you know, your policy is written on a claims-made basis, retroactively to January 1, 1988. You have 30 days from the cancellation date of the policy to purchase Extended Reporting Period ("tail") Coverage. This would extend the reporting period for claims otherwise covered by your policy during the period 1/1/88 to 8/15/2000. Please advise us should you desire a quotation.

Thank you for your attention to this matter. Should you have any questions, please contact me.

Sincerely,

Grant Sohm
Director of Underwriting

1115 30th Street, NW
Washington, DC
20007

800.613.3615
202.969.1866
202.969.1881 fax

NCRIC, Inc.

June 30, 2000

Mr. Larry Wilson
Columbia Physicians Group
2425 L Street, NW
Washington, DC 20037

Dear Gentlemen:

Notice of Cancellation

You are hereby notified that Policy Number 700999 issued by NCRIC, Inc., with an effective date of December 1, 1999, is cancelled. Under the terms of the Policy, this cancellation is effective August 15, 2000.

You may be eligible for insurance under the District of Columbia Insurance Placement Act, the District of Columbia Automobile Plan or other similar plans. Information regarding your eligibility for coverage under such plans may be obtained by contacting:

Superintendent of Insurance, Insurance Administration
Department of Consumer & Regulatory Affairs
PO Box 37200, Washington DC 20013

Appeal Procedures

a. If you dispute the validity of this cancellation, you may at any time before the effective date of this cancellation, send written notification of the reasons you believe the cancellation is invalid to the Superintendent of Insurance at the address noted above. A copy of such notification shall also be sent to NCRIC at the same time.

b. The Superintendent shall, unless the matter has been settled, proceed to determine the cancellation was authorized under the terms of Chapter 3 of Title 26, District of Columbia Municipal Regulations.

c. Decisions of the Superintendent shall be appealed under the applicable of the District of Columbia Code.

Sincerely,

Grant Sohm
Director of Underwriting

CHW 000325
16d-002720

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Davis
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Proponent's Rule 26(b)(4)
MEDICAL CENTER, INC.,	)	Statement Due: June 26, 2001
	)	
Defendant/Counter-Plaintiff.	)	
	)	

DEFENDANT'S RULE 26(B)(4) STATEMENT
AS A PROPONENT OF A CLAIM

Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by counsel, hereby states, pursuant to District of Columbia Superior Court Rules of Civil Procedure 16(b)(3) and 26(b)(4), that it expects to call at trial, as an expert witness on its behalf:

1. **Peter Ben Ezra, 4930 Fort Sumner Drive, Bethesda, MD 20816-1945.**

Mr. Ben Ezra (whose curriculum vitae is attached hereto as Exhibit A) is expected to testify with regard to the calculation of damages proximately caused by NCRIC's torts, including (1) the economic effects, such as lost revenue from decreased patient volume, of certain practice groups moving their practices from Columbia to competing hospitals, and any reputational harms stemming from related events; (2) the lost revenue resulting from the non-occurrence of specific fundraising activities and events; and (3) the loss of specific sources of financing and partnership opportunities that otherwise would have been available to Columbia.

The substance of the facts and opinions to which Mr. Ben Ezra is expected to testify is: that, as a proximate result of NCRIC's torts, Columbia has suffered and will suffer economic harm including loss of revenue, damaged reputation in the community, and loss of good will; and

further, that the total sum of economic harm that Columbia has suffered and will suffer as a result of NCRIC's torts runs in the tens of millions of dollars.

For his expected opinion testimony, Mr. Ben Ezra, a Certified Public Accountant and Professorial Lecturer in the Department of Accountancy at the George Washington University, draws upon his professional training, knowledge and experience in the fields of financial accounting, managerial accounting, and financial statement analysis. The factual data upon which Mr. Ben Ezra's expected testimony depends includes his analysis of Columbia's historical records and reports, operating statistics and financial results, and other relevant market and financial data. Mr. Ben Ezra's expected testimony also will draw upon the intimate knowledge of Columbia's financial affairs the he developed as a financial advisor and consultant to the hospital for several years, from the period of receivership through the period of bankruptcy.

2. Ms. Julia M. Brill, Esq. 2105 Bay Front Terrace, Annapolis, MD 21401

Ms. Brill (whose curriculum vitae is attached hereto as Exhibit B), or any similarly-qualified expert who may assist her, is expected to testify with regard to (1) methods, formulas and criteria for setting loss reserves by hospitals and/or insurers for medical malpractice liability claims in the District of Columbia and/or surrounding metropolitan area; and (2) the reasonableness and propriety, in light of the industry standards for setting loss reserves for medical malpractice liability claims in the District of Columbia and/or surrounding metropolitan area, and in light of other loss reserves of the same nature set by NCRIC in the same region, of the loss reserves set by NCRIC under the Retrospective Rating Plan Agreement.

Due to NCRIC, Inc.'s untimely production of documents, Ms. Brill has not had an adequate opportunity to review and analyze all of the documents necessary for her to evaluate the reasonableness and propriety of NCRIC's loss reserves. As such, Ms. Brill has not yet fully

developed her factual and opinion testimony. However, Columbia expects that, once Ms. Brill complete her review of the relevant NCRIC claim files, she may testify that NCRIC's loss reserves are unreasonable and improper, in light of the aforementioned industry standards.

The factual basis for Ms. Brill's opinions, should she complete her review of NCRIC's claim files and fully develop her testimony, will be a detailed understanding of each claim for which NCRIC set a loss reserve, developed through a careful review of the files. Ms. Brill's opinion will be based, it is expected, on her experience as an attorney and risk management consultant in this area.

* * *

Columbia makes the forgoing statements regarding the experts it expects to call at trial subject to the following qualifications: (1) Columbia reserves the right to call any witness listed in Defendant's Initial Rule 26(B)(4) Statement as a Proponent of a Claim (March 12, 2001), or any other suitable person later discovered by Columbia, if it is unable to retain Ms. Brill as an expert; (2) Columbia reserves its right to supplement or change this statement, including its expert witness designations, at any time during the course of discovery, or if its currently-pending motion to extend the time for filing this statement is granted; and (3) Columbia reserves its right to designate any of the foregoing, or others, as rebuttal expert witnesses at a later time.

DATED: June 26, 2001

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Steven F. Benz, D.C. Bar # 428026
Joseph K. Leahy, D.C. Bar # 465773
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

202-326-7999

Peter Ben Ezra
4930 Fort Sumner Drive
Bethesda, Maryland 20816
(301) 229-0028

OBJECTIVE — Expert Witness

EXPERIENCE — PROFESSIONAL EXPERIENCE

06/01/77 to Present

Peter Ben Ezra, Certified Public Accountant
4930 Fort Sumner Drive, Bethesda, Maryland 20816-1945
Certified Public Accountant
Provides tax, financial, and management advisory services to individuals, corporations, partnerships, non-profit, international, and governmental organizations.

11/27/94 to 09/30/96

Corporation for National and Community Service
1201 New York Ave., N.W., Washington, D.C. 20250
Director, Corporate Analysis, GS-510/10, $95,531
Responsible for the preparation of Corporate-wide financial statements, management (internal) controls, performance measurements, tax compliance, and special studies and analysis. Also responsible for corporate re-invention initiatives.

12/31/79 to 11/26/94

Financial Systems Division, Office of Finance and Management
U.S. Department of Agriculture, Washington, D.C. 20250
Chief, Financial Systems Division, GM-510-15/10, $90,252
Responsible for USDA's financial systems including accounting systems, cash management, debt collection and credit management, management (internal) controls, performance measurement, and preparation of consolidated USDA-wide financial statements.

07/01/78 to Present

The George Washington University, Department of Accountancy.
Washington, D.C.
Professorial Lecturer
Teach Financial Accounting and Managerial Accounting at the graduate level. Taught Introduction to Financial Accounting and Introduction to Managerial Accounting at the undergraduate level. Taught undergraduate Governmental Accounting and Advanced Accounting.

07/01/79 to Present

D.C. Institute of CPA's Education Foundation
1023 15th Street, N.W., 8th Floor, Washington, D.C. 20005
Discussion Leader
Taught regularly scheduled Continuing Professional Education seminars to Certified Public Accountants in such areas as accounting, taxation, auditing, law, practice management, personal financial planning, and computers.

EDUCATION

The George Washington University
Washington, D.C. 20052
Masters of Science in Managerial Accounting, 1975
GPA: 4.0

University of Maryland
College Park, Maryland
Bachelor of Science in Information Systems Mgmt., 1972
Minor: Accounting
GPA: 3.6 High Honors

Kaufman-Cades CPA School
Washington, D.C.
1976
Passed Uniform CPA Exam on the first try. Scored as follows: Auditing 83, Practice 80, Theory 89, and Law 92.

Continuing Professional Education

PERSONAL

Born:	August 24, 1949 Washington, D.C.
Height:	5'10"
Weight:	210 lbs
Race:	Hispanic
Married:	1975 Wife graduate of University of Puerto Rico
Service:	U.S. Army National Guard (1970 to 1976) Honorably discharged No reserve obligation

ORGANIZATIONS/SOCIETIES

1976 to Present — American Institute of Certified Public Accountants
Member and Discussion Leader for AICPA Continuing Professional Education programs.

1976 to Present — D.C. Institute of Certified Public Accountants
Member. Participated on the Executive Search Committee (1995), Board of Directors, and the Ethics, Government, and (Chairman) Business Information Systems committees.

1972 to Present — Association of Government Accountants, Washington Chapter
Member. Board of Directors 1993-1994 and 1994-1995.
Chairman, Education Committee 1990-1991.
Organized National Performance Review Event (Sept. 1993).

1990 to Present — Beta Alpha Psi (Honorary Member), Accounting Honor Society

AWARDS

- USDA Superior Service Award as Group Leader of the Interest Penalty Task Group for reducing USDA's interest penalties (6/92).
- Association of Government Accountants: National Award for Chapter Service (6/91) & Washington, D.C. Chapter, Chapter Service Awards (5/93 and 5/91)
- Award for Special Recognition and a cash award of $1,000 from the Agricultural Research Service (4/90).

- Award for Distinction at the 5th Annual Cash Management and Credit Management/Debt Collection Awards Ceremony, U.S. Department of Treasury-1989, $3,000 Cash Award (3/89).
- Certificate of Appreciation and cash award (10/87) of $750 for implementing cash and debt management initiatives with tangible benefits and annual savings of over $29 million.
- Certificate from the DCICPA in recognition of outstanding contributions to the accounting profession as a member of the board of governors for 5 years (6/85).
- Letter of Commendation from the National Association of State Departments of Agriculture for a program review and analysis study improving Federal/State relations (6/79).
- Certificate of Appreciation from the Federal Railroad Administration in recognition of innovative and effective professional services rendered (10/77).
- Assistant Secretary for Administration letters commending outstanding performance in preparing USDA's Consolidated Financial Statements (2/91) and work ethics (5/90).

PUBLICATIONS

Several Articles in D.C. Institute of Certified Public Accountants' publications.

Profile

Julia M. Brill

Attorney and Health Care Consultant

Julia M. Brill, Esq., is an attorney and risk management consultant with 17 years experience in the area of employment issues, risk management, and health care law. Since 1988, after leaving Johns Hopkins, she has maintained a regional practice specializing in employment, worker's compensation, risk and claims consulting, and health care law. Continuing a career-long focus on employment issues, she has specialized in the design and implementation of worker's compensation claims and cost management programs, having achieved considerable savings on behalf of her clients. Clients in the Baltimore-Washington region, Northern Virginia, Eastern Shore of Maryland, and Delaware have included hospital systems, insurance companies and brokers, multi-system physician-hospital organizations, medical specialty independent practice organizations, and managed care companies.

From 1983-1985, Ms. Brill's private law practice included worker's compensation, employment discrimination, and education law, (a former teacher). Highlights included participation as co-counsel in stress claim under Maryland Worker's Compensation laws, and cases brought under the Fair Labor Standards Act, including one resulting in a shared published opinion.

From 1985-1988, Ms. Brill, Senior Attorney, the Johns Hopkins Hospital and Medical Institutions, performed a variety of operational legal, risk and claims management activities: participation, design and implementation of the risk management program; employment defense and worker's compensation claims activities; periodic review and implementation of the professional and general liability insurance program; participation, claims review meetings; and both direct and oversight of litigation. Featured were extensive counsel in defense of involuntary admissions and ***court-ordered information releases, direct litigation of guardianships, and developing joint procedures for safety and abuse*** reporting between the Baltimore City State's Attorney and the Hopkins institutions. Corporate and transactional counsel to all departments was also key to the Hopkins experience. Leaving Hopkins in 1988, she established a health care practice, which she subsequently carried to a large law firm setting. ***After three years in the corporate department of a large regional law firm, from 1990-1993, Ms. Brill re-established of her sole practice and consulting activities, including an engagement as consultant to and Vice President, Legal Affairs, of an MCO, first to accomplish licensure under the Maryland Medicaid Managed Care Program, then for contracts compliance, network development and oversight of risk management & quality, April, 1997-February, 1998. Extensive counsel over time to providers as in-house counsel, in direct representation or as part of the insurance broker's team, result in Ms. Brill's unique perspective.***

Ms. Brill, a graduate of Wilson College, Chambersburg, Pennsylvania, a former teacher of nine years, received her J.D. and admission to the Maryland Bar in 1983. Ms. Brill has lectured and written nationally and regionally in risk management, employment, corporate contracting, and various health care legal issues. Lectures and contributions to publications include to the American Health Lawyers Association, Society of Women in Emergency Medicine, Maryland Psychological Association, American Nurses Association, Maryland Society for Health Care Risk Management (MSHRM) and the Maryland Medical Records Association, co-authored audiotape series for the American Nurses Association and national broker's risk management quarterly.

Ms. Brill holds membership in the Maryland Bar Association, Maryland Society for Healthcare Risk Management, the American Health Lawyers Association, and the American Society for Healthcare Risk Management, and has been a member of the Health Law Section of the Maryland Bar Association, and on the MSBA Committees on Advanced Directives and Elder Law. *Ms. Brill maintains her office at 2105 Bay Front Terrace, Annapolis, Maryland, 21401. Tel. & Fax. (410)974-4671.*

JULIA M. BRILL, ESQ.

Health Care Attorney & Consultant

Selected Accomplishments

Johns Hopkins Health System Corporation ***September, 1985- February, 1988***
Baltimore, Maryland.

- ***As a Senior Attorney, participated in claims management program for general and professional liability exposures as related to the creation and implementation of risk management policy and procedures, the training and support of new system risk managers and in concert with appropriate management of exposures in general and professional liability settings.***

- ***Responded to a variety of physician practice and appointment issues, including those affecting the FMG, the review, drafting and negotiating of academic affiliation agreements, and the credentialing and professional liability insurance exposures.***

- ***Reviewed and negotiated agreements with pharmaceutical companies and documents utilized in investigational protocols from the perspective of both the physician's and the Hospital System's professional and general liability exposures*** and in preparation for presentation at the Institutional Review Board.

- **Developed risk management curricula for delivery of periodic compulsory education series and international symposium and based upon current claims and risk experience of health system.** Lecture: International ophthalmology symposium, Wilmer Institute: "Legal Implications of Non-FDA Approved Uses of Drugs and Devices in Experimental Protocols".

- ***Counsel to System Risk Management Committee*** formulated to address risk management issues, and achieve consistency in policies, and programs throughout the system while considering some individuality of system components.

- ***Counsel to large teaching hospital AIDS Committee*** and to System AIDS Committee, which functions were to develop and implement system-wide consistent approaches to blood-borne pathogens issues.

- ***Authored the JHHS Employee Aids Policy*** and Co-authored the patient policies subsequently adopted and approved by the JHHS AIDS Task Force during the initial stages of the AIDS crisis.

- ***Direct litigation of guardianships & defense of EEO cases*** at local, state , & federal jurisdictional levels for the system and oversight of external counsel on various cases assigned to outside defense counsel for JHHS Corp.

16d-002731

Hopkins, Cont'd.

- Reviewed, drafted, and negotiated all manner of contracts on behalf of the hospital, including large equipment purchase agreements and license agreements for various departments, including for the purchase of MRI, CT, and other select radiological systems from both a corporate legal and professional liability perspective.

***Lectured nationally on a variety of health care legal topics, including healthcare contracts and professional liability issues effecting physicians, hospitals, and healthcare systems**, for such entities as the American Health Lawyers Association Contracts Institute, Women In Emergency Medicine, the Maryland Medical Records Association, the Maryland Psychological Association and the Maryland Society for Health Care Risk Management.*

Partner, Health Care Lawyer, Baltimore, Maryland. *February, 1988 - November, 1990*

- ***Represented physicians in the organization of a PHO*** formed principally for the delivery of managed care medical services at the beginning of the trend to establish such entities.

- ***Co-authored "Risk Management Issues In Nursing"***, AudioTape Series on behalf of the ***American Nurses Association.***

Lectured nationally on a variety of topics including healthcare contracts issues effecting physicians, hospitals, and healthcare systems, for such entities as Women In Emergency Medicine, Maryland Psychological Association and Maryland Medical Records Association on the Confidentiality of Medical Information, American Nurses Association on risk management and legal issues affecting nurse professionals, Maryland Society for Healthcare Risk Management on a variety of topics, including its first educational program relative to AIDS and HIV, physician-hospital contracting, risk management, AIDS, & legislative issues.

Miles & Stockbridge, Baltimore, Maryland. *November, 1990 - November, 1993.*

- ***Acted as Counsel to regional division of a national behavioral health provider and, with a national insurer drafted and negotiated the agreements resulting in the design and implementation of an employer-sponsored behavioral health services delivery system in 4 states for a large, regional manufacturer.***

- As health care counsel to several multi-hospital systems in the Baltimore, Washington and on the Eastern Shore, reviewed and developed health standard forms in response to new initiatives in the areas of informed consent, including advance directives, medical staff governance, medical services agreements, motions and pleadings in pursuit of orders of guardianship and other general counsel duties.

16d-002732

Health Care Attorney & Consultant, Annapolis, Maryland. **November,** ***1993 to Present***

- ***As Senior Attorney and in-house counsel at Johns Hopkins and since, Ms. Brill has served as risk management consultant to several large brokerage entities charged with the analysis and design of risk financing and risk management systems for small to large multi-faceted health and non-healthcare corporations, thus developing knowledge of claims systems, and general and professional coverages and exposures. In concert with brokers and their Account Executives, she has developed and implemented risk management programs, including for the control and management of worker's compensation costs.***

- ***As health care consultant to the captive insurance trust of a newly formed multi-hospital delivery system, Ms. Brill has had an extensive one year engagement with involvement in the 'beta' phase of the implementation of the electronic risk and loss prevention system developed by the Harvard Risk Management Foundation. With responsibility for the creation of a ten-year claims history database, her activities are key to the implementation of its newly acquired electronic claims and risk management system. Responsibilities include: determination of the appropriate levels of risk, responsibility and identification of risk management and legal issues arising in the course of the claims or lawsuits of member institutions; and, the input of those determinations to create a history for effective risk financing, management and loss prevention. Identification and reporting of systems issues arising in the course of database creation resulting in system enhancements have been key features of Ms. Brill's role.***

- ***As Chair, Legislative Committee, and its first registered lobbyist, Maryland Society for Healthcare Risk Management,*** presented testimony to the Maryland Legislature's House of Delegates Committee on Economic Matters urging the consideration of operational, practice and risk management issues in the design and implementation of healthcare reform initiatives prior to the adoption of Maryland's health care reform initiatives.

- ***Charged with oversight of Risk Management and the successful creation of risk management programs on behalf of managed care organization*** for peer review, credentialing, and quality, to name a few, for inspection and licensure by the State as an MCO in the Maryland Medicaid Program, as well as other large commercial payers.

- ***In 1997-98, first as consultant to and then as Vice President of Legal Affairs, completed managed care contracts on behalf of a multi-hospital owned managed care MCO to achieve a statewide physician delivery system for the successful licensure*** with Maryland's Medicaid Managed Care Program. In addition, drafting and negotiating contracts and administering the successful completion of annual contracts and credentialing audits with the major HMOs.

16d-002733

EXHIBIT 2

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

November 12, 2003

By Hand

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Scott:

As you know, the parties agreed at the pretrial conference to resolve certain outstanding issues involving trial exhibits. To that end, Columbia encloses revised exhibits to address the following objections raised by NCRIC:

First, NCRIC objected that Exhibits 2, 37, 43, & 69 included extra pages. Columbia has removed the extra pages from those exhibits.

Second, NCRIC objected that Exhibits 16, 38, 97, 98, 101, & 102 were incomplete. Columbia has added the pages necessary to complete those exhibits.

Third, NCRIC objected to the redactions in Exhibits 5 & 35. These documents were mistakenly redacted, and Columbia has included unredacted copies of those exhibits. This production should not be taken as a waiver of the attorney-client privilege.

Fourth, NCRIC suggested that it was missing a copy of Exhibit 56. Columbia has reproduced that exhibit.

Finally, as we alerted the court at the pretrial conference, Columbia has included as Exhibit 71A a copy of NCRIC's most recent Form 10-Q, filed by NCRIC after the parties submitted their exhibits in the Joint Pretrial Statement. Like NCRIC's 10-Ks already admitted by the court, the 10-Q is relevant to the issue of punitive damages.

If you have any remaining concerns, please advise us promptly; otherwise, we plan to file these revised exhibits with the court on November 14, 2003.

Sincerely,

Eli C. Schulman

Eli C. Schulman

Enclosures

cc: Neil M. Gorsuch

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

WHEREAS the use of computer technology can assist in the orderly and efficient presentation of the evidence at trial; and

WHEREAS the Parties wish to use such technology to that end, including the following equipment needed to facilitate use of such technology:

1. laptop computers
2. LCD projectors and tripod
3. cabling
4. theater screen (80" measured diagonally)
5. flat-screen monitors, if needed
6. other equipment, as necessary to facilitate use of this technology;

it is hereby ORDERED that the use of such equipment shall be permitted at trial; and

it is FURTHER ORDERED that the Parties shall be permitted to bring such items into the courthouse.

ENTERED this 19th day of December 2003.

A. Blackburne-Rigsby

Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

16d-002739

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Trial -- January 26, 2004**
Defendant.	

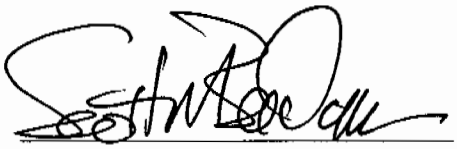
NCRIC'S MOTION TO VOIR DIRE
PETER BEN EZRA PRIOR TO IMPANELING THE JURY

Pursuant to the applicable standards governing the admission of expert testimony and the equitable power of the Court, for the reasons stated in the attached Statement of Points and Authorities in Support, Plaintiff NCRIC, Inc. ("NCRIC") moves that the Court conduct voir dire to exclude the opinions and expected testimony of Defendant Columbia Hospital for Women Medical Center Inc.'s ("Columbia's") designated damages witness, prior to impaneling the jury in the above-captioned case. Pursuant to D.C. Superior Court Rule 12-I(e), a Proposed Order and Statement of Points and Authorities in Support of this Motion are also attached.

Oral Hearing Requested.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: January 9, 2004

CERTIFICATION REQUIRED BY D.C. SUPERIOR COURT RULE 12-I(a)

Counsel for Plaintiff NCRIC, Inc. certifies pursuant to Rule 12-I(a) that the parties discussed this motion during a telephone conference on January 9, 2004 and consent from counsel for Defendant Columbia Hospital for Women could not be and was not obtained. Accordingly, this motion is necessary for Plaintiff NCRIC, Inc. to obtain the necessary relief.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Trial -- January 26, 2004**
Defendant/Counter-Claimant.	

NCRIC'S MEMORANDUM IN SUPPORT OF ITS MOTION TO VOIR DIRE PETER BEN EZRA PRIOR TO IMPANELING THE JURY

Plaintiff NCRIC, Inc. ("NCRIC") respectfully requests the Court to permit the voir dire of Defendant Columbia Hospital for Women Medical Center, Inc.'s ("Columbia's") proposed expert witness, Peter Ben Ezra ("Mr. Ben Ezra"), prior to impaneling the jury in this case.

As previously stated and for the reasons discussed in more detail below, NCRIC objects to the admission of Mr. Ben Ezra's testimony as "expert opinion" on the grounds that it is inherently defective, wholly speculative, and improperly biased as a matter of law. At the December 19, 2003, Pre-trial Conference in this matter, the Court acknowledged that Columbia faces "hurdles that still need to be met" before Mr. Ben Ezra's testimony reaches the jury. The Court further indicated that, prior to his taking the stand, Mr. Ben Ezra would be subject to voir dire and that NCRIC would have the opportunity to cross examine him with respect to issues such as the reliability of his data, his methodology, and bias.

In light of the Court's decision this week to postpone the start of the trial until 1:00 p.m. on January 26, 2004, conducting voir dire of Mr. Ben Ezra prior to impaneling the jury will promote efficiency in selecting a jury and conducting the trial. No party will be prejudiced, but instead each party, the Court and the process will benefit from the parties' ability to more accurately evaluate the length and structure of the trial and to organize their cases accordingly.

A. Mr. Ben Ezra's Testimony is Biased, Inherently Defective and Speculative

As noted previously, NCRIC objects to the admission of Mr. Ben Ezra's testimony as "expert opinion" in this case on the grounds that it is inherently defective, wholly speculative, and improperly biased as a matter of law. Columbia cannot be permitted to put forward to the jury and rely upon a witness: (1) who without independent verification accepted Columbia's counsel's representations concerning the group of physicians who allegedly stopped (or reduced) admitting patients at Columbia, a fact upon which his entire damage analysis is premised; (2) who used unaudited and speculative data having no reliable support; (3) who simply presumed causation of damages; (4) who performed no analysis or investigation related to the other factors which may have been involved in a physician's decision to leave or reduce the number of patients he or she admitted to Columbia; and (5) who cannot be independent or objective because he was the Chairman of the Board of Columbia – and indeed as admitted by Columbia's counsel during the pretrial conference – who is still designated as a responsible individual with decision making authority on behalf of the hospital with regard to this litigation.

Moreover, with respect to the single damage claim for which he attempted to establish a damage number (estimated lost cash flow), Mr. Ben Ezra: (a) simply accepted as true the representation of counsel with respect to the doctors who allegedly left Columbia (Ben Ezra Dep. at 140); (b) did no analysis or investigation why doctors left Columbia (Ben Ezra Dep. at

16d-002744

140); (c) used one year of unaudited data (Ben Ezra Dep. at 164); (d) did no analysis or research to determine causation (Ben Ezra Dep. at 133);[1] (e) presumed that each doctor would work until he or she turned age 65 without reviewing any studies or analysis concerning the retirement age of physicians (Ben Ezra Dep. at 154-55); and (f) simply assumed a 20 year damage projection without offering any facts as to why he selected that time period (Ben Ezra Dep. at 151-153). *See* Ben Ezra Dep. at 133, 140, 151-55, 164, attached as Exhibit A. Based upon these "facts," Columbia seeks to have Mr. Ben Ezra opine that Columbia will incur over $20 million in damages over the next 20 years based on the conduct of NCRIC. Mr. Ben Ezra's report is fundamentally flawed, unfairly prejudicial and must be excluded as a matter of law.

Mr. Ben Ezra's report and its findings are based on unreliable data, which is not the type reasonably relied upon by experts calculating damages. *See Dyas v. United States,* 376 A.2d 827, 832 (D.C. 1977); *In re Melton,* 597 A.2d 892, 901 n.10 (D.C. 1991) *(en banc).* Mr. Ben Ezra's opinion fails to satisfy even the minimal standard for admissibility of expert opinion testimony imposed by District of Columbia courts. *See Washington Metro. Area Transit Auth. v. Davis*, 606 A.2d 165, 177-78 (D.C. 1992) (holding that speculative expert testimony about lost earnings should be excluded where unsupported by sufficient facts); *Toy v. District of Columbia*, 549 A.2d 1, 7-8 (D.C. 1988) (finding that expert testimony lacked a sufficient factual basis to establish national standard of care for police departments). To be admissible, expert opinion testimony must be based on facts or data "of a type reasonably relied upon by experts in the particular field," although "the facts or data need not be admissible in evidence." *Melton,* 597

---

1 "Question: 'I just want to make clear, you don't have any information with respect to causation? You're not here for that purpose, are you?' Answer: 'No. I was just given a list and ran my analysis.' " (Ben Ezra Dep. at 133).

A.2d at 901-02 (adopting Federal Rule of Evidence 703 in the District of Columbia). While Mr. Ben Ezra purported to use a "scientifically valid methodology"-- a discounted cash flow analysis -- his application of this method warrants exclusion because: (1) there is no evidence that the underlying benchmark data he used was statistically meaningful or appropriate; (2) he applied a marginal cost percentage strictly (and literally) based on an accounting textbook example with no assurance that such percentage approximates Columbia's true variable costs; and (3) he relied upon a list of doctors provided by Columbia counsel which finds no support in the record.

Although a discounted cash flow analysis may well in theory be based on sound economic principles, Mr. Ben Ezra's application of this methodology here is unreasonable and unreliable. *See K.W. Plastics v. United States Can Co.*, 131 F. Supp. 2d 1289, 1292 (M.D. Ala. 2001) (excluding expert's calculation of lost profits, which was based on "impermissibly flawed" application of "sound economic principles").

The reasons for excluding the proffered expert testimony here are magnified by the involvement of the witness as a Board Member of Columbia. Counsel for Columbia identified Mr. Ben Ezra as the person with settlement authority for the hospital's board. Mr. Ben Ezra is far from a disinterested expert witness in this matter. By claiming he is an expert, Columbia and its counsel hope to dress up their speculative damage claim and pass it off in front of a jury as if it has a sound economic or scientific basis. The unfair prejudice to NCRIC and very real possibility of misleading the jury are cause to exclude these exhibits regarding Mr. Ben Ezra's "expert" testimony.

B. Conducting Voir Dire of Mr. Ben Ezra Prior to Impaneling the Jury is in the Best Interests of the Court, the Jury and the Parties

In light of the Court's intention, as stated at the December 19, 2003 Pre-trial Conference in this matter, to conduct voir dire of Mr. Ben Ezra prior to his taking the stand,

16d-002746

NCRIC submits that it would be in the best interests of the Court, the jury and the parties, for the examination to occur prior to the impaneling of the jury. Due to the postponement of the start of the trial until 1:00 p.m. on January 26, 2004, NCRIC proposes that afternoon could be efficiently and effectively used to conduct the voir dire. Doing so would prevent prospective jurors from being called for one-half day, or alternatively, being forced to wait for jury selection to begin during the afternoon of January 26th. It would also prevent a disruption later during the trial to conduct the voir dire of Mr. Ben Ezra, outside the presence of the jury. Finally and most importantly, should Mr. Ben Ezra's testimony be excluded, as NCRIC submits it should be, the length of the projected two week trial will likely be significantly reduced.

Making a determination of the admissibility of Mr. Ben Ezra's testimony prior to impaneling the jury will allow the parties to better organize and present their cases and will reduce disruptions and delays during the trial. Moreover, because the exclusion of Mr. Ben Ezra's testimony could significantly impact the length of the trial, making this determination at the start of the case will result in a better organized trial for all involved.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center, Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: January 9, 2004

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Trial -- January 26, 2004**
Defendant.	

ORDER PERMITTING VOIR DIRE OF
PETER BEN EZRA PRIOR TO IMPANELING THE JURY

Pending before the Court is NCRIC's Motion to permit voir dire of Columbia's purported damages expert, Peter Ben Ezra, prior to impaneling the jury in the above-captioned action. For the reasons stated in the Motion, and the issues being fully considered, the Court finds that good cause exists to grant the Motion, and, therefore it is so:

ORDERED, that the motion is **GRANTED** and the voir dire of Peter Ben Ezra shall take place on _____, 2004 prior to impaneling the jury in this case.

_____
The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

16d-002748

Copies to:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

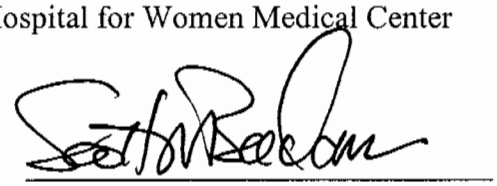
16d-002749

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of NCRIC's Motion to Voir Dire Peter Ben Ezra Prior to Impaneling the Jury was served this 9th day of January 2004, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center



Scott M. Badami

EXHIBIT A

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

NCRIC, INC., :

:

Plaintiff, :

:

vs. : CA No. 00-0007308

: Calendar # 8

COLUMBIA HOSPITAL FOR WOMEN : Judge Davis

MEDICAL CENTER, INC., :

:

Defendant. :

January 24, 2002

Washington, D.C.

Deposition of:

PETER BEN EZRA

called for examination by counsel for the Plaintiff, pursuant to Agreement, taken at the offices of Bryan Cave, LLP, 700 Thirteenth Street, N.W., Suite 700, Washington, D.C. 20005-3960, before John W. Whitman, RMR, Notary Public in and for the District of Columbia, commencing at 10:04 a.m., when were present on behalf of the respective parties:

of which are called major procedures, some of which are called minor procedures. I have the quantities for those procedures; I don't have the prices; and until I get prices that I can depend on I can't do that extension, price times quantity equals total. It would be a good way of checking the results in the model that we have in front of us today.

Q. Have you made a request of Columbia or its lawyers to provide you with this additional data?

A. Yes, I have. But to this point in time there is not acceptable data. In other words, I can't rely on the data they have given me.

MR. LEAHY: I represent on the record Mr. Ben Ezra has been working for about four or five months to try and get this and hasn't yet successfully gotten this data. He can testify to that if you want.

BY MR. BADAMI:

Q. I would like to ask you just a couple questions about what you were designated to do in this case. Does your expert report contain any information with respect to any loss of goodwill suffered by

Columbia Hospital?

A. Negative. It does not.

Q. Does your report contain any calculations for damages related to the reputation of Columbia in the community?

A. No, it does not.

Q. Does your report contain any information or calculations concerning the loss of specific sources of financing and partnership opportunities that otherwise would have been made available to Columbia?

A. No, it does not.

Q. Does your report contain any information concerning the lost revenue resulting from the non-occurrence of specific fund raising activities?

A. No, it does not.

Q. How about any reputational harms stemming from related events?

MR. LEAHY: Objection; asked and answered.

Whenever I object, you can answer the question.

THE WITNESS: No, it does not.

BY MR. BADAMI:

Q. Do you anticipate doing any further calculations or analysis with respect to goodwill?

A. If I'm requested to, I will.

Q. Have you been requested to?

A. At this point I have not been requested.

Q. Would your answer be the same for damages to reputation in the community?

A. Yes, it is. If requested I will be glad to furnish an expert opinion on that.

Q. But you haven't been requested to do so at this point?

A. No, I have not been requested to do that.

Q. Can I get you to confirm, sir, that you are the witness who will be testifying at trial in this case?

A. I assume I am.

Q. Has anybody been working with you, try it that way, on this report?

A. No. I did this report. I'm the only person that worked on this report. This is my

product.

Q. In addition to the other forms of damages, which I have just asked you about, are you aware of other damages that you did not calculate?

A. There was supposed to be a series of galas for fund raising. I know that the hospital was planning to receive net proceeds, in the order of magnitude of about $2 million on an annual basis, I believe, for about two or three years. That has not happened.

Q. Have you done any work related to those?

A. I have been at meetings where that has been discussed.

Q. I'm sorry, for the purposes of this case, have you done any damage calculation with respect to those issues?

A. No, I haven't, other than I am aware that they expected about $2 million a year.

Q. But that's not contained in your report?

A. No, it is not contained in my report.

Q. And you're not going to testify about that

today?
A. I don't think so. I thought the subject was going to be my report.
Q. I'm just asking all the things you considered, sir, that's all.
A. In addition, it was my understanding that they were trying to seek financing from the Department of Housing and Urban Development.
Q. When you say, "they," do you mean Columbia Hospital?
A. It's interesting. When we say Columbia Hospital, there is really a Columbia Hospital Foundation and then there is also a Columbia Hospital Medical Center and so we'll just talk about an entity called Columbia Hospital, but legally they are different legal entities.
Q. I appreciate that.
A. Yes. As I recall, the scope of magnitude was somewhere in the order of about $15 million to $20 million on a refinancing, which would have allowed the hospital to borrow funds from HUD at the Treasury cost

of borrowing plus maybe a quarter or a half a point, but that would be very favorable.
Q. That's not contained in that report?
A. That is not contained in that report at all.
Q. And you're not expected to testify about that?
A. No. However, would it would have affected the calculations here if they had obtained that financing, because I used the cost of capital being the current cost of financing on the real estate, which is the highest cost of capital.
So for purposes of discussion the Treasury cost of borrowing today for 30 years is five percent, and if HUD were to put a quarter or a half point on that the cost of borrowing to the hospital would be 5 1/4 or 5 1/2 as opposed to 10 1/2 that I did use for my analysis.
MR. BADAMI: I would like to ask the court reporter to mark this as Exhibit No. 2.

(Ben Ezra Exhibit 2 was marked for identification.)
BY MR. BADAMI:
Q. Mr. Ben Ezra, I'm showing you what's been marked as Ben Ezra Exhibit No. 2 and ask you, sir, if you recognize this?
A. Yes.
Q. Can you tell me what it is, please?
A. It's basically my curriculum vitae. It's like a resume. It explains my professional experience.
Q. Is this resume accurate?
A. Yes, it is.
Q. Can you tell me about your post-high school education?
A. I graduated Montgomery Blair High School. Then I went to the University of Maryland. My major was information systems management, and my minor was accounting. I graduated with high honors from the University of Maryland.
I then got my graduate degree at George

Washington University. My major was managerial accounting.
From there I passed the CPA exam on the first sitting and was one of the highest scorers in the State of Maryland on the CPA exam.
Subsequently, I've been working at George Washington University from about 1976 --
Q. You have '78, I believe.
A. -- from 1978 to current. I'm an adjunct professor.
Q. What does that mean?
A. Basically, a part-time professor. I don't get full benefits as a full-time professor would. I'm called a professorial lecturer, which is the highest rank for an adjunct professor. And I've been doing that since 1978 to the current time.
And I brought a couple of my textbooks, if you're interested in them. I encourage everybody to take a managerial accounting course and a financial accounting course.
Q. I appreciate that. Let me ask you about

might have reached back then?
A. Yes.
Q. Could you tell me about them, please?
A. The conclusions were, basically, that the former board of directors of Columbia Hospital for Women had major conflicts of interest with the hospital, and they obtained significant amounts of money as a result of their arrangements or their being on the board of Columbia Hospital for Women. They mostly were in the financial and the construction area.

For example, one of the board members, we came to find out, had under his control or he was an employee of an organization who had under their control two construction companies. Both construction companies worked on the hospital, and built the old professional office building, and as I recall received, perhaps, $30 million as a result.

MR. LEAHY: Can we go off the record for a minute?

MR. BADAMI: Sure.

(Discussion off the record.)

THE WITNESS: So that was one individual.

BY MR. BADAMI:

Q. I'm asking you for the conclusions you reached at that time.

A. We had on the board two CPAs from two different accounting firms. One of those firms received approximately $800,000 for doing the management study on the hospital, and when we looked at that study we didn't think we received full value for $800,000. It was some sort of a long-range, strategic study.

Another board member had a travel agency. We found out that the hospital had a policy to only use one travel agency, that was his, and we came to find out there was a feeling of the doctors when they used that travel agency that they did not have the lowest tickets when they got on a plane and started comparing prices.

Q. You mentioned three different board members. Are those individuals still on the board of

Columbia today?
A. No, they are not.
Q. Can you tell me who they are and when they left?
A. I don't remember the names, but there was a court case that was handled by the law firm of Kellogg, Huber, Hansen, Todd & Evans. Mark Hansen was our attorney. All that information is in the various filings and that should be part of the public record and they will have names and dates. But the conflict of interest was --
Q. Do you remember about what year this was?
A. If I went there in '96, the following spring, maybe, approximately, March or April the board, basically, imploded, and requested that the Corporation Counsel, here, in D.C. take over the receivership of the hospital.

So the hospital went into or was requested to go into receivership. The medical staff fought it, and actually the receivership never -- although they appointed a receiver that was short lived, and

approximately three or four weeks later the hospital was taken out of receivership and a new board was constituted, made up of some former board members and then new board members, which included members of the medical staff.

I've lost track of the question.

MR. LEAHY: I was going to say if he can ask you questions.

(Discussion off the record.)

MR. LEAHY: Peter, whenever you're ready, let him know.

THE WITNESS: Would you ask the question again?

BY MR. BADAMI:

Q. I was asking about the board of directors, and you were saying it imploded and a number of members of the medical staff came on the board and other members left the board?

MR. LEAHY: Object to the form. You may answer.

THE WITNESS: That's basically the case.

16d-002755

BY MR. BADAMI:
Q. Can you tell me which members of the medical staff joined the board?
A. To my best recollection, it would have been Safa Rifka, Nabil Asterbadi, Marty Dukes, John Berryman, Joe Gutierrez. It will be on the record.
Q. You mentioned earlier that you were the one who put Columbia in bankruptcy?
A. Yes.
Q. Can you tell me about that?
A. Basically, in order to go into bankruptcy the Foundation Board did not go into bankruptcy, the Medical Center Board did go into bankruptcy, and there was a Columbia Hospital for Women, which was a real estate corporation, that went into bankruptcy.
So as Chairman of the Medical Center Board I signed the papers to put the Medical Center into bankruptcy. I believe the real estate company was signed by Safa Rifka.
Q. Can you tell me why the Medical Center went into bankruptcy?

MR. LEAHY: Objection to form.
THE WITNESS: There was litigation at that point in time. The bank of Tokyo, Mitsubishi was attempting to grab approximately $12 million to $14 million that was in a fund, and in order to prevent the grab of that money we filed for bankruptcy within a few minutes of losing a hearing in the same courthouse.
Q. When you say losing a hearing, losing a hearing in the lawsuit filed by the Bank of Tokyo?
A. I'm not sure it was a lawsuit, I think we may have asked for an injunction and failed to obtain that injunction.
Q. Were there any other reasons why Columbia filed for bankruptcy at that time?
A. That was the major one that I'm aware of.
Q. Did my client, NCRIC, have anything to do with Columbia's bankruptcy filing at that time?
MR. LEAHY: Objection to the form.
THE WITNESS: As I recall, the hospital had to make a deposit of approximately $1 million to

NCRIC. Obviously, that affected their cash flow.
BY MR. BADAMI:
Q. Do you know why they had to make that deposit to NCRIC?
A. If that was at that point in time, I believe that was sort of a good faith, escrow payment on the Retro Plan, as I recall.
Q. Can you better describe a good faith escrow payment? What do you mean by that?
MR. LEAHY: Object to the form.
THE WITNESS: I think NCRIC was concerned that we would file for bankruptcy, and to protect their interest and nature they had some collateral that they could go against in the possibility that the Retro Plan went negative, my term. They asked for, like, a security deposit, when you're a landlord and you have a new tenant you ask for a security deposit just in case something happens further down the line that you need the money.
BY MR. BADAMI:
Q. From what you've just testified, then, is

it your belief that that money wasn't already owed to NCRIC?
A. Yes, that's my belief, that that was not owed to NCRIC. This was, basically, a deposit, just like if you're a landlord you get a security deposit, even though you're not owed the rent, because at the time the rent is going to be in the future, but you have a security deposit on hand to protect your financial interest.
Q. Do you know what facts lead you to have that belief that it was an escrow payment?
MR. LEAHY: Object to the form.
THE WITNESS: I'll use the facts. I was at a meeting with this gentleman and his boss and somebody else. I don't know their names.
MR. LEAHY: By, "this gentleman," he was pointing to Mr. Fargis.
THE WITNESS: Mr. Fargis.
I made a presentation.
BY MR. BADAMI:
Q. Do you remember when you made the

16d-002756

the, quote, net realizable value.
Q. Do you know or are you familiar, let's say, with the competitive status of the local hospital marketplace here in D.C.?
A. Yes. Obviously, hospitals are in competition with each other to acquire patients as well as doctors, and it is a very competitive environment.
Q. Would you say in your experience Columbia is well positioned to compete against, say, GW and Sibley?
MR. LEAHY: Object to the form. You may answer.
THE WITNESS: I forgot the question.
MR. BADAMI: Can you read it back, please?
(The record was read by the Reporter.)
THE WITNESS: Yes.
BY MR. BADAMI:
Q. And why would you say that?
MR. LEAHY: Object to the form.
THE WITNESS: Columbia is really a

specialty hospital, sort of a boutique. They do a few things and they do it very well. Whereas Sibley and GW are more general hospitals, they do a lot of different procedures, and they don't specialize, for example, in plastic surgery or in birthing.
BY MR. BADAMI:
Q. So you called Columbia, I think you said, a small boutique?
A. It's a boutique, they do a few things, but they do it very well.
Q. You said they have had losses for every year you can recall?
A. I recall they made money many, many years ago.
Q. For the past decade?
A. I think it's fair to say for the past decade they have been operating at a loss.
Q. How would you describe Columbia's financial performance over the past decade?
MR. LEAHY: Object to the form.
THE WITNESS: Basically, they're in

trouble.
BY MR. BADAMI:
Q. They have not been performing well, try it that way.
MR. LEAHY: Objection to the form.
THE WITNESS: Financial performance, yes. Medical performance --
BY MR. BADAMI:
Q. I was asking financial.
A. Okay.
Q. If I used the term, liquidity, with respect to Columbia, would you have an opinion with respect to whether Columbia would be considered liquid?
MR. LEAHY: Object to the form.
THE WITNESS: I prefer not to use the word, opinion.
BY MR. BADAMI:
Q. Okay.
A. Basically, the very act of filing for bankruptcy shows poor liquidity. In emerging from bankruptcy you have to show the judge that you have a

plan to meet your future cash requirements to emerge from bankruptcy, and the hospital was able to do so, and was allowed by the bankruptcy court to emerge from bankruptcy.
Q. How would you define Columbia's liquidity today?
A. Poor.
Q. How would you define Columbia's ability to access capital?
MR. LEAHY: Object to the form. Are you asking him to define the concept or are you asking him to just describe Columbia's --
BY MR. BADAMI:
Q. Describe Columbia's ability to access capital in today's market.
A. They are able to obtain capital; however, it is not at the most favorable rates. Their current cost of capital that I used for my analysis was 10.5 percent, which is what they were paying for their real estate loan, and they have a real estate loan on the hospital building, and that is the cost of capital

Q. You don't know if it's all the doctors or a subset?
A. No.
Q. You didn't do any analysis to determine that?
A. I did read the SEC filing and I did see a reference to, I believe it was, 70 doctors, as I recall, in the SEC filing.
Q. And when did you read that SEC filing?
A. Within the last two weeks.
Q. And did you use any information in the SEC filing for the conclusions you've drawn in your report today?
A. No, I did not.
Q. Can you tell me which SEC filing that might have been?
A. It was either a 10 K or a 10 Q or both; it would be both.
Q. Did you just pull it off the internet?
A. Yes. I should have pulled myself off.
Q. Do you have any knowledge of the Columbia

self-insurance malpractice trust fund?
A. Yes, I do.
Q. What do you know about that?
MR. LEAHY: Object to the form.
THE WITNESS: Basically, that is a separate legal entity that's been established to pay malpractice claims against the hospital.
In the past it had a sizeable amount of money, probably in the neighborhood of $10 million or $12 million.
BY MR. BADAMI:
Q. You say, in the past. When are you referring to?
A. Maybe, six years ago.
Q. So, approximately, 1996?
A. Yes, roughly.
Q. And what happened to the self-insurance trust since then?
A. It's been depleted.
Q. Why has it been depleted?
A. Because they have used it to pay insurance

claims and insurance premiums.
Q. Do you know if they have attempted to replenish the trust fund?
A. If they had excess cash available they would have replenished it. I don't believe they have excess cash available at this time.
Q. Do you know if the self-insurance trust fund is currently solvent?
MR. LEAHY: Objection to the form.
THE WITNESS: I don't have the financial records. I would assume there is probably a small balance, but not a large balance.
BY MR. BADAMI:
Q. When you say small, can you give me whether you're referring to $100 or $1 million?
A. Probably less than $1 million, probably more than $100.
Q. Can you be any more specific?
A. I don't know.
Q. In preparing your report did you review the counter-claim that was filed by Columbia in this case?

A. No.
MR. LEAHY: Are you talking about any particular counterclaim?
MR. BADAMI: The last counterclaim you filed.
MR. LEAHY: Inclusive of all the individual counts?
MR. BADAMI: Correct. Eleven counts.
MR. LEAHY: I'm sorry.
THE WITNESS: I did not review it. I did provide some input. I was asked at an early stage what I thought the results were and I think the wording was tens of millions of dollars.
BY MR. BADAMI:
Q. Who asked you? What conversation are you referring to?
A. I think that was with counsel, and --
Q. When was it?
A. Early on.
Q. I'm sorry, I don't know when early on is.
A. I'm not sure.

MR. LEAHY: Do you want a representation?
MR. BADAMI: If you can tell me when he talked to you about the counterclaim, sure.
MR. LEAHY: My representation is that my recollection with regard to when I spoke with Mr. Ben Ezra is sometime shortly before the 26(b)(4) Statement in which the tens of millions of dollars figure that he used was drafted and filed, at about that time.
MR. BADAMI: I'll accept that representation.
BY MR. BADAMI:
Q. But you haven't read the counterclaim that was filed by Columbia against NCRIC in this case?
A. I haven't read it. We did discuss that particular wording.
Q. How did you come up with the tens of millions figure that you used in your Rule 26(b)(4) Statement?
A. I'm not even sure. If you're going to represent that's where it was.
Q. That's what Mr. Leahy just represented to

us.
MR. LEAHY: I represented on the record that is what a pleading filed in this action to summarize what it is expected the expert will testify to, Mr. Ben Ezra was consulted with regard to, although he didn't have the data at the time, what it was he expected he would testify to. That's my representation.
THE WITNESS: That is correct.
BY MR. BADAMI:
Q. Can you tell me how you estimated at that time the tens of millions of dollars?
A. That was an educated guess.
Q. What's on what data?
A. I didn't have data. I had a feeling or belief.
Q. Where did you get the feeling or belief?
A. Based upon my knowledge of the hospital and what was going on and its financial condition.
Q. There is nothing specific you can point to?
A. No.

MR. BADAMI: I would like to show you the 26(b)(4) Statement, if I might. I would ask the court reporter to mark it as Ben Ezra Exhibit No. 11.
(Ben Ezra Exhibit 11 was marked for identification.)
MR. BADAMI: Mr. Ben Ezra, I'm showing you what's been marked as Ben Ezra Exhibit No. 11, and I'll ask you, sir, if you have ever seen it. I'll represent to you that it's two pages long. The document was originally longer, but No. 1 on the first two pages references you, which is what's been copied, which is what identifies you, and what's been copied.
MR. LEAHY: Are you going to represent who this has been signed by?
MR. BADAMI: Off the record.
(Discussion off the record.)
MR. LEAHY: This document was signed by myself, I believe if this is, in fact, the document counsel purports it to be.
MR. BADAMI: I believe it is.
THE WITNESS: I have received Exhibit No.

11. I have not seen Exhibit 11 before.
BY MR. BADAMI:
Q. Can I ask you to look at the paragraph closest to the bottom on Page 1 where it talks about the substance of the facts and opinions to which Mr. Ben Ezra is expected to testify is, and then it talks about as a proximate result of NCRIC's torts, do you see that?
A. Yes.
Q. I want to just make clear, you don't have any information with respect to causation? You're not here for that purpose, are you?
A. No. I was just given a list and ran my analysis.
Q. Have you reviewed any other pleadings or filings in this case?
A. No, I have not.
Q. Have you reviewed any deposition transcripts in this case?
A. No, I have not.
Q. Have you done any interviews or had any

to show the model and the procedure I used to generate those estimates.

Q. But with the exception, then, of that one, I guess, group, or one line in your report, was the rest of your report the same?

A. It was basically the same, yes.

Q. When you say basically the same, I don't mean to split hairs with you, what else?

A. Basically, the model was there. It may have had a couple of typos, but, basically, what you see is that model.

Q. You mentioned this draft report. Were there other previous drafts of your report?

A. No.

Q. So you consider what you produced to us today Version 2?

A. I would say this would be Version 1.

Q. What do you --

A. The draft was, basically, a working paper, a draft of this version.

MR. BADAMI: Off the record.

(Discussion off the record.)

BY MR. BADAMI:

Q. Mr. Ben Ezra, I'd like to focus your attention now on your report.

A. Yes.

Q. On the first page of your report, which is marked 8708, you refer to the NCRIC group of doctors?

A. That's correct.

Q. We've talked about this a little bit, but I would like to confirm again who the NCRIC group of doctors is.

A. The NCRIC group of doctors are the physicians that are listed on Page 8713.

Q. Right.

A. Where I defined the NCRIC group of doctors by their physician name and their number.

Q. Did you determine if any of these doctors maintained hospital privileges at any other District of Columbia hospital?

A. No, I did not.

Q. Did you determine if any of these

physicians maintained hospital admitting privileges in either Suburban Maryland or Northern Virginia?

A. No, I did not. However, I know from my own knowledge that Dr. Edward G. Koch does maintain an office in, I guess it is, Virginia.

Q. We also briefly touched upon this, but I like to focus on the first page with respect to leaving or cutting back. Obviously, leaving means they stopped referring patients at all to Columbia, is that correct?

A. That's correct.

Q. And tell me how you defined cutting back.

A. That the amount of business they brought to the hospital was less than the previous year.

Q. But, again, you made no analysis or investigation into why those doctors may have cut back or left Columbia?

A. No. It was from -- this is a subset of the list that was furnished to me by counsel, which is Exhibit No. 8.

Q. In doing your analysis, Mr. Ben Ezra, did

you take into account that some of these doctors might switch back to Columbia Hospital in the future?

A. It's my hope that they will.

Q. Is that included anywhere in your report?

A. No, it is not.

Q. So if a doctor made the decision two years from now to go back to Columbia your numbers would be in error?

A. That's correct. Without saying error, if you would tell me which doctors are going to return, I could run the numbers accordingly and determine the net economic lost.

Q. You indicated a moment ago it is your hope, I believe is your word, that these doctors would return to Columbia. Why is it your hope?

A. So we would not have the scope and magnitude of damages, that the hospital would have their business.

Q. I asked you earlier a little bit about insurance. Do you have any knowledge with respect to the effective dates or the insurance coverages of the

breakdown?
A. No, I did not break it down into a subset.
Q. Would that have been helpful to do that analysis?
A. Probably not.
Q. Why not?
A. We don't have the data available. That's part of -- I would like to break it down between inpatient and outpatient, major procedure, minor procedure, even mix of payers, but I don't have that data.
Q. But you'd like to do that if you had the data?
A. If the data was available I certainly would like to do that analysis.
Q. But your testimony is Columbia has not provided you that data?
A. That is correct, has not provided me with the data.
Q. Have you asked for that data?
A. Yes, I have.

Q. Do you know if they have that data?
A. As late as yesterday evening, no, they did not.
Q. You did a projection over the next 20 years?
A. Two different ways.
Q. I'm trying to -- I would like to start, I guess, with how you picked 20 years out in the way you did your analysis?
A. The reason I did 20 years was when you look at the present value of future cash flow, and I draw your attention to the column 20 years will be on Page 8712.
Q. Right.
A. As you go further and further out in time that discount rate eventually goes to zero. So if I had done it for a hundred years the result would not have been much different.
I did it for 20 years in this analysis. I, also, did it by expected age of retirement, which we presumed or I presumed to be 65, and actually I took

the month in which the doctor would turn 65.
Q. We'll get to that. Let's start with the 20 years, first.
A. This analysis shows the present value of future cash flow over a 20-year period, but if you were to say, for example -- let's do only ten years, then I have the results for ten years. So for 20 years, using this approach the present value of the lost cash flows would be approximately $22 million. If you were to say, "What if it's only ten," the answer would be a little over $16.5 million.
Q. I recognize that. I recognize that you picked 20 years as the front page of your report.
A. That's correct.
Q. I'm trying to figure out what facts led you to take that 20-year period?
A. That was my experience. I assumed, and this is an assumption, that the lost cash flow would be over a period of 20 years. If you want to say, well, we think ten is better than 20, then the answer would be different, but that answer is disclosed in

this report.
Q. Again, you just assumed it. You didn't do any further investigative analysis with respect to why the 20-year number works?
MR. LEAHY: Objection to form.
THE WITNESS: My initial approach was to do it for the 20 years. Then when I did it based on the age of the physician, the result was not much different than the 20 years. Actually, the first approach I used was the 20 years. Then, when I found I could get the data for how old they were and when I could presume, that's an assumption that they would retire on their 65th birthday, I ran those numbers. The results are not materially different between the two.
BY MR. BADAMI:
Q. You mentioned the age 65 issue and I was going to come to that. How did you make the decision to choose 65 as the date that the physician would retire?
A. Okay, again, that's a presumption. My

A. My experience is if a doctor spends time building up their practice they're not going to be willing to give it up.

Q. Are you aware of other hospitals in the District of Columbia metropolitan area who actively try to recruit physicians away from Columbia?

A. No. I do know that that happens.

Q. Would this impact your analysis, if, say, Sibley Hospital recruited doctors to come practice at Sibley?

A. I assume the same is true for Columbia trying to recruit doctors at Sibley to come and work at Columbia.

Q. What I'm asking you, is that contained in your analysis, if the group was recruited to go to Sibley or GW?

A. I make the assumption that they will continue. The doctors that I have met have been at Columbia for, in many cases, several decades, maybe 30 or 40 years. It seems to me from my perception a degree of entropy that a doctor at Columbia is going

to stay at Columbia unless they are hit by an outside force hard enough to get off of that track.

Q. What are those outside forces?

A. In this case it may be -- it could be NCRIC.

Q. Do you have any facts to back that up?

A. No. I have a presumption.

Q. But no facts?

A. No facts.

Q. What are the other outside forces that you just referenced? How about Columbia's bankruptcy, could that be an outside force?

A. It's interesting, Columbia's bankruptcy, at least I didn't see any major changes in the doctors I didn't see doctors dropping out of Columbia.

In fact, it looked to me that maybe they increased while we were in bankruptcy. Certainly, there was a lot more support. I mean, the doctors were very supportive of Columbia and they wanted it to stay. As you look at the history of the bankruptcy and taking it out of receivership, it was the doctors

that put their blood, sweat and tears to take it out of receivership and take it out of bankruptcy.

Q. Am I understanding your testimony, and I want to be clear that it's your words, the bankruptcy in your view wasn't an outside influence to have doctors leave?

A. I didn't view it as such, no. I don't recall any doctors that left because of the bankruptcy.

Q. How about staffing problems with nurses at Columbia?

A. There is a nursing shortage in Washington, D.C.

Q. I'm specifically referring to a nursing shortage at Columbia which might be one of those outside influences.

A. I don't think it would be a major influence, because, as I understand, all hospitals are undergoing a nursing shortage and they make up for any shortages using outside nursing agencies.

Q. When you say those outside influences, you

are not talking about nursing issue?

A. No, I don't think it would be a nursing issue.

Q. How about supply problems; for example, the doctors can't get the supplies they need at the hospital?

A. I don't think that that has been a major problem. Certainly, if there is a supply shortage I'm sure it gets the attention of management very quickly.

Q. I've tried to come up with some things that I thought might have been the outside forces?

A. We're talking entropy, like in the laws of physics, that basically a doctor at Columbia, I will presume, will stay at Columbia, and at least it is my experience and observation that that is true.

Q. Do you have any empirical data to back that up?

A. It would be available at the medical staff. They would have a number of years that the physician has been at Columbia.

Q. You didn't review any of that for the

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
JAN

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Trial,
MEDICAL CENTER, INC.,	)	January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S MOTION TO EXCLUDE EVIDENCE BASED ON DOCUMENTS PRODUCED THREE BUSINESS DAYS BEFORE TRIAL AND DEMONSTRATIVES PRODUCED AFTER THE COURT ORDERED DEADLINE

Nearly *three years* after they were requested by Columbia, and just three business days before the scheduled start of this trial, NCRIC produced to Columbia 1232 pages of documents that, it represented, NCRIC's experts had "referred to, relied upon, [and] consulted" in forming the opinions to which they intend to testify. Of the 1232 pages produced at the eleventh hour before trial, some 735 are *not part of the record in this case, having never been produced in discovery*. The day after this belated document production, and two days after the passing of the deadline for the exchange of demonstrative aids, NCRIC produced 50 power point slides based on these newly produced documents, making clear that NCRIC intends to expose the jury to the information contained in NCRIC's untimely document production using untimely demonstrative aids. NCRIC's conduct – two years after the close of discovery and just days before trial – can only be described as sandbagging. It is also fundamentally unfair and prejudicial to Columbia. For this reason, court after court has found that this sort of conduct requires that the newly produced material, as well as any testimony based on that material, be excluded.

BACKGROUND

In March of 2001, Columbia served document requests seeking "any document[s] that [NCRIC's] expert[s] referred to, relied upon, or consulted (whether or not provided by [NCRIC]) in developing a conclusion, preparing a report, or rendering an opinion." Ex. A, Request No. 47. NCRIC responded in April of 2001, claiming that it "ha[d] no documents in [that] category." Ex. B.[1] Shortly after NCRIC's August 9, 2001 designation of its experts in a Rule 26(b)(4) statement, Columbia requested that NCRIC supplement its responses to the document requests. Ex. C. NCRIC ignored this request until late in the evening of January 20, 2004, just three business days before trial was slated to start. That night, NCRIC produced to Columbia over 1200 pages and, quoting from Columbia's 2001 document requests, NCRIC described the materials as documents "'referred to, relied upon or consulted'" by NCRIC's experts "in developing their conclusions in this case." Ex. D. Seven hundred and thirty-five pages of this production represent materials never before seen in this case.

NCRIC did not stop there. The very next day it produced 50 additional pages, comprising slides created for use by its experts as demonstrative aids. Ex. E. The slides were themselves *two days late* under the Joint Pretrial Statement, which required the parties to exchange any demonstrative aids to be used in their cases-in-chief one week before trial. Ex. F. These demonstratives, moreover, repeatedly cite to and make use of NCRIC's January 20 document production, making entirely clear that NCRIC wishes to put before the jury the

[1] While not necessary to make NCRIC's actions sanctionable, it is notable that these documents are responsive to a number of *additional* requests by Columbia. *See* Ex. A, No. 27 (seeking all documents "relating to Columbia's finances or financial situation"); *id.* No. 37 (seeking all documents relating to the "financial health" of Columbia); *id.* Request No. 44 (seeking all documents relating to "competition between hospitals in the District of Columbia metropolitan area for physicians or staff").

16d-002764

substance of the materials contained in that late production. The demonstratives are also rife with rank hearsay, including excerpts from newspaper and journal articles.[2]

ARGUMENT

It is undisputed that trial courts possess the "inherent power to protect the integrity of the discovery process by imposing a wide range of sanctions for a party's violation of the discovery rules, including the exclusion of evidence." *See* NCRIC's Motion to Exclude the Testimony of Columbia's Newly Named Witnesses at 3 (filed June 5, 2003) (quoting *Nolan v. Nolan*, 568 A.2d 479, 487 (D.C. 1990)). It is equally clear that courts deter these kinds of abuses by excluding reliance on such documents at trial precisely because of the prejudice to the opposing party when the producing party flouts the rules. NCRIC's conduct merits such a sanction.

NCRIC's newly produced documents fall within several of the document requests that Columbia served in 2001. And there can be no doubt that NCRIC, even if it lacked these materials when it first responded to Columbia's document requests, had a duty to produce these materials long ago. Rule 26(f)(1) requires parties "seasonably to supplement" their responses with respect to "the substance of [an expert witness]'s testimony." SCR 26(f)(1)(B). Nothing could bear more directly on the substance of an expert witness's testimony than the documents that the expert has referred to, relied upon, or consulted to reach an opinion. NCRIC was further "under a duty seasonably to amend a prior response" to Columbia's document requests once it "obtain[ed] information" showing that its response, although correct at the time, was "no longer true and the circumstances [we]re such that a failure to amend the response [wa]s in substance a knowing concealment." SCR 26(f)(2)(B). Having served these documents upon Columbia with

---

[2] *See* Ex. E at Moore Expert Report Slides at 16 (quoting a magazine article that in turn quotes a consultant from New York); *id.* at Henderson Expert Report Slides at 6 (quoting a Washington Post article that in turn quotes a "veteran D.C. health care executive").

16d-002765

a cover letter *quoting* one of the document requests Columbia issued in 2001, NCRIC cannot deny that it was obligated by the Rules to supplement its response. It failed, however, to do just that until late at night *three business days* before trial.

Trial courts have the "inherent power to apply sanctions for a breach of the duty to supplement responses, including the power to exclude evidence." *Sowell v. Walker*, 755 A.2d 438, 446 (D.C. 2000) (quoting *Corley v. BP Oil Corp.*, 402 A.2d 1258, 1261 (D.C. 1979)) (affirming decision to exclude testimony not contained in Rule 26(b)(4) statement). And court after court has found the exclusion of evidence to be an appropriate sanction for analogous conduct, even when the prejudice to the opposing party was not nearly as substantial as the prejudice faced by Columbia:

- Courts have imposed such a sanction even when the documents were disclosed well in advance of trial. *See, e.g.*, *Giesting v. Storz Instrument Co.*, 171 F.R.D. 311, 312 (D. Kan. 1997) (excluding documents produced as part of a purported Second Supplemental Final Exhibit List "one month before the scheduled trial date"; the plaintiff was "essentially precluded . . . from having an adequate opportunity to question defendant's witnesses with regard to the newly disclosed documents"); *Gallup, Inc. v. Kenexa Corp.*, No. 00-5523, 2003 U.S. Dist. LEXIS 9821, at *3, *12-*14 (E.D. Pa. June 2, 2003) (excluding testimony regarding information withheld by defendants during the discovery period, and disclosed months before trial, after plaintiff had filed its expert report; the plaintiff had "prepared for trial using only the more general information" that had been produced earlier and could not "adequately incorporate this new financial information into its case").

- Courts have also imposed the sanction of exclusion when far fewer documents were at issue. *See In re Omeprazole Patent Litig.*, No. M-21-81, 2002 U.S. Dist. LEXIS 3225, at *4, *7, *11 (S.D.N.Y. Feb. 27, 2002) (court excluded both document and related testimony when defendant served upon plaintiff a supplemental expert report discussing a *single document* that had allegedly been found the month before, shortly before trial began; if the plaintiff "had been given proper notice of the [document] during discovery," it might have collected other documents and interviewed witnesses, investigated the *bona fides* of those persons who claimed to have received the document, or sought discovery from third parties relating to the document).

- Courts do not hesitate to exclude demonstrative exhibits when circumstances require. *See, e.g., Fusco v. General Motors Corp.*, 11 F.3d 259, 265 (1st Cir. 1993) (affirming exclusion of demonstrative evidence slated to be used by expert at trial when litigant should have seasonably supplemented discovery by producing the evidence but failed to do so).[3]

Here, NCRIC dropped 735 pages of never before seen documents on Columbia three business days prior to the scheduled start of trial, followed thereafter by 50 slides that were two days late under the pretrial statement and replete with references to NCRIC's improper document production. Columbia barely has time even to review the newly disclosed documents and slides,

[3] As additional evidence of the rigor with which such rules are enforced, last Fall, months before trial, the Court granted NCRIC's motion in limine to exclude five of Columbia's witnesses – even though the identities of these individuals had been disclosed to NCRIC for 18 months – because Columbia had not named those witnesses on its initial witness list at the outset of the case, in June of 2001.

16d-002767

much less to explore them fully, or develop any rebuttal to them. Under these circumstances, prejudice is a certainty; and the documents and demonstrative slides at issue – as well as any testimony or argument based upon them – should be excluded.[4]

This remedy is also separately mandated by the hearsay rules. The newly produced documents contain articles clipped from periodicals making assertions that are not subject to cross-examination and quoting persons who will not testify at trial, as well as hearsay reports, whose accuracy cannot reasonably be investigated at this late date, produced by a panoply of private firms and advocacy groups. The slides, which draw heavily upon this rank hearsay, suffer from the same evidentiary infirmities and NCRIC clearly intends to use them as a vehicle to place such hearsay before the jury as substantive evidence.[5] Both Federal Rule of Evidence 703 and its Advisory Committee notes require that hearsay evidence relied on by an expert in forming his or her opinion "shall not be disclosed to the jury . . . unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect." Fed. R. Evid. 703. NCRIC cannot begin to carry the substantial burden

[4] Nor can NCRIC remotely suggest that it just discovered these documents. Many of them are several years old. As just a few examples, the production includes reports by the American Institute for Certified Public Accountants from 1993 and 1999; a survey of "physician recruitment trends" that purports to have been completed in September of 2002; articles from periodicals such as the Washington Post, Washington Times, and Healthline ranging in dates from 1998 to 2003; District of Columbia Hospital Association Financial Indicators reports for fiscal years 1997 to 2001; and a draft briefing paper for the D.C. Department of Health dated February of 2002.

that it bears: it cannot show that the probative value of its documents and slides "substantially outweighs" the unquestionably significant prejudice that Columbia faces from the use of evidence produced on the eve of trial, in defiance of long outstanding document requests and the deadline for demonstratives prescribed by the Joint Pretrial Statement.

CONCLUSION

NCRIC has, in a flurry of activity at the eleventh hour, produced a vast collection of hearsay documents and demonstratives, without providing Columbia any notice or time to analyze and rebut the assertions that they contain. For reasons of fairness, as well as the undue prejudice that exposing the jury to hearsay of this sort creates, this Court should enter an order prohibiting NCRIC or its witnesses from making any use of the withheld documents and the late-produced slides that depend upon and make repeated use of them. A proposed order is attached.

---

[5] *E.g.*, Ex. E at Moore Expert Report Slides at 6 (graph based on DCHA Financial Indicators); *id.* at 9 (graph based on DCHA Utilization Indicators); *id.* at 10 (graph based on D.C. Infant Mortality Study); *id.* at 12 (graph including information from Ingenix Financial Indicators); *id.* at 13 (graph based on DCHA Financial Indicators); *id.* at 16 (quoting Modern Healthcare magazine); *id.* at 18-19 (quoting a Solucient report); *id.* at 21-22 (graph including information from Ingenix Financial Indicators); *id.* at 24 (quoting a report by the HHS Inspector General); *id.* at 25-27 (graph based on a report by the HHS Inspector General and DCHA Utilization Indicators); *id.* at 28 (graph based in part on a report by the HHS Inspector General); Henderson Expert Report Slides at 6 (quoting a Washington Post article); *id.* at 8 (graph based on D.C. Infant Mortality Study).

16d-002769

DATED: January 28, 2004

Respectfully submitted,

Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

16d-002770

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of Defendant/Counter-Plaintiff Columbia Hospital For Women Medical Center, Inc.'s Motion to Exclude Evidence Based on Documents Produced Three Business Days Before Trial and Demonstratives Produced After the Court Ordered Deadline, it is hereby

ORDERED that plaintiff NCRIC, Inc. is precluded from offering testimony or evidence at trial related to or based on the 735 pages of material that NCRIC produced for the first time on January 20, 2004. NCRIC is further precluded from using the demonstrative aids it provided on January 21, 2004, after the deadline prescribed by the Court for the exchange of such materials.

ENTERED this ____ day of _____, 2004.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

CERTIFICATE OF SERVICE

I, Jessica Bartlow, hereby certify that on this 28th day of January, 2004, a copy of the foregoing was served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on this 28th day of January, 2004, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Jessica Bartlow

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

January 28, 2004

Via Hand Delivery
Clerk of the Court
Civil Division Clerk's Office
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room JM170
Washington, D.C. 20001

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.
Civil Action No. 0007308-00

Dear Sir or Madam:

Enclosed for filing is an original and one copy of *Columbia's Response to NCRIC's Attempt to Introduce Incomplete Documents as Trial Exhibits*. Please date-stamp one copy and return it to the messenger in the enclosed self-addressed envelope.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me at (202) 326-7978.

Sincerely,

Neil M. Gorsuch

Enclosures

16d-002774

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

January 28, 2004

Via Hand Delivery
The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 3540
Washington, D.C. 20001

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.
Civil Action No. 0007308-00

Dear Judge Blackburne-Rigsby:

Please find enclosed a courtesy copy of *Columbia's Motion to Exclude Evidence Based on Documents Produced Three Business Days Before Trial and Demonstratives Produced After the Court Ordered Deadline.*

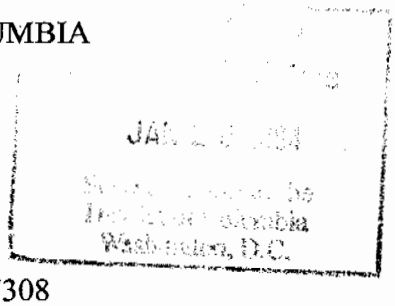
Respectfully submitted,

Neil M. Gorsuch

Enclosures

16d-002775

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division



NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 27, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

PRAECIPE REGARDING DEPOSITION DESIGNATIONS RIPE FOR DECISION

Columbia hereby submits this Praecipe to notify the Court that certain objections associated with the deposition designations Columbia intends to read at trial are ripe for decision.

Pursuant to the Court's directive at the Status Conference of December 19, 2003, the parties embarked on a process for exchange of deposition designations. Columbia designated certain deposition excerpts that it wishes to read during its case-in-chief. In turn, NCRIC was provided with an opportunity to offer any counter-designations and objections it wished. NCRIC chose to offer various counter-designations, but it raised no objections. Finally, Columbia designated certain rebuttal designations and made a handful of objections to NCRIC's counter-designations; it is these objections that are now ready for the Court's review and ruling.

The relevant deposition transcripts are attached. At the front of each deposition transcript is a chart summarizing the parties' designations, counter-designations, rebuttal designations, as well as the objections at issue before the Court. A column for the Court's rulings on those objections is also provided for the Court's convenience. Columbia wishes to read these depositions during the second or third day of trial, in advance of its expert taking the stand, and appreciates the Court's attention to this matter.

For the Court's ease of use, the enclosed deposition transcripts also have been color-coded, and the objections have been noted in the margins. Columbia designations are coded in blue; NCRIC's counter-designations in yellow; and Columbia's rebuttal designations in pink.

DATED: January 28, 2004

Respectfully submitted,

Mark C. Hansen, D.C. Bar # 425930
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-002777

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that, on this 28th day of January 2004, copies of the foregoing *Praecipe Regarding Deposition Designations Ripe for Decision* were served upon the following by hand delivery:

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 28th day of January 2004, courtesy copies of the aforementioned papers were served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Jessica Bartlow

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

January 28, 2004

Via Hand Delivery
Clerk of the Court
Civil Division Clerk's Office
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room JM170
Washington, D.C. 20001

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.
Civil Action No. 0007308-00

Dear Sir or Madam:

Enclosed for filing is an original and one copy of *Praecipe Regarding Deposition Designations Ripe for Decision*. Please date-stamp one copy and return it to the messenger in the enclosed self-addressed envelope.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me at (202) 326-7978.

Sincerely,

Neil M. Gorsuch

Enclosures

16d-002779

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

January 28, 2004

Via Hand Delivery
The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 3540
Washington, D.C. 20001

Re: NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.
Civil Action No. 0007308-00

Dear Judge Blackburne-Rigsby:

Please find enclosed a courtesy copy of *Praecipe Regarding Deposition Designations Ripe for Decision.*

Respectfully submitted,

Neil M. Gorsuch

Enclosures

16d-002780

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INC., Plaintiff.	
V.	Civil Action No. 7308-00
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, Defendant.	

Washington, D.C.
Wednesday
January 28, 2004

The above-entitled action came on for a trial before the Honorable ANNA BLACKBURN-RIGSBY, Associate Judge, and a jury empaneled and sworn, in Courtroom Number 48A, commencing at approximately 11:32 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS THE TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

RODNEY F. PAGE, Esquire
SCOTT M. BADAMI, Esquire
Washington, D.C.

On behalf of the Defendant:

NEIL M. GORSUCH, Esquire
ELI C. SCHULMAN, Esquire
PRIYA AIYAR, Esquire
Washington, D.C.

16d-002781

THE JUROR: Yes, I served before on one jury.

THE COURT: Here in Washington, D.C.?

THE JUROR: Yes.

THE COURT: Do you remember how long ago it was?

THE JUROR: Just a few years.

THE COURT: Do you recall whether it was a criminal or civil case?

THE JUROR: I'm not sure. But it was a charge against two police officers.

THE COURT: And question number eight was whether you or a family member were born at Columbia Hospital for Women or ever received treatment at Columbia Hospital for Women.

THE JUROR: Yes, two of my sister's children were born there and I have received treatment there.

THE COURT: Do you have an opinion, either positive or negative, about the hospital?

THE JUROR: Not extreme but it is basically positive or I wouldn't want to continue going there.

THE COURT: And you answered yes to question 20 with a question mark that you may have

16d-002782

recognized one of the names.

THE JUROR: Yes, Dr. Morton Roberts may be an associate of my gynecologist.

THE COURT: And I don't recall whose witness that was.

MR. PAGE: Both.

THE COURT: And question number 26 was whether you had ever brought a claim against an insurance company.

THE JUROR: Just for my medical -- regular, ordinary medical and dental claims.

THE COURT: Okay. Any follow-up questions from counsel?

MR. PAGE: Nothing for us.

MR. GORSUCH: No, thank you.

THE COURT: Thank you.

THE JUROR: Your Honor, could I offer something in addition?

THE COURT: Sure.

THE JUROR: I did not write down number 12 because I don't think that it would affect my ability to be fair in the deliberations but I would like the parties to know that my sister has a severely-challenged child who has been accepted at Kennedy Kreiger Institute at Johns Hopkins in a

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INC., Plaintiff.	:	
V.	:	Civil Action No. 7308-00
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, Defendant.	:	

Washington, D.C.
Thursday
January 29, 2004

The trial in the above-entitled action was resumed before the Honorable ANNA BLACKBURN-RIGSBY, Associate Judge, and a jury empaneled and sworn, in Courtroom Number 48A, commencing at approximately 9:46 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS THE TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

[As previously noted.]

16d-002784

Q Did the hospital have adequate staffing?
A Yes.
Q Supplies?
A Uh-huh.
Q Was the equipment up to date?
A Yes.
Q Were you aware of the community outreach committee of the board as well?
A I was. I was very much aware of it because when I went onto the board, at some point when I was on the board, I said to the CEO, Pat Caine at the time, that I noticed that there wasn't anything called a community outreach committee. So there wasn't really a function -- there didn't seem to be a function that was apparent. And I said as a nonprofit organization there really should be. So they developed -- the administration developed an ad hoc community outreach committee. And later I said, if you're really going to be a nonprofit, this committee should not be ad hoc. It should be a standing committee of the board, which it became. And you sometimes have to be careful what you ask for because then I was asked to be chair of the community outreach committee. So I spent probably a number of years as chair of the outreach

committee.

Q Was the teen center one of the things you were involved in that capacity?

A Yes, it was. Capitol Hill Hospital actually started a teen center and then later the hospital -- the Capitol Hill Hospital was unable to keep it going and so Columbia took over the facility. First I think it was actually in Capitol Hill Hospital and then later on we expanded it and moved it out of the hospital. So that it could serve more people and was accessible I think to a subway line.

Q Where was the teen center located?

A It was on Capitol Hill somewhere at a point -- the Northeast and the Southeast and -- it becomes a little bit difficult to tell which sector you're in.

Q Is that geographically separated from the hospital?

A Oh, absolutely, it was on the other side of town from the hospital. That was very important because it was more accessible to the people that needed it in that location, rather than being at the hospital. Although we had a clinic at the hospital as well.

So I would go after work or on Saturdays or that sort of thing. The remainder of my time on the board.

Q And you said you served as chairman of the board as well --

A Yes.

Q -- during this period '97?

A Yes.

Q In your decade plus of experience with Columbia as a patient and a board member, did you observe whether Columbia doctors have short or long tenures at the hospital?

A Long tenures. Very long tenures user.

Q What do you mean by that?

A Well, you know, I saw the same doctors -- I got to know the doctors. And certainly the years I was on the performance improvement committee where I had significant contact with doctors because they were on my committee, and through the time I was chair of the board, you know, I saw people constantly. I was in the office or in the hospital for ten hours a day. So I knew a lot of the doctors and so I knew that they'd been there for a long time.

Q Did you also attend meetings of the

medical staff, the doctors staff?

A I did. As chair of the board I attended all the medical staff monthly meetings because I just felt it was important that they know what was going on in the hospital. And I wanted them to know that I was concerned about them and their welfare and wanted to give them as up-to-date and good information as I could give them.

Q Can you explain what the medical staff is?

A The doctors. Basically the doctors that practice in the hospital.

Q Do they have privileges at other hospitals?

A They can have privileges at other hospitals but they certainly have to have privileges at Columbia.

Q What makes them distinct as a body of medical staff of Columbia?

A I'm not sure I understand your question.

Q Is there some expectation that the medical staff would refer their patients predominantly to Columbia?

A Well, of course.

Q Could you explain that?

A Well, the medical staff, that's how your patients really come. I mean, you have to have a person that practices at the hospital to admit the patient and to take care of the patient. And so a significant amount of your patient population comes through the doctors at your hospital.

THE DEPUTY CLERK: Excuse me.

(The courtroom tape ran out.)

THE DEPUTY CLERK: Your Honor, for the record NCRIC versus Columbia Hospital for Women. Counsel you may proceed.

BY MR. GORSUCH:

Q I think the question pending, Ms. Chamblee, did the hospital have any expectations whether its medical staff would refer most of its patients to the hospital.

A Yes, it expected its medical staff to refer patients to the hospital.

Q Why is that?

A Because that was basically the way patients came into the hospital, is through the medical staff.

Q Doctors who chose to serve at Columbia?

A That's right.

Q And send most of their patients there?

A Yes.

Q Did you ever during your service from '87 all the way through '97 ever see an exodus of 30 attending faculty members?

A No, never.

Q How about in a six-month period, did you ever see anything like that happen, over six months?

A No.

Q Over a year?

A No.

Q Did you ever see anything like that happen over two years?

A No, I never saw an exodus like that.

Q As a board member and chairman, would you have known about a mass exodus of doctors if it had occurred during your tenure?

A Of course, I would have known. First of all, as chair of the performance improvement committee, I would have clearly known and been very concerned about it. But as a board member and certainly as chair of the board, I would have been very concerned about such an exodus. You know because the medical staff is the life blood of the hospital. When you have medical staff, you have

medicine?

A 1989.

Q What's your medical speciality.

A OB/GYN.

Q I'd like to move on and talk about your involvement with Columbia. Did you work in Columbia's clinic?

A Yes.

Q When was that?

A I believe I worked in the clinic in -- I may have started working in the clinic in about 1998 maybe.

Q And what were your responsibilities for the clinic?

A I was assigned a half a day in the general OB/GYN clinic to essentially take care of the clinic patients. And also I did some night call where we actually covered labor and delivery, covered the whole hospital essentially as a physician that was in the house, in the hospital.

Q So when you were on call for the clinic were you on call from home or actually from the hospital?

A In the clinic -- you know, the clinic setting is just like a private office setting. You

just see patients in the clinic. You're there from the time the clinic starts until you finishing seeing patients. The night call, you know, was a requirement that you in the hospital during that period. It could be 12 hours, it could be 24 hours. But it was in-hospital coverage.

Q So what hours would you typically be on call?

A I believe call always started at 8:00 a.m. and would last for 24 hours.

Q And what sorts of problems or medical emergencies would you deal with while you were on call?

A In general mostly it was management of labor, you know, doing deliveries and taking care of the few emergencies that may arise. Because there was no emergency room, we didn't have an actual emergency room, periodically there were clinic patients with an urgent problem. We had a way to see them in the hospital and manage and take care of their urgent problems.

Q And was that a benefit to the attending faculty at Columbia, that doctors like you were on call at the hospital 24 hours?

A Certainly. You know, in our specialty

gynecology.

Q And was there also a specialized oncology clinic of sort?

A Yeah, I believe there was a -- there was a physician who had an office upstairs. I think his name was Dr. Boyce. And he would receive referrals from our clinic on those patients who had issues that were -- that could potentially be cancerous. I don't know whether he actually saw patients down in the actual physical clinic setting but I know that we at times would refer our patients up to his office, which was I believe on the second floor of the hospital.

Q So when you saw clinic patients, if they needed specialized care, could you refer them to any one of these other specialized clinics?

A Yes.

Q And what happened when a patient came into the clinic who didn't have medical insurance and couldn't afford to pay for care?

A That was a frequent issue and there was a system set up that would assist those patients in getting insurance. So there would be some counselors there that would assess their financial state and, you know, see whether they were eligible

for D.C. medical assistance or whatever kind of, you know, assistance that was available to them. So there were dedicated counselors that were there on a full-time basis that did that type of assessment and help for the people who didn't have insurance.

Q Did you treat the patients first before you sent them to these counselors?

A Sometimes, yes. Sometimes, no. Sometimes we knew beforehand that they needed to go through the counselor. And then there were times where we provided care first and then had them referred to the counselors so they could have their insurance in order or whatever it is -- whatever kind of financial arrangements in order. It was primarily the pregnant patient where you had a little more time, you know, you had an idea about when they were going to deliver. You had a little more time to work with them to get their insurance issues resolved. You could see them, refer them to the counselors. You know, they would work while we were continuing to provide care. So, you know, care wasn't restricted because of inability to pay.

Q And where did clinic patients tend to come from geographically?

A Most of the patients came from Southeast. There was a good number of the population that came from Southeast. There was a good percentage of the population that came from Southwest. They traveled across town. Initially I thought that was -- you know, was pretty strange they would travel all the way across town passing other hospitals to come to Columbia. And there was also a group of patients that had chartered health plan or chartered insurance. And there would be a bus that would come every day that would bring patients, you know, to the back of the hospital. They would come in and come to the clinic and the bus would wait and take them back home. So -- but, you know, in looking at the demographics there was a large population of patients that came from east of the river.

Q Now, Doctor, do you recall a time when NCRIC stopped insuring physicians for their work in the Columbia clinic?

A I recall a time when there was an insurance issue where there was a change in the insurance.

Q And did that change affect -- how did that affect whether physicians could work in the

Columbia clinic if they were insured by NCRIC?

A There was a period of time where there were a lot of physicians who elected to work either on call in the hospital and work in the clinic. So getting hours was something that was a little difficult to do for a long period of time. And then there was -- if something happened and then we didn't have enough physicians to cover all of the slots that, you know, were available. There were times where clinics had to be canceled because there wasn't enough physicians. And there were physicians who actually left the hospital and left the clinic at that time. Whatever that -- whatever occurred caused, you know -- caused an exodus of physicians and, you know, it affected the scheduling of clinics.

Q So the NCRIC insurance issue affected whether physicians were able to work in the clinic?

MR. PAGE: Objection, leading.

THE COURT: Sustained.

BY MS. AIYAR:

Q How did this NCRIC insurance issue affect physicians?

MR. PAGE: Objection, no foundation.

THE COURT: Sustained.

A I believe, again, that was in 2000. That was, you know, somewhere like in the fall of 2000.

Q Do you remember whether doctors left Columbia around that time?

A Yes.

Q Do you remember about how many doctors left?

A It seemed that about half of the doctors that were delivering care at Columbia, you know, left within a short period of time, you know, right around the time that that occurred.

Q And based on your personal observations, did you know why these doctors left?

A Based on not only my personal observation but what was actually conveyed to me was --

MR. PAGE: Objection, hearsay.

BY MS. AIYAR:

Q Just based on your personal observations.

MR. PAGE: Your Honor, I object if any of this is based on conversations, which is what he started to say. He should be instructed --

THE COURT: The objection is sustained. The doctor can testify based on his own personal observations only.

THE WITNESS: Based on my personal

observation there was a period of time where there was a number of doctors leaving at one time.

BY MS. AIYAR:

Q Had you ever seen this many doctors leave Columbia all at around the same time?

A No.

Q And was this period of time close to the time when NCRIC announced that it was terminating the retro plan?

A Yes.

Q Do you know where most of these doctors went?

A Yes.

Q What hospitals did they go to or most of them?

A Most of them went to really three hospitals: Washington Hospital Center, George Washington Hospital, and Sibley.

Q Did Sibley and George Washington have retro plans with NCRIC?

A Yes.

Q How did this loss of doctors affect how busy the hospital was?

A Well, it had a tremendous impact. A labor and delivery area where at times there would

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INC., Plaintiff.	
V.	Civil Action No. 7308-00
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, Defendant.	

Washington, D.C.
Friday
January 30, 2004

The trial in the above-entitled action was resumed before the Honorable ANNA BLACKBURN-RIGSBY, Associate Judge, and a jury empaneled and sworn, in Courtroom Number 48A, commencing at approximately 2:45 p.m., pursuant to the continuance on January 29, 2004.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS THE TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

[As previously noted.]

16d-002799

Now, the center has a component for it. We have a low income mammography center in Betty Ford. Which means for those who cannot afford, we give them free mammograms. And not only free mammograms. If we found something abnormal, we take them to Columbia and we treat them.

Q I ask you to turn to page 2179 of that same exhibit. Just ask you what is that?

A This is the low income mammography, something about the description of the low mammography program in the Betty Ford Comprehensive Breast Center.

Q Were you aware of any other hospital in the District that gave away free cancer surgery to low income patients?

A I'm aware of mammograms but I'm not aware in any place where if they diagnose you have a problem, they take care of you.

Q How many free mammograms did Columbia give out every year?

A In excess of 2000.

Q How many members of the attending faculty on the staff were there, Doctor?

A About 80.

Q Did Columbia have reason to expect that

its doctors would refer their patients to Columbia?

A Yes.

Q Can you explain that?

A Yes. The attending faculty at Columbia are self-selected and self-elected. They have elected to band together to form what we call the faculty of Columbia. And they are bound by their history of admitting the bulk of their patients to Columbia and by their futuristic expectation that they're going to admit all their future patients to Columbia Hospital.

Q Even though they had privileges at other hospitals?

A Yes, even if they had privileges in other hospitals.

Q Like you had privileges at other hospitals?

A Yes. When I was at Columbia, I had privileges at Sibley but I admitted all my patients to Columbia.

Q And that's what it meant to be on the medical staff?

A Yes.

Q Do you know if other hospitals had similar expectations of their doctors?

A Probably some of them did.

Q How significant were these attending faculty doctors to the financial help of Columbia insuring its future?

A These physicians brought the bulk of the income to Columbia Hospital for Women.

Q What did that mean though in terms of the hospital's ability to operate?

A This means that the hospital depended on the business that its attending faculty bring in to continue to operate. No doctors, no patients, no hospital.

Q Columbia couldn't survive without its doctors?

A Not for a minute.

Q Do you know whether the executives at NCRIC were aware of this fact?

A I'm sure they were.

Q How long did doctors at Columbia intend to stay? Did they stay a few years or their entire careers?

A For a long, long, long years.

Q Were they loyal?

A They were.

Q Do you know what age attending faculty

tended to retire?

A They stayed for a long time beyond 65.

Q Did the hospital also have full time doctors? Did it employ full time doctors who work simply in the clinic?

A Yes, the hospital did.

Q Was Dr. Proctor one of these?

A Yes, sir.

Q He was an employee of the hospital?

A To work in the clinic in Columbia Hospital for Women, yes, sir.

Q Did the existence of the clinic doctors also help and have any role in recruiting attending faculty doctors?

A The clinic doctors, while they administered and gave care to people who want it, had another function. Their function was they were present in the hospital 24 hours a day, seven days a week so that if a physician is late to deliver his or her patient, the clinic doctor would step in. Because he or she were board certified obstetrician and gynecologist. And if a physician is stuck in a case, then that clinic doctor will be there to help and to manage. So it added an extra layer or an extra net of safety to the whole thing.

Q Safety to the patients?

A Safety to the patients, absolutely.

Q Comfort to the doctors?

A Comfort to the doctors. And making sure that clinical care is administered by competent people all the time.

Q Did that fact and the existence of the clinical doctors being there all the time help as a recruiting tool to attending faculty doctors?

A Absolutely. Because obstetricians need, in case of emergency, somebody to be there in the hospital who's a board certified obstetrician/gynecologist to take care of the patients all the time. And if obstetrician is in some other Hospital's or stuck in traffic or cannot make it for the delivery, there is a competent, specialized physician in Columbia to take care of events.

Q If you lose the clinic doctors and they can't work, what effect does that have on the operations of the hospital?

A You lose your safety net.

Q Does that also make it difficult to recruit other doctors to come work on the attending faculty?

A It will make it very difficult to recruit obstetricians to admit to a hospital that has no coverage from physicians in case there is an emergency.

Q Directing your attention to the early 1990s. Do you know what the trends were in terms of costs for medical malpractice insurance for OB/GYN doctors?

A They were going up.

Q How bad is the problem?

A Bad.

Q Did Columbia decide to do something about it for its doctors?

A Yes, Columbia decided to do something to retain, first, doctors in the city in Washington, D.C., so that doctors do not get out of the city and, second, to retain them for Columbia Hospital for Women, yes.

Q Was this Columbia's initiative or was this NCRIC's idea?

A Columbia's initiative.

Q What did Columbia decide to do?

A Columbia decided to do give the physicians a discount of a certain percentage and Columbia will shoulder the responsibility for that

16d-002805

Q Why not?

A Because we want to see the closure of each year and wait for all the claims have closed and then make our final calculations.

Q Did you trust NCRIC?

A Of course.

Q And trust them to hold your $150,000 safe?

A Absolutely.

Q To pay interest?

A Yes, we trusted them.

Q As president of the medical staff and later chairman of the board, would you have known if there were an agreement -- if the agreement to wait until all claims had closed and resolved had changed, if that agreement had changed or ended in any way?

A I'm not aware of that.

Q But as chairman of the board would you have known if there had been such a change in the parties' agreement?

A Absolutely.

Q Let me turn your attention to 1997. Was there a written contract in place between NCRIC and Columbia at that time?

A No.
Q When did it expire?
A The retro plan expired in September of '96.
Q Did the parties continue to operate without a contract?
A Yes, we continued to operate without a contract as if there was a retro plan.
Q How long?
A Till 1998, beginning of 1998.
Q Did NCRIC send out termination notices?
A No.
Q Did it send out bills without undiscounted premiums to the doctors?
A No.
Q Did the doctors continue to receive your discounts even though there wasn't a written contract in place?
A They continued to receive their discounts.
Q At some point in time did the parties start discussing a new contract?
A Yes.
Q And what was NCRIC's position?
A In 1997, late 1997 NCRIC came to

16d-002807

administration, a structured meeting. I remember I was there. Dr. Asterbadi was there. The CO was there. Mr. Fargis and Mr. Burgess were in attendance. And they told us that if we ever want to continue with retro plan and have a contract that we need to come up with some money.

Q How much?

A They told us that they are aware of the hospital's precarious financial condition and that they would require, in the beginning they said $1.7 million. Which they admit is not due them under the plan but that they needed because of what they described as the hospital's bad financial condition. And that unless we pay that there is going to be no contract, no retro plan, and no discount.

Q What did Columbia do?

A Well, Columbia asked what would happen first to the money. And NCRIC continued to characterize that this money is Columbia's money. It will stay on Columbia's books. It will be with NCRIC as a custodian and it will earn the same interest rate, between 12 and 6 percent, but that if we cannot pay it, there's going to be no contract and there's going to be no retro plan.

Q Who told you all this?
A Mr. Fargis and Mr. Burgess.
Q Did anyone ever say this is a payment of money?
A There was no payment due under any plan. They admit that. They just needed the money to -- as a deposit with them. It will remain on our books. It's actually our money. They are the custodians. And they mandated this not because the plan mandated it because they came and told us that they know we are in a precarious financial condition and, therefore, they demanded $1.7 million, which later they put it down to a million dollars.
Q If you could turn your attention to Defendant's Exhibit 79. Doctor, what is this?
A This is something that -- about the retro program that we have received on October of '99.
Q The date in upper left-hand corner?
A Yes.
Q And who provided this?
A NCRIC.
Q And what does this document purport to be?
A This is the document to explain on the

year-to-date plan '94 to '95, '95 to '96, '96 to '97 going onward.

Q Is a million dollars recorded in there?

A Yes, it's recorded as a Columbia deposit.

Q Can you show us where it is?

A It is actually just towards the three quarters down the page under losses. There is a retro premium due and there is Columbia deposit. And Columbia deposit between parenthesis a million dollars.

Q And that's just highlighted up on the screen at the moment?

A Yes, sir.

Q And so this is a NCRIC document and this is how they describe it to you?

A Yes.

Q I'm going to ask that we push that up to one side and bring up Defendant's Exhibit 81. What is this document, Doctor?

A This is a document provided by NCRIC in September 1 of 2000.

Q And it's another reconciliation statement of the parties dealings?

A Actually, this was one of their communications with reconciliation which was

interest that we can -- counted on our money. They converted it suddenly to a payment. They took the money.

Q Did you agree to that?

A Never.

Q Was it discussed with you?

A No.

Q Anyone at the hospital?

A With nobody.

Q Have you asked for the million dollars back?

A We did.

Q Has NCRIC ever returned a million dollars security deposit?

A NCRIC's answer to that was the lawsuit on October 3rd.

Q Let's talk for a minute about where Columbia got the million dollars for the security deposit to give to NCRIC. Where did it come from?

A The million dollars came from the self-insurance trust.

Q What's a self-insurance trust?

A Self-insurance trust is money that Columbia put one way, doesn't come back. Once it goes to the trust, it stays there and that money

the board concerned about there?

A That NCRIC will switch from being physician owned to become a wall street company.

Q Why was that of concern for a not-for-profit hospital?

A Because that makes the profits for NCRIC of paramount importance.

Q There's another con under NCRIC. Reads has had a near monopoly in the past. What was the board's discussion of consideration here?

A The board was discussing that there is a near monopoly on the insurance market in Washington, D.C., by NCRIC. And that the board was cognizant of the fact that you're not going to get lower premium if you don't get competitors to the area if monopoly still holds.

Q Do you know how malpractice premiums in the District compare with those in Maryland?

A In the District they're much higher.

Q How about compare them to Virginia?

A In the District they are much higher.

Q Do you know whether there is more competition among insurance companies in Maryland as compared to D.C.?

MR. PAGE: Objection, Your Honor. There

is no foundation for this testimony.

THE COURT: Sustained.

BY MR. GORSUCH:

Q Do you know, Doctor, whether there is more competition? Just yes or no, do you know whether there is more competition in Virginia among insurance companies?

A Yes.

Q Do you know whether there's more competition among insurance companies in Maryland?

A Yes.

Q Was the board interested in bringing competition to the District?

A The board was interested in saving money for the hospital. We were in bankruptcy and we were interested in making sure we get the best deal for us and for the hospital and for the physician.

Q Did the board make any finding about why the costs were so much more expensive in D.C.?

A Yes. Because with no competition there's always high premiums.

Q I'm going to ask you to turn to one of the pros under MIIX, Doctor. It's the last one actually. Lower total final cost for all participants?

Q Goes on to say, NCRIC stands ready to discuss with Columbia other needs they may have and alternatives that may better suit them. However, should Columbia not wish to continue its program with NCRIC, we will be contacting the members shortly to discuss alternatives for the renewal on January 1, '99, that will provide everyone the same savings opportunities that they currently enjoy.

What was your understanding about the phrase alternatives to renewal? Alternatives for renewal on January 1, 1999.

A That they're going to take our doctors away.

Q Why?

A Because we are not having a retro plan with them.

Q There was going to be no alternative with NCRIC at Columbia?

A We already voted to go with MIIX at that time.

Q Talks about some savings opportunities that the doctors currently enjoy. What were those?

A The doctors had no savings with the NCRIC program. The savings was for NCRIC.

Q I'm sorry, Doctor, the savings was what?

and to the physicians of the hospital that I am the chairman of the board of. And I thought I'm going to attend anyhow, uninvited, because I was a NCRIC policy holder.

Q You were insured personally by NCRIC at that time?

A Yes, I was.

Q Again, who's present for NCRIC at these meetings?

A Mr. Pate and Mr. Fargis, I think Mr. Burgess.

Q Did Mr. Fargis or Mr. Pate discuss what the Columbia doctors should do if the hospital in fact went with MIIX?

A Yes, they did.

Q Who talked about that issue.

A Mr. Pate.

Q What did he say?

A He says that the doctors -- Columbia does not have a retro plan. The doctors should leave and go to another hospital that has it.

Q Did they specify which hospitals?

A The hospitals that have it. Other programs they said.

Q With NCRIC, programs with NCRIC?

A Yes.

THE COURT REPORTER: I'm sorry, wait a minute. Would you say that again.

BY MR. GORSUCH:

Q I'm sorry. Did he specify what kind of hospitals?

A No, he said other programs with NCRIC.

Q Did Mr. Fargis or Mr. Pate say anything about the leaders of Columbia Hospital at this meeting?

A Yes, he did.

Q Let's start with Mr. Pate. Did he say something to that effect?

A He did.

Q What did he say?

A He said that Columbia's leadership saying that it cannot afford the payment of cash is not true. They're not saying the truth. Although at that time we were in chapter 11. And, second, he said that bringing MIIX to Washington does not benefit the physicians, it benefits some of the board members part of Columbia Hospital for Women.

Q Could you explain what he meant by that?

A He meant that some members of the board were stand to benefit from the MIIX proposal.

Q Personally?
A That's what I understood, personally.
Q How many doctors did he say that in front of?
A 15.
Q Is that true?
A That was untrue.
Q Did any of the Columbia leadership have anything personal to gain out of MIIX coming, other than lower premiums?
A Nothing.
Q Let's talk about the second meeting. Were you invited to that one?
A The second meeting was more public. So I read the poster and I went. It was in a hotel in front of the hospital and I went there.
Q Did NCRIC bother to contact you as chairman of the board and president of the medical staff about it?
A No.
Q You had to read the poster on a notice board?
A I knew it by reading something, either a poster or a circular.
Q Did NCRIC show doctors power point slides

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
JAN 23

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN	)	Next Event: Trial,
MEDICAL CENTER, INC.,	)	January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S MOTION FOR ADDITIONAL SANCTIONS WITH RESPECT TO NCRIC'S LATE-PRODUCED EXPERT DOCUMENTS AND SLIDES

On January 28, 2004, the Court invited Columbia to propose additional sanctions to address NCRIC's production of 50 separate slides and 735 pages worth of never before seen hearsay documents three business days before the scheduled start of trial. Columbia respectfully submits that an additional ruling is in order. A brief review of NCRIC's slides and underlying materials demonstrate that NCRIC wishes to use its experts in at least three distinct ways that it never disclosed in its Rule 26(b)(4) statements. Lacking any time to prepare a rebuttal to expert theories that should have been revealed years ago, Columbia would be irreparably prejudiced should NCRIC's experts be permitted to testify to these never-disclosed opinions. Columbia therefore seeks an order limiting NCRIC's experts to testifying within the scope of their Rule 26(b)(4) statements.

Discussion

I. NCRIC HAS SOUGHT – AT THE LAST MINUTE – TO INTRODUCE AT LEAST THREE NEW, PREVIOUSLY UNDISCLOSED EXPERT THEORIES

A. NCRIC's Seasonably Disclosed Expert Theories

On August 9, 2001, NCRIC served Columbia with its Rule 26(b)(4) statement. Ex. A. In that filing, NCRIC disclosed several potential expert witnesses, including Steven Moore, W. McKay Henderson, and Mary Woodford. NCRIC stated that Moore would "provide testimony involving a market analysis of the hospital and healthcare market *in the District of Columbia Metro area*, impact of certain financial and market factors such as admissions, reimbursement levels, demographics, staffing, revenue cycles, etc. on the financial stability of a hospital and the defendant." *Id.* at 2 (emphasis added). NCRIC disclosed that Henderson and Woodford would testify to an "assess[ment] of the various damage elements that defendants have stated." *Id.* at 1. All three of these witnesses were also designated to testify that "the *damages allegedly suffered by defendant* are . . . the result of factors other than those alleged by defendant," and that if any damages were found to be related to tortious activity on NCRIC's part, "the amount of damages caused by plaintiff's activities is less than as calculated by defendant's experts." *Id.* at 1-2 (emphasis added).

On February 14, 2002, NCRIC expressly acknowledged its duty to supplement seasonably its Rule 26(b)(4) disclosures, revealing that Woodford would also testify to her opinion that Peter Ben Ezra's damages calculations "have not been made to a reasonable degree of economic certainty due to his lack of independent inquiry and lack of reasonable and supportable bases for the assumptions underlying his conclusions." Ex. B at 2. NCRIC also specifically stated that its previous, August 9, 2001, disclosures for its other experts, including Moore and Henderson, "remain[ed] valid." *Id.*

B. NCRIC's Three Brand New Theories

NCRIC's last-minute production of documents and slides reveals that NCRIC intends to elicit opinions and testimony from Moore and Henderson that fall outside the scope of its Rule 26(b)(4) disclosures in at least three respects.

1. Moore's materials indicate that he does not intend to confine his analysis to the D.C. Metro area healthcare market. Rather, *half* of Moore's 30 slides make clear that he wishes to discuss and opine on trends *nationally* with respect to "urban hospitals" and the "women's specialty" hospital business. For example, one of his slides sets forth the opinion that "[f]ew hospitals *in the U.S.* are similar to [Columbia]," and another relies on a nationwide survey to draw the conclusion that Columbia's business model as a women's specialty hospital could not capture all of its potential revenues. A series of additional slides compares performance and financial statistics for Columbia to those for other "National Urban Hospitals." Far from discussing Columbia's place in the D.C. Metro area healthcare market, Moore plainly plans to discuss features of the market for hospitals nationwide, and compare Columbia to hospitals well outside the D.C. metropolitan area market.[1]

2. Other slides indicate that Moore and Henderson both intend to opine that Columbia would have closed regardless whether NCRIC engaged in tortious conduct. But Columbia was never put on notice that these professionals would be called to offer an opinion on the reasons for Columbia's closure. Rather, Henderson and Moore were designated to address

---

[1] Moore's underlying materials reinforce the point, including: A Summary Report by Merritt, Hawkins & Associates ("MHA") entitled "2003 Survey of Hospital Physician Recruitment Trends." MHA is "a *national* physician search and consulting firm" that is headquartered in Irving, Texas; a report from Solucient, which deals with the bottom lines of hospitals, cites "data from more than 3,700 hospitals," uses "operating profit margins for the *median U.S. hospital,*" and discusses distinctions between urban and rural hospitals; and a 150 page almanac of national

16d-002820

the cause of the damages *that Columbia alleged.* And *none* of Columbia's alleged damages flow from the closing of the hospital. Instead, they constitute predominantly cash flows lost as a result of doctors leaving Columbia because of NCRIC's tortious activities -- not *all* of the cash flows lost as a result of the hospital closing. *See* Ex. C (Joint Pre-Trial Statement (July 24, 2003)) at 16-17.[2] Indeed, if Columbia had sought damages for the closure of the hospital, that would be an amount *many times larger* than what is sought here. (For example, Peter Ben Ezra opines that Columbia lost approximately $2.5 million per year in revenues as a result of the doctors leaving after NCRIC's tortious conduct. By contrast, the closing of the hospital meant the loss of over $40 million in revenues per year.)

3. Henderson's materials contain articles by the American Institute of Certified Public Accountants on issues relating to professional ethics and standards with respect to independence and bias among professional accountants. While NCRIC seasonably supplemented its Rule 26(b)(4) statement to disclose that Woodford would testify on this score, it never so supplemented for Henderson; it has designated him to testify only about the calculations made by Peter Ben Ezra, not Mr. Ben Ezra's compliance with actual or imagined professional ethical standards. Meanwhile, NCRIC has apparently elected to withdraw Woodford as a witness.

---

healthcare statistics, which does not offer a single separate statistic for D.C. hospitals – all of its tables contain "N/A" under the District of Columbia category.

[2] Columbia's damages also include lesser amounts attributable to the cancellation of the Columbia gala fundraiser and the denial of a HUD loan; expenses incurrent connection with its bankruptcy proceedings; the improperly retained $1 million security deposit; and amounts due under the contract. *Id.* Additionally, Columbia seeks pre-judgment interest and punitive damages. *Id.*

II. THE COURT SHOULD EXCLUDE NCRIC'S NEWLY-REVEALED EXPERT THEORIES

"Common sense suggests that when a party makes a last-minute change that adds a new theory of liability, the opposing side is likely to suffer undue prejudice." *Macaulay v. Anas*, 321 F.3d 45, 52 (1st Cir. 2003).

That is exactly the case here. In order even to begin to digest and rebut NCRIC's new expert opinions, Columbia would have defend not only arguments about the D.C. hospital market, but also about the market for hospitals in *fifty* different states – something it never had any reason to believe would be part of this case.

Columbia would likewise suffer prejudice if NCRIC's experts are permitted to discuss the previously undisclosed theory that Columbia would have failed even if NCRIC did commit tortious acts. While the hospital's closure is certainly a relevant fact to this case, as both sides admit, Columbia does not seek damages for the hospital's closure. Rather, it seeks damages only for physician-driven revenues lost in the immediate aftermath of NCRIC's tortious conduct, lost fundraising opportunities, and a lost HUD loan – all events that immediately followed NCRIC's tortious conduct. In its Rule 26(b)(4) report, NCRIC said that its experts would testify that Columbia's claimed damages were not the result of NCRIC's conduct but the result of other causes, and it is free to do so. NCRIC *never* told Columbia or the Court that its experts would opine on the distinct question whether the hospital would have closed even if NCRIC *did cause* the losses Columbia alleges. NCRIC's experts now, in essence, want to tell the jury to ignore Columbia's damages – *even if NCRIC did cause them* – because the hospital would have died anyway. That involves an entirely new and different expert opinion than that which NCRIC ever disclosed, one that Columbia has never had an opportunity to investigate, test, or challenge – and one that would be grossly prejudicial if it were permitted to be aired before the jury.

Finally, Columbia would be prejudiced if Henderson is permitted to testify on professional ethics topics on which only Woodford was disclosed as having formed an opinion. During discovery, Woodford submitted a supplemental 26(b)(4) report and declaration, which would have been used to cross-examine her vigorously at trial. By maneuvering to substitute Henderson for Woodford at the last minute, NCRIC plainly seeks to deny Columbia that right and opportunity.

Columbia could have undertaken to address each of NCRIC's newly-disclosed expert theories had they been revealed seasonably, literally years ago. Columbia, however, was denied that opportunity. Under similar circumstances, court after court has refused to permit last-minute expert theories to go to the jury.[3] Indeed, some courts have gone much further in sanctioning last-minute expert disclosures, as this Court would be well within its rights to do. *See Mems v. City of St. Paul*, No. 97-1589, 2002 U.S. Dist. LEXIS 3517, at *4 (D. Minn. Feb. 20, 2002), *aff'd*, 327 F.3d 771 (8th Cir. 2003) (reaffirming decision to exclude expert's testimony in its entirety when expert's supplemental notes were not provided to opposing counsel until night before scheduled testimony).

---

[3] *See, e.g.*, *Macaulay*, 321 F.3d at 51 (affirming trial court ruling that litigant could not rely at trial on a theory revealed in an untimely supplemental expert report; rather, "the parties were bound by the tenor of the reports that had been submitted" in a timely fashion); *In re Omeprazole Patent Litig.*, No. M-21-81, 2002 U.S. Dist. LEXIS 3225, at *10 (S.D.N.Y. Feb. 27, 2002) (precluding expert "from testifying to the opinions and facts expressed in his Supplemental Expert Report" when that report was not timely disclosed); *Shalley v. City of Philadelphia*, No. 94-5883, 1996 U.S. Dist. LEXIS 5690, at *9-*10 (E.D. Pa. May 1, 1996) (refusing to admit untimely filed supplemental expert report; "[a]t trial, plaintiff's expert's testimony will be narrowly confined to the specific findings and opinions contained in plaintiff's original expert report").

Conclusion

Columbia seeks an order precluding NCRIC from offering expert testimony or opinions not previously disclosed in NCRIC's Rule 26(b)(4) disclosures, including without limitation, about (1) trends in the healthcare market outside the D.C. metropolitan area; (2) the reasons why Columbia closed; and (3) professional accounting ethics. A proposed order is attached.

DATED: February 2, 2004

Respectfully submitted,

Neil M. Gorsuch / EAP by permission

Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-002824

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Trial, January 26, 2004
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of Defendant/Counter-Plaintiff Columbia Hospital For Women Medical Center, Inc.'s Motion for Additional Sanctions With Respect To NCRIC's Late-Produced Expert Documents and Slides, it is hereby

ORDERED that Plaintiff/Counter-Defendant NCRIC, Inc. is precluded from offering expert testimony at trial related to the information contained in its late-produced documents that does not fall within the subject matter of its Rule 26(b)(4) disclosures. This includes testimony relating to (1) trends in the healthcare market outside the D.C. metropolitan area; (2) the reasons why Columbia closed; and (3) professional accounting ethics.

ENTERED this ____ day of _____, 2004.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

EXHIBIT A

8/9/01

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)
	)
Plaintiff,	)
	)
v.	) Civil Action No. 0007308-00
	) Calendar #8
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.	) Judge Linda K. Davis
	) Next Event: Discovery close 8/12/01
	)
Defendant.	)

RULE 26(b)(4) STATEMENT AS OPPONENT OF A CLAIM

Plaintiff, by and through its attorney Roy Niedermayer, hereby states in accordance with SCR 26(b)(4) that it expects to call the following expert witnesses at the trial of this matter:

1. **W. McKay Henderson and Mary Woodford**
   1900 K Street, NW Suite 900
   Washington DC, 20006

Mr. Henderson and Ms. Woodford, whose *curriculum vitae* are attached hereto as Exhibits A and B, are expected to testify with regard to analysis and rebuttal to the calculation of damages as alleged by the experts for Columbia Hospital for Women. While defendant has not provided a report or the detailed substance of calculations for the damages it alleges or the bases for any opinions which he will render, and the deposition of defendant's expert noticed for August 22, 2001 has not yet taken place, and defendant has informed plaintiff that its expert Mr. Peter Ben Ezra has not yet prepared his calculations or analysis, it is anticipated that Mr. Henderson and Ms. Woodford will be assessing the various damage elements that defendants have stated, including loss of revenue, damaged reputation in the community, and the loss of good will. Mr. Henderson and Ms. Woodford are expected to testify that the damages allegedly suffered by defendant are substantially if not wholly the result of factors other than those alleged by defendant. To the extent the damages are found to be related to any tortious activity by plaintiff, Mr. Henderson and Ms. Woodford are further expected to testify that the amount of damages caused by plaintiff's activities is less than as calculated by defendant's experts.

Upon receipt of damage information from defendant, Mr. Henderson and Ms. Woodford can provide the substance and facts to which they are expected to testify. It would be expected that the factual data Mr. Henderson and Ms. Woodford will consider in evaluating alleged damages may include analysis of Columbia's historical records and reports, operating statistics and financial results for the Hospital and specific doctors that were impacted and other relevant market data.

For his expected opinion testimony, Mr. Henderson, a Partner with PricewaterhouseCoopers LLP, and a Certified Public Accountant, will draw upon his professional training, knowledge and experience in the fields of accounting and financial analysis, knowledge of the healthcare field and knowledge of methodologies for the calculation of economic damages. He has been qualified as an expert to testify on economic damages in other courts.

Ms. Woodford, a Director with PricewaterhouseCoopers LLP, with a Masters in Business Administration, will draw upon her professional training, knowledge and experience in the fields of accounting and financial analysis, and knowledge of methodologies for the calculation of economic damages. She has been qualified as an expert to testify on economic damages in other courts.

2. **Steve Moore**
1900 K Street, NW Suite 900
Washington DC, 20006.

Mr. Moore, whose *curriculum vitae* is attached hereto as Exhibit C, is expected to testify with regard to analysis and rebuttal of damages as alleged by Columbia Hospital for Women. While defendant has not provided a report or the detail substance or calculations for the tens of millions of dollars in damages it alleges, it is anticipated that Mr. Moore will provide testimony involving a market analysis of the hospital and healthcare market in the District of Columbia Metro area, impact of certain financial and market factors such as admissions, reimbursement levels, demographics, staffing, revenue cycles, etc. on the financial stability of a hospital and the defendant. Mr. Moore is expected to testify that the damages allegedly suffered by defendant are the result of factors other than those alleged by defendant. To the extent the damages are found to be related to any tortious activity by plaintiff, Mr. Moore is further expected to testify that the amount of damages caused by plaintiff's activities is less than as calculated by defendant's experts.

Upon receipt of damage information from the plaintiffs Mr. Moore can provide the substance and facts to which he is expected to testify. It is expected that the factual data Mr. Moore will consider in evaluating alleged damages may include analysis of Columbia's historical records and reports, financial statements, operating statistics and financial results for the Hospital.

For his expected opinion testimony, Mr. Moore, a Partner with PricewaterhouseCoopers LLP, and a Certified Public Accountant, will draw upon his professional training, knowledge and experience in the fields of accounting and financial analysis, knowledge of the healthcare operations, and knowledge of financial and market factors effecting hospitals in the District of Columbia Metro area.

3. **Martin Cohen**
1900 K Street, NW Suite 900
Washington DC, 20006.

Mr. Cohen, whose *curriculum vitae* is attached hereto as Exhibit D, is expected to testify with regard to analysis and rebuttal of damages as alleged by Columbia Hospital for Women. While defendant has not provided a report or the detail substance or calculations for the tens of millions of damages it alleges, it is anticipated that Mr. Cohen will provide testimony on the impact from a financial, competitive market, and staffing position that bankruptcy filings have on a hospital and various related issues that arise in negotiations and relationships with physicians. Mr. Cohen is expected to testify that the damages allegedly suffered by defendant are the result of factors other than those alleged by defendant. To the extent the damages are found to be related to any tortious activity by plaintiff, Mr. Cohen is further expected to testify that the amount of damages caused by plaintiff's activities is less than as calculated by defendant's experts.

Upon receipt of damage information from the plaintiffs, Mr. Cohen can provide the substance and facts to which he is expected to testify. It is expected that the factual data Mr. Moore will consider in evaluating alleged damages might include analysis of Columbia's historical financial records and reports, bankruptcy filings, financial statements, and operating statistics.

For his expected opinion testimony, Mr. Cohen, a Partner with PricewaterhouseCoopers LLP, will draw upon his professional training, knowledge and experience in the fields of finance and financial analysis, knowledge of the healthcare operations, and knowledge of the bankruptcy process as related to healthcare entities.

Respectfully submitted,

Roy I. Niedermayer, DJK

Roy Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on August 9, 2001, a copy of plaintiff's Rule 26(b)(4) Statement as Opponent of a Claim was mailed first class mail, postage prepaid, to:

Mark C. Hansen, Esq.
Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, DC 20006

Roy I. Niedermayer/DJK

Roy I. Niedermayer, Esq. #180380
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
Telephone: 301-951-4456

Attorney for Plaintiff

W. Mckay Henderson
w.mckay.henderson@us.pwcglobal.com

POSITION

Partner, Financial Advisory Services, PricewaterhouseCoopers LLP

EDUCATION

Bachelor of Science in Business Administration, emphasis-Accounting - University of North Carolina - Chapel Hill - (1976 to 1981)

Appalachian State University, Boone, NC (1974 to 1976, Transferred to UNC-CH)

RANGE OF EXPERIENCE

Mr. Henderson is a Partner in PricewaterhouseCoopers' Financial Advisory Services practice, specializing in dispute analysis and investigations. He has assisted law firms and corporate clients in financial and operational analysis and damages calculations in a variety of litigation matters, including breach of contract, franchising matters, minority shareholder disputes, insurance fraud, business interruption claims, wrongful termination/lost wages, lender liability, and securities litigation. He has been named and testified as an expert witness in many of these matters. He also has extensive experience with investigative/forensic accounting matters including assisting clients with the allegations of vendor kickbacks, embezzlements by employees, insurance fraud, and healthcare fraud both investigating third parties and defending against Government actions. Mr. Henderson has been involved with dispute analysis and investigations since 1984.

PROFESSIONAL EXPERIENCE

PRICEWATERHOUSECOOPERS LLP., Washington, DC (1998-present), Financial Advisory Services,

COOPERS & LYBRAND L.L.P., Philadelphia, PA (1990-1998), Financial Advisory Services,

LAVENTHOL & HORWATH., Philadelphia, PA (1987 – 1990), Litigation and Insurance Claims,

GRANT THORNTON., Philadelphia, PA (1985 – 1987), Litigation Consulting Services,

ARTHUR YOUNG & COMPANY., Charlotte, NC (1983-1985), Management Consulting,

DUKE POWER., Philadelphia, PA (1981-1983)

PUBLICATIONS & SPEECHES

Co-authored article entitled "Proceed with Caution" published in the Summer 1993 in Chester County Business & Industry.

"Taming the Liability Monster" – L&H Perspective, Vol. 15, Number 1, 1989

"What Every Non-Profit Director Needs to Know" – Philadelphia Business Journal, January 1994

"Making the Best of Corporate Integrity Agreements" – Healthcare Financial Management – July 2001.

TESTIMONY EXPERIENCE

* Testified at trial on the value of chemical distributor related to a divorce action. (Montgomery County Court of Common Pleas)

* Testified at disposition and trial concerning lost profits and value of a custom van dealership. (United States District Court for the Eastern District of Pennsylvania)

* Testified at trial on the value of partnership interest related to the dissolution of a physician practice. (Bucks County Court of Common Pleas)

* Testified at trial in a defamation matter as to analysis of lost earnings of an OB-GYN practice. (Court of Common Pleas-Philadelphia, PA)

* Testified at trial and deposition in an insurance fraud matter related to the trucking industry as to the calculation of insurance premiums owed by plaintiff. (Superior Court of Delaware)

* Testified at deposition on behalf of insurance carrier as to income reported per filed tax returns.

*Testified at deposition on behalf of quick lube franchiser as to value of potential franchises. (Federal Court – Camden, NJ)

* Testified as a fact witness at deposition on behalf of client related to internal investigation of travel and entertainment expenses. (District Court Western District of Washington at Seattle)

* Testified at trial on behalf of charter service as to lost profits in a breach of contract matter. (Superior Court of New Jersey – Atlantic County)

* Testified at deposition on behalf of investment banking firm as to investigation of the misappropriation of investments by management of an investment fund. (Superior Court of New York)

OTHER EXPERIENCE

Economic Damages

* Engaged to assist counsel with the analysis of alleged lost profits related to termination of a contract involving water purification equipment.

* Involved in dispute between a contractor and municipality on cost overruns and lost profits on the reconstruction of a housing development.

* Engaged to assist franchisor of fast food restaurants with the calculation of damages related to alleged breach of contract by franchisee.

* Engaged by franchisor of national quick lube chain to analyze franchisee's damage calculation and developed alternative damage theories.

* Engaged to investigate alleged lost profits and potential fraud related to claims made by owner of restaurant to their insurance carrier.

OTHER EXPERIENCE

* Engaged to analyze plaintiff's damage calculations involving losses allegedly substantiated due to contaminated product injuring livestock.

* Engaged to analyze lost profits alleged by various roofing contractors related to allegations of price fixing and anti-trust violations.

* Engaged by a hospital to assist with breach of contract claims against a third party-billing agency related to collections and fees charged.

* Engaged by a large physician practice at assist with breach of contract claims against a third party billing company.

Accounting Investigations

* Engaged on behalf of the majority shareholders of a family owned business to assist with the defense of allegations by minority shareholders of the misuse of corporate assets. Assistance included analysis of the corporation's accounting records, analysis of capital expenditures, dividend payments, officer' s compensation and retirement benefits.

* Assisted with the identification and tracing of assets misappropriated by the president and other officers of a corporation. Our team traced over $70 million of funds that were originally invested by individual investors through private placement offerings. The president used over 20 corporations for the movement of investor funds and acquisition of assets.

* Engaged by majority owners of a start-up corporation. The owners were concerned that the president was misappropriating corporate assets. Analyzed the corporation accounting records, interviewed the president and other employees, confirmed certain assets through physical observation and performed searches of public records.

* Engaged by a church organization to investigate allegations that checks were

PROFESSIONAL CREDENTIALS	Certified Public Accountant – P.A., N.C., D.C. Certified Fraud Examiner
PROFFESIONAL MEMBERSHIP	American Institute of Certified Public Accountants Pennsylvania and North Carolina Institute of Certified Public Accountants National Association of Fraud Examiners

Mary A. Woodford
mary.a.woodford@us.pwcglobal.com

POSITION

Director, Financial Advisory Services, PricewaterhouseCoopers LLP

EDUCATION

MBA/General Management, Colgate Darden Graduate School of Business Administration, University of Virginia, Charlottesville, VA (1976-78). Recipient of the William Michael Shermet Award (1977).

AB/Economics, Summa Cum Laude, Sweet Briar College, Virginia (1972-76). Ranked first in graduating class. Phi Beta Kappa. Junior year at University of Southhampton, England.

RANGE OF EXPERIENCE

Ms. Woodford is a Director in PricewaterhouseCoopers' Financial Advisory Services practice, specializing in dispute consulting and financial analysis. She has assisted law firms and corporate clients in financial and operational analysis and damages calculations in a variety of litigation matters, including patent and trademark infringement, theft of trade secrets, antitrust, breach of contract, consumer fraud, unfair competition, lender liability, solvency and bank fraud. In addition to specializing in litigation consulting since 1989, Ms. Woodford has 10 years of financial management experience with a Fortune 200 company, including assignments in the United States and in Barcelona, Spain.

PROFESSIONAL EXPERIENCE

PRICEWATERHOUSECOOPERS LLP., Washington, DC (1998-present), Financial Advisory Services, **Director** (1998-present)

COOPERS & LYBRAND L.L.P., Philadelphia, PA (1993-1998), Financial Advisory Services, **Director** (1997-1998); **Manager** (1993-97)

PRICE WATERHOUSE, Philadelphia, PA (1989-93), Litigation Services, **Senior Manager** (promotion announced April 1993); **Manager**, (1990-93); **Senior Consultant**, (1989-90)

FMC CORPORATION, Chicago, IL (1979-89)

- Foret SA, Barcelona, Spain (Subsidiary of FMC Corporation) (1987-89), **Financial Manager**
- Peroxygen Chemicals Division, Philadelphia, PA (1984-87), **Financial Analyst**
- Special Products Group, Philadelphia, PA (1982-84), **Planning Manager**
- Corporate Development, Chicago, IL (1979-82)
- **Senior Acquisitions Analyst**

CONTINENTAL ILLINOIS BANK, Chicago, IL (1978-79), **Multinational Banking Associate**

PUBLICATIONS & SPEECHES

"Financial Aspects of LICENSE NEGOTIATION, LESSONS FROM GEORGIA PACIFIC", Les Nouvelles, September 1995.

"The Prejudgment Interest Award in Alpex Computer Corp. v. Nintendo Co. Ltd": The Pittsburgh Legal Journal, April 1996; Les Nouvelles, December 1996.

Panelist at Stakeholder Session held by USPTO, October 1998, to discuss the role of intellectual property and of the USPTO in the US economy.

Presentation on the Use of Financial Statements for Lawyers, American Corporate Counsel Association, November 1998.

Instructor, PricewaterhouseCoopers Internal Training. Advanced Intellectual Property Course, 1998 and 2000; Introductory Intellectual Property Course, April 1999.

Calculating Monetary Relief: Damages and Profits, ALI-ABA Litigating Trademark, Trade Dress, and Unfair Competition Cases, December 2000.

Patent Damages, LEI Intellectual Property Law Conference, January 2001.

Did Grain Processing Murder Panduit in the Conservatory with a Candlestick? Or, Are Rumors of Panduit's Demise Exaggerated?, ABA IP Section Newsletter, Winter 2001.

Review of Chapter on "Damages Issues of Trademark, Trade Secret, False Advertising and Copyright Cases," Litigation Services Handbook, 3rd Edition, Wiley 2001.

TESTIMONY EXPERIENCE

* Testified at deposition on behalf of plaintiff in misappropriation of trade secrets involving health care practice management computer systems. (U. S. District Court Western District of Wisconsin)

* Testified at deposition on behalf of defendant in a Lanham Act matter involving retail of women's apparel. (U.S. District Court Southern District of New York)

* Testified at arbitration on behalf of defendant in a breach of contract, and misappropriation of trade secrets matter involving interactive electronic program guides used on cable television set-top boxes. (AAA, San Francisco)

* Testified at deposition on behalf of defendant in class action matter involving potential excess interest on consumer credit cards. Submitted expert affidavit in connection with approval of settlement. (U.S. District Court of Delaware)

* Testified at deposition on behalf of defendant in breach of warranty matter involving defective shoes. (U. S. District Court of Maine)

* Testified at trial on behalf of defendant in patent infringement matter, as to lost profits, price erosion, and reasonable royalty in office products industry. (U. S. District Court Western District of Wisconsin)

* Testified at deposition and in a Daubert hearing on behalf of defendant in breach of contract matter involving the distribution of a consumer product in the Baltics. (U.S. District Court, New Jersey)

* Testified at deposition on behalf of Chapter 11 debtor-plaintiff in breach of contract matter involving a critical raw material in a start-up venture. Matter settled prior to trial. (U.S. Bankruptcy Court, New Jersey)

* Testified at deposition and at trial on behalf of plaintiff in breach of contract matter involving the distribution of specialty paper. (U.S. District Court, New York – Southern District)

* Testified at trial on behalf of hospital in breach of contract matter involving a cardiac surgery practice. (Pennsylvania State Court)

* Testified as to the adequacy of a university environmental laboratory's cost accounting system relative to compliance with state regulations. (Iowa State Court)

* Testified to the appropriate methodology of determining the damages to a bank resulting from the fraudulent use of a working capital line of credit. (U.S. District Court; Eastern District of Pennsylvania)

OTHER INTELLECTUAL PROPERTY EXPERIENCE

* Issued expert report on reasonable royalty rate and damages involving toy software.

* Directed engagement on lost profits, unjust enrichment, and reasonable royalty damages involving genetically modified seed in a breach of contract matter.

* Directed engagement on reasonable royalty rate and damages involving a pharmaceutical product. Matter settled before trial.

* Directed engagement on reasonable royalty rate and damages involving a sensor used in carbon monoxide detectors. Matter settled before trial.

* Directed engagement on royalty revenue recovery for multinational telecommunications client in Europe and Far East.

* Issued expert opinion as to lost profits and reasonable royalty in design patent matter involving novelty items. Matter settled before trial.

* Selected as the expert to lead engagement team on patent infringement damages, including lost profits and reasonable royalty on behalf of alleged infringer in sports equipment industry. Issues also involved evaluating impact of infomercials. Matter settled before expert discovery was completed.

* Lead engagement team on patent infringement damages, including lost profits, reasonable royalty, and price erosion, on behalf of alleged infringer in television transmitter industry.

* Lead engagement team on patent infringement damages, including lost profits and reasonable royalty, of both claimant and counterclaimant in multi-billion dollar consumer product industry.

* Directed engagement team in two engagements on determination of the infringing revenue base for reasonable royalty determination involving process patent in semiconductor industry. Assisted counsel in analysis and rebuttal of reasonable royalty opinions issued by opposing experts.

* On behalf of defendant, analyzed and prepared critique of damage claims for tens of millions of dollars related to alleged theft of trade secrets by major publicly owned entertainment company.

* Issued expert opinion as to reasonable royalty in patent infringement matter involving automotive product.

* Issued report and expert opinion involving reasonable royalty involving textiles and bedding products. Matter settled before trial.

* Lead engagement team in determining trademark infringement damages in consumer mail order business. Matter settled before trial.

OTHER INTELLECTUAL PROPERTY EXPERIENCE

* Lead engagement team in matter involving breach of contract on software/networking product development.

* Lead engagement team in insurance coverage dispute involving an approximately $26 million settlement of litigation involving past and future rights to certain trademarks and logos involving personal computers and musical products.

* Issued expert rebuttal report addressing damages in a dispute involving the installation of a computer system at a food processing company.

OTHER EXPERIENCE

* Directed engagement concerning performance of software of an Internet product in a network environment. Coordinated with counsel and technical computer experts.

* Directed multidisciplinary engagement team in analysis of and reconstruction of multi-billion dollar mortgage-backed securities portfolio, analysis of institutional performance and other issues associated with a savings and loan.

* Assisted testifying witness and counsel in analysis and discovery of breach of contract claim involving the distribution of novelty gift items. Client was awarded approximately $46 million in damages.

* Assisted counsel in discovery and rebuttal of plaintiff's damages claim in antitrust matter involving electronic funds transfer.

* Directed engagement team to assist expert witness and counsel for defendant in analysis of liability and damages issues in a lender liability matter involving a real estate construction loan.

* Directed engagement to assist expert witness and counsel in defense of lender liability claim involving government contracts for a regional fuel oil distributor.

* Directed engagement team to assist expert witness in analysis of liability and damages issues in lender liability claim involving a retail clothing company.

* Issued expert report on the value to a debtor's estate of an exclusive distribution contract for beverages.

* Assisted expert witness in development of solvency opinion in connection with a fraudulent conveyance claim for a bankrupt airline. Analyzed company projections, aircraft purchase contracts and lease agreements, and coordinated analysis with technical airline industry experts.

STEPHEN M. MOORE

Partner

Steve serves as partner-in-charge of our Healthcare Consulting Practice in the Mid-Atlantic Region. He is an integral part of our Firm's healthcare practice from our Washington office with eighteen years of experience serving a variety of healthcare clients. He also serves as the National partner-in-charge of PwC's finance team within the Healthcare Consulting Practice, dealing with consulting engagements in the areas of financial analysis and feasibility studies, mergers and acquisitions, merger efficiency studies, operations improvement, managed care, reimbursement issues, decision support, internal controls reviews, and revenue cycle re-engineering. He has most recently spent the past twenty-four months dealing with many of these issues at a major Academic Medical Center in assisting management in developing and implementing a performance improvement plan.

Steve is an active member of the Healthcare Financial Management Association ("HFMA") where he served on a statewide Board of Directors as President. He currently serves on the National Advisory Board of the Healthcare Financial Management Association.

Professional Experience:

- Responsible for planning and execution of financial audits in the healthcare field, including academic medical centers, healthcare systems, long-term care providers, senior housing and assisted living providers, and home health entities.
- Consulting with healthcare providers on various matters ranging from reimbursement issues to strategic planning and compliance issues.
- Mergers and acquisitions consulting for healthcare and other clients, including merger efficiency studies.
- Internal controls reviews.
- Compliance program development and implementation.
- Numerous agreed-upon procedures engagements.
- Management of engagements for providers issuing bonds or other forms of debt for capital expansion.

Education:

B.S.B.A., Phi Beta Kappa honors graduate, University of North Carolina at Chapel Hill, Concentration - Accounting 1983

Professional Affiliations:

North Carolina Chapter of the Healthcare Financial Management Association (HFMA)
North Carolina Association of Certified Public Accountants
American Association of Certified Public Accountants

POSITION

Principal, Business Recovery Services
PricewaterhouseCoopers LLP, Washington DC

EDUCATION

Virginia Polytechnic Institute and State University
B.A., Political Science, 1973

Virginia Polytechnic Institute and State University
MBA (concentration in Finance), 1974

RANGE OF EXPERIENCE

Mr. Cohen has over 25 years experience in the Healthcare Industry. During this time, he has served as Chief Financial Officer, Chief Marketing, Strategic Planning and Business Development Officer, Chief Operating Officer, President, Director and advisor to numerous healthcare companies.

Mr. Cohen has represented both creditors and debtors in formal bankruptcy and out-of-court settlements. Activities performed in this area include: analysis of cash flow projections and development of cash management programs; operational reviews and development of business/strategic plans; bankruptcy planning; assessment and development of asset sale/liquidation plans; facilitation and negotiation of asset sales in and out of bankruptcy and negotiations with parties in interest.

Mr. Cohen has extensive experience representing various parties in interest in the health care arena including the hospital, post acute, physician practice management, ambulatory and medical supply segments. Representative engagements in the hospital and post acute segments include Integrated Health Services (post acute care); New American Healthcare (rural hospitals); Charter Behavioral (freestanding psychiatric hospitals); and Mariner Post Acute Network (post acute care). Representative engagements in the physician practice management segment include PhyCor, ProMedCo Management Company, a leading single-specialty ENT PPM, and Response Oncology.

In addition, Mr. Cohen has represented parties in interest in the manufacturing and distribution sectors including Crown Simplimatic, a manufacturer of bottling and packaging systems and USA Floral, a floral importer and distributor.

Prior to joining PricewaterhouseCoopers Mr. Cohen was Senior Vice President with Inova Health System, one of the nations leading integrated health care systems with net revenues in excess of $1.0 billion annually. During his 12-year tenure at Inova, he led the division responsible for the development and operation of Inova's post acute, ambulatory, and behavioral services. Mr. Cohen was also responsible for all of Inova's strategic planning, marketing, and business development.

RANGE OF EXPERIENCE, Continued

Mr. Cohen has extensive experience in the development and operation of Hospital services. Prior to his tenure at Inova, Mr. Cohen served as a financial officer for the Greater Southeast Community Hospital, a 450 bed hospital located in Washington, D.C. Mr. Cohen has also advised numerous hospitals on utilization management, cost management, new program development, and mergers and acquisition as a principal with a regional management consulting firm that specialized in health care. During his tenure at Inova Mr. Cohen had primary responsibility for growing the system. In this capacity, he was responsible for strategic planning, marketing, new business development, mergers, and acquisitions, joint ventures, and relationships with affiliated health care systems. Mr. Cohen was also responsible for the development of Inova's strategies for integrating with it's affiliated physicians. As a senior executive with Inova Mr. Cohen was extensively involved in the development and implementation of system-wide operating plans.

Mr. Cohen has extensive experience in the development and operation of behavioral services. While at Inova he was responsible for all inpatient and outpatient mental health services which included hospital based psychiatric units at each Inova hospital, freestanding outpatient child and adolescent services, substance abuse services, a large multi-disciplinary group practice, and managed mental health products covering over 275,000 lives.

Mr. Cohen has extensive experience in the development and operation of freestanding ambulatory services. While at Inova he was responsible for various ambulatory services including occupational health, employee assistance, urgent care centers emergency care centers, rehabilitation centers, and radiation therapy. Mr. Cohen was also responsible for Inova's development of freestanding ambulatory centers.

Mr. Cohen has extensive experience in post acute care having led the development and operation of these services for most of his tenure at Inova. Inova's post acute services included nursing homes, subacute units, assisted living facilities, a wide range of home health services, and case management services. The home health services operated by Mr. Cohen included home intermittent services (over 300,000 visits per annum), private duty services, infusion services, durable medical equipment, and respiratory services.

As a consultant, Mr. Cohen has also provided services in the areas of bond financing and feasibility studies. Mr. Cohen has served as Director to various health care organizations including the Genetics & IVF Institute and several HMO's.

EXHIBIT B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN	Next Event: Opposition to
MEDICAL CENTER, INC.,	Summary Judgment Motions -- February 28, 2002
Defendant.	

PLAINTIFF NCRIC'S SUPPLEMENTAL RULE 26(B)(4) STATEMENT AS OPPONENT OF A CLAIM

Pursuant to District of Columbia Superior Court Rule 26(b)(4) plaintiff NCRIC, Inc. ("NCRIC"), hereby supplements its prior statement filed August 9, 2001 regarding the following expert witnesses NCRIC expects to call at trial:

1. **Mary Woodford**
PricewaterhouseCoopers LLP
1900 K Street, NW Suite 900
Washington DC 20006

As stated in NCRIC's prior Rule 26(b)(4) statement, Ms. Woodford will testify with regard to analysis and rebuttal of the calculation of damages presented by defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia") through defendant's designated damages witness, Peter Ben Ezra. On January 23, 2001, NCRIC received the damages calculations report by Mr. Ben Ezra, and NCRIC deposed Mr. Ben Ezra regarding his damages calculations on January 24, 2001. Mr. Ben Ezra's opinion relates to Columbia's claim

for lost income as a result of alleged conduct by NCRIC as detailed in Columbia's Amended Counterclaim.

Upon review of the materials submitted by Columbia's expert, Ms. Woodford will testify regarding the reasonableness of Mr. Ben Ezra's damages calculations. Specifically, Ms. Woodford will testify that Mr. Ben Ezra's calculations have not been made to a reasonable degree of economic certainty due to his lack of independent inquiry and lack of reasonable and supportable bases for the assumptions underlying his conclusions. Ms. Woodford will testify that due to the significant defects in Mr. Ben Ezra's conclusions, Columbia's damages calculations are baseless and speculative.

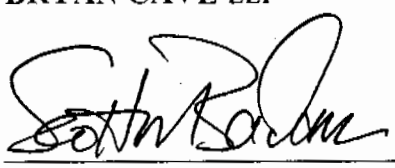
Ms. Woodford will base her testimony on a review of the documents Columbia designated and produced as the data relied upon by Mr. Ben Ezra in his calculations and preparation of his report. Ms. Woodford will also analyze available documents produced by Columbia regarding Columbia's historical operating and financial statistics and relevant market data.

Ms. Woodford is a Director with PricewaterhouseCoopers LLP, and has a Masters in Business Administration, as indicated on her curriculum vitae submitted with NCRIC's 26(b)(4) Statement filed August 9, 2001. Ms. Woodford has extensive professional training, knowledge and experience in the fields of accounting and financial analysis, and specific expertise in calculation of economic damages. Ms. Woodford has been qualified to testify as an expert on economic damages in other courts.

NCRIC respectfully reserves the right to supplement this disclosure should a more detailed review of Mr. Ben Ezra's report reveal that additional testimony is required. Finally, the other disclosures contained in NCRIC's initial Rule 26(b)(4) report remain valid.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer, D.C. Bar No. 180380
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: February 14, 2002.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Supplemental Rule 26(b)(4) Statement as Opponent of Claim was served this 14th day of February 2002, via first class mail, postage prepaid, to:

Joseph K. Leahy, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Margaret Perl

16d-002848

EXHIBIT C

RECEIVED
Civil Clerk's Office
JUL 24 2003
Superior Court of the
District of Columbia
Washington, D.C.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 – Judge Blackburne-Rigsby Pretrial Date: July 31, 2003, 4:30 p.m. Trial Date: To be determined (Jury)

JOINT PRETRIAL STATEMENT

The parties, Plaintiff and Counter-Defendant, NCRIC, Inc. ("NCRIC"), and Defendant and Counter-Plaintiff, Columbia Hospital for Women Medical Center, Inc. ("Columbia"), by and through their respective counsel, hereby submit this Joint Pretrial Statement in accordance with Rule 16(e) and the Court's Form for Pretrial Statement.

A. CERTIFICATION OF RULE 16(c) MEETING

On May 29, 2003 at 6:30 p.m., the parties met at the offices of NCRIC's counsel, Bryan Cave LLP, 700 Thirteenth Street, N.W., Washington, D.C. Scott M. Badami, Margaret G. Perl, and Jenifer Berger attended on behalf of NCRIC; Eli C. Schulman attended on behalf of Columbia. The parties made a good-faith effort to reach agreement on all of the matters listed in Rule 16(c).

The parties also met on June 22, 2003 at 2:30 p.m. at the offices of Columbia's counsel, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., 1615 M Street, N.W., Washington, D.C. Margaret G. Perl and Eileen Weiss attended on behalf of NCRIC; Eli C. Schulman attended on behalf of Columbia. The parties made further good-faith efforts to reach agreement on outstanding matters included in this Joint Pretrial Statement.

B. PARTIES AND COUNSEL

Plaintiff/Counter-Defendant

NCRIC, Inc.
1115 30th Street, N.W.
Washington, D.C. 20007
(202) 969-1866

Counsel for Plaintiff/Counter-Defendant

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Margaret G. Perl, Esq.
Jenifer Berger, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(202) 508-6000

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(301) 951-4456

Defendant/Counter-Plaintiff

Columbia Hospital for Women Medical Center, Inc.
2425 L Street, N.W.
Washington, D.C. 20037
(202) 293-6500

Counsel for Defendant/Counter-Plaintiff

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

16d-002851

C. NATURE OF THE CASE

In October 1993, Columbia, a non-profit hospital specializing in care for women, and NCRIC, a provider of malpractice liability insurance to physicians in the District of Columbia, entered into an agreement called the Retrospective Rating Plan (or, "Retro Plan"). The purpose of the plan was to establish a malpractice liability program for physicians at Columbia to help reduce the costs to physicians through a sharing of malpractice risk.

In October 2000 NCRIC filed a breach of contract claim against Columbia contending that Columbia refused to pay the Additional Premium due under the Retro Plan when it expired on September 1, 2000.

Columbia countersued in November 2000, contending that NCRIC breached the contract and owes Columbia money under the plan. Columbia also contends that NCRIC communicated that it would administer a medical malpractice plan for Columbia so that the hospital did not have to do so itself, and, after assuring Columbia that it would act in the hospital's best interests, deceived Columbia about the terms of the Plan and overcharged the hospital, failing to perform required calculations honestly and accurately. In addition, Columbia contends that NCRIC interfered with Columbia's existing and expected business relationships with the doctors who worked at Columbia by disparaging Columbia and inducing Columbia's doctors to move their practices to other hospitals. Columbia contends that NCRIC also made false and defamatory statements about Columbia that caused harm to Columbia's reputation in the community. Additionally, Columbia contends that NCRIC improperly demanded a $1 million deposit not called for by the parties' contract on threat of discontinuing malpractice coverage to the hospital and later refused to return Columbia's money. Columbia seeks damages in the multiple millions of dollars.

16d-002852

D. CLAIMS AND DEFENSES

1. NCRIC's Claim

NCRIC and Columbia are parties to a Retrospective Rating Plan Agreement ("Retro Plan") which provided medical malpractice insurance to physicians from 1993 through September 1, 2000. Pursuant to the Retro Plan, NCRIC provided insurance at discounted premiums to doctors practicing at Columbia, and in return Columbia agreed to share a portion of the risk of future malpractice claims. The Retro Plan requires a "reconciliation" that looks back over the term of each year to compare the discounted premiums to the actual claims for a given year. Each reconciliation follows the calculation formula presented in the Retro Plan to determine: (1) if Columbia was required to pay "Additional Premium" to NCRIC, because losses under the plan exceeded the physician premiums by a predetermined calculated amount, or (2) if NCRIC was required to pay "Return Premium" to Columbia, should the losses have been less than the predetermined amount.

NCRIC's breach of contract claim is based upon Columbia's refusal to pay NCRIC the Additional Premium due under the Retro Plan calculations. In November 1996, the parties orally agreed to avoid interim payments of Additional and Return Premium by exchanging money only when a year was "closed-out" under the plan or the Retro Plan ended. After a series of renewals from 1993 to 2000, the parties chose not to further renew the plan. The Retro Plan expired on September 1, 2000. As obligated under the Retro Plan and the parties' oral agreement, NCRIC performed the reconciliation calculation and sent the reconciliation with a notice and request for payment of Additional Premium due from Columbia on September 1, 2000. Columbia has not paid NCRIC any of the Additional Premium owed to NCRIC under the terms of the Retro Plan since September 1, 2000. NCRIC's breach of contract claim seeks to recover this amount.

16d-002853

Finally, NCRIC contends that none of the alleged misconduct detailed in Columbia's counterclaims, assuming *arguendo* that Columbia proves such conduct, negates the Retro Plan and relieves Columbia of the obligation to pay NCRIC the amount owed for the premiums as calculated under the Retro Plan.

2. Columbia's Claims

1. Breach of Contract: NCRIC breached the Retro Plan by, *inter alia*, failing to pay Columbia Return Premium that Columbia was due. NCRIC further breached the parties' agreement by seeking payment from Columbia in violation of the parties' oral agreement.

2. Breach of Implied Covenant of Good Faith and Fair Dealing: NCRIC evaded the spirit of the contract, willfully rendered imperfect performance, and/or interfered with Columbia's performance by, *inter alia*, performing Reconciliations inaccurately.

3. Breach of Fiduciary Duty: NCRIC breached its fiduciary duty to Columbia by, *inter alia*, failing to perform Reconciliations honestly and accurately; demanding a $1 million deposit when it was not due and then refusing to return the $1 million; refusing to allow Columbia to audit NCRIC's calculations; and causing Columbia to overpay Additional Premium.

4. Tortious Interference with Business Relations: NCRIC wrongfully interfered with Columbia's business relations with the Attending Faculty doctors, causing about 30 Attending Faculty members to terminate their association with Columbia and move the bulk of their practices to Sibley and/or George Washington University hospitals.

5. Tortious Interference with Prospective Business Advantage: NCRIC wrongfully interfered with Columbia's reasonable expectation of continuing its business relations with the Attending Faculty doctors, causing about 30 Attending Faculty members to terminate their association with Columbia and move the bulk of their practices to Sibley and/or GW hospitals.

6. Actual and/or Constructive Fraud: NCRIC made false representations of material facts to Columbia, including, for example, those relating to NCRIC's improper Retro Plan calculations, and concealed from Columbia material facts that amounted to a misrepresentation by refusing to provide Columbia information as provided for by the Retro Plan and by refusing to provide Columbia access to data necessary independently to verify NCRIC's bookkeeping.

7. Negligent Misrepresentation: NCRIC negligently made false representations by, *inter alia*, miscalculating Reconciliations.

8. Defamation and Libel: NCRIC published material false statements about Columbia that disparaged Columbia, causing Columbia harm to its reputation and substantial economic loss.

9. Trade Libel/Commercial Disparagement/Injurious Falsehood: NCRIC published false and misleading statements that disparaged the quality of Columbia's services as a health care facility, causing Columbia harm to its reputation and substantial economic loss.

10. Conversion: NCRIC unlawfully exercised ownership, dominion, and control over Columbia's $1 million deposit, in denial or repudiation of Columbia's rights to the money.[1]

Columbia reserves the right to offer evidence of additional facts in support of any of its claims.

3. NCRIC's Defenses

Columbia's Breach of Contract and Breach of Implied Duty of Good Faith and Fair Dealing (Counts 1 and 2)

NCRIC denies all allegations of improper calculations of premiums and intends to present fact and expert testimony in support of its position that all calculations were valid and

[1] The negligence claim originally pleaded by Columbia as Count Six was dismissed by order of July 3, 2001.

16d-002855

that the amount of Additional Premium owed by Columbia is proper and correct. Columbia's evidence regarding the alleged miscalculations of the Retro Premium is inadmissible and non-credible as it consists of calculations performed by Columbia's counsel for the purposes of this litigation. NCRIC will also present credible and undisputed evidence that NCRIC maintained the loss reserves under the Retro Plan in accordance with the requirements of the plan and according to "industry standards." Columbia has not presented any credible evidence that NCRIC's alleged breach caused Columbia's financial problems or proximately caused Columbia's bankruptcy filing such that NCRIC is liable for these damages. NCRIC has performed all duties properly under the Retro Plan and has not "evaded the spirit of the contract," therefore NCRIC is not liable for breach of contract or breach of the implied duty of good faith and fair dealing.

Columbia's Breach of Fiduciary Duty Claim (Count 3)

NCRIC denies all allegations that it was under a duty to act on Columbia's behalf in a fiduciary capacity. The parties in this case were two sophisticated business entities which negotiated a commercial contract, the Retro Plan, which did not contemplate the creation of a fiduciary relationship. The Retro Plan and all subsequent amendments and renewals were negotiated instruments between the parties and their counsel and consultants. There is no evidence of unequal bargaining power. Finally, a fiduciary relationship did not evolve over time during the course and dealings of the parties.

Columbia's Tortious Interference Claims (Counts 4 and 5)

NCRIC further denies all allegations of tortious activity which allegedly interfered with current or prospective business relations between Columbia and its attending faculty. There is no evidence that any physician terminated his or her relationship with Columbia based on the

alleged defamatory statements by NCRIC in 2000, because NCRIC representatives urged them to do so, or because the parties did not agree to renew the Retro Plan in September 2000. To the extent the tortious interference claims rely upon the alleged defamatory statements, NCRIC incorporates the defenses to the defamation claims below. Finally, NCRIC contends that Columbia's future business expectancy in patient referrals is too remote to support a tortious interference claim. NCRIC intends to present fact and expert testimony in support of its position that any economic loss suffered by Columbia during the time of alleged tortious acts in 2000 was caused by a number of other market factors and conditions at the hospital itself, as opposed to the alleged tortious interference Columbia attributes to NCRIC. Moreover, NCRIC contends that Columbia has failed to mitigate any such damages which it claims.

Columbia's Fraudulent and Negligent Misrepresentation Claims (Counts 7 and 8)

NCRIC denies all allegations that it made fraudulent and/or negligent misrepresentations of fact to Columbia regarding the Retro Plan. As discussed with regard to the breach of contract claims above, NCRIC's calculations were proper and did not constitute a fraudulent misrepresentation regarding the amount of Additional Premium due from Columbia. Columbia cannot prove that any reconciliations were false because there is no credible evidence from any witnesses regarding the alleged "proper" calculations under the Retro Plan. Moreover, as discussed above, any statements with regard to the loss reserves set for the Retro Plan were true as the loss reserves were set and maintained properly under the Retro Plan and industry standards. NCRIC did not have any intent to defraud Columbia at any time, nor did Columbia and NCRIC have a "confidential relationship" to support a negligent misrepresentation claim in the absence of fraudulent intent.

Columbia's Defamation and Injurious Falsehood Claims (Counts 9 and 10)

NCRIC denies all allegations of defamatory statements by NCRIC representatives in 2000. The Court has found in favor of NCRIC on summary judgment with regard to all defamation and injurious falsehood claims based upon alleged statements by NCRIC in 1998; therefore, these statements are not properly presented by Columbia at trial. There is no evidence that the "rumors" of September 2000 regarding the possible closure of Columbia were attributable to any NCRIC representative. Any defamatory statements allegedly made by Dr. Glassman in September 2000 do not support a claim against NCRIC because (1) Dr. Glassman was not speaking as a representative of NCRIC, (2) these alleged statements were not properly "published" to third parties, and (3) these alleged statements were true. Moreover, these alleged statements do not support an injurious falsehood claim because these statements do not concern a product or service of Columbia. Finally, as discussed with regard to the tortious interference claims above, NCRIC intends to present fact and expert testimony in support of its position that any economic loss suffered by Columbia during the time of alleged defamatory statements in September 2000 was caused by a number of other market factors and conditions at the hospital itself, as opposed to the alleged defamation and harm to reputation which Columbia attributes to NCRIC.

Columbia's Conversion Claim (Count 11)

NCRIC denies all allegations of conversion with regard to the $1 million partial payment of Additional Premium made by Columbia in 1998. The $1 million payment was a negotiated partial payment towards a balance of approximately $1.7 million in Additional Premium due in 1997. NCRIC consistently applied this amount towards the premium due in all subsequent reconciliations under the Retro Plan. There is no evidence that the parties agreed that this

16d-002858

payment would be held by NCRIC as a "deposit" which would accrue interest. Nor is there any evidence that Columbia demanded the money be returned as it was allegedly held by NCRIC unlawfully. Finally, Columbia has not presented any credible evidence that NCRIC's alleged conversion caused the hospital's financial problems or proximately caused Columbia's bankruptcy filing such that NCRIC is liable for these damages.

4. **Columbia's Defenses**

1. Columbia did not breach the contract and does not owe NCRIC any Additional Premium because NCRIC miscalculated the Deposit Premium, Minimum Premium, and Development Factors under the Retro Plan. When the proper calculations are made, NCRIC in fact owes Columbia premium.

2. Columbia did not breach the contract and does not owe NCRIC any Additional Premium because NCRIC's demand for Additional Premium violates the parties' November 1996 oral agreement that the parties would not exchange Additional or Return Premium for any year of the Plan until all outstanding claims for that year had closed. The only closed years are those for which NCRIC owes Columbia premium.

3. Columbia did not breach the contract and does not owe NCRIC any Additional Premium because NCRIC, the Plan's bookkeeper, failed to notify Columbia of any amount of premium due, as required by the Plan. Such notice is a precondition to any obligation of Columbia to pay NCRIC Additional Premium.

4. Columbia fully performed all of its duties and obligations under the alleged agreement between it and NCRIC.

5. NCRIC's claim is barred as a result of NCRIC's failure to satisfy conditions precedent, including, but not limited to, failing to perform Reconciliations properly, and failing to calculate and inform Columbia of the correct amount of Additional or Return Premium due.

6. NCRIC's claim is barred by the doctrines of estoppel, waiver and/or unclean hands.

7. The alleged agreement between Columbia and NCRIC is unenforceable, in whole or in part, due to NCRIC's material breach of the express and/or implied terms thereof.

8. The alleged agreement between Columbia and NCRIC is unenforceable, in whole or in part, due to modification, novation, and/or accord and satisfaction.

9. The alleged agreement between Columbia and NCRIC is void, in whole or in part, because Columbia renewed and/or amended it while under duress caused by NCRIC.

10. The Amended Complaint fails to state a cause of action upon which relief may be granted.

11. Columbia denies all allegations in the Amended Complaint not specifically admitted, and demands strict proof thereof.

E. UNDISPUTED ISSUES/STIPULATIONS

1. On or about October 23, 1993, Columbia and NCRIC entered into the Retrospective Rating Plan Agreement ("Retro Plan"). NCRIC drafted the Retro Plan.

2. The original term of the Retro Plan was three years.

3. A retrospective rating plan, such as the Retro Plan, requires a "reconciliation" that looks back over each year to compare the premium to the claims to determine: (1) if additional premium is due to the insurance company; or (2) if a return of premium is due the hospital, should losses have been favorable based on a predetermined calculation.

4. All premiums under the Retro Plan are calculated by applying multipliers to the subject premium.

5. To determine if the appropriate premium amounts were collected to pay losses under the Retro Plan, the Retro Premium (as calculated based on a preset formula) is then compared to the Deposit Premium. If the Retro Premium is less than the Deposit Premium, the premium is due to Columbia. If the Retro Premium is more than the Deposit Premium, Columbia owes NCRIC the additional premium to pay against the losses. But any amount of Retro Premium is limited by the set Minimum Premium and Maximum Premium.

6. A "floor" and a "ceiling" are set to financially protect both Columbia and NCRIC from large swings in risk. If total losses were large (130% of total), then this would cap Columbia's risk. If losses were extremely favorable (60% of total), then NCRIC is protected. The "floor" is the Minimum Premium, and the "ceiling" is the Maximum Premium.

7. When the parties entered into the Retro Plan, the premium discount ("Attending Faculty discount") was 19% off the cost of $500,000 in malpractice coverage.

8. In November 1996, NCRIC representatives met with Columbia's Finance Committee. The NCRIC representatives presented the first Reconciliation under the Retro Plan and proposed new revisions to the discount and premium calculations.

9. During these meetings, the NCRIC representatives explained that claims from prior years were still pending and therefore calculations of premium for those years were subject to change.

10. NCRIC's Reconciliation for the 1993-94 Experience Period showed a balance $172,815 in Return Premium due to Columbia for this Experience Period.

16d-002861

11. In 1997, Columbia was fighting a lawsuit by one of its largest creditors, The Bank of Tokyo-Mitsubishi, regarding Columbia's line of credit.

12. In February 1998, Columbia filed for reorganization under Chapter 11 of the United States Bankruptcy Code.

13. Columbia emerged from bankruptcy in January 1999.

14. The Medical Entity Policy issued by NCRIC was a standard group insurance policy which covered the physicians practicing medicine at Columbia's Clinic for professional liability in return for the payment of a set premium each year.

15. In the fall of 1999, NCRIC and Columbia renewed both the Retro Plan and the Medical Entity Policy until September 1, 2000 and December 1, 2000, respectively.

16. During the spring of 2000, Columbia requested NCRIC propose a transitional plan to replace the Retro Plan with a new program which did not require a retroactively calculated premium.

17. NCRIC proposed a method of "closing out" the Retro Plan and converting the program to a guaranteed cost contract which would discontinue the retroactive calculations from previous years of the Retro Plan.

18. The parties negotiated the one-time cost that Columbia would have to pay to accomplish such a close out throughout the spring and summer of 2000.

19. The endorsement excluded from coverage any activities in the Clinic after November 15, 2000.

F. DISPUTED ISSUES

NCRIC's Issues

1. Whether Columbia breached the Retro Plan by not remitting Additional Premium due under the Retro Plan Reconciliations when the Retro Plan expired on September 1, 2000. NCRIC contends that Columbia breached the agreement; Columbia contends that it did not.

Columbia's Issues

2. Whether NCRIC breached the Retro Plan by, *inter alia*, failing to pay Columbia Return Premium that Columbia was due and seeking payment from Columbia in violation of the parties' oral agreement? Columbia contends that NCRIC breached the agreement; NCRIC contends that it did not.

3. Whether NCRIC evaded the spirit of the contract, willfully rendered imperfect performance, and/or interfered with Columbia's performance by, *inter alia*, performing Reconciliations inaccurately? Columbia contends that NCRIC did; NCRIC contends that it did not.

4. Whether NCRIC breached its fiduciary duty to Columbia by, *inter alia*, failing to perform Reconciliations honestly and accurately; demanding a $1 million deposit when it was not due and then refusing to return the $1 million; refusing to allow Columbia to audit NCRIC's calculations; and causing Columbia to overpay Additional Premium? Columbia contends that NCRIC did; NCRIC contends that it did not.

5. Whether NCRIC wrongfully interfered with Columbia's business relations with the Attending Faculty doctors, causing about 30 Attending Faculty members to terminate their association with Columbia and move the bulk of their practices to Sibley and/or George

16d-002863

Washington University hospitals? Columbia contends that NCRIC did; NCRIC contends that it did not.

6. Whether NCRIC wrongfully interfered with Columbia's reasonable expectation of continuing its business relations with the Attending Faculty doctors, causing about 30 Attending Faculty members to terminate their association with Columbia and move the bulk of their practices to Sibley and/or GW hospitals? Columbia contends that NCRIC did; NCRIC contends that it did not.

7. Whether NCRIC made false representations of material facts to Columbia, including those relating to NCRIC's improper Retro Plan calculations, and concealed from Columbia material facts that amounted to a misrepresentation by refusing to provide Columbia information as provided for by the Retro Plan and by refusing to provide Columbia access to data necessary independently to verify NCRIC's bookkeeping? Columbia contends that NCRIC did; NCRIC contends that it did not.

8. Whether NCRIC negligently made false representations by, *inter alia*, miscalculating Reconciliations? Columbia contends that NCRIC did; NCRIC contends that it did not.

9. Whether NCRIC published material false statements about Columbia that disparaged Columbia, causing Columbia harm to its reputation and substantial economic loss? Columbia contends that NCRIC did; NCRIC contends that it did not.

10. Whether NCRIC published false and misleading statements that disparaged the quality of Columbia's services as a health care facility, causing Columbia harm to its reputation and substantial economic loss? Columbia contends that NCRIC did; NCRIC contends that it did not.

16d-002864

11. Whether NCRIC unlawfully exercised ownership, dominion, and control over Columbia's $1 million deposit, in denial or repudiation of Columbia's rights to the money. Columbia contends that NCRIC did; NCRIC contends that it did not.

G. REQUESTED STIPULATIONS

Attached at Tab G are the parties' Proposed Stipulations and objections, as follows:

1. NCRIC's Proposed Stipulations
2. Columbia's Objections to NCRIC's Proposed Stipulations
3. Columbia's Proposed Stipulations
4. NCRIC's Objections to Columbia's Proposed Stipulations

H. RELIEF SOUGHT

1. NCRIC seeks the following relief:

NCRIC seeks to recover money owed by Columbia pursuant to the calculations agreed to by the parties in the Retro Plan. The amount of Return Premium owed is calculated in quarterly reconciliations of premium according to methodology contained in the Retro Plan. Columbia currently owes NCRIC the sum of $3,090,693, or such amount as is calculated periodically under the plan.

2. Columbia seeks the following relief:

- lost profits in the amount of approximately $21.5 million;
- lost proceeds from annual fundraiser (more than $1.5 million per year);
- loss of $35 million, low-interest HUD loan, reasonably expected to reduce the hospital's cost of capital from 10.5% to 4.5% per month (resulting in lost savings for Columbia of approximately $2 million per year);
- more than $1.5 million for expenses incurred in connection with bankruptcy;

- return of $1 million deposit;
- $765,347.49 in Return Premium;
- prejudgment interest;
- punitive damages;
- costs, including reasonable attorney fees;
- further relief as the Court may deem just and equitable.

I. CITATIONS

Attached at Tab I are lists of citations that the parties wish to call to the Court's attention.

1. NCRIC's Citations

2. Columbia's Citations

Each party is providing the Court with copies of those authorities not found in D.C. Code, A.2d, or U.S. App. D.C. Because of the volume of the authorities, each party is submitting for the Court's convenience two separate stand-alone volumes to accompany the citation lists – one volume with citations relevant to the substantive claims, and a second volume with citations relevant to the pending motions listed in Section J below.

J. PENDING MOTIONS

NCRIC

The following motions were filed by NCRIC on June 5, 2003:

1. NCRIC's Motion To Require Defendant to Provide Security for Costs

2. NCRIC's Motion for Leave to Amend the Complaint

3. NCRIC's Motion for Reference to a Special Master

4. NCRIC's Motion To Exclude the Opinions and Testimony of Defendant Columbia's Designated Damages Expert

16d-002866

5. NCRIC's Motion to Exclude Evidence of Certain Counterclaim Damages

6. NCRIC's Motion to Exclude the Testimony of Columbia's Newly Named Witnesses

7. NCRIC's Motion to Exclude Certain Documents and Calculations

8. NCRIC's Motion To Compel and for Sanctions Pursuant to Rules 33(b) and 37(a)

Columbia

The following motions were filed by Columbia on June 5, 2003:

1. Motion *in Limine* of Defendant To Exclude Testimony of NCRIC's Purported Expert Witnesses

2. Motions *in Limine* of Defendant

   a. Motion To Re-Order Presentation of Proof to Conform to Evidence

   b. Motion To Establish Admissibility of Documentary Exhibits Before Trial

K. WITNESSES

Attached at Tab K are the parties' respective Witness Lists.

1. NCRIC's Witness List

2. Columbia's Witness List

The matters about which experts will, if allowed by the Court, testify are as follows:

1. **NCRIC's Experts**

A) **James McGuire, Esq.:** Mr. McGuire's testimony will support NCRIC's claim that the loss reserves set by NCRIC under the Retro Plan were valid, adequate, proper and correctly calculated based upon appropriate insurance industry methods.

16d-002867

B) **James D. Hurley:** Mr. Hurley's testimony will support NCRIC's claim that the premiums owed by Columbia are calculated using the proper deposit factors which were derived as a result of mathematical and actuarial computation.

C) **Steve Moore:** Mr. Moore's testimony will support NCRIC's rebuttal of the damages alleged by Columbia to have been caused by NCRIC's commission of various alleged torts. Mr. Moore will support NCRIC's position that any losses experienced by Columbia (such as decreased profits) are the result of other factors outside of any alleged misconduct by NCRIC.

D) **W. McKay Henderson and Mary Woodford**: Mr. Henderson and Ms. Woodford's testimony will support NCRIC's rebuttal of Columbia's expert testimony regarding damages allegedly suffered as a result of NCRIC's alleged misconduct. Mr. Henderson and Ms. Woodford's testimony will support NCRIC's position that any losses experienced by Columbia (such as decreased profits) are the result of other factors outside of any alleged misconduct by NCRIC.

2. **Columbia's Expert**

Peter Ben Ezra: In his role as an expert, Mr. Peter Ben Ezra, Professor of Accountancy at the George Washington University's School of Business and Public Management, will testify with respect to the calculation of lost profits incurred by Columbia as a result of NCRIC's tortious conduct.

L. EXHIBITS

Attached at Tab L are the parties' Exhibit Lists and objections to exhibits, as follows:

1. NCRIC's Exhibit Summary Form
2. Columbia's Objections to NCRIC's Exhibits

16d-002868

3. Columbia's Exhibit Summary Form

4. NCRIC's Objections to Columbia's Exhibits

Each party is also submitting separately a copy of its objections, together with copies of the exhibits to which the objections are made.

Both parties reserve the right to offer all exhibits listed on the opposing party's exhibit list, as well as all deposition exhibits and rebuttal exhibits that have not been identified herein. To the extent one party has identified a document as an exhibit, at this time, that party is not stipulating to the authenticity or admissibility of that document. To the extent Columbia and NCRIC identify the same exhibit, both parties preserve the right to object to its admission.

M. DEPOSITIONS

Attached at Tab M are the parties' respective deposition designations, as follows:

1. NCRIC's Deposition Designations

2. Columbia's Deposition Designations

Both parties reserve the right to object at trial to any designation of deposition testimony included in this submission pursuant to Superior Court Rule 32(b) and/or to require additional parts of depositions that ought in fairness to be considered with the part designated pursuant to Superior Court Rule 32(a)(5).

N. PLEADINGS AND DISCOVERY RESPONSES

Attached at Tab N are the parties' respective designations of pleadings and discovery responses, as follows:

1. NCRIC's Designations of Pleadings and Discovery Responses

2. Columbia's Designations of Pleadings and Discovery Responses

O. DEMONSTRATIVE OR PHYSICAL EVIDENCE

The parties have agreed to exchange the demonstrative aids they intend to use in their opening statements and cases-in-chief one week prior to trial. Both sides reserve the right to prepare additional demonstratives aids based on the evidence actually adduced at trial, subject to 24 hours' advance notice to the opposing party.

P. VIDEOTAPES

The parties do not expect to use videotapes at trial.

Q. REQUESTED VOIR DIRE QUESTIONS

Attached at Tab Q are the requested questions that the parties have agreed upon and those that the parties have not agreed upon.

R. LIST OF STANDARD JURY INSTRUCTIONS REQUESTED

1. The following standard instructions have been agreed upon:

Instruction 1-1	Function of the Court
Instruction 1-2	Function of the Jury
Instruction 1-4	Juror's Duty To Deliberate
Instruction 1-5	Attitude and Conduct of Jurors
Instruction 1-6	Instructions To Be Considered as a Whole
Instruction 1-7	Court's Commenting on the Evidence
Instruction 1-8	Court's Questions to Witnesses
Instruction 1-9	Jury Not To Take Cue from Judge
Instruction 1-10	Rulings on Objections
Instruction 1-11	Equality of Litigants – Corporations
Instruction 2-1	Evidence in the Case
Instruction 2-2	Evidence in the Case – Judicial Notice
Instruction 2-3	Inferences
Instruction 2-4	Inadmissible and Stricken Evidence
Instruction 2-5	Statements of Counsel
Instruction 2-6	Jury's Recollection of Controls
Instruction 2-7	Evidence Admitted Against One Party Only
Instruction 2-9	Evidence Produced by Adversary

16d-002870

Instruction 2-10	Direct and Circumstantial Evidence
Instruction 3-1	Jury To Determine Credibility of Witnesses
Instruction 3-2	Number of Witnesses
Instruction 3-3	Expert Opinion
Instruction 3-4	Failure To Produce Stronger Available Evidence
Instruction 3-5	Depositions as Evidence
Instruction 3-8	Impeachment by Prior Inconsistent Statements
Instruction 3-9	Adopting Prior Inconsistent Statements
Instruction 3-10	Charts and Summaries
Instruction 4-4	Columbia's Claims, Cross-Claims, and Third-Party Complaints
Instruction 4-5	Consideration of the Evidence – Corporate Party's Agents and Employees
Instruction 6-2	Vicarious Liability – Basis
Instruction 11-12	Contract To Be Construed as a Whole
Instruction 11-13	Terms of a Contract – Evidence
Instruction 12-2	Extent of Damages – Proximate Cause
Instruction 12-3	Burden of Proof – Speculative Damages
Instruction 17-4	Interpretation/Defamatory Meaning
Instruction 17-5	Identification
Instruction 17-14	Punitive Damages
Instruction 20-7	Fraudulent Misrepresentation – Reliance on Actionability of Misrepresentation
Instruction 20-8	Fraud – Opinion
Instruction 20-10	Reliance Where Falsity Obvious – Duty To Investigate

2. The following instructions have not been agreed upon:

Standard Instructions Requested by NCRIC

None.

Standard Instructions Requested by Columbia

General Instructions

Instruction 2-8	Burden of Proof

16d-002871

Columbia's Claim 1 & NCRIC's Claim 1 (Breach of Contract)

Instruction 11-1	Contract – Defined
Instruction 11-2	Contract Formation – Elements
Instruction 11-3	Offer
Instruction 11-4	Acceptance
Instruction 11-5	Consideration
Instruction 11-6	Past Act Not Consideration
Instruction 11-7	Intent To Be Bound
Instruction 11-8	Certainty
Instruction 11-9	Express and Implied Contracts
Instruction 11-10	Oral Contracts
Instruction 11-14	Contract Interpretation – Course of Performance
Instruction 11-16	Condition Precedent
Instruction 11-17	Breach of Contract – Defined
Instruction 11-19	Excuse from Performance
Instruction 11-20	Prevention of a Condition
Instruction 11-22	Estoppel
Instruction 11-23	Modification
Instruction 11-24	Substantial Performance
Instruction 11-25	Waiver
Instruction 11-26	Novation
Instruction 11-27	Mistake
Instruction 11-28	Fraud in the Inducement
Instruction 11-29	Undue Influence
Instruction 11-30	Duress
Instruction 11-31	Breach of Contract – Damages
Instruction 11-32	Nominal Damages

Columbia's Claim 6 (Fraud)

Instruction 20-1	Fraudulent Misrepresentation – Elements of the Claim
Instruction 20-2	Fraudulent Misrepresentation – Elements Defined
Instruction 20-3	Fraudulent Misrepresentation – Burden of Proof
Instruction 20-4	Fraudulent Misrepresentation – Determination of Liability and Damages
Instruction 20-5	Fraudulent Misrepresentation – Misrepresentation Made Through Third Person
Instruction 20-6	Fraudulent Misrepresentation – Plaintiff's Reliance Upon Own Investigation
Instruction 20-9	Fraud – Predictions

16d-002872

Columbia's Claim 8 (Defamation or Libel)

Instruction 17-1	Defamation – Private Plaintiff/Non-Media Defendant
Instruction 17-6	Substantial Truth
Instruction 17-7	Consent
Instruction 17-13	Compensatory Damages

Damages

Instruction 12-1	Damages – Jury To Award
Instruction 12-7	Duty To Mitigate Damages
Instruction 16-1	Punitive Damages
Instruction 16-2	Punitive Damages Against a Corporation
Instruction 16-3	Computation of Punitive Damages Award

S. NON-STANDARD JURY INSTRUCTIONS

Attached at Tab S are proposed non-standard jury instructions, as follows:

1. NCRIC's Proposed Jury Instructions
2. Columbia's Objections to NCRIC's Proposed Jury Instructions
3. Columbia's Proposed Jury Instructions
4. NCRIC's Objections to Columbia's Proposed Jury Instructions

T. VERDICT FORM

Attached at Tab T are proposed verdict forms, as follows:

1. NCRIC's Proposed Verdict Form
2. Columbia's Objections to NCRIC's Proposed Verdict Form
3. Columbia's Proposed Verdict Form
4. NCRIC's Objections to Columbia's Proposed Verdict Form

U. SETTLEMENT

1. NCRIC Statement Regarding Settlement:

The parties engaged in extensive settlement negotiations, including the exchange of draft agreements, throughout the Fall of 2001. Although NCRIC believes it is owed the amounts due as calculated under the Retro Plan, the parties agreed in principle on an amount of $1.5 million for NCRIC to hold as collateral while reconciliation calculations under the Retro Plan continue over the next few years. Unfortunately, previous settlement negotiations have stalled due to Columbia's repeated attempts to push NCRIC down farther in priority behind a group of Columbia's secured and unsecured creditors. Columbia has also consistently imposed additional conditions into the draft settlement agreement which are unnecessarily prejudicial to NCRIC. At subsequent settlement meetings and court-sponsored mediation attempts in 2002, Columbia appears to have had essentially an unexplained $5 million swing in how the hospital values this case. Despite Columbia's drastic shift in position, NCRIC has again within the last month extended a proposal for resolution of this case by the parties. Columbia has not responded to that proposal.

2. Columbia Statement Regarding Settlement:

The parties have engaged in court-ordered mediation and private settlement discussions, neither of which yielded any meaningful progress. Columbia respectfully submits that settlement of this matter is not likely.

V. ESTIMATED LENGTH OF TRIAL

NCRIC estimates that the trial will run approximately 5-10 days.

Columbia estimates that the trial will run approximately 5 days.

16d-002874

The foregoing Joint Pretrial Statement, as revised at the pretrial conference in the presence of the parties and counsel, shall stand as the pretrial order in this case.

Dated: July 24, 2003

Respectfully submitted,

Scott M. Badami by ECS with permission

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6000

Attorneys for:
Plaintiff/Counter-Defendant NCRIC, Inc.

Eli C. Schulman

Mark C. Hansen, D.C. Bar No. 425930
Neil M. Gorsuch, D.C. Bar No. 456411
Eli C. Schulman, D.C. Bar No. 472879
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
Defendant/Counter-Plaintiff Columbia Hospital for Women Medical Center, Inc.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Pretrial Conference, July 31, 2003
	)	
Defendant/Counter-Plaintiff.	)	
	)	

JOINT PRETRIAL STATEMENT
CERTIFICATE OF SERVICE

We hereby certify that, on this 24th day of July 2003, a copy of the *Joint Pretrial Statement*, and all attachments thereto, was served upon opposing counsel by hand delivery.

We further certify that, on this 24th day of July 2003, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Scott M. Badami by ECS with permission

Scott M. Badami

Eli C. Schulman

Eli C. Schulman

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	4762
CONNECTION TEL	7988001982025086200
SUBADDRESS	
CONNECTION ID	BRYAN CAVE,DC
ST. TIME	02/02 16:00
USAGE T	15'54
PGS.	61
RESULT	OK

FAXED

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

FACSIMILE TRANSMISSION

TO: Rodney Page, Esq. Fax: (202) 508-6200
Scott Badami, Esq.

FROM: Eugene M. Paige

PHONE: (202) 326-7988

DATE: February 2, 2004

Matter: 00198

TOTAL NUMBER OF PAGES: 60 **(INCLUDING THIS SHEET)**

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL OUR SERVICE CENTER AT (202) 326-7949
OUR FAX NUMBER: (202) 326-7999

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, Inc.,	*	
	*	
Plaintiff,	*	
	*	Civil Action No.: 00-7308
vs.	*	Judge Anna Blackburne-Rigsby
	*	Calendar 8
	*	
Columbia Hospital for Women Medical Center, Inc.	*	
	*	
	*	
Defendant.	*	
	*	

ORDER DENYING DEFENDANT COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.'S MOTION TO EXCLUDE EVIDENCE BASED ON DOCUMENTS PRODUCTED THREE BUSINESS DAYS BEFORE TRIAL AND DEMONSTRATIVES PRODUCED AFTER THE COURT ORDERED DEADLINE

This motion came before the Court on January 28, 2004 prior to the impaneling of the jury in the above-captioned trial. Upon consideration of the defendant's motion and oral argument, and the plaintiff's oral argument in opposition thereto, the Court DENIED the motion without prejudice.

Accordingly, it is this 3rd day of February, 2004 hereby ordered that the record shall reflect that the motion was denied in open court on January 28, 2004.

A. Blackburne-Rigsby
Judge Anna Blackburne-Rigsby

MAILED

16d-002878

Copies to:
Kellogg, Huber, Hanson, Todd & Evans, PLLC
Neil M. Gorsuch
Eli C. Schulman
1615 M Street, NW
Suite 400
Washington D.C. 20036

Bryan Cave, LLP
Rodney F. Page
Scott M. Badami
700 Thirteenth St., NW
Washington D.C. 20005-3960

Roy I. Niedermayer
3 Bethesda Metro Center
Suite 430
Bethesda, MD 20814

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, Inc.,	*	
	*	
Plaintiff,	*	
	*	Civil Action No.: 00-7308
vs.	*	Judge Anna Blackburne-Rigsby
	*	Calendar 8
	*	
Columbia Hospital for Women Medical Center, Inc.	*	
	*	
	*	
Defendant.	*	
	*	

FILED
CIVIL ACTIONS BRANCH
FEB 0 3 2004
Superior Court
of the District of Columbia

ORDER DENYING PLAINTIFF'S MOTION TO PERMIT VOIR DIRE OF COLUMBIA'S PURPORTED DAMAGE EXPERT, PETER BEN EZRA, PRIOR TO IMPANELING THE JURY

This motion came before the Court on January 28, 2004 prior to the impaneling of the jury in the above-captioned trial. Upon consideration of the plaintiff's motion and oral argument, and the defendant's oral argument in opposition thereto, the Court DENIED the motion without prejudice.

Accordingly, it is this 3rd day of February, 2004 hereby ordered that the record shall reflect that the motion was denied in open court on January 28, 2004.

A. Blackburne-Rigsby
Judge Anna Blackburne-Rigsby

DOCKETED FEB 0 4 2004

MAILED FEB 0 4 2004

Copies to:
Kellogg, Huber, Hanson, Todd & Evans, PLLC

16d-002880

Neil M. Gorsuch
Eli C. Schulman
1615 M Street, NW
Suite 400
Washington D.C. 20036

Bryan Cave, LLP
Rodney F. Page
Scott M. Badami
700 Thirteenth St., NW
Washington D.C. 20005-3960

Roy I. Niedermayer
3 Bethesda Metro Center
Suite 430
Bethesda, MD 20814

16d-002881

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INC., Plaintiff/ Counter-Defendant,	
v.	Civil Action No. 7308-00
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/ Counter-Plaintiff.	

Washington, D. C.

Tuesday, February 3, 2004

The above-entitled action resumed for a jury trial before the Honorable ANNA BLACKBURN-RIGSBY, Associate Judge, in Courtroom Number 48-A.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

2004 MAR -3 P 3:51
SUPERIOR COURT/DIVISION
DISTRICT OF COLUMBIA
COURTS

APPEARANCES:

On behalf of the Plaintiff:

RODNEY PAGE, Esquire
SCOTT M. BADAMI, Esquire

On behalf of the Defendant:

NEIL GORSUCH, Esquire
ELI SCHULMAN, Esquire
PRIYA AIYAR, Esquire

DONNA K. HAWKINS
Official Court Reporter Telephone: 879-1035

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002882

from Columbia to -- I would like the total if you know -- George Washington and Sibley?

A I do not have a breakout between the two. I believe it to be in the range of thirty to forty, but a specific number I do not have.

Q What about the reasons? Do you know why those physicians left Columbia to move their practices to Sibley and George Washington?

A I do not know why.

Q Was it your understanding that it was -- had to do with the termination of the Retro Plan that they could no longer get the discount on NCRIC's insurance at Columbia?

A It was my understanding that that was one issue related to the decision, although I didn't speak to the physicians directly about their individual decisions.

Q Was it your understanding that the physicians who did leave did leave around the time -- when I say leave, I mean move their practices -- around the time the Retro Plan was terminated?

A That is my understanding.

Q Do you know what his understanding is?

A I do not know.

Q You said that it was your understanding that one of the rasons was the Retro Plan; correct?

A That is correct.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002883

of Marketing.

Q Does that entail any contact with actual policyholders?

A Yes.

Q Let me be specific. Does your job entail contact?

A Yes.

Q Can you give me an example of the types of policyholders that you speak with on a daily basis?

A Physicians, Ancillary Specialists, Hospital Directors.

Q Have any endorsements similar to Columbia been issued with regard to ambulatory clinics, i.e., the physicians will not be covered in the clinic, but they can practice there?

A I don't recall any specifics applying to ambulatory clinics. There have been a number of endorsements generated that exempt certain activities of physicians, but from coverage under the policy.

Q Can you give me some specific examples of those endorsements?

A Sure. Physicians who do work for a hospital under the coverage of the hospital insurance or trust that practice would be excluded from coverage under the NCRIC policy. Physicians at the hospital who serve in a voluntary capacity such that it's protected under the

Laser stock Form FMRRN
Corby USA 1-800-255-5040

hospital coverage, that activity would be excluded. Physicians who practice on behalf of the Government and, therefore, are subject to immunity under the Government statute, that practice would be excluded from coverage under the policy.

Q Do you know who would have made that decision with regard to whether or not NCRIC considered the clinic a prudent underwriting risk?

A I would assume senior management, but I don't know specifically.

Q Is this why the endorsement was issued?

A I'm sorry?

Q Is that why the endorsement was issued because NCRIC no longer considered it a prudent underwriting risk to insure activities at the clinic?

A From my standpoint, the endorsement was issued because I was directed to do so by my superior.

Q And you haven't speculated ever as to why that occurred?

A No.

Q So you don't know whether or not anyone at NCRIC in your level of management or above no longer considered it to be prudent underwriting risk to insure activities at the clinic at that time?

A I don't know independently. I see it stated that

Laser stock Form FMRRN
Corby USA 1-800-255-5040

way in the letter.

Q You don't know whether it's just words on paper or if it's a true statement?

A I don't know.

Q Do you know of any other exclusionary endorsements that were issued in the District of Columbia up to the time of this letter for the reasons stated in that last sentence, that it was no longer a prudent underwriting risk to insure activities at that facility?

A (No response.)

Q Which means you can ask to rephrase it if you want?

A Let me think for a moment. I don't recall any speficially within my stand of employment, no.

Q Do you know whether any NCRIC has any policies with regards to situations and/or facilities that are too dangerous so that you wouldn't underwrite the risk of practicing in those situations?

A There is no specific policy that I'm aware of.

Q Are there any facilities in the District that NCRIC has determined it's not a prudent underwriting risk to insure activity at that particular facility?

A In the District, not that I'm aware of.

Q How about the three-state area?

A Within that three-state area, I'm not aware of

Laser stock Form FMRRN
Corby USA 1-800-255-5040

any facilities.

Q You have no idea why NCRIC's senior management above yourself decided not to insure any activity of the clinic; is that correct?

A Correct.

Q Do you know who was involved with the decision to terminate the policy as well?

A I was given instructions by either Mr. Fargis, Mr. Pate or Mr. Osborn to terminate the policy.

Q Do you remember whether any information was conveyed to you at that time in addition to simply, "this policy must be terminated?"

A I don't recall.

Q Was there any reason given?

A No.

Q Did you know why it was being terminated?

A No.

Q Did you not speculate why it was being terminated?

A No.

Q Have you subsequently speculated as to why it was terminated?

A No.

Q Is there a reason why you don't speculate about these types of things?

A Because when I'm given an order by my superiors,

Laser stock Form FMRRN
Corby USA 1-800-255-5040

I carry it out. And if they choose to share their rationale with me, it's their privilege to do so.

Q Who generally at that time -- at the time that this letter was sent out had the authority to decide for underwriting reasons to terminate a policy?

A Mr. Pate, Mr. Osborn, Mr. Fargis.

Q Did you have authority?

A I suppose I did. If I did, I never exercised it independently. I certainly would not have exercised it without consulting them first.

Q Was this the type of decision you would consult them for?

A Because any cancellation outside of normal expiration dates of the policy is something that I kept them informed of.

Q Has anyone subsequent at this time in senior management given an explanation of the reason for the termination of this policy?

A No.

Q Have you ever asked?

A No.

Q I'm going to ask you to look on the June 30 letter. Can you see, is there a reason for the termination given in that letter or the attached notice of cancellation?

A The August 1 first letter cites the reason for

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002888

cancellation as material change with respect to insurability?

Q Right. Did you see that at all in the June 30 letter?

A No, I don't.

Q Do you know if at the time Columbia was told why the termination occurred?

A I don't know.

Q Is it typical that the cancellation of a policy occurs mid-policy and no reason given for the termination?

A No.

Q An entity policy?

A To the best of my knowledge of the twenty or so entity policies we have, this is the only one that has been cancelled.

Q No other entity policy has been cancelled for people not being current on their premium?

A No, entity policy has ever been cancelled for any reason except this one.

Q So even out of a hundred or so, can you think of any instances that you know of where an entity policy has been cancelled where the premium is cancelled and no claims have been made?

A Yes. When practices are discontinued, the premium is current and there are no claims made and the entity simply goes out of business.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A Yes, I have.

Q How much was at issue in that lawsuit?

A It was tens of millions of dollars. It was for the Agriculture Research Service. I did the Discounted Cash Flow Analysis and it was used in a court of law.

Q What was the result of that lawsuit for the Government?

A The Federal Government won and the contractor had to pay and the bonding company had to pay.

Q Did you receive a citation from the Government for your service?

A Yes, I received an award from the Government for that particular project.

Q Have you used Discounted Cash Flow Analysis of the sort employed here in this case for private clients as well as Government clients?

A Yes, I have.

Q How much money have private clients spent or invested in reliance of Discounted Cash Flow Analysis?

A Millions of dollars.

Q Do you teach accounting on a part-time basis?

A Yes. I'm an adjunct faculty professor of George Washington University and I have taught for them for twenty-six years.

Q What courses do you teach at George Washington?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002890

A I teach Financial Accounting, Managerial Accounting, Financial Statement Analysis.

Q What kind of students do you teach?

A I teach undergraduate students and graduate students and I also teach MBA candidates because they are taking their MBA when they take my course.

Q What is your title at Georgetown?

A Not Georgetown.

Q At George Washington University?

A I'm a professor.

Q And how long again have you been teaching?

A Since about 1978.

Q And do you teach Discounted Cash Flow Analysis and accounting techniques like you employed in this case?

A Yes, I do. I teach it every semester. Each class gets one or two class periods in which that is all we do is Discounted Cash Flow Analysis.

Q Have you contributed to any textbooks in the field?

A Yes, I have. I contributed to the Eighth Edition of the Managerial Accounting Textbook that we use in our graduate program. And I have also written the +- bank for that, the Eighth Edition and for the Seventh Edition also.

Q You also teach Continued Education Seminars?

A Yes, I teach Continuing Education Seminars for

Laser stock Form FMRRN
Corby USA 1-800-255-5040

the D. C. Institute of CPA and I have also taught for Maryland CPA and also the New York Society of CPA's.

Q Who attends those kind of Continuing Education Seminars?

A Those are primarily attended by CPA's who are seeking continued professional education and they are specialty type courses.

Q To professionals?

A Yes.

Q And how long have you taught professional CPA?

A Since approximately 1978.

Q Twenty-six years?

A Yes.

Q Do you teach about Discounted Cash Flow Analysis techniques to these CPA's?

A Yes, I do, especially in the real estate courses.

Q And how many students in total would you say that you have taught Discounted Cash Flow Analysis to over the years?

A At least two thousand. Probably more.

Q Have you held any positions within professional CPA organizations?

A Yes, I have. I have been on the D. C. Institute of CPA Board of Governors for five years. I was also on their Ethics Committee for seven years. I was Chairman of

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q Did the data you used in order to determine how much was left come from the hospital's normal business records?

A Yes, it did.

Q Was it the sort of financial data that was relied upon by the Board in making business decisions?

A Yes, it was.

Q Now, did you use the hospital's revenue data or the cash flow data?

A I used the cash flow data.

Q And who does that favor, Columbia or NCRIC?

A That favors NCRIC.

Q Why?

A Because if we used the financial statement data, we would use revenues, but revenues are what's earned and not necessarily what is corrected.

Q So, you focused on the cash flow which was what was actually collected by Columbia?

A That's correct which is a stronger -- I used the term more asset test.

Q Any why did you choose to use cash flow instead of revenues?

A One, because it was conservative, and two, the issue really is cash flow and so the important thing was to figure out what was the lost cash flow to the loss

Laser stock Form FMRRN
Corby USA 1-800-255-5040

as a result of a group of doctors leaving.

MR. PAGE: Your Honor, I object on grounds that lost cash flow is not relevant to this case and not a proper element of damages.

THE COURT: Sustained. You can rephrase the question, please.

MR. GORSUCH: Sure.

BY MR. GORSUCH:

Q Did you conduct any test to determine whether the cash flow data you used would be a reliable basis?

A Yes, I did.

Q And did you compare the cash flow data that you relied upon with the revenue statement from the hospital?

A Yes, I did.

Q Did you seek to use cash flow data from earlier years too?

A Yes, I did.

Q Ultimately did you conclude that the prior year data was reliable or unreliable?

A I concluded it was unreliable after applying some tests to it.

Q Did you try and reconstruct it?

A I tried to go back, have counsel go back to the information technology people to try to generate the data.

Q How much time did you spend seeking to try and

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002894

gather cash flow data for the hospital?

A I would say about forty hours.

Q And did you determine that the before data that you used for the year immediately preceding the doctors as part of your test were reliable?

A Yes, I did.

Q Were you aware of any other reliable data regarding cash flow before or after that you didn't employ?

A No, I was not.

Q Are you aware that NCRIC has offered an expert in this case?

A Yes, I am.

Q Did they point out to you in their report or efforts any other cash flow data that you should have used?

MR. PAGE: I object, Your Honor. That hearsay at this point.

MR. GORSUCH: It's what he relied on, Your Honor. It goes to explain the basis for his opinion.

THE COURT: The objection is sustained at this point.

MR. GORSUCH: I will ask it this way.

BY MR. GORSUCH:

Q Are you aware of any other reliable data on cash flow that you chose not to use?

A No, I used the best available data.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q In comparing the cash flow data from the year immediately before and the year immediately after the doctors left, what did you find?

A I found out there was a major dive.

Q Did it go up or down?

A It went down.

Q And what was the damages you found the difference before and after before you made any reductions?

MR. PAGE: Your Honor, I object to this point again. The cash flow is not a proper measure of damages and he's not testifying about lost profit. He's testifying about cash flow.

MR. GORSUCH: Your Honor, this is straight out of the report.

THE COURT: The objection is overruled.

BY MR. GORSUCH:

Q What did you find?

A I found there was approximately a four million dollar difference.

Q Annually?

A Annually.

Q And did you run that out over twenty years?

A Yes, I ran it out over a period of twenty years.

Q And so, what was the total number that you came up with?

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002896

A I came up with under that analysis was approximately as I recall fifty-two million dollars.

Q Now, did you stop there at that point and say damages are fifty-two million dollars?

A No, I did not.

Q Did you make some reductions to NCRIC's statement?

A Yes, I did.

Q Beyond using cash flow, did you reduce damages to take into account for potential collection difficulties?

A Yes, I did.

Q And what data did you use there?

A I used the actual collection rate. In other words, they bill at the hospital basically at retail and then they have to adjust that amount down and the adjustments are usually because of contracts that are made with insurance companies to accept something less than full retail price. Also, they are adjusted down to reflect charity care and Columbia did between three and five million dollars a year in charity care. And so that's adjusted out and arrived at a number which I call the most realizable value. And then I compare the cash collections against that realizable value and found they only collected about ninety-five percent of that net realizable value.

Q So, did you reduce your initial assessment to

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002897

Q So as the number of doctors or patients increase, so do the marginal costs?

A That's correct. It's a marginal cost.

Q And you took out the marginal cost; is that correct?

A That's correct.

Q Okay. What marginal cost rate did you use in your analysis?

A I used thirty percent which I consider a very high rate.

Q Can you explain why you considered it a high rate?

A Because basically it's out of pocket cost to the hospital, the cost of supplies and medication which is relatively small. If I were to come in as a patient, they would have to pay for three meals, there would be breakfast, lunch and dinner. That's a relatively small cost to the hospital. There would be the cost of the laundry for doing the bedsheets and the blankets. That's a small cost. The medications that aren't billed is a small cost. Most of the medications are billed.

Q Well, first of all, why did you consider thirty percent?

A Well, because of my knowledge and experience in accounting for almost thirty years. I have done indirect cost rates for the Federal Government for almost

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002898

twenty years and I was responsible for indirect cost rates. I know what costs should be and personally it should have been something closer to twenty percent, but if I were to err, I would err on the high side. And so I took thirty percent which is in NCRIC's favor.

Q Who does the higher marginal cost rate favor and why?

A It favors NCRIC because if I were to use a lower amount, then that would increase the cash flow to the hospital for the analysis. Again, to be conservative, I took that alternative which was less favorable to Columbia Hospital for Women and more favorable to NCRIC in this case. That's part of conservatism.

Q In terms of getting to the thirty percent marginal rate numbers, what material did you look and rely upon?

A I used an accounting textbook that I teach from, in fact, in undergrad school. That is a problem that I use in class. It talks about a St. Vincent Hospital that has a thirty percent variable cost or marginal cost rate and forty-two million dollars in fixed costs. And then it asks the students to determine what is the break even point. And it's then asked the number of patient days it would take for that hospital to break even.

Q And what is the marginal rate used in that problem in the textbook?

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002899

A It's thirty percent. The same thirty percent I used in your analysis.

Q At your deposition were you sure whether or not that was a real problem for a real hospital?

A At the deposition, you have to understand I was under a lot of stress in that deposition. That was one of the few depositions I ever had in my lifetime, and I was not sure whether that was, in fact, an actual case or not.

Q Did you subsequently investigate that?

A Yes, I did.

Q What did you find?

A I found in the preface to the book, it talks about the cases and it says that they used real life cases in the preface to the book.

Q Did you rely on anything else in coming to your thirty percent figure?

A Yes. Right after I left the Federal Government, I did some independent contractor work for the Columbia Hospital for Women medical staff.

Now, in that role I did ask -- the then Comptroller, Warren Danfield, what rate should I use for the term indirect cost but we can use marginal costs or variable costs in the same term, what rate could I use to do a break even analysis. And he suggested to me to use the thirty percent rate.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002900

Q And did you, in fact, use that in conducting work for the medical staff, the doctors at Columbia Hospital?

A Yes, I did.

Q And they relied on that in their ordinary business?

A Yes, the medical staff relied upon that analysis.

Q Is there anyone at Columbia who is more familiar with the marginal cost sector of the hospital than the Comptroller?

A No, the best source of that information would be the Comptroller of the Hospital. The Comptroller is responsible for preparing the financial reports and responsible for doing the tax statements and the tax reports and the tax returns. The person to go to would be the Comptroller.

Q And is that a generally accepted accounting practice in your profession to rely on information provided by Comptrollers of companies in estimating marginal cost rates?

A Yes, the Comptroller is in the best position to give me that guidance.

Q Did you also review other cases where marginal cost rates have been used?

A Yes, I did. I found a case called Coventry out of Kansas. It's in the Federal Court system where the Court found that fixed costs were seventy percent and that

Laser stock Form FMRRN
Corby USA 1-800-255-5040

the marginal costs were thirty percent.

Q For hospitals?

A Yes, it was a hospital case. The same thirty percent that I used.

Q Did you review any articles in the Journal of American Medical Society?

A Yes, I did.

Q What did you find?

A I found that thirty percent was actually too high. It should be a lower amount.

Q What did you find from these articles?

A Sixteen to eighteen percent.

Q If you had used sixteen or eighteen percent, who would that have favored?

A That would have favored Columbia.

Q But you didn't?

A No, I didn't.

Q And you didn't change your opinion. You continued to stick with thirty percent?

A No, I did not.

Q How many hours did you spend researching the marginal cost application?

A I would say about forty hours.

Q A week?

A Yeah.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002902

highest cost of capital to the hospital. There were lower costs of capital which I could have blended in and normally you would, but again, if I was going to err, let's err on the high side of 10.5 percent which favors NCRIC.

Q When you say cost of capital and discount rates, we're talking like the interest charge.

A Right, the cost of borrowing money.

Q Like a mortgage rate?

A Exactly. If you have a lower mortgage rate, you pay less interest. If you have a higher mortgage rate, you pay higher interest. If you were to do a mortgage and look at that form that they give you with the three hundred and sixty payments, if your interest rate is higher, you will pay more out, okay. So, therefore, it will have a lower present value. And so again, I wanted to be conservative in my estimation. I used that highest cost of capital or interest rate being charged to the hospital which is 10.5 percent.

Q What are interest rates usually today?

A Today I just negotiated a mortgage for 5.875 percent. No points.

Q But you used 10.5 percent anyway?

A That's correct. Again, I used the highest cost of capital to the hospital.

Q Were you aware that Columbia was negotiating

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q If you had used that, how would that have affected your analysis?

A That would have significantly increased the present value of the future cash flows by almost eight million dollars.

Q Are you aware of any evidence in this case suggesting that you should have used a higher discount rate than 10.5 percent?

A No, I'm not.

Q Have you reviewed all of the materials supplied by NCRIC and its experts?

A Yes, I have.

Q Is there anything in there that caused you to believe that you should have used a higher discount rate?

A No, nothing is there.

Q Besides the factors we discussed already, collectibility and marginal cash rates and the high discount rate, did you make any other reductions in favor of NCRIC?

A I think that's it.

Q Well, let me ask you about this. You took the before and after and you came up with four million dollars?

A Right.

Q Did you ever assume that Columbia might be able to increase that amount over the years?

A No, I did not.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002904

Q Did you take into account inflation?

A No, I did not factor in any growth factor at all. And again, to be conservative. It turns out that over the last four years for hospitals in general, the CPI index according to the Bureau of Labor Statistics shows that hospital rates have gone up 7.6 percent on average over those four years.

I criticize my students when they bring their phones to class. I apologize. I'm really embarrassed. And that's my daughter's phone which makes it even worse.

Q Mr. Ben Ezra, just so I understand your testimony, the inflation in the medical industry is 7.6 percent?

A On average over the last four years that's correct, and over thirty percent in total for the last four years.

Q And you found that before and after was a four million dollar drop?

A That's correct, without factoring the inflation or any growth.

Q Over any years?

A None.

Q You just said no inflation?

A I assume zero inflation, again to be as conservative as possible.

Q And over what length of period did you use for

Laser stock Form FMRRN
Corby USA 1-800-255-5040

measuring damages?

A In the first alternative I used twenty years.

Q Why did you select twenty years?

A Because I had talked to the doctors at the hospital and Safa Rifka and Nabil Asterbadi and asked them, and this was a majority hit to the hospital. The doctors that left were their top producers. The top admissioners. And I asked them point-blank, how long would it take to recover. And they said it would be at least a generation. That's why I used twenty years.

Now, remember, I did this report two years ago.

Q Before the hospital closed?

A Before the hospital closed. Unfortunately, it's not a generation. It's forever.

Q Why do you say that?

A There is no way that the hospital itself will ever reopen. As you know, the property has been sold. And so Columbia coming back as it was is not going to happen.

Q So, you could have run out damages longer; is that your view?

A Yeah, I could have done it for literally thirty years or forty years or fifty years. But again, to be conservative, I took twenty.

Q And taking into account all of these deductions we talked about, did you come to a final conclusion about

Laser stock Form FMRRN
Corby USA 1-800-255-5040

future cash flow that is discounted at 10.5 percent for that second year.

The third year -- if I'm going too fast slow me down.

Q Go ahead, Doctor.

A In the third year, using a discount rate of roughly eighty cents on the dollar.

Q Now, why is that? Let me stop you. What does the eighty cent represent?

A The eighty cents is two years out with compounding.

Q So 10.5 plus 10.5?

A Right. And that's roughly the math is pretty evident. Roughly ten percent each year, and so that's why it's eighty percent. And so if you were to take two million, 77 thousand 412.57, that amount that's in the net present value column and invest that for two years at an interest rate of 10.5 percent compounded annually, you would have at the end of those two years the 2 million five hundred and ninety-three 442.86.

So, each year as you go out, the present value of the future cash flows for each individual year goes out and goes down because of the time value of money.

Q And who does that favor?

A It favors NCRIC.

Q In fact, the total lost cash flow that estimated --

Laser stock Form FMRRN
Corby USA 1-800-255-5040

that you estimated was 51 million dollars; is that right?

A That's right, it's 51.868 which I guess rounded would be 52 million dollars.

Q And you discounted all the way down to what?

A To 22 million dollars.

Q And that was your final view?

A That was for that alternative. It was 22 million dollars on a present value basis and 52 million dollars on a total amount of dollar basis.

Q Now, how does this number compare, 22 million dollars, with the lost cash flow that you estimated with one year of lost cash flow for the hospital?

A It would be approximately half.

Q So, if I took the one lost year, if the hospital died one year earlier because of NCRIC, the damages are half that number?

A That is correct.

Q Did that favor NCRIC?

A Yes, very much so. If I had known that the hospital was going to close, then the damages would have been a lot more. When I wrote the report, when I did my analysis, the hospital was in business and the assumption was that the hospital would continue in business.

Q But you developed and you learned that those doctors are never coming back?

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002908

A That is correct. I used another alternative.

Q And was it necessary for accounting professional standards to do a second test?

A No, it wasn't. I wanted to check myself and so I did it a completely different way and then compare the results and took the lower of the two.

Q And your second test, did that involve specific doctors?

A Yes, that represented twenty-four doctors and three practice groups.

Q And how did you get the names of the doctors you used?

A I got the name of the doctors that I used from counsel. It represented about thirty-seven names as I recall. And then I called those down to the twenty-four doctors and the three practice units.

Q And what were the twenty-four doctors and three practice units left that were on your list? What do they represent?

A Those represented the doctors that left Columbia or cut back at Columbia. And I was able to test and see if, in fact, that did happen. And it did. So, their numbers are basically -- those were reductions that resulted from the doctors leaving or cutting back. So, I performed some tests.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002909

Q How many doctors who left in the last half of 2000 -- only the doctors who left in the last half of 2000?

A That's correct.

Q And what kind of test? Did you compare it against your own personal knowledge from working at the hospital?

A Yes, I did. In addition, I performed mathematical tests on the data also. There were some data that although they had left and they cut back, it was not material in amount. And so I elected to exclude that amount again in NCRIC's favor.

Q And did you speak with hospital administrators to conform that those doctors were the ones that left?

A I knew from my experience on the Board for the Medical Center, as well as being a financial advisor to the Foundation Board, that the reason those doctors left was because of NCRIC.

MR.PAGE: Objection, Your Honor. Move to strike that.

THE COURT: Sustained. And that statement will be stricken from the record.

MR. GORSUCH: I'm not asking why the doctors left. We're talking about solely about how did you check the list to see that those were the doctors that left as opposed to doctors who had stayed.

THE WITNESS: Well, one of the reasons as you see in the practice groups, some of them had just initials, and

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002910

so I had to check with the administration to see which doctors were included within that practice unit.

Q Practice unit with acronyms as names?

A Yes.

Q You didn't include any doctors on your list for doctors who stayed?

A No, I did not.

Q Your analysis was limited to doctors who left?

A That is correct. It's the lost cash flow.

Q Are you aware of any other evidence suggesting that the list of doctors you ultimately wound up with was unreasonable or wrong?

A No. In fact, it's probably too conservative. It's my understanding that Mr. Pate has testified in his deposition that the number of doctors that left were between thirty and forty. Remember, I ended up using twenty-four doctors in three practice units.

Q Who is Mr. Pate?

A Mr. Pate, I believe is in NCRIC.

Q Why did you use a lower number?

A Again, to be conservative. If I'm going to err, let me err in favor of NCRIC.

Q In the second analysis, did you use assumption about the retirement age of the doctors who left?

A Yes, I did.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002911

Q Why?

A I tried to figure out how long they would continue to practice at the hospital. Sixty-five is the normal retirement age and I used sixty-five even though I know that there are many doctors at that worked into their seventies.

Q Did you, in fact, look at any reports about the hospital?

A Yes, I have.

Q And what did you find about the retirement age of doctors in the hospital?

A I found that approximately nine percent of the doctors were sixty-five and older and so, therefore, I felt that sixty-five years of an assumption was probably conservative because doctors don't like to retire. And remember, they are self-employed and they are independent businessmen under a small closely held company or individual and they tend to work longer than the normal retirement age.

Q Did you look at any information from Social Security about retirement?

A Yes, I did. Currently someone retiring today had to be sixty-five years old and four months in order to retire under normal retirement at Social Security. I was born in 1949 and so my normal retirement age is sixty-six. Somebody born in 1960, their retirement age -- or after --

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002912

A No, except for the ones prescribed earlier.

Q You used cash flow rather than revenue?

A That is correct.

Q You reused reductions for the collection data?

A That is correct.

Q You used that thirty percent high marginal rate?

A Marginal cost rate.

Q You used the 10.5; is that correct?

A That is correct.

Q And didn't all five of those favor NCRIC?

A Absolutely.

Q And based on your estimate on the second damage analysis, what did you estimate Columbia's lost cash flow to be?

A About fifty million dollars.

Q And did you discount it again?

A Yes, I discounted it 10.5 and it yielded about 21.5 million dollars.

MR. GORSUCH: Your Honor, may we put that on the screen?

MR. PAGE: Same objection.

THE COURT: All right. The objection is noted and I will allow it to be published on the screen.

BY MR. GORSCUH:

Q Is this the summary of your second damage analysis?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002913

A Yes, it is.

Q And it lists the names of various doctors?

A That is correct.

Q And it assumes a retirement date based on age sixty-five?

A That is correct.

Q And then you accounted for the total cumulative loss to the hospital?

A That is correct.

Q And that's the fifty million dollar figure?

A That is correct.

Q And then you try the net present value?

A That is correct.

Q And that's again what you explained about the value of a dollar today not being worth as much tomorrow?

A That is correct.

Q And what figure did you use here?

A 10.5 percent was the discount rate.

Q And what was the total damage you came up with using the second?

A Okay. The present value for lost cash flow says 21.5 million dollars. The total dollar amount, however, is a little bit over fifty million dollars.

Q And again, if you used a different discount rate, say the HUD loan rate of 5.5 percent, what would the 21 million

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002914

dollar figure be?

A That would be 28.3 million dollars.

Q It increases the number by seven million dollars?

A Yes.

Q And again, how does that net present value cash flow compare to one year of lost cash flow from the hospital?

A It's almost half.

MR. GORSUCH: If I could, Your Honor, put both of the summaries up on the screen so that you can compare it. May we, Your Honor?

THE COURT: Yes.

MR. GORSUCH: Thank you.

BY MR. GORSUCH:

Q Mr. Ben Ezra, is what's depicted on the screen, does that summarize your findings using the two different analysis that you did?

A Yes, they do. But as you will notice, they are very similar.

Q In one analysis the total damages are 51 million 800 thousand dollars?

A That's correct.

Q And the other is 50 million 25 thousand dollars?

A That's correct. So, I took the lower of the two.

Q So your final opinion is to take the lower of the two?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A Again, there are two alternatives. Take that which is less favorable to Columbia Hospital for Women.

Q And the net present value of these items is 22 million versus 21.5?

A That's correct.

Q And again, both of those are approximately half the cash flow of the hospital in one year of operation?

A That's absolutely correct. And again, I took the lower of the two. Again, if you give two alternatives, take that which is less favorable to Columbia Hospital for Women and so that's the 21.5 there.

Q Has NCRIC in the two years since you supplied your report and your opinions in this case, January of 2002, caused you to revise your estimated damages?

A Yes, it has.

Q When did you receive information that caused you to revise your damages?

A About a week before the trial began, I got an indication that there were some clerical errors and that the amount needed to be adjusted down a little bit.

Q And how much did you adjust them down?

A Okay. The fifty million at the top is now adjusted down to 47.2 million, and the 21.5 million is now adjusted down to 20.4. And so the new numbers are 47.2 and 20.4. And that's my revised estimate, but again, I only got that

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002916

a week ago and they had the report for two years.

Q Did your damage analysis include anything for the last HUD loan?

A No, it did not.

Q The lost fund raising efforts?

A No.

Q The million dollar security deposit?

A No.

Q The money owed under the Retro contract to Columbia?

A No.

Q Fees associated with the bankruptcy?

A No.

Q And does your damage analysis cover the losses associated with the closure of the hospital?

A No, it does not because that occurred subsequent to my publishing of the report two years ago.

Q Has your involvement in this case as a witness for Columbia resulted in any harm to you personally?

A Yes, it has.

Q Can you explain?

A I was given notice by NCRIC that they would pursue me personally. They would sue me.

MR. PAGE: Objection, Your Honor.

THE COURT: Sustained.

BY MR. GORSUCH:

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q What was Columbia's financial condition at the time?

A I wasn't well aware of the financial condition. I was really moving into the Risk Manager role. I don't know that it was strong.

Q Did the hospital end up filing for bankruptcy shortly thereafter?

A Yes, in February of 1998.

Q And did Columbia give NCRIC money at the time?

A Yes.

Q Were you involved with that?

A I was involved with the transactions, yes.

Q What do you mean involved with the transaction?

A I was asked by Gerry Beaulieu to set up four disbursements for NCRIC of two hundred and fifty thousand dollars each beginning in January of 1998.

Q Did you have an understanding as to the reason for those payments?

A My understanding was that it was a deposit against future claims.

Q Did you have an understanding as to whether Columbia was supposed to receive interest for those payments?

A I would have imagined so. I would have expected interest.

Q You did expect it?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002918

to hold as a deposit, you would be accruing interest on that.

Q It was understood that Columbia would be getting interest?

A Yes.

Q The only question you raised was documentation of the interest; is that right?

A Yes.

Q What was Mr. Pate's response? Did he pay the interest?

A No.

Q He refused to pay the interest?

A We were told we weren't going to get interest.

Q Was the one million dollars referred to as a deposit by NCRIC in the course of your time at Columbia?

A Yes.

Q When was that?

A On the Retro Plan reconciliation sheet that we reviewed quarterly.

Q It was referred to on those sheets as a deposit?

A Yes.

Q Thank you. Why couldn't Columbia decide not to give NCRIC the one million dollars?

Q Well, at the point this occurred, we were already -- we did not have an agreement in place and the physicians typically renewed their professional liability policies

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q Good afternoon, Dr. Rifka.

A Good afternoon, sir.

Q I have a few questions and I'm going to try real hard to get finish today. We talked a little bit the other day, it was only yesterday, about your practice at Columbia. You were there as part of a partnership; am I correct?

A Which year and when? I was there part of a partnership?

Q Yes.

A No.

Q Let me ask the question this way. In your medical practice, you practice alone or do you practice with partners?

A Which year?

Q Well, let's say currently?

A Currently, yes, I do.

Q And while you were working at Columbia Hospital, did you practice with partners?

A No.

Q And when you testified as to the arrangement that you had at the hospital in terms of offices and staff, did any of that apply to partners that you had?

A There were no partners. We were two people in the Division of Reproducted Endocrinology, Richard Faulk

Laser stock Form FMRRN
Corby USA 1-800-255-5040

but I'm only asking you to tell me. And I think you have done it. It's accurate except for the one correction you made?

A No, for several corrections. Georgetown University was not purchased for profit. It was purchased by a non-for-profit. And the second is, I said that on the surgery that we don't have open surgery while we have a NICU and there is something which I said, that we continue to stand alone non-for-profit, in addition, no university medical school affiliation or endowment. And I told them not to do that.

MR. PAGE: All right. I'm going to ask no further questions of this witness.

MR. GORSUCH: Your Honor, very briefly.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. GORSUCH:

Q Dr. Rifka, even though there were no written contracts with the doctors in the hospital, is that an expectation that members would prefer to --

MR. PAGE: Objection. Scope, Your Honor.

MR. GORSUCH: He asked about written contracts yesterday.

THE COURT: Overruled. Yes, there was an expectation.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002921

BY MR. GORSUCH:

Q Can you explain that?

A Well, these physicians historically over decades have brought all their patients to Columbia Hospital for Women. They banded together to form the attending faculty, meaning that they have not only the history of bringing patients to the hospital, but the common objective of bringing all their patients to Columbia futuristically.

Q And before the event of this case in the summer of 2000, was there any reason to believe that was going to change?

A No, there wasn't any reason before the NCRIC clip.

Q And before the NCRIC clip, was there any reason to believe the hospital was going to close?

A No, on the contrary, the hospital at that time was doing fantastic. And we had a bright future in front of us.

Q Was there any talk of the hospital closing?

A Never.

Q We heard about the cleaning staff being out-sourced. Did they do a good job?

A The cleaning staff was out-sourced. They did a great job. This cleaning staff, the story is we out-sourced the cleaning services, but guess what we did, we

16d-002922

Laser stock Form FMRRN

Corby USA 1-800-255-5040

Dr. Rifka returned to the stand in response to one of his questions from Mr. Page, he responded that one of partners was Dr. Maurice Butler who was my doctor formerly. And I wanted to disclose that to the parties. I was not aware of these relationships until I heard his testimony today. And I wanted to bring that to the parties' attention at this time.

MR. PAGE: Your Honor, may I ask a question?

THE COURT: Yes.

MR. PAGE: And I'm sorry to do it. You say you're a former patient.

THE COURT: Yes.

MR. PAGE: The question I'm getting to is this. Is there any history that you have had being a patient of a practice in which Dr. Rifka is a partner or principal?

THE COURT: I don't know the answer to that. I know that Dr. Maurice Butler has been my doctor off and on, I guess maybe the last time I seen him was about a year ago. And so I don't know at what point in time he was with or practicing with other doctors because he's the only doctor that I saw.

MR. PAGE: I appreciate the Court's disclosure. I would like the opportunity to at least discuss it with my client.

THE COURT: All right.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INC.,	:	
Plaintiff/ Counter-Defendant,	:	
v.	:	Civil Action No. 7308-00
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	:	
Defendant/ Counter-Plaintiff.	:	

Washington, D. C.

Wednesday, February 4, 2004

The above-entitled action resumed for a jury trial before the Honorable ANNA BLACKBURN-RIGSBY, Associate Judge, in Courtroom Number 48-A.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

RODNEY PAGE, Esquire
SCOTT M. BADAMI, Esquire

On behalf of the Defendant:

NEIL GORSUCH, Esquire
ELI SCHULMAN, Esquire
PRIYA AIYAR, Esquire

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002924

Court, the issue for us is simply to clarify if it were the case that you had any prior relationship with Dr. Rifka in a patient-doctor relationship, that would be a concern to us and is something that we had known it earlier, we might have said something about it. And so with great respect and deference to the Court, but feeling I have an obligation given that history to at least clarify it so my client knows. And then as they ask me what the story is, I will at least be able to state with complete accuracy what the situation is.

THE COURT: That's fine.

MR. PAGE: I'm asking for a clarification.

THE COURT: I have never been a patient of Dr. Rifka's. I have never seen Dr. Rifka. I don't know Dr. Rifka. I have been a patient of Dr. Butler's and as I stated yesterday, off and on for about ten years. And the last time I saw him was about a year ago.

Dr. Butler's name has never come up in this trial and it had never come up in any of the pre-trial matters. There have been a number of doctors listed by name. His name has never come up until the first time yesterday late in the afternoon. And as soon as I heard the name, I felt it was important to disclose the relationship. And so I don't know Dr. Rifka. I have not had contact with Dr. Rifka. He has never, as far as I know,

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002925

had any role in my care in terms of seeing Dr. Butler. I don't know what Dr. Butler's arrangement is or has been with Dr. Rifka. And I don't know what else to say. Dr. Rifka, I don't know.

MR. PAGE: Okay.

THE COURT: And I mean, as far as you can certainly discuss it some more because I don't want this to become an issue in the case. This is a jury trial, of course, and so I don't have any role in terms of assessing the credibility of any of the witnesses or making any determinations ultimately about the verdict or the damages. It's not a patient care case. It's a case involving a contract between Columbia Hospital for Women and NCRIC.

So, for all those reasons, it wasn't until yesterday when my doctor who I know I have seen and been a patient of came up in this trial for the first time that I felt it was important to disclose. I don't see it as an issue for recusal, but I'm certainly open to hearing any concerns before we proceed any further.

MR. PAGE: Just a final point. May I assume from your statement that you were a patient at Columbia?

THE COURT: Yes. Well, I think that's a fair statement. Dr. Butler's offices are in the Physicians Office Building at Columbia on the grounds of Columbia.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002926

MR. PAGE: All right.

MR. GORSUCH: For the record, Your Honor, the office building is not owned by the hospital and is a separate facility.

THE COURT: Well, I don't know. It says Columbia. I think the name of his practice group is Columbia Fertility Association. And so you go into the door of Columbia Hospital.

MR. GORSUCH: It's next door to the hospital. It's a separate building.

THE COURT: That may be the case. I just know I go into his office building.

MR. GORSUCH: Yes, Your Honor.

MR. PAGE: Your Honor, the issue for us and I will only take a short more time on this, but the medical community in the District of Columbia is fractionized. There are some doctors who are pro-Columbia and some aren't. There are some doctors who are pro-NCRIC and some aren't. And some are anti and other factions as well. And our concern is and has been if there is any trier of fact, for example, who had a relationship that might color that even subconsciously or unconsciously, that would have been of concern to us. And I think that we did also in the voir dire express concern about people and we used preemptories on people who had been treated at

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002927

A Dr. Rifka.

Q And what was the assignment?

A I was -- the assignment?

Q What did he ask you to do to come on board to do?

A Yes. I had served on the Board and I was President, CEO, and as President and CEO, I was responsible for the administration, the management, controlling, organizing, planning for the hospital. And I was also really charged with carrying out the recovery plan that we had started as -- we had started while I was a member of the Board.

Q The hospital at this point was coming out of bankruptcy?

A Just coming out of bankruptcy.

Q And you were charged with administering the plan to recover the hospital?

A Exactly.

Q How did giving up that million dollars in 1997 to NCRIC for a security deposit affect Columbia?

MR. PAGE: Objection. Foundation.

THE COURT: Sustained. You may ask some foundational questions first.

MR. GORSUCH: I would be happy to.

BY MR. GORSUCH:

Q You were on the Board in 1997?

A Yes, I was.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002928

Q You were aware of Columbia's finances?

A Yes, I am.

Q How did the million dollars affect -- how did giving up the million dollars to NCRIC affect Columbia?

A It had a tremendous effect. It was one of our primary causes of our bankruptcy.

Q And how much money was involved?

A About 3.5 million dollars.

Q Did the Bankruptcy Court approve these expenses?

A Yes.

Q And they were paid?

A Yes.

MR. PAGE: I object and move to strike all of the testimony about the bankruptcy expenses.

MR. GORSUCH: It's an element of damages, Your Honor.

THE COURT: I will sustain it at this point. We're talking about the losses to the hospital first and we may be able to come back to this area later.

MR. PAGE: Your Honor, I wanted to add one thing. I also object on grounds that this is not the best evidence and there is no foundation for any of the testimony.

THE COURT: All right. With respect to the best evidence, the objection is overruled. Counsel can ask a few more foundational questions.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002929

A Yes.

Q With the Retro Plan set to expire on September 1st, 2000, if I could move to 2000 now, did you personally begin negotiations with NCRIC yourself?

A Yes, I did.

Q And when did you begin those negotiations?

A I started those negotiations February - March of 2000.

Q And who was the point person at NCRIC that you were negotiating with?

A David Osborn.

Q It wasn't Mr. Pate who was the point person at NCRIC that you negotiated with?

A No.

Q It wasn't Mr. Fargis?

A No.

Q It was Mr. Osborn?

A It was Mr. David Osborn.

Q What was NCRIC's initial demand in early 2000?

A In early 2000 the first demand was nine hundred and forty-four thousand dollars.

Q Plus keeping the million dollar deposit?

A Plus retaining the million dollars. It came to a total of one million, nine hundred and forty-four thousand dollars.

Q Did you agree to that with Mr. Osborn?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A No, I did not.

Q Why not?

A The number was high. We had always contested the one million dollar deposit issue and so we thought that we could negotiate it downward. We had planned or we did negotiate it downward.

Q How about the nine hundred and forty-four thousand dollars, did you agree with that assessment?

A Definitely not.

Q Why not?

A That number was -- Number One, we didn't understand the calculation. We didn't understand everything that went into it. We didn't have all the information to render a fair judgment on it.

Q Had you, in fact, at this point in time already retained Mr. Feldman?

A Yes. By the time we started with negotiations -- by the time I started negotiations with Mr. Osborn which was around March, I had already retained Feldman.

Q And you had received his initial analysis?

A Yes.

Q That NCRIC owed Columbia money and not the other way around?

A That is correct.

Q So you rejected the nine hundred and forty-four

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002931

thousand dollars?

A I did. Actually, we rejected it at that point, yes.

Q Did NCRIC come back and revise the demand in response to this?

A Yes, they did.

Q What did they demand the second time around?

A The second time around they demanded seven hundred and fifty thousand dollars, retaining the one million dollar deposit.

Q Did they respond to any of the concerns that you or Mr. Feldman and Ann Gaffey had raised about their analysis and calculations?

A They did not.

Q What was your initial reaction to the demand for seven hundred and fifty thousand?

A My initial reaction was that it was still too high, but we didn't have any basis to know exactly what it should be.

Q It was just a number?

A It was just a number too high.

Q And there was no basis for it that you could determine?

A That's exactly correct.

Q And you looked into it with Mr. Feldman and Ms. Gaffey?

A That is correct.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002932

A Yes.

Q Was it a regular habit of his to stop by your office out of the blue?

MR. PAGE: Your Honor, he's leading. I object.

THE COURT: Sustained.

THE WITNESS: That was the first time.

MR. GORSUCH: Let me rephrase the question.

BY MR. GORSUCH:

Q Was it the regular habit of Mr. Pate to stop by your office?

A No, definitely not.

Q Were you personal friends with Mr. Pate?

A No.

Q What did Mr. Pate say to you when he stopped by your office?

A Mr. Pate stopped by to tell me, to encourage me to accept the seven hundred and fifty thousand dollar demand that they had made on Columbia Hospital for Women. At that point I was definitely discouraged and distraught because again, NCRIC had not addressed any of the issues that Mr. Feldman had raised in his analysis. And at that point Mr. Pate indicated to me that if I didn't accept the seven hundred and fifty thousand dollar demand, that there was going to be a train wreck.

Q Did he use those words, train wreck?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002933

Q Were you expecting this?

A No, I was not.

Q Was there any advance warning at all that this was coming?

A None. Absolutely none.

Q Had NCRIC done anything like this in prior years in negotiations over the Retro Plan?

A No.

Q Did NCRIC cancel the clinic policy just forty-eight hours later?

A Yes.

Q Defendant's Exhibit No. 62, is that the letter you received? Let's put them both up side-by-side?

A Yes, it is.

Q Two termination notices within days after the Board rejected the demand?

A That is correct.

Q Both sent to you and received by you?

A That is correct.

Q Neither expected?

A Neither expected.

Q No advance warning?

MR. PAGE: Your Honor, it's cumulative. I would object and it's leading

THE COURT: The objection is sustained on the

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002934

grounds that the question is leading. If you would rephrase your question.

MR. GORSUCH: Yes, Your Honor.

BY MR. GORSUCH:

Q Did you expect either of these notices?

A Didn't expect either.

Q Did you pick up the phone to complain?

A Yes, I did.

Q Were you able to reach somebody?

A Well, I had been negotiating with Dave Osborn. I called Dave Osborn at his office.

Q You didn't have any problem reaching him?

A I did not reach him. I also called him on his cellphone.

Q Did you eventually reach him and talk to him about these termination notices?

A I did not. I could not reach him.

Q Did you speak to Mr. Fargis?

A I did not speak with Mr. Fargis.

Q After the fact, after you received these two letters, did NCRIC offer any reason for these termination notices?

A No, they did not.

Q Had there been any material change to the clinic's financial health?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A None.

Q They just renewed the policy six months earlier?

A That is correct.

Q And did NCRIC have access to the status of -- information --

MR. GORSUCH: Strike that, Your Honor. I apologize.

BY MR. GORSUCH:

Q Did NCRIC have access to information about the status of Columbia's self-insurance trust?

A Yes.

Q Was that public information?

A It was.

Q Because you're not for-profit?

A We're not for-profit.

MR. PAGE: Your Honor, I object. Again, cumulative.

THE COURT: Overruled.

THE WITNESS: We're non-for-profit and the information is in our tax returns and et cetera.

BY MR. GORSUCH:

Q And those tax returns were public?

A Public.

Q Were there members of NCRIC's Board that had served on Columbia's Board of Directors and who had, therefore, heard regular reports about the status of the trust?

A Yes.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002936

Q And who were those people?

A Dr. Catares and Dr. Dukes.

Q Is Dr. Dukes in the courtroom today?

A Dr. Dukes is sitting right here.

Q Did Columbia ever refuse to provide financial information that NCRIC asked?

A Never.

Q If it had asked for any more information about the self-insurance trust fund status, would you have given it to them?

A Absolutely.

Q Did the hospital have an excess insurer?

A Yes, we did.

Q What is an excess insurer?

A An excess insurer is an insurance company designed to cover catastrophic levels of insurance. It goes over and above the regular insurance policy.

Q Over and above what you had with NCRIC?

A For big losses.

Q Did that insurance ever cancel Columbia's policy in 2000?

A No.

Q Did the Insurance Commissioner ever address NCRIC's cancellation of the clinic policy?

A I didn't hear that.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q I'm sorry, Dr. Wilson. Did the Insurance Commissioner ever address NCRIC's termination of the clinic policy?

A Yes, he did.

Q What was the result?

A The result was the Commissioner said to us after I complained to him about the cancellation and wanted to know why is that NCRIC had followed the administrative process from the Commission.

Q Did he say anything about the merits of your complaint?

A No, the Commissioner said to us the merits of the case should be taken to court. And that's why we're here today.

Q And if you turn to Defense Exhibit No. 48 and turn to the last paragraph, is this the letter?

A This is the letter.

Q "This Department does not intervene in matters of determining damages and negligence to settle a contractual dispute. Therefore, you may seek resolution from a Court of competent jurisdiction." Is that what you're speaking about?

A Yes, it is.

Q After terminating the Retro Plan and then terminating the clinic plan, did NCRIC within ten days

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002938

send out bills to doctors?

A Yes, they did. They sent out bills the first week in July or the second week in July.

Q Did these contain the usual Retro Plan discounts?

A They were undiscounted bills.

Q So it didn't include?

A It didn't include the Retro Plan discount at all.

Q And how much of a magnitude are we talking about these bills on discount?

A Oh, thirty percent, twenty, twenty-two thousand dollars or so.

Q Twenty thousand or more higher than what the doctors expected?

A That is correct.

Q Had NCRIC done anything like that before?

A Never.

Q Had they done it before in contract negotiations in '97?

A No.

Q '98?

A No.

Q '99?

A No.

Q What effect did the termination of the Retro Plan, the termination of the clinic policy and undiscounted bills,

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002939

what kind of effect did it have on the doctors at Columbia that you were able to observe?

A Tremendous effect. Morale was low. That was the topic of conversation. Physicians were calling almost hourly. They were concerned.

MR. PAGE: Objection, Your Honor. This is hearsay.

THE COURT: The objection is sustained.

BY MR. GORSUCH:

Q I will not ask you what they said. I'm just going to ask you what effect did it have on the doctors that you could observe?

A It had a detrimental effect that I could observe.

Q Were people coming up to you?

A People were coming up to me asking about --

MR. PAGE: Objection, Your Honor.

THE COURT: Just answer the question, Dr. Wilson. Did people come up to you?

THE WITNESS: Yes.

BY MR. GORSUCH:

Q Was their demeanor concerned?

A Yes.

Q Were they worried?

A Yes.

Q People who hadn't done this before?

A People who had not done this before, right.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002940

Q And that's part of why you agreed to pay the seven hundred and fifty thousand dollar ultimately?

A That is correct.

Q Did you call Mr. Osborn to discuss this issue with him on August 15th?

A I did.

Q The same day that he sent it to you?

A Yes.

Q Were you able to reach Mr. Osborn?

A I was not able to reach Mr. Osborn.

Q Did you try him at the office?

A I tried him at the office.

Q Did you try him on his cellphone?

A I tried him on his cellphone.

Q Had you ever had problems reaching Mr. Osborn in the prior days and weeks of negotiating this deal?

A No, I had not.

Q When is the last time you had spoken to Mr. Osborn?

A The day before.

Q And how many times have you two spoken in the previous week alone?

A During that time at least twice a day.

Q Do you know whether Mr. Osborn was aware that you planned to finalyze the deal on August 15th after four months of negotiations?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A No, I was not able to reach him.

Q Do you have personal knowledge of ultimately what happened to Mr. Osborn?

A Yes, he was terminated.

Q Fired?

A Fired.

Q After being unable to reach Mr. Osborn, did you hear from Mr. Pate?

A Yes, I did.

Q He returned some of the calls you left at NCRIC?

A Yes.

Q Were you expecting to hear from him?

A I was surprised. This was the first time that I had heard from Mr. Pate since that conversation about the train wreck he promised.

Q What did Mr. Pate tell you this time?

A This time Mr. Pate told me that the agreement that Mr. Osborn had reached with me was canceled.

Q No deal?

A No deal.

Q Even though you had a signed letter from NCRIC?

A That's correct.

Q Were you shocked?

A I was shocked. Totally surprised.

Q Expecting any of this?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002942

years that hadn't closed out?

A No.

Q Around this time did you receive letters from doctors saying that they were leaving?

A Yes.

Q And if you could take a look at Exhibit No. 41.

MR. PAGE: Your Honor, this is cumulative. We are going over the same testimony that other witnesses have done.

THE COURT: Overruled.

MR. PAGE: I'm concerned about timing. That's the reason for my objection.

THE COURT: The objection is noted and if counsel would move quickly through this line.

MR. GORSUCH: Yes, Your Honor. I have ten more minutes tops.

BY MR. GORSUCH:

Q Did you receive this letter?

A Yes, I did.

Q Defense Exhibit No. 46. Did you receive that letter?

A Yes, I did.

Q Defense Exhibit No. 52, did you receive this letter?

A Yes, I did.

Q Defense Exhibit No. 54, did you receive this letter?

A Yes, I did.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002943

Q If you could put them all up, 41, 46, 52 and 54. You can't do it, okay. You received all four of those letters about the same time?

A I did.

Q Did any of them complain to you about supplies?

A No.

Q Equipment?

A No.

Q Patient safety?

A No.

Q What were they complaining about?

A About NCRIC. About the cancellation of the insurance policy.

Q These were all doctors who left?

A Yes.

Q Did you review the financial results of the hospital on a regular basis as CEO?

A Yes, I did.

Q How often?

A Monthly.

Q And the hospital accounts for its finances on a fiscal year that runs from July 1st through June 30th?

A Yes.

Q What were the revenues of the hospital in the fiscal year ending June 30th, 2000? The year before the

Laser stock Form FMRRN
Corby USA 1-800-255-5040

doctors left?

A The year before the doctors left, forty-seven million dollars.

Q And what were revenues of the hospital for the fiscal year ending June 30th, 2001? After the doctors left?

A After, thirty-seven million dollars.

Q What's the difference?

A Ten million dollars.

Q Had you seen any drop of that magnitude during your years at the hospital as CEO?

A No.

Q As CEO, did Columbia have any plans to close the hospital before the doctors left?

A Oh, no, to the contrary. We were on the road to make money. The volume or the admittance leveled off and had gone into fiscal year 2001 and given the increase in our -- well, the revenue enhancement initiatives we had in place and the cost containment initiatives we had in place, we were on track to make a profit that year for the first time in many years.

Q Before the doctors left?

A Before the doctors left.

Q You were expanding services into new areas that were profitable?

A That's correct.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

out of bankruptcy.

Q And was the hospital able to meet all its obligations in '99 and 2000 before the doctors left?

A Yes.

Q And if referrals from the doctors had just remained stable and hadn't dropped, would the cost containment measures and revenue enhancement measures we talked about put the hospital in the black in fiscal year 2000?

A It would have ensured a profit.

Q And where, in fact, doctors referrals and revenue stable up until September 1st, 2000?

A Yes.

Q Did anyone at NCRIC during any of this period in 2001 ever tell you that they thought the hospital was unsafe?

A Never.

Q Did they ever show you any safety studies about the hospital?

A No.

Q Did they ever say it was badly equipped?

A No.

Q Did NCRIC ever tell you that the hospital was dirty?

A No.

Q Did they ever tell you that the number of claims

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002946

against doctors was increasing?

A No.

Q When was the first time you heard these supposed reasons for terminating the Retro Plan?

MR. PAGE: Objection to the Retro, to the termination.

THE COURT: Sustained.

BY MR. GORSUCH:

Q Did you come to hear these reasons?

A Yes.

MR. PAGE: Same objection. Nobody ever said the Retro Plan was terminated.

THE COURT: Sustained.

BY MR. GORSUCH:

Q Did you hear about those things, about safety studies, badly equipped, dirty, number of claims rising?

A Yes, I did.

Q When is the first time you heard about those things?

A The first time I heard those characterizations was from Mr. Page right here in this courtroom.

Q We heard about borrowing supplies from George Washington. Do you remember that earlier in this case?

A Yes, I do.

Q Well, did G.W. ever ask to borrow supplies from Columbia?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002947

the Columbia Board had decided to terminate the Retro Plan; correct?

A One of the conditions as set forward by NCRIC was that in order to enter into a new plan, the only way we could do that was to close the old plan. I communicate that to the Board.

Q Okay. The last sentence of the first paragraph, you advised that the Board desired to terminate the agreement quote unquote. Do you see that?

A Yes.

Q The agreement being referred to as the Retrospective Rating Agreement; right?

A Yes.

Q The Columbia Board is the Board referred to; right?

A That is correct.

Q And you in fact advised NCRIC that the Board had decided, the Board of Columbia had decided to terminate the Retrospective Rating Plan; right?

A Yes, but it didn't stop there. They also instructed me because of the reasons I stated earlier to continue to negotiate.

Q To negotiate over the buy-out dollar amount; right?

A No, to continue to negotiate a new Retro Plan.

Q A new Retro Plan?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q Now, there was no obligation of NCRIC to enter into a new Retro Plan?

A Oh, to the contrary. We thought there was an obligation, at least a moral obligation, we had negotiated and worked with NCRIC for all this time in good faith. Mr. Osborn and I had talked daily for the whole summer. We had -- he had actually come up with some of these conditions that he had set out. And so I thought there was an obligation. I thought we had an agreement.

Q So your view was that because you had an existing arrangement with the insurance company, they had an obligation to continue dealing with you regardless. Is that what you're saying?

A Not regardless, but there was a moral obligation because the kind of relationship we had in the past.

Q The relationship being that you had a contract; right?

A It was more than a contract in our opinion.

Q Now, I noticed in this letter you don't make any reference to being threatened by Mr. Pate; do you?

A I do not.

Q There is not a single document in here where you say I have been threatened by Mr. Pate?

A I do not.

Q The Board Minutes don't reflect that the President

Laser stock Form FMRRN
Corby USA 1-800-255-5040

MR. PAGE: May I be heard, Your Honor?

THE COURT: Yes.

MR. PAGE: Your Honor, on behalf of NCRIC --

THE COURT: Parties may be seated.

MR. PAGE: On behalf of NCRIC, Your Honor, I move for judgment as a matter of law on elements of the counterclaim, and while I don't want to prolong things, I would like to be heard briefly on the matter.

There are, I think, if I counted right, ten counterclaims, ten separate claims like this. There was one that had been dismissed, Count VI of the complaint, and I think there were a total of eleven counts otherwise.

Your Honor, we would move for judgment as a matter of law on all of the counterclaims except Count I. Count I is a breach of contract claim and the issue, as I understand it, is a dispute as to the amount owed and whether they owed money. But all of the other counts, in our view, the evidence presented is insufficient as a matter of law for the jury to consider the claims.

If you would allow me, I'm going to do them a little bit out of the numerical order and I might even start at the back with Count, I think it's Count XI which is called Conversion.

The conversion claim as we understand it is the pleadings and in the Pre-trial files it's a claim that the

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002950

in giving the benefit of the doubt to Columbia that they can infer from the evidence that there was some intentional misrepresentation of the amount owed, there is no indication of reliance by Columbia for damages. They have not been damaged in any way because actually they haven't paid anything. And this case is about whether or not they owe money under the Retro Plan. It seems to us they have not established the elements of fraud and in particular, we would say they have not established any reliance or any change of behavior on the part of the hospital with regard to the statements made by Columbia. And again, I point out the very statements they are relying upon ultimately are part of their breach of contract claims. All of this is another twist on the argument that the amount that are claimed is not the right amount and that there should be a different amount owed.

Counts IV and V are tortuous interference claims and I think the thrust of the case that they have presented is really about this tortuous interference claim. And we know that there is no written contract. We also know that in the District of Columbia the law is business expectancy could be that contract and they have put on evidence of that. What they have not shown, however, Your Honor, is that any of these doctors left because NCRIC either induced them coerced them or encouraged them to leave.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002951

MR. GORSUCH: Your Honor, I think Dr. Glassman's statement alone is legally sufficient, and that's what I would point you to most pointedly. Dr. Lenny Glassman was at the time Chairman of the Board of NCRIC, Inc.

THE COURT: And that was in --

MR. GORSUCH: Dr. Rifka's testimony. He testified after --

THE COURT: What's the exhibit number that's in evidence?

MR. GORSUCH: Your Honor, it was an oral admission. It was an admission against interest testified to by Dr. Rifka.

MR. PAGE: May I be heard on that, Your Honor?

THE COURT: Yes.

MR. PAGE: Just on that single point. This is the way I wrote it down. It was in testimony and it was the single reference. I wrote it down as follows: Dr. Rifka testified that Glassman told doctors in staff meeting quote, if they did not have the Retro Plan with NCRIC, they should pack their bags and leave, unquote.

Now, the reason I say that is two things. First, nothing was said about Columbia closing. That was counsel's fortuitous spin on those words. Secondly, Dr. Glassman as a matter of law is entitled to give his opinion and opinion testimony of Dr. Glassman or even of

Laser stock Form FMRRN
Corby USA 1-800-255-5040

NCRIC is not libel.

THE COURT: All right.

MR. GORSUCH: Your Honor, briefly, not only my recollection but I think the record will reflect that Dr. Rifka testified to both of those things that Mr. Page said correctly, but he also said that the hospital was going to close; that he did say. That came off of the witness stand and that, Your Honor, is defamation per se under District law.

MR. PAGE: And it's true as to the defense as well, Your Honor.

MR. GORSUCH: Your Honor, they are entitled to argue that to the jury. I completely agree with Mr. Page that Page 16 of our Proposed Jury Instruction outlines the law of defamation per se and financial insolvency among those reasons to, to constitute defamation per se.

THE COURT: All right. Before I address the motion and the response, I want to talk a little bit about scheduling the remainder of the day.

MR. PAGE: May I, Your Honor? We have waiting two witnesses. They are both doctors. We had thought we were going to moving faster than this. If we can get them on before lunch, they will be able to testify today. If not, they will have to be rescheduled for a later day. I had planned to have a total of four or five witnesses today.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002953

Q Is it your testimony you referred a patient to a specialist to Columbia even after you had left the hospital? Isn't that right?

A Yes.

Q You wouldn't have done so if the standard of care had been inadequate; isn't that right?

A We haven't discussed the standard of care. I haven't made any comment about the standard of care.

Q Until mid-2000, Doctor, isn't it true that you have never seen a group of thirty or so doctors leave Columbia at one time?

A That's correct. To the best of my knowledge.

Q Isn't it true when those doctors left, admission decreased dramatically?

A You know, we were probably the first group of doctors to leave Columbia and so I can't comment on what the admission status was after we left because during that time period there were doctors here or there that had left. But as we were probably the largest group at the time that left, I can't comment on what the number of admissions were after we left.

Q Doctor, you said that you stopped referring patients around October 31st; is that right? You stopped referring patients to Columbia at that time?

A There is a difference between admitting patients

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002954

in your practice; isn't that right?

MR. BADAMI: Objection, Your Honor. Same question, asked another way.

MR. SCHULMAN: Your Honor, it's bias.

THE COURT: What's your question? Is your question who is his malpractice insurer?

MR. SCHULMAN: Yes, Your Honor.

THE COURT: Okay. Then ask that question.

MR. SCHULMAN: Okay.

BY MR. SCHULMAN:

Q Isn't it true that NCRIC has paid over six hundred and ninety thousand dollars --

THE COURT: No, that's not the question. If you want to know who his insurance providers are, you can ask that question.

MR. SCHULMAN: Okay.

BY MR. SCHULMAN:

Q Isn't it the case that your insurance provider is NCRIC?

A Yes, it is.

Q Isn't it the case that NCRIC has paid substantial sums for you personally and your practice for malpractice?

MR. BADAMI: Objection. That's the same question?

THE COURT: I will allow the witness to answer.

THE WITNESS: I don't know the amount, but I have

Laser stock Form FMRRN
Corby USA 1-800-255-5040

been and members of my group have been -- we have been sued before and NCRIC has paid monies. I don't know the exact amount of monies, but we have been involved in some lawsuits.

BY MR. SCHULMAN:

Q Isn't it the case that NCRIC has paid over six hundred and ninety thousand dollars for your cases personally?

MR. BADAMI: Asked and answered, Your Honor.

THE COURT: Sustained.

BY MR. SCHULMAN:

Q Isn't it the case that NCRIC has paid more than a million dollars for your practice group in claims and expenses?

MR. BADAMI: Same objection.

THE COURT: Sustained.

BY MR. SCHULMAN:

Q It's important to you to have a good relationship with NCRIC?

A It's important for me to have a good relationship with everybody; yes.

THE COURT: Any redirect?

MR. BADAMI: No, Your Honor.

THE COURT: All right. Thank you, Doctor. You're excused and free to go.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

care to people who otherwise would not have been able to receive it. They could have insurance or have less insurance than they needed, but they would make arrangements for people to receive the care, no matter what kind of monies they had.

Q And it gave the same excellent standard of care whether you were a princess or someone just off the street; isn't that right?

A Yes.

Q And you often delivered teenage mothers in your clinic with no insurance?

A Yes, I did.

Q What was the youngest girl for whom you delivered a child at Columbia's clinic?

MR. BADAMI: Objection, Your Honor. Relevance.

THE COURT: Sustained.

BY MR. GORSUCH:

Q How many patients did you see at the clinic every year?

A I only worked in the clinic for two or maybe three years and I did mostly covering labor and delivery rather than seeing them downstairs in the clinic. And so, you know, probably just a few dozen in the clinic itself.

Q Isn't it true that you quit treating clinic patients on September 1st, 2000?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A I don't know the date, but that's -- it was around August or September.

Q Wasn't it September 1st, Doctor?

A I don't remember the date.

MR. GORSUCH: Your Honor, with your permission, I would ask leave to give a binder of documents.

THE COURT: Yes.

MR. GORSUCH: Thank you.

BY MR. GORSUCH:

Q Doctor, could you please turn to what has been labeled and admitted into evidence as Defense Exhibit No. 41 and if we could put that on the screen. Doctor, this is a letter from one of your partners? Is that DX 41?

A Yes.

Q Okay. This is a letter from one of your partners, Jeanette Sheffield; correct?

A Sheffield, yes.

Q And what's the date on that letter?

A September 1, 2000.

Q And that's the very date the Retro Plan terminated; isn't that correct?

A I know that coverage for clinic positions ended that day. I don't know if the Retro Plan ended that day, but I know the reason for this was --

Q Doctor, isn't it correct that the clinic coverage

Laser stock Form FMRRN
Kolby USA 1-800-255-5040

ended that day.

A Yes.

Q And you don't know whether the Retro Plan ended that day?

A It seems to me that the coverage we had for the clinic ended sooner. I may be mistaken about that, but we found our coverage had been taken away. And so we did not want to work without malpractice insurance.

Q And that's why you stopped treating patients at the clinic because of the lack of malpractice insurance; isn't that correct?

A Yes.

Q In fact, that's what you say in this letter; isn't it, that you're stopping the practice because you lack liability insurance; isn't that right?

A Yes, our contract had been that the hospital would provide us that malpractice insurance. And they took that insurance away and so we no longer wanted to work for them.

Q And in fact, you go on to say, should NCRIC insurance Company be reinstated, please advise us. We agree to work for the clinic as most people when they will do extra work have to have malpractice insurance and the physicians don't pay for that separately. And so the agreement, the contract with the hospital was that in return

Laser stock Form FMRRN
Corby USA 1-800-255-5040

for our work we would receive a certain amount of monies and they would pay our malpractice insurance. And they stopped paying it and so we stopped working, you know.

Q Doctor, a simple question. You wanted to be advised if the NCRIC insurance was reinstated?

A If we were given malpractice as we had been promised, then we would consider going back to work. Uncovered, we were not going to expose ourselves to legal liability, and so the assumption was it would be with NCRIC, but we needed malpractice coversage.

Q And you don't know whether NCRIC terminated that policy legally or illegally?

A What mattered to us is that we were not covered and the things that went before that weren't the issue. The issue was we were not covered. We were promised coverage. It was taken away. We were not going to work until or unless we had coverage.

Q Doctor, a simple question. You didn't know whether NCRIC terminated that policy legally or not, did you?

A I don't know why they did what they did.

Q When your practice group wrote in the letter about stopping treating patients in the clinic, you didn't cite safety concerns at the clinic, did you?

THE COURT: Whose letter is it?

MR. GORSUCH: This is Dr. Sheffield on behalf

Laser stock Form FMRRN
Corby USA 1-800-255-5040

of your practice group; isn't that correct?

THE WITNESS: Yeah, that wasn't the intent of the letter.

BY MR. GORSUCH:

Q Doesn't mention safety, does it?

A That wasn't the intent of the letter.

Q Doesn't mention equipment?

A That wasn't the intent of the letter.

Q Doesn't mention supplies?

A No.

Q And you never mentioned any of those concerns with Dr. Rifka, the Chairman of the Board of the Hospital, did you?

A Dr. Rifka and the rest of the hospital were very aware on a daily basis of our concerns about supplies and --

Q But the issue, Doctor --

THE COURT: I'm sorry. Was the witness finished with her answer?

THE WITNESS: I can be.

BY MR. GORSUCH:

Q Isn't it true that the reason why you left the clinic is because of the lack of insurance; Doctor?

A That was the precipitating factor, yes.

Q Thank you. And you wrote a letter on October 6th

16d-002961

Laser stock Form FMRRN

Corby USA 1-800-255-5040

anyone and we appreciated the work everyone worked so hard at the hospital to keep it going. We didn't want them to think -- everyone had to make their own personal choices as to whether they wanted to continue to stay there. We didn't want them to think that they needed to leave because we left. We wanted to leave on good terms. We had very many friends there, physicians, front desk workers, janitors, you know, OR technicians, every thing. We were just saying goodbye. We didn't want to talk about people, or you know, make complaints. We had already made up our minds that this is what we were going to do and we wanted to say goodbye and thank you.

Q If you would answer my question, it's not in there; correct?

A No, we didn't want it to be in there.

Q And you stayed at the hospital all the way through receivership in 1997?

A Yes, I guess that's a technical term for it, okay.

Q And the bankruptcy in '98?

A Yes, I remember that.

Q And the reorganization plan?

A Yes.

Q And all the way through the first half of 2000?

A Yes.

Q And you wouldn't have treated a single patient

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002962

weeks.

A That's my point. So we would then have them go to G.W.

Q So they couldn't go to Sibley which is where you took your patients?

A They could, but it wouldn't be the right place for them to be.

Q And until mid-2000, you never saw thirty doctors leave Columbia within a matter of weeks, did you?

A No.

Q You would agree that Columbia's closure and the loss of the clinic was a loss to the community?

A Oh, it was a tremendous loss.

Q You would agree it's important for OB/GYN doctors to have malpractice insurance?

A You have to have it.

Q Foolish to practice without it?

A I don't think that you can. Well, I guess you can, but yeah, it's pretty foolish.

Q You could risk losing your personal assets in a lawsuit?

A Yes.

Q Your home?

A Yes.

Q So it's important that you have a good relationship

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q And the reason you left the Board, would you tell the jury?

A Okay. Insurance was an issue, the physical plan of Columbia Hospital was an issue and the direction that the hospital was heading in also was an issue so far as my decision to leave. I think also the fact some of my patients had mentioned certain things that occurred also influenced me.

Q All right. Now, let's skip ahead to the point where you actually began to transition your practice from Columbia. When approximately did that occur?

A This happened in the fall of 2000.

Q And that was in your relationsip to your leaving the Board; how long after that?

A Probably two to three months on that time span.

Q All right. And at the time you were practicing principally at -- well, let me start over. At the time you were referring to, you had admitting privileges at Columbia; is that correct?

A I did.

Q Did you have admitting privileges at any other hospital at that time?

A Yes, I did. I had admitting privileges at George Washington Hospital and I had earlier applied but I did not officially have privileges at Sibley.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q When you began or when you did transition your practice from Columbia, where did you end up referring most of your patients?

A I ended up at Sibley Memorial Hospital.

Q Now, you said that involved in your decision in disengaging from Columbia, there was an insurance issue. Do you recall saying that?

A Yes, I do.

Q Tell the jury what you mean by the insurance issue?

A Well, I was concerned about my premium and when I say my premium, the amount I would have to pay.

Now, certainly I had the option of staying with Columbia Hospital but that certainly would mean that I would have to change to another insurance company.

Q If the Retro Plan from NCRIC had continued in effect with Columbia, would you have left Columbia?

A Well, at this point with all that had happened, it would have been difficult to reverse the process of my move.

Q If the Retro Plan had continued in effect, would it have had an impact on the timing of your decision?

A Would you repeat the question?

Q If the Retro Plan from NCRIC had continued in effect on September 1 of 2000, would that continuation have

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q And when was that?

A It's been about two and half to three years ago.

Q And how many members of the Board of Directors are there?

A We now have twelve and we will probably be downsizing soon, but at this point twelve.

Q And how many of the twelve directors are physicans practicing in the District of Columbia?

A Seven if memory serves me correctly.

Q A majority of the Board?

A Yes.

Q And do you hold any particular assignment as part of the NCRIC Board?

A Yes, I'm Vice Chair of the Claims Committee.

Q What is the Claims Committee of NCRIC?

A The Claims Committee is a committee that reviews all suits that come in. Not only suits, but what we would call incidents of NCRIC's insured, so that if anyone is either sued or has an incident where they expect that legal action may be taken, we have meetings that review the suit. I wouldn't be able to say a lot. The work product is privileged, but we assess the suit for merit.

Q And who is on the Claims -- well, how many people are on the Claims Committee?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002966

Q Dr. Dukes, isn't it true that you weren't listed as a likely witness in this case?

MR. PAGE: Objection. That's a mischaracterization.

THE COURT: Sustained.

BY MR. GORSUCH:

Q For the time that you indicated that you sat on the Board of Directors at Columbia; is that right?

A Yes, that's correct.

Q And when you did so, you received regular updates about the financial status of the self-insurance trust from Ann Gaffey and others?

A Well, when you say I received regular updates, I did in the context of any Board member if these matters were discussed at our meetings.

Q And were you here when Ann Gaffey testified that she gave regular updates to the Board?

A Unfortunately, I was not here.

Q You don't dispute that you received regular updates about the self-insurance trust from Ann Gaffey and others?

A In the same context as any Board member.

Q Until mid-2000, you have never seen thirty doctors leave Columbia within weeks, had you?

A That's correct.

Q First and only time?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Isn't it true you have seen letters in this courtroom from doctors citing the lack of insurance as a reason why they stopped working at Columbia?

A If you would add the clinic, I may be able to agree with you.

Q Okay. The clinic then, Doctor?

A Yes, I would agree with that.

Q You have seen those letters?

A I have seen those letters.

Q You haven't seen any letters from doctors citing safety at the hospital, have you?

A No, but this has been something that has been mentioned by certain witnesses that have come to the stand today.

Q Four years later; right?

A It was mentioned today.

Q And today is four years after the fact; isn't it?

A Yes.

Q Okay. And the only letters you have seen from the time citing insurance; isn't that right?

A That's correct.

Q They don't mention the cleanliness of the hospital, do they?

A No, they do not.

Q And you would agree that even after you left --

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q And insurance is one of the reasons?

A That's correct.

Q You stayed on NCRIC's Board?

A Yes.

Q And you're being paid for your presence here today; isn't that right, by NCRIC?

A That's correct.

Q How much are you going to be paid, Doctor?

A I think you heard in my early testimony that this is not yet been worked out, but I will be reimbursed for my time away from my own office for patients that I have not seen.

Q How much per hour?

A We would take the patient list. It has not been worked out.

Q More than a hundred dollars an hour for sitting in the courtroom?

A If my patient list indicates that, I would hope I would get that.

Q More than two hundred dollars an hour?

A I rarely get that, but if it indicates that, I would expect to get it.

Q You wouldn't hesitate to give a bill for over two hundred dollars an hour for your presence in this courtroom?

A Absolutely not.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

one hundred and forty-four shares from another Stock Award Plan?

A Yes.

Q Those are free shares; right, Doctor?

A Yes, they are.

Q How much are those shares worth today?

A I think the stock is being traded at somewhere between nine and twelve dollars.

Q And in fact, if youadd those up, that's over eighty-two hundred shares; right?

A Well, I really can't see, but I will take your word for it.

Q Do you have any reason to disagree with my math that it's over eight thousand shares of stock?

A Yes.

Q All of which was free except for seven hundred and forty-six; right?

A Yes.

Q And at ten dollars a share, that's over eighty thousand dollars worth of stock; isn't that correct?

A Correct.

Q You're also insured by NCRIC?

A Yes, I am.

Q And NCRIC has spent over a hundred thousand dollars defending you in lawsuits?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A Yes.

Q And NCRIC provides your insurance to this day?

A That's correct.

MR. GORSUCH: Thank you, Doctor.

THE WITNESS: Thank you.

THE COURT: Any redirect?

MR. PAGE: No redirect, Your Honor.

THE COURT: All right, Dr. Dukes. You're free to step down at this time.

THE WITNESS: Thank you.

(Thereupon, the witness was excused at 4:40 p.m.)

THE COURT: All right. This may be a good point to stop for the day and excuse the jury at this time. And again, thank you all for your attention. We have a lot of things going on in the building and so I know you have all heard the drilling and the banging. And I appreciate your ability to focus on the trial at hand. The jury stands excused.

(Thereupon, the jury was excused at 4:40 p.m.)

THE COURT: Okay. If we could spend about five minutes before everyone leaves talking about scheduling for tomorrow. What witnesses do you have?

MR. PAGE: Your Honor, we know that we have Messrs. Fargis and Pate, and we have the two witnesses from Price Waterhouse Cooper.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002971

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NRCRIC, INC., Plaintiff/ Counter-Defendant,	
v.	Civil Action No. 7308-00
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/ Counter-Plaintiff.	

Washington, D. C.

Thursday, February 5, 2004

The above-entitled action resumed for a jury trial before the Honorable ANNA BLACKBURN-RIGSBY, Associate Judge, in Courtroom Number 48-A.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

2004 MAR 10 P 4:01
CIVIL DIVISION
DISTRICT OF COLUMBIA
COURTS

APPEARANCES:

On behalf of the Plaintiff:

RODNEY PAGE, Esquire
SCOTT M. BADAMI, Esquire

On behalf of the Defendant:

NEIL GORSUCH, Esquire
ELI SCHULMAN, Esquire
PRIYA AIYAR, Esquire

DONNA K. HAWKINS
Official Court Reporter
Telephone: 879-1035

16d-002972

Laser stock Form FMRRN
Corby USA 1-800-255-5040

in the Plan. And that lower limit and we have to use nineteen percent just because -- we have to use a larger percentage on a smaller number to get back to that fifteen percent of the million dollars.

Q The idea of using a lower amount to calculate was part of the original Retro Plan; isn't that correct?

A Yes, it was.

Q That was a negotiated term between Columbia and NCRIC back at the beginning of the Plan; right?

A That's my understanding.

Q Now, you then indicate that that deposit premium will change to another number if the discount increases from fifteen to -- excuse me, fifteen to thirty percent; right?

A That's correct.

Q And what is the new number in the deposit premium that would be indicated?

A It's sixty-two percent and sort of simply it was nineteen before and they doubled it. And so the double would take the nineteen to thirty-eight. It can only be sixty-two percent.

Q Now, did this number have an impact on the amount of money collected by NCRIC under the Plan?

A Yes, we were collecting in essence seventy cents on the dollar from the physicians.

Q Now, let me turn now -- you included the

Laser stock Form FMRRN
Corby USA 1-800-255-5040

contract effective --

Q Before you go into the letter, let me get it admitted if I could. And does this letter reflect the discussions that you had with Mr. Beaulieu at that time?

A It does.

MR. PAGE: All right. Your Honor, I would move into evidence Exhibit No. 43. Plaintiff's Exhibit No. 43.

THE COURT: All right. We will admit that into evidence at this time.

MR. PAGE: May I publish it to the jury, Your Honor?

THE COURT: Yes.

BY MR. PAGE:

Q Now, does your letter, Mr. Fargis, deal with the continuation of the Retrospective Plan?

A It does.

Q And what was proposed by the new letter?

A What we were proposing in October, late October '97 was that they sign the current contract for 1997 that had been effective since January 1st of that year. Also that they provide financial security of a million dollars on the outstanding contingent liability of 1.7 million dollars. And then just the time and date that they meet both of those conditions.

Q Did you have any meetings personally face-to-face with representatives of Columbia about this proposal?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002974

Q Now, the Retro Plan ended on September 1 of 2000 and in the exhibit that we looked at, Mr. Osborn informed the hospital of that on June 28th of 2000. Do you recall that?

A Yes.

Q Did there come a time after that when NCRIC mailed statements or bills to the insured doctors reflecting the undiscounted premiums?

A Yes, following --

Q Before you go on and testify, just listen to the question. Did there come a time when it happened?

A Yes.

Q Do you know when?

A It was in late June-July.

Q Was it soon after the letter to Columbia saying that the Plan would be ending on September 1?

A Yes.

Q Within a matter of less than two weeks, the bills went out; is that correct?

A That's correct.

Q And how many doctors did those bills go to?

A I belive at the time we had about seventy participants in the Columbia Plan.

Q So those doctors received a bill and did the bills show that they now owed a hundred percent of the premium?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A Yes.

Q And why is it that NCRIC sent out a bill to the doctors almost immediately asking them to pay a hundred percent of the premium?

A Well, we had confirmation and acceptance of Columbia's Board saying they did not want to continue the Retro Plan. We had no agreement on the go-forward plan. We are required by the regulators, the Department of Insurance that if a premium increases above a certain amount, we have to give due notice. And so we were in a position because the credit was going away that they were going to get a thirty percent increase in their premium. And so we had to meet our obligation under the law and at the same time, the program had ended and the credit was no longer available. And so we billed the physicians.

Q Now, under the Retro Plan, what was the proper treatment of these premiums at the point the Plan ended?

A I'm not sure I understand.

Q Did the Plan make any reference to the premium returning to one hundred percent?

A Yes. There is actually -- there is actually a document in the original plan that indicated upon termination or notice that we were allowed to bill for the hundred percent.

Q And was NCRIC receiving any communication from

Laser stock Form FMRRN
Corby USA 1-800-255-5040

discussions?

A Yes.

Q And you told Columbia doctors that the hospital had on deposit with NCRIC a million dollars?

A I don't know if we used that exact term, but again, a credit.

MR. GORSUCH: Your Honor, may I approach the witness?

THE COURT: Yes.

MR. GORSUCH: I'm going to hand you a copy of the jury notebook and ask you to turn to Defense Exhibit No. 22.

BY MR. GORSUCH:

Q Mr. Fargis, would you turn to the first page of this document. This is a presentation?

A I'm sorry. Did you say 22?

Q Twenty-two, yes, sir.

A I don't have a 22.

Q Oh, you don't. I apologize. Here, you can have mine.

A Okay.

Q This is a presentation you made to Columbia doctors on or about October 1st, 1998?

A Yes, that's correct.

Q Okay. And if you could turn with us to the third

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002977

page, I believe it is in the upper right-hand corner. You indicated it was on deposit with NCRIC; right?

A Okay. Yes, I see that.

Q And that's what you told the doctors?

A Yes.

Q Okay. When it came to September of 2000 do you remember that? Do you remember September of 2000, Mr. Fargis?

A Yes.

Q September of 2000?

A Yes.

Q That's when the Retro Plan terminated; correct?

A September 1, 2000, yes, sir.

Q And that very day you sent Columbia a bill?

A Shortly thereafter.

Q Do you have any reason to disagree it was that day?

A It may have been on that day.

Q And that day you called the million dollars a payment; isn't that correct?

A That's correct.

Q And today you told the jury this morning that the money is a credit; isn't that correct?

A That's correct.

Q You testified this morning that it was Columbia

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002978

correct if we can blow up the heading, Retrospective Rating Plan Agreement for September 1, 2000, and then the next paragraph thereunder. Mr. Osborn offered to continue a Retrospective Rating Program with Columbia; isn't that correct?

A That's correct.

Q What happened to Mr. Osborn?

A Mr. Osbonn is no longer with the company.

Q He was fired?

A Mr. Osborn was terminated.

Q Mr. Osborn was terminated beginning 2001; isn't that correct?

A That's correct.

Q Is he going to be a witness in this case; do you know?

A I don't know.

Q You would agree with me that NCRIC sued Columbia Hospital for Women?

A I'm sorry?

Q Would you agree with me, Mr. Fargis, that it was NCRIC that sued Columbia Hospital for Women?

A Yes, we did.

Q And you said that Columbia owed NCRIC money?

A That's correct.

Q And you did the math for the bill that formed

Laser stock Form FMRRN
Corby USA 1-800-255-5040

right?

A I'm sorry, which line are you looking at?

Q I'm looking at subject premium under 1998-'99, the subject premium is 3.6 million?

A Yes.

Q And deposit premium 2.2 million?

A That's correct.

Q And if you do the math, 2.2 is sixty-two percent of 3.6?

A Yes, that's how it should work out.

Q The deposit premium you used is sixty-two percent of the subject premium?

A Yes, we had always used sixty-two percent. Since we had changed the agreement when Columbia wanted to increase the credit.

Q Now, you didn't write anywhere on the bill that you were using sixty-two percent?

A No, not on the bill we didn't.

Q To determine that, you have to do the math?

A Yes.

Q Mr. Fargis, isn't it true that the governing contract expressly says that the parties are to use a deposit premium of sixty-seven percent and not sixty-two percent?

A Yes, I explained earlier I don't know why it says

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002980

sixty-seven percent because mathematically, it just can't be.

Q If we could bring up Defense Exhibit No. 76.

A Is that in this book also?

Q It is.

A Did yousay 76?

Q I believe it is. If it's not in your book, I apologize. Let me get it for you.

MR. GORSUCH: If I may approach the witness.

THE COURT: Yes.

MR. GORSUCH: And Your Honor, may we publish this to the jury?

THE COURT: I'm sorry. This is --

MR. GORSUCH: This is in evidence. It has not, however, been included in the jury notebook to date, and with your permission, I would like to do so.

THE COURT: And it's Defendants' Exhibit 76 for the record?

MR. GORSUCH: That's correct, Your Honor.

THE COURT: Yes, you can publish it.

THE JURY: We have it.

MR. GORSUCH: I apologize, Your Honor. My book doesn't have it but I guess it's in there.

BY MR. GORSUCH:

Q This is the governing addendum concerning the deposit premium?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002981

A Yes, this was an addendum added to the Plan. It looks like for the '98-'99 years.

As I indicated -- well, it was an original agreement of three years, and then every year after we would addendum for the new year.

Q You're not aware of any subsequent amendment to this document relating to the deposit premium; right?

A Well, yes, there was the amendment that we made with Sue Hansen when she changed it to sixty-two percent.

Q That was an earlier amendment; correct?

A Well, except Columbia wanted to change the credit and give the physicians thirty percent and it's set forth what the deposit premium was to be.

Q Well, the one you're talking about with Ms. Hansen is Defense Exhibit No. 74; right, and that's in the white notebook that you and your counsel discussed. That's the sixty-two percent. It's in there; right, in Defense Exhibit No. 74?

A It's not in here but I know what you're talking about.

Q Okay. That's it. Mr. Fargis, Defendant's Exhibit No. 74, the one you discussed with your counsel this morning was dated 1996; correct?

A Yes, that's when they wanted to affect the change in that third year of the program.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q And that does say sixty-two percent; right?

A Yes, sir, it does.

Q You subsequently amended this document, though; isn't that correct, in 1998?

A Well, we amended the document and each year the Plan, if there were any changes or anything to the Plan that the hospital and us might work out, but as far as the credit never changed for the physicians. They were always getting thirty percent. And so the deposit premium is always going to be sixty-two percent as long as they get a thirty percent credit.

Q That's your view. That's your position; right, sixty-two percent always; right?

A Yes. I mean, that's the only way it can work out.

Q Let's take a look at the 1998 addendum, Defendants' Exhibit No. 96 in the black binder. Page 6, Mr. Fargis. Do you see the reference to deposit premiums, Mr. Fargis?

A I do.

Q Would you read for us the figure that the parties agreed upon?

A It says deposit premium means the subject premium multiplied by sixty-seven paren 67% end paren.

Q That's what the contract says; correct?

A Yes. As I explained before, I admit it's a typo.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002983

It's a mistake.

Q That's a typo?

A That's a mistake. It's a mistake on our part. As I tried to explain when they were at fifteen and went thirty, they were at eighty-one percent. It can only go to sixty-two percent.

Q That's just the math; right, in your mind?

A Well, it's the math that we were trying to honor.

Q This is the contract, though, Mr. Fargis. This is the contract.

THE COURT: If the witness could please finish his answer.

THE WITNESS: Again, we were trying to honor what Columbia wanted. The physicians were benefitting from the thirty percent, and Columbia was benefitting from what the doctors were getting. Again, this was brought to our attention in the meeting with Mike Feldman. And we immediately rectified it and corrected it, but we had always done the calculations at sixty-two percent and we had always gone over the reconciliations with Columbia.

BY MR. GORSUCH:

Q And you continued to use sixty-two percent, didn't you?

A Oh, yes.

Q After Mr. Feldman brought this to your attention?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002984

A Yes.

Q And you continue to use sixty-two percent to this day?

A We do continue to use sixty-two percent to this day. In the most recent one done, we used sixty-two percent.

Q If you could turn to the signature page a couple of pages earlier. You would agree with me, would you not, that this addendum was signed by Ray Pate, President and CEO of NCRIC?

A That's correct.

Q NCRIC can't just unilaterally change the terms of the contract when it wants to, can it, Mr. Fargis?

A No, we honor our contracts.

Q And you honored this contract by using sixty-two percent instead of sixty-seven percent, that's your position?

A Well, that's the only way it can be correct.

Q It can't be correct to follow what's written in the contract, Mr. Fargis? That's your position? It can't be?

A No. Like I say, hopefully I have been able to explain that. It can't be sixty-seven percent.

Q Let's talk about that for a second. Isn't it true that that contract in 1998 specified a discount for the doctors of thirty-three percent?

A No, the discount has always been thirty percent of their one million, three million premium.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002985

Q Mr. Fargis, would you turn to Page 4, the modifications to Exhibit A, six-year Retrospective Rating Plan. Your testimony has been that the discount was supposed to be what?

A The discount to the physicians is thirty percent of their one million-three million premium.

Q Thirty percent. That's what you have been calling all these years?

A Well, that's what we have been giving the physicians for all these years.

Q Doesn't the contract, in fact, call for a thirty-three percent discount?

A Well, this indicates what the discount -- that's the discount at the five hundred thousand dollars limit.

Q It says thirty-three percent?

A Yes. And that's not correct.

Q You would agree thirty-three plus sixty-seven equals a hundred?

A It does.

Q Let's go back to Defense Exhibit No. 81, Mr. Fargis.

A I'm sorry, which book was that in?

Q Eight-one, that's in the black book.

A Okay.

Q Do you have two copies of the white book at the moment?

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002986

A Yes.

Q May I have mine back? Thank you very much, Mr. Fargis.

THE COURT: Mr. Fargis, I'm sorry to keep interrupting you, but it's very difficult to hear you. If you could just try to keep your voice up, please.

THE WITNESS: Sure. You said 81?

MR. GORSUCH: Yes, sir, and that's the bill that was based on this lawsuit; right?

THE WITNESS: Yes, that was a bill that we sent out September 1.

BY MR. GORSUCH:

Q And if I could draw your attention to the minimum premium, Mr. Fargis, do you see that at the bottom?

A I do.

Q And you used as a minimum factor seventy-five percent for one year and sixty percent for the others?

A Yes, the sixty percent reflects when the hospital wanted to change the credit to thirty percent. And so as I was explaining earlier, that's the other factors that have changed when the deposit premium changed, you change your minimal. You change your maximum premium factor. The one before is when we were giving the fifteen percent credit to the physicians.

Q Mr. Fargis, it's correct that you used seventy-five

16d-002987

Laser stock Form FMRRN
Corby USA 1-800-255-5040

percent for one year; correct?

A No, that's not correct. We used it on the year previous to that also.

Q Okay. For two years then, but this year is still open, '94-'95 and you're using seventy-five percent?

A That's correct.

Q Isn't it true that the minimum premium prescribed by the contract is sixty percent?

A Once we started giving them a thirty percent discount, then yes, the minimum factor of sixty percent would apply.

Q Mr. Fargis, you would agree that the contract specified sixty percent?

A The contract specifies .60 1.33. We made the change -- the deposit premium, you lower -- the minimum factor lowers below the factor, the deposit premium factor.

Q If we could go back to the contract, Defense Exhibit No. 76, Page 7, Mr. Fargis.

A I'm sorry, what page?

Q It's Defense Exhibit No. 76, Page 7.

A Yes.

Q Do you see the middle of the premium defined there?

A Yes, it's sixty percent.

Q That's what the contract says; right?

A That's correct.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002988

Q But you continue to use seventy-five percent for some years?

A Well, we used it on the first two years when the credit was fifteen percent.

Q Now, if NCRIC had wanted to use different numbers for different years, you agree it would have written that into the contract?

A We would have written it if it made business sense.

Q You could have written it into the contract, Mr. Fargis. You agree with me?

A Theoretically I guess you can write any number in there.

Q Mr. Fargis, isn't it correct that when NCRIC wanted to use different discounts for different years, it wrote that into the contract?

A No, that is not correct.

Q Okay. If you could take a look at Defense Exhibit No. 76, Page 4, Paragraph 2?

A I'm sorry. Page 4.

Q That's right. If we have Exhibit A and blow up Paragraph No. 2. It provides that the discount is nineteen percent for the first two years of the Plan and thirty-three percent otherwise. Isn't that correct, Mr. Fargis?

A It does.

Q So when NCRIC wanted to use different factors for

Laser stock Form FMRRN
Corby USA 1-800-255-5040

different years, it knew how to put that into the contract; correct?

A No, it was to amend the contract. You know, we keep going back and forth over this. I think what we need to keep in mind is that the Plan was first set out to give the doctors a fifteen percent discount for three years. And then the third year, the Plan Columbia approached us and wanted to increase it for the doctors to thirty percent. And at that point in time that's when the Plan changed and that's the only thing that changed to give the doctors an additional discount. And we honored that and we gave them thirty percent. And so it changes the deposit premium and it changes the other two at that point in time, but you've got to remember the first two years of the Plan had already passed and they had been set. We had given the fifteen percent discount to the physicians.

Q Mr. Fargis, don't you agree with me that when NCRIC wanted to use different discounts for years, they put that into the contract. Nineteen percent and thirty-three percent.

A We were to amend the contract to reflect the change of thirty percent. There was only one change to change it from a fifteen percent credit program to a thirty percent credit program.

Q Well, it actually says nineteen and thirty-three?

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002990

A But again as I tried to explain that's because we lowered the premium amount to a half million dollars in limits and mostly they all buy a million in limits. But by dropping that down --

Q Mr. Fargis --

A I'm sorry. Could I explain?

Q Go ahead, please.

A I'm just trying to explain why. It can be confusing why the doctors get fifteen percent and it says nineteen, because at nineteen percent multiplied by a physician's premium that had a half million dollars in limits, it equals the same dollar amount that their million dollars carried. And that's what they actually carried and that's what the hospital chose to be at risk for. So again, if I could find a better way to explain it, I will try.

Q My point here, though, the question is simply that you did incidate that you were going to use two different discounts?

A Yes, the first two years of the Plan and then the remaining years.

Q And when we go back and look at the minimum premium, we don't see two different numbers. We just see sixty percent; right?

A Yes.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002991

Q Thank you. Now, when Mr. Feldman and Ms. Gaffey raised some of these concerns with you in the spring of 2000, you told them that you were concerned that Columbia was relying on a direct reading of the contract; right?

A I believe so.

Q And you said you were puzzled by what the contract said?

A I'm still puzzled how sixty-seven percent is in there.

Q Isn't it true, Mr. Fargis, that by late 2000 when NCRIC sued Columbia, NCRIC had collected almost eleven million dollars in premiums through the Retro Plan?

A I can look at the sheet, but --

Q Please do. It's Defense Exhibit No. 81 and I would reference you to the deposit line which is the second line. And if you would take that all the way across, the cumulative total by September 1st was just about eleven million dollars?

A Yeah, and again, that reflects the amount of that premium.

Q That you had actually collected?

A We had collected that much.

Q And you also got the million dollars from Columbia which is listed as a payment for their value paid; right?

A That's correct.

16d-002992

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q So all told NCRIC had collected very nearly twelve million dollars from the Retro Plan?

A That's correct.

Q Now, you would agree with me that as of the date you sued Columbia, NCRIC had paid out less than six million dollars in this program?

A Yes, our total -- well, that is not necessarily true. Again, remember that we cap the losses at a half million dollars. And so any cases that are above a half million dollars, like a million dollars, and we had some million dollar verdicts, one hasn't been reflected in there.

Q The total loss as agreed to by the parties was less than six million dollars?

A By these terms, yes.

Q And in fact, that's reflected under total losses, 5.7, eight million dollars?

A That would have been paid.

Q Collected, twelve, paid, six?

A Yeah. But you can't forget what is called a basic premium of the 2.7 million. The second million reflects, if you will, exactly what was paid to plaintiffs and injured parties as well as defense counsel in that we had to hire defense counsel. The basic premium line you see up there is a charge which is the administrative charge we have to have where claim reps we have to issue parties

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002993

and this is calculable. And so you're right, it's six million dollars in lawsuits, but it takes people behind that to manage and administer. Without that, you wouldn't have this and so you have got to add that back as a cost to the program.

Q Just a simple question. You would agree with me you collected twelve million and paid out in total losses less than six?

A We collected twelve and we paid out six in losses as well as having to pay for administrative. But what you're assuming is that we ignore reserves.

Q I will get to reserves in just a moment, Mr. Fargis.

A Well, I just don't want that to be left that we got twelve and paid six and there was six left over. We have got a contract for reserves also.

Q We will get to reserves.

A Okay.

Q But would you agree with me just so the record is clear that NCRIC had collected twelve and paid out in total losses six?

A At the point in time of this, that's correct.

Q And yet at this point in time, NCRIC wanted more money from Columbia and that's why it sued?

A That's correct. We wanted to be paid securities on the remaining amounts so that we would be able to pay

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002994

all those other cases that are still on reserve, if you will, notice, and that's an additional seven million dollars.

Q Let's talk about reserves. You believe your reserves are guesses, educated guesses?

A I don't set our reserves. Our reserves are set by another office in the company who handles claims. I can't answer for them except for the fact that we have got twenty years of experience of trying cases here in the District of Columbia and we have got a pretty good idea of reserves.

MR. GORSUCH: Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. GORSUCH:

Q Mr. Fargis, I'm going to hand you a copy of your deposition. Do you remember being deposed in this case?

A I want to say which time. There were three days of depositions.

Q And Dr. Rifka was deposed for three days too; isn't that right?

A I don't know.

Q If we could put up 91, Lines 11 through 8. Mr. Fargis, you were asked and you gave the following --

A I'm sorry, which one of these boxes?

Q Ninety-one. I have opened it for you. Do you see

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-002995

it there?

A Yes.

Q And I direct your attention to Line 11. You have stated that you determined it's an educated guess to be based on many factors. It could be a highly educated guess. That being true at this time, is this the way NCRIC in your personal understanding calculates ARAE reserves, an educated guess? That was your testimony?

A Yes. Again, my personal understanding.

Q And that was true of your testimony when you gave it?

A Yes.

Q And you were also asked at Page 92, Line 5, "Is that same true with regard to indemnity reserves at this time, to your personal knowledge?" And you answered "yes;" correct?

A I'm just trying to see what the -- oh, yes.

Q And that was truthful testimony?

A Yes.

Q And it's true you can't really know how much a claim is worth until it's resolved?

A Well, of course, once it's resolved, that's the final judgment.

Q Some cases are dismissed; right?

A That's true.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

sure it was every quarter, I would have to go back and just look at it.

Q Would you like to look at the contract?

A No, I'm fine with that.

Q You don't disagree it was Paragraph 10A2 of the contract; right?

A Just to make sure.

Q Defense Exhibit No. 72, you looked at that this morning with your contract on it?

A I'm sure. I just wanted to make sure I'm looking at the right one.

Q I think it's numbered F. I know it's numbered in the white book but it indicates that NCRIC and the Medical Center, Columbia, will meet quarterly?

A Yes.

Q And at those meetings, NCRIC promised to provide under A2 a verification by NCRIC consulting actuaries?

A That's correct.

Q And Mr. Fargis, NCRIC has no such verifications in its possession?

A I'm sorry. We don't. Is that your question?

Q It has no such verifications in its possession?

A No, we have our losses as I stated are verified by our consulting actuaries twice a year and signed off on and filed with the Department of Insurance.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Q Isn't it true that Ann Gaffey asked you for such verifications?

A I believe she did ask in 2000.

Q Isn't it true that NCRIC sent a notice terminating the clinic policy just forty-eight hours after sending a notice terminating the Retro Plan?

A I'm sorry. You switched subjects. Could you repeat it?

Q I have and you're right. I apologize. I will talk briefly about 2000. We're back in 2000 again. And isn't it true that in June of 2000, twenty-four hours after receiving the Board's rejection of your seven hundred and fifty thousand dollar proposal, NCRIC terminated the Retro Plan?

A Of June 4th?

Q June 28th of 2000, Mr. Fargis, do you remember that date?

A Yes.

Q And that was the date NCRIC terminated the Retro Plan?

A We received notice that Columbia wanted it. We acknowledged Columbia's request to terminate the Plan and we sent notice it was terminated.

Q Columbia didn't terminate it. NCRIC did; right?

A That's not correct.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

to the courthouse and filed and said oh, this is an additional amount that the hospital owes. And I called Gerry Beaulieu specifically and said, I understand there is a problem, but rest assured, and yeah, maybe it wasn't the smartest business decision to try to become a secured creditor at that time, but we knew we weren't going to go in and ask that there be an additional amount added to what Columbia was already in bankruptcy for. That's what our involvement with the bankruptcy was during that period.

Q If you could just answer my question, I would be grateful.

A Okay. I thought I did.

Q You received all of the notices that Columbia issued publicly as part of the bankruptcy process; isn't that right?

A Again, I'm not sure if we received all of them, but we stopped the attorney from getting the request.

Q Do you remember being deposed in this case on July 31, 2001?

A Yes.

MR. GORSUCH: Your Honor, may I approach?

THE COURT: Yes.

BY MR. GORSUCH:

Q Mr. Fargis, you could turn to Page 436; Line 17?

A I'm sorry. Which line?

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-002999

Q Line 17.

Do you know if NCRIC received the notices of Columbia's bankruptcy? Do you know?

A I believe we received all notices.

Q Do you know who at the company -- was there someone at the company, NCRIC itself, that reviewed those notices?

A I received all the notices.

Q That was truthful testimony?

A Yes. That's what I'm saying. I believe we received them all. I can't recall when we had the attorney stopped receiving them, and whenever they came in, I was receiving them. I just can't recall when, how long it went on and when we stopped receiving them.

Q You testified at your deposition that you received all notices; right?

A Again, I'm trying -- I said I believe we did, and I just can't remember when we stopped receiving the notices.

Q Mr. Fargis, isn't it a fact you simply didn't bother to review all the notices?

A No, I didn't review all the notices.

Q Could you turn to Page 447, Lines 4through 7, please. QUESTION: "Did you have a chance to review them all?" ANSWER: "I didn't have a chance to review all of them."

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003000

A No, I didn't.

Q That was truthful testimony?

A Right. That's what I just said. Was that not clear?

Q You would agree with me that there was no contract between the parties in 1997? I'm sorry, go back. I apologize. I'm shifting gears a bit.

MR. PAGE: Your Honor, I'm still having trouble hearing everybody. If both counsel and Mr. Fargis would speak up, it might help.

MR. GORSUCH: I will try.

BY MR. GORSUCH:

Q You would agree there was a period in 1997 when there wasn't a written contract in place between the parties?

A Yes, that's correct.

Q And you would agree with me that NCRIC didn't send out undiscounted bills to doctors during that period?

A No, we did not.

Q You would agree with me that the first time they severed their relationship with Columbia, that NCRIC sent out undiscounted bills to the doctors, was July 2000?

A That's correct.

Q And you would agree with me that that occurred twelve days after the termination notice for the Retro Plan was sent?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

for insured physicians that they could get into an alternative plan, we would try to assist them to do that." That was your testimony in your deposition?

A Yes.

Q And that was truthful testimony when you gave it?

A Yes, it was.

Q You also reported to the Board in your plan of action that you were assisting physicians with potential new programs at George Washington University?

A Yes, George Washington had approached us about creating a plan to absorb some of the OB/GYNs who were interested in going over to G.W.

Q And it just happened to happen, this report, the day after you sent out the discounts; right?

A What happened?

Q You met with the Board to tell them about this; right?

A No, we had a scheduled audit committee meeting and it was put on the Audit Committee agenda.

Q And you would agree that G.W. didn't previously have a discount plan at this time?

A They had not. They never approached.

Q It just came to fruition during the summer of 2002; right?

A I believe again they had been approached by some of the physicians in the community about creating a

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003002

plan there?

Q And would you agree with me that it just came to fruition around this time in the summer of 2002?

A Yes.

Q Do you remember the discussion this morning about exclusions with the clinic?

A Yes.

Q And that's the endorsement you issued on doctors' personal policies suspending coverage for them for work done at the clinic; correct?

A That excludes the coverage.

Q You can't work at the clinic and be covered; right?

A It's not covered on our policy because it's covered by whatever policy the clinic has.

Q Well, you testified this morning that the reason why you issued those exclusions was because the physicians had double coverage; right?

A They would have had double coverage if the clinic had one policy and they also had our policy that covered them also.

Q Now, you wrote letters to the doctors at the time telling them about the exclusion; right?

A That's correct.

Q And you didn't mention double coverage anywhere anywhere in that letter, did you?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A I can't recall. Could I take a look at the letter to verify it.

Q Defense Exhibit No. 45, and I believe it's in your notebook, the black one. And if it's not, please let me know?

A Yes.

Q This is the letter?

A Yes, sir.

Q And this letter was sent out to all of the doctors who you issued the exclusion for at this period of time in October of 2000?

A That's correct.

Q And you can't find anywhere in there that NCRIC mentioned the issue of double coverage; can you?

A No, we do not mention that.

Q You sent letters to people like Dr. Heather Johnson about this; correct?

A That's correct.

Q And all of the other clinic doctors who had policies that still covered them at the clinic?

A That's correct.

Q Now, you had no explanation why NCRIC doesn't issue this exclusion years earlier when it first issued the doctors individual policies or first issued the clinic policy, do you?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A No, we did issue some endorsements on some of the policies. It was after canceling the clinic and going through an audit of all of the physicians that we found out that we had not endorsed all of them.

Q You have no explanation why you didn't do it earlier; correct?

A Well, I don't have an explanation about why everybody didn't get the endorsement.

Q You cannot explain it as anything other than a mistake; correct?

A I can explain why the endorsement was left off of some and some got the endorsement. All of them should have gotten the endorsements who were insured with us. Now, we covered others who had other policies.

Q This was just another mistake; right?

A Well, it was in their favor, but --

Q Well, without regard to whose favor NCRIC's conduct was in, this was just another mistake you made, Mr. Fargis; correct?

A We did not endorse all the policies; that's correct.

Q It's a mistake; right?

A As I said, we didn't endorse them.

Q It's a mistake, Mr. Fargis; correct?

A If you want to -- sure, it's a mistake.

Q You can't explain it any other way, can you?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003005

A I can't.

Q Isn't it true, Mr. Fargis, that Ann Gaffey had told you almost two years earlier all of the Columbia doctors who had individual policies with NCRIC? She gave you a list?

A Oh, yes, we had a list of all those and also those who aren't insured with us.

Q So it's true that you knew exactly which clinic doctors had personal coverage with NCRIC since the beginning of the clinic policy?

A That's true.

Q And you just got around to correcting this mistake on October 1, 2000?

A No, what this endorsement -- again, these are physicians who have practiced at the Clinic that we no longer covered. We were excluding coverage now for practice at the clinic after -- I'm sorry.

Q Go ahead, Mr. Fargis, please.

A After we had canceled the policy.

Q Now, you previously testified that your failure to do it earlier was a mistake; correct?

A Well, when we accepted the policy, the endorsement should have gotten in everyone's policy. We cancelled and we made sure the endorsement was done on everyone's policy.

Q Isn't true, Mr. Fargis, you had the information

Laser stock Form FMRRN
Corby USA 1-800-255-5040

necessary to correct your mistake since the day the clinic policy was issued?

A Well, we had a list of all of the physicians and all of the endorsements should have been issued then.

Q And you didn't get around to it until Octber lst, 2000; right?

A That's correct.

Q And isn't it true that after you cancelled the clinic policy and then issued these exclusions that the doctors personal policies, the clinic doctors had no coverage and not double coverage?

A I don't know that. I don't know where the clinic had placed that coverage.

Q You don't know whether the answer is that doctors had no coverage; right, other than double coverage, do you?

A No, I don't know if they had placed the clinic policy with another carrier. I don't know where they had put it.

Q For all you know, those doctors were left with no coverage; isn't that correct, Mr. Fargis?

A No, I don't know that.

Q You don't know one way or the other?

A I don't know.

Q You would agree with me that within just a few months after this dispute with Columbia in 2000 that by February

Laser stock Form FMRRN
Corby USA 1-800-255-5040

of 2001, you were promoted?

A I'm sorry. I'm trying to follow that after --

Q You were promoted to president of NCRIC in February of 2001?

A I was promoted to president of the subsidiary of ours, it's a management services company in February of 2001.

Q And Mr. Osborn conducted many of the negotiations with Mr. Wilson. And he was let go around that same time?

A I believe it was January 5th, 2001.

Q Do you know if Eric Hempelman will appear in this trial?

A I don't know.

Q In 1998 when Columbia was considering MIIX rather than NCRIC, you were aware that NCRIC had a higher premium than MIIX for every single doctor in Columbia's plan?

MR. PAGE: Objection. Scope, Your Honor.

THE COURT: Would you repeat the question, please?

MR. GORSUCH: Yes, Your Honor. In 1998 when Columbia was considering MIIX versus NCRIC, you were aware that every single doctor would have had lower premiums in the MIIX plan?

THE COURT: All right. The objection is sustained.

BY MR. GORSUCH:

Q Isn't it true that NCRIC intended to continue

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003008

MR. PAGE: But I don't think we will finish tomorrow with only two hours of testimony.

THE COURT: So, it looks like we're in a position then where we can -- you can conclude Monday about 12:30 and we can break, and allow time for Juror No. 6 to attend her medical appointment, and either recess early on Monday and just plan to do closings on Tuesday and instructions as well.

MR. PAGE: That's a plan we would shoot for.

THE COURT: Okay. We will still have an outstanding issue with respect to the testimony and the scope of the testimony of Mr. Moore and Mr. Henderson, and those were issues raised by Columbia in their motion for additional sanctions.

MR. PAGE: Correct, Your Honor. And we filed a response to that in writing.

THE COURT: I have the written response. I guess we could spend five minutes now going through this.

MR. GORSUCH: Your Honor, if it would aid the Court, there are three points we have and we're withdrawing one of them, the second point, Your Honor. So that there are two points that are left.

THE COURT: And the second point was?

MR. GORSUCH: The scope of --

THE COURT: The geographic scope.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003009

BY MR. BADAMI:

Q Mr. Moore, were you retained in this case to conduct an analysis?

A Yes, I was.

Q Can you tell the jury the first part of your analysis?

A Yeah. The first part was to do an analysis of the health care and hospital markets in the District of Columbia.

Q We will get to some of the specific factors in a moment, but can you tell the jury your conclusion on your first part of your analysis?

A Yes, the conclusion is this is a highly competitive health care market and some of those market forces that are in place here really led to the continued deterioration of the financial performance of Columbia Hospital for Women starting in the early nineties.

Q Was there a second part of the analysis you were retained to do in this case?

A Yes, the second part was to look at those specific trends and market forces and demographic and financial and operating type data and determine the impact of those on Columbia Hospital for Women.

Q And what was your conclusion with respect to the second part of your analysis in this case?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003010

A It really was that Columbia Hospital for Women was in a bad financial position, and due to these market forces would have failed really regardless of the actions which this case is addressing.

Q Let's talk about some of the specifics now, Mr. Moore. Could you describe for the jury the D. C. market for hospitals and health care?

A Yeah. In order to understand that, there are three things you really have to focus on and understand about the health care market here. One, there are multiple providers. Over this time period it ranges anywhere from ten to twelve hospitals in the District of Columbia independently owned and separately managed hospitals. And so it's competetive. And so, that's one thing. The second piece that is important to understand is that there is excess capacity in this system. You may hear that referred to as overbedded. The market is overbedded.

Q What does that mean?

A It really means we have excess capacity in the District when you look at the numbers. If you step back and look at the numbers that the D. C. Hospital Association keeps, you would see that over the last five, probably even ten years, that the average occupancy of the hospitals in the District has been -- hovers around two-third and three-quarters full. And so there is about three thousand

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003011

determine what Columbia's future would have been had the doctors stayed?

A Financial projection really wasn't called for in this case. There was no ongoing entity for which would be the subject of a financial projection.

Q And you could do a financial projection with hypothetical assumptions; correct?

A No, sir, not if there is an ongoing institute, I can't.

Q You're not aware of the American Institute rules about this?

A I'm very much aware of those rules.

Q And they say you can do hypothetical assumptions, for instance, if the doctors had stayed and you could have examined what the effects would have been on a hypothetical basis; right?

A No, sir, not in this case. There was no entity.

Q You would agree you did not perform any financial projections in this case?

A It wasn't called for, no.

Q You didn't examine in a financial projection what the impact of profitable services Columbia had added like plastic surgery; correct?

A No.

Q You didn't look at how the HMO imbursements they

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003012

out and see what the impact would have been for Columbia?

A Again, there was no HUD loan to project.

Q I understand that. You make hypothetical assumptions in doing financial projections, don't you?

A But you can't assume something that is not even realistic. That's one of the basic principles behind financial projections and such assumption is that they have to have reasonable basis to be valid. And there was no HUD loan. There was an attempt to get a HUD loan and there was never any completed transaction there.

Q We will get to that in a minute, Mr. Moore, but for right now, I'm just asking I think a straightforward question. You didn't do a financial projection to see what Columbia would have looked like if it had gotten the HUD loan, did you?

A No, there was no financial projection as a part of this engagement.

Q Isn't it true that without doing a financial projection, you can't render a formal opinion on what Columbia's future viability would have been if the doctors had stayed?

A I can have an expert opinion on what the outcome of the hospital would have been which is what I am testifying to.

Q Isn't it true that your firm, Price Waterhouse

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Coopers, three years ago this very month told HUD it could not render a future without performing financial projections?

A It's just a totally different circumstance. There was an entity and there was a reason that a projection could have been done at that time, but there is no -- again, there is no basis for projections at this point because there is no entity.

Q Mr. Moore, isn't that what Price Waterhouse Coopers, your firm --

A In the context of that engagement, you're correct. That's a clarifying statement of what that work was and what it wasn't is a more accurate statement.

Q Mr. Moore, I think my question calls for a yes or no and I will ask you for a yes or no. Did you or did you not tell HUD you couldn't render a formal opinion on Columbia's viability without doing a financial projection?

A Two points there. One, I was not involved in that work and so I didn't tell HUD or Columbia anything related to that, Number One; and, Number Two, that statement is a clarification of the work that was done on behalf of our client, HUD, at the time and has nothing --

MR. GORSUCH: Your Honor, may I approach the witness?

THE COURT: I don't think the witness is finished with his answer.

16d-003014

Laser stock Form FMRRN

Corby USA 1-800-255-5040

MR. GORSUCH: I'm sorry.

THE WITNESS: I guess I'm finished.

THE COURT: Yes, you may approach.

MR. BADAMI: Your Honor, may I ask what document he's showing Mr. Moore?

MR. GORSUCH: The Price Waterhouse report.

BY MR. GORSUCH:

Q Mr. Moore, I would ask you to turn to Page 2 of the January 1, 2001 letter to Mr. Whitehead at HUD. Do you see that there?

A I don't see it.

Q I would be happy to hand you my copy, Page 2.

MR. BADAMI: Your Honor, with all due respect, I would object to it being shown to the jury at this time. It's not in evidence.

MR. GORSUCH: No, it's not in evidence, Your Honor. That's correct. This is for impeachment purposes.

THE COURT: I guess you need to ask some foundational questions.

MR. GORSUCH: Sure.

BY MR. GORSUCH:

Q What I have handed you is a letter from Price Waterhouse Coopers?

A Yes.

Q To the Department of Housing and Urban Development?

16d-003015

Laser stock Form FMRRN

Corby USA 1-800-255-5040

A That's correct.

Q On or about January 8, 2001?

A That's correct.

Q Signed by Price Waterhouse Coopers as a firm; correct?

A That's correct.

MR. GORSUCH: Your Honor, may I please publish the document?

MR. BADAMI: Your Honor, I would object. It's still not in evidence.

MR. GORSUCH: It's for impeachment purposes.

THE COURT: May I see the document, please?

THE WITNESS: Yes, ma'am.

THE COURT: I need a few more foundational questions because I thought the witness' testimony was that he was not involved in this particular transaction.

MR. GORSUCH: Your Honor, if we may approach just a moment on this.

THE COURT: Actually, if you could just ask him a few more questions about his knowledge or involvement with this particular document.

MR. GORSUCH: Sure.

BY MR. GORSUCH:

Q You're aware Price Waterhouse did a report for the Housing and Urban Development Department; right?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A Yes, we were engaged by HUD, Housing and Urban Development in advance of part of their consideration of whether to give a loan -- to extend a loan to Columbia Hospital for Women.

Q And you relied in part on this document in forming your opinion in this case: right?

A It was one of the documents that was made available for review, but my opinion is not based on this document.

Q And you told the jury you're a partner of Price Waterhouse Coopers; right?

A Yes.

Q And you have been for a number of years?

A Yes.

MR. GORSUCH: Your Honor, I would move that is foundation enough.

MR. BADAMI: Your Honor, he stated that he had no part of that Price Waterhouse audit years ago.

THE COURT: I will allow the use of that document. That objection is overruled.

BY MR. GORSUCH:

Q If you could turn your attention to Page 2 of the document. "It is important to note that we have not performed a financial projection of any kind with respect to CHW, that's Columbia Hospital for Women; right??

A Yes.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003017

Q And therefore, are unable to render a formal opinion on Columbia's future viability or ability to meet a level of incremental debt service; correct?

A What's the question?

Q That's what Price Waterhouse wrote in 2001 to HUD?

A Yes. It came out of a letter we wrote to our client, Housing and Urban Development.

Q And you told HUD the truth?

A This was a statement as part of that deliverable to that client to make sure they understood what we had done and what we had not done, so that our deliverable in that case would not be misconstrued as being a projection when really it was an analysis and review of the financial conditions or market conditions of Columbia Hospital for Women.

Q Sir, your company told the Federal Government the truth when it said it couldn't render a formal opinion on Columbia's viability without doing a financial projection; correct?

A No, I think you're misunderstanding the deliverable there which is part of the issue here. Again, there was the subject of this letter which is a report which you have just handed me that details many of the financial problems that were being caused at Columbia Hospital for Women because of the market forces that we're talking about here today. And when you deliver a report like that, as part of our

16d-003018

Laser stock Form FMRRN
Corby USA 1-800-255-5040

professional standards, to be clear so that the user doesn't misconstrue what they are receiving, and in this case, that statement is simply that. It doesn't say we can't do a projection. It just says there is not a projection and in this context, you know, you're not rendering an opinion on anything because a projection is not done.

Q Correct. And that was the truth.

A It was part of the deliverable to the client, yes.

Q When you told HUD that you couldn't render a formal opinion on the viability of Columbia Hospital without doing a formal financial projection, you were telling the truth?

A On behalf of our client HUD, we were going to give them a formal opinion, we couldn't do it without doing more work and doing a projection.

Q Now, it's also true, isn't it, that you haven't been asked to give an opinion of exactly how much longer Columbia would have survived if it hadn't lost all those doctors in 2000; right?

A That's correct. How much longer.

Q So, even though you say Columbia would have died at some point, you're not saying it would have died in the year 2002 if the doctors had stayed. You have no opinion on that; right?

A Yes. As a matter of fact, it could have died

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003019

sooner if the doctors would have stayed.

Q And it could have died later, for all you know; right?

A Yes.

Q It could have been a year later?

A Its destiny was sealed is the way I see it in the market place.

Q Right. But it could have survived another year; for all you know?

A Hypothetically, anything is possible, I guess.

Q You didn't study it. You have no opinion on that issue?

A I have an opinion that it would fail. The timing is not part of the subject here.

Q Not part of your opinion; is that right?

A It would have failed, yes.

Q It could have been two years later, for all you know?

A I very seriously doubt that.

Q It could have been --

A No, my opinion is it was all going to be pretty tightly around the time that it actually happened.

Q But you don't know, do you?

A Well, I tell you why I do know it was going to be pretty quick and it actually could have been quicker.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A I don't remember the exact number, but it was substantial in all those years.

Q Did you see a drop like that between '99 and 2000?

A I think the revenue was dropping consistently.

Q Isn't it true in the fiscal year ending '99, total revenues were forty-six million dollars?

A Can I see the document you're looking at?

Q I'm just asking a question at the moment.

A I don't have that data here handy.

Q Do you have any reason to disagree with that?

A I have no reason to disagree with that.

Q And isn't it true the following year total revenues were about forty-six million?

A I don't have that data handy.

Q You don't have any reason to disagree with that, do you?

A No, but I don't have the data --

MR. GORSUCH: Your Honor, may I approach the witness?

THE COURT: Yes.

MR. GORSUCH: Handing the witness the Form 99 for the fiscal years ending 1999 and 2000, the total revenue lines if you look at those on the first page, you looked at these in forming your opinion in this case?

A These were part of the documents, yes.

Q Isn't it true that the total revenue for both

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003021

years is around forty-six million dollars?

A What I would have looked at which is probably in my opinion a more accurate document to look at to judge revenues is the audited financial statement for 1999. But according to these documents, it's 45.6 million in 2000 and 46.4 million in '99.

Q That's what was reported to the Internal Revenue Service; right?

A Yes, it's on the Form 990; right.

Q So, it's about the same in those two years; isn't it?

A Yeah.

But I will point out in looking at this very same comparison you're trying to make in other years, it's not true that you can rely on the tax return data to be the same as audited financial statement in this particular case as we looked at it all the way back to 1995. And there are differences in all those years and so --

Q So, the question I had is they are about the same, what's on the page in front of you, total revenues for those two years?

A Yes, according to that, yes.

Q And isn't it true the following year, the year after the doctors left, the total revenue reported was ten million dollars less?

A I would have to see that document that you have there.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

MR. GORSUCH: Your Honor, may I approach?

THE COURT: Yes.

THE WITNESS: This says 36.6 million.

BY MR. GORSUCH:

Q It's about a ten million dollar drop.

A Yes.

And also the net revenue was sixty-five million the year 1995, and so I think to have an accurate picture you would have to look at this trend over multiple years. And that's where my analysis was focused is what was happening over the long term.

Q Before and after the doctors left in a single year, it was a ten million dollar drop of revenue; right?

A Yes, according to this year. The other observation I have, the difference between those two years is that the hospital actually did better bottom line-wise financially. And so --

Q Now, you talked about the status of the births generated in the D. C. area and the trends; right?

A Of births generally, yes.

Q Did you look at Defense Exhibit No. 47 in forming your opinion?

A I would have to get a copy of that. I'm pretty sure I did, but --

MR. GORSUCH: Your Honor, this is in evidence and

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003023

I think the jury knows this.

THE COURT: All right.

MR. GORSUCH: If you would turn to the page marked births and it's up on the screen. Would you agree with me that in 1998 and 1999 and up to September 2000 births at Columbia were pretty steady?

THE WITNESS: What page are you on again?

BY MR. GORSUCH:

Q It's labeled births.

A Yes, it's going up and down, yes.

Q Pretty steady, though; above three hundred?

A About three hundred.

Q And then there is a steep down function; isn't there?

A According to the chart it does drop off, yes.

Q And it resumes at a lower level?

A Yes.

Q It's pretty steady there too; isn't it?

A Well, it's up and down.

Q Well, it's somewhere a hundred and fifty and two hundredish thereafter; isn't it?

A Yes.

Q Something happened in September of 2000; isn't that right?

A Yes.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003024

Q Between 1998 and 1999 after Columbia emerged from bankruptcy, Columbia's market share in obstetrics and its primary service rate increased 1.5 percent; right?

A Give me that statistic again.

Q Between 1998 and 1999 after Columbia emerged from bankruptcy, its market share in obstetrics and in its primary service area, it increased 1.5 percent?

A I don't have access to that data here, but --

Q If you could take a look at the Price Waterhouse report with me, your company's report. Could you turn to Page 3-5 and take a look at the top line. You would agree with me that Columbia increased its market share in '99 over '98 by 1.5 percent?

A Yes, it looks like that's what happened, yes.

Q And you would agree with me that Columbia's market share increase was almost four times larger than Sibley's market share increase?

A Yes.

Q You would agree with me it was almost eight times larger than George Washington's market share increase?

A Yes.

Q You would agree with me that Georgetown and Holy Cross and Howard all lost market shares during the same period?

A According to this page, yes.

Q This page was prepared by Price Waterhouse; right?

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003025

A That's correct.

A JUROR: I'm sorry, Your Honor. I don't know if the jury has this document and I'm saying no one can see.

MR. GORSUCH: I'm sorry. We can blow it up.

BY MR. GORSUCH:

Q So, just so we're clear, Georgetown and Holy Cross and Howard all lost market shares during the same period?

A It looks like it, yes.

Q Columbia is doing pretty well in its turn-around program, wasn't it?

A I don't know if I would conclude that from this chart, no, sir.

Q Thank you very much.

It's also correct that in Fiscal year 2000, Columbia's cost per adjusted discharge had a favorable decrease in trend; right?

A That's possible, yes.

Q You don't have any reason to disagree with that, do you?

A I don't have any reason to disagree with it, no.

Q And isn't it correct that as of January, 2001, Columbia's cost was also showing a favorable decreasing trend for the previous three years?

A Like I said before, because of the revenue was dropping so dramatically over the extended period and so

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003026

were the costs and therefore that statistic would be dropping as well. That doesn't mean the financial performance was following, though.

Q Mr. Moore, isn't it true that Price Waterhouse represented in 2000 that it was a favorable decrease in trend?

A That would be a favorable decreasing trend, yes.

Q Isn't that correct that as of January 2001, Columbia renegotiated most of the managed care contracts to increase per patient reimbursements and total net patient revenues?

A It's true that it was reported that they increased their managed care contract rate, yes.

Q Is it, in fact, correct that Columbia management had done an admirable job of cutting costs in 2000?

A This very report I think says they were working hard at cutting costs, yes.

Q Didn't you find they had done an admirable job?

A I didn't find anything because I wasn't involved in this, but if you can find what it says in this report, at least one person's opinion was that they were doing an admirable job.

Q You don't have any reason to disagree that that was Price Waterhouse's opinion that they were doing an admirable job?

A If you show me where they said that.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003027

Q On Page 2-7. First of all, look at the right-hand side, the first sentence. "First, from an operating perspective, management has done an admirable job of controlling costs." That was true when this case was presented to the Federal Government?

A That was the case.

Q And isn't it true that Price Waterhouse found that in October of 2000 immediately, almost immediately following the cancellation of the Retro Plan, Columbia's total patient discharges had decreased twenty-two percent as compared with the year before?

A That sounds right, yes.

Q And isn't it correct that Price Waterhouse found that Columbia was experiencing decreasing volumes due to physician retention problems?

A Yeah, and also I think in the report, it says that we were -- we did not find what we would normally find in a hospital, and that is a physician recruiting a retention program which is really the issue. It's not that you lose physicians because hospitals lose physicians. The question is do you have a program to replace them and retain them.

Q Do you know if Columbia had ever lost thirty physicians in a month before?

A I don't know but I can tell you it's not unusual

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003028

A We absolutely have, yes.

MR. BADAMI: Thank you very much.

THE COURT: All right. Thank you.

(Thereupon, the witness was excused.)

Thereupon, (4:11 p.m.)

WILLIAM McKAY HENDERSON,

having been called as a witness for and on behalf of the Plaintiffs, and having been first duly sworn by the Deputy Clerk, was examined and testified, as follows:

THE COURT: All right. Good afternoon, and just for timing, we're going to go a little bit past 4:30 since we got started a few mintues late today.

MR. BADAMI: Thank you, your Honor. May I proceed?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. BADAMI:

Q Mr. Henderson, I would ask you to introduce yourself to the jury, please.

A My name is William McKay Henderson.

Q And can you tell the jury your occupation and business address?

A Yes, I'm a partner with Price Waterhouse Coopers and my business address is 1900 K Street, Washington, D. C.

Q How long have you been a partner at Price Waterhouse Coopers?

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003029

A Since 1995.

Q Is Steve Moore one of your partners?

A Yes, he is.

Q Do you have an area of specialty?

A Yes, I'm a partner in the Financial Advisory Services.

Q And can you describe for the jury what Financial Advisory Services are?

A Financial Advisory Service is a practice unit in Price Waterhouse Coopers that specializes in providing financial and business advice to clients in a variety of matters including forensic instant accounting investigation.

Q And do you also do work with respect to health care fraud and abuse investigation?

A Yes, I'm the national leader of Health Care Abuse and I run a unit that deals with health care fraud across the country.

Q How long have you worked in this field?

A The health care fraud?

Q Yes.

A I started the practice in 1992.

Q Does that work involve reviewing financial materials in an effort to assess damages?

A The practice includes health care fraud, but the other practice, we evaluate financial business records, market

Laser stock Form FMRRN
Corby USA 1-800-255-5040

factors and other relevant information and evaluate potential economic impact.

Q Does your work involve an understanding of accounting and financial records?

A Yes.

Q I would like to have you talk to the jury about your background just for a moment. Would you tell the jury your educational background and history.

A I have a B.S./B.S. from the University of Chapel Hill with concentration in accounting.

Q What year did you earn that?

A 1981.

Q Are you also a Certified Public Accountant?

A Yes, I am.

Q And how long have you been a CPA?

A I got my CPA in 1984.

Q And how about are you a certified fraud examiner?

A Yes, I am.

Q And can you tell the jury some of your professional memberships?

A I'm a member of the American Board of Certified Public Accountants and a member of the Pennsylvania and North Carolina State of Certified Fraud Examiners.

Q Have you authored any publications in your professional career dealing with damages?

16d-003031

Laser stock Form FMRRN
Corby USA 1-800-255-5040

A Not specifically damages, but financial issues.

Q And can you tell the jury about some of the financial issues you authored?

A Most recent was Corporate Integrity Agreements which is a settlement agreement that entities enter into when they settle investigative issues with the Department of Justice and part of that requires review and analysis by an independent accounting firm of certain operations of the business.

Q Following your graduation from the University of NC., could you give the jury a brief overview of the companies you worked at and some of the engagements you have been tasked to take on?

A Coming out of school I joined a company called Duke Power as a staff accountant and I went on to join an accounting firm called Arthur Young and I was involved in their financial consulting group. And in that group we designed accounting systems for clients and we developed the design of sort of the books and records and what they would need to account for their revenue sales and expenses and those type of things. Then I moved on to an acocunting firm, actually in Philadelphia called Grant Thornton and I continued to do accounting design systems and design work, but also began to get involved in what they called their litigation consulting practice which was a group that was

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003032

involved with evaluation of economic damages and other types of financial services for clients. And then I ultimately joined the Price Waterhouse Coopers and have been with them since 1990.

Q Have you been qualified, Mr. Henderson, previously in Federal and State court to testify with respect to damage calculations?

A Yes, I have.

Q Can you tell the jury about some of those times?

A I have two of those involved where I was qualified to calculate damages and one was with a urologist where we value a piece of his partnership and the other one was the lost earnings for a physician who happened to be an OB/GYN.

Q As a part of your work, Mr. Henderson, have you interviewed witnesses?

A Yes.

Q Have you performed forensic reviews of accounting records?

A Yes, I have.

Q Can you tell the jury what a forensic review of an accounting record is?

A Forensic review is a specialty where we're brought in to help investigate various allegations or misappropriations. It often involves determining whether or

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003033

not simply how cash was taken out of a business, where the records were falsified in order to cover up a transaction and then includes often interviewing company employees and individuals, some of these being the subject of our investigation.

Q Have you reviewed financial records?

A Yes.

Q Have you calculated claims involving economic damages?

A Yes.

Q About how many times would you say?

A Cases where there was some element of lost profit or economic damage is probably a hundred cases.

Q And the experience that you have been describing to the jury, did that assist you to obtain the skills necessary to evaluate damages in this case?

A Yes.

Q Is the work that you did in this case based on the same type of data and the same type of, I guess of data experience that you have talked about in these other cases?

A Yes, it is.

MR. BADAMI: Your Honor, at this time NCRIC would offer Mr. Henderson as an expert witness with respect to damages.

Laser stock Form FMRRN
Coby USA 1-800-255-5040

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INC.,	:	
Plaintiff/ Counter-Defendant,	:	
v.	:	Civil Action No. 7308-00
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	:	
Defendant/ Counter-Plaintiff.	:	

Washington, D. C.

Monday, February 9, 2004

The above-entitled action resumed for a jury trial before the Honorable ANNA BLACKBURN-RIGSBY, Associate Judge, in Courtroom Number 48-A.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

2004 MAR 1 P 4:58

APPEARANCES:

On behalf of the Plaintiff:

RODNEY PAGE, Esquire
SCOTT M. BADAMI, Esquire

On behalf of the Defendant:

NEIL GORSUCH, Esquire
ELI SCHULMAN, Esquire
PRIYA AIYAR, Esquire

DONNA K. HAWKINS
Official Court Reporter Telephone: 879-1035

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003035

Q You don't know?

A It's not so specific. If you want me to quote a Social Security Administration review, no.

Q So you didn't look at the Social Security retirement numbers either?

A I said I looked at the work life tables.

Q But you didn't look at the Social Security numbers; correct?

A No.

Q Isn't it true that nine percent of Columbia's doctors in 2001 were over sixty-five?

A I didn't see any of that data in what I looked at and if there is some data there, I will look at it, but in Mr. Ben Ezra's data that he looked at, I didn't see specifics on it.

Q Isn't it correct that Price Waterhouse Coopers in 2001 found that nine percent of Columbia's doctors were over the age of sixty-five?

A I don't know what you're referring to, but --

MR. GORSUCH: Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. GORSUCH:

Q Mr. Henderson, I would ask you to trun to Page 61 and in the right-hand column, the second bullet point, if we could publish that to the jury. Isn't it correct -- I'm

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003036

sorry. Page 6-1. Price Waterhouse specifically found in 2001 that nine percent of the physicians staff at Columbia was over the age of sixty-five; isn't that correct?

A I mean, this is a report that was prepared by the firm and there's a statement in here that says nine percent of the doctors are over sixty-five.

Q And Price Waterhouse would have been telling the truth in 2001; isn't that right?

A Yes, they would.

Q You also relied on an article by a Lawrence Farber about retirement funding; correct?

A Relied on an article?

Q That was one of the materials you looked at in forming your opinion in this case?

A I reviewed it, yes.

Q And isn't it true that that found that among doctors sixty years of age and older, more than half wouldn't quit until the age of seventy?

A I would have to look at the specific article.

MR. GORSUCH: Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. GORSUCH:

Q If you could turn with me to Page 5 of ten, and in the second to the last paragraph, isn't it true the

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003037

if that hospital is not financially viable, then that may be more than an overriding factor than the twenty or sixty-five.

Now, one of the issues I raised on that we also consider, for example, Mr. Ben Ezra's testimony raised auditor's going concern opinion and a going concern opinion is whether the hospital would be able to stay in business for more than a year. He mentioned that and so those are all the factors that I'm raising as to how were all these things, how were these facts evaluated in his making an assumption of sixty-five and twenty. I didn't see that.

Q It's just a simple question. You did not offer any alternative retirement age besides sixty-five; correct?

A I just raised the issue that there was nothing.

Q And as to the viability of the hospital, you did no financial projections to determine the viability of the hospital, did you?

A I didn't do specific projections, but I looked at the financial statement, the tax returns and various market data.

Q Let's talk about the marginal cost rate and the thirty percent used by Mr. Ben Ezra. Do you remember that testimony?

A Right.

Q You didn't interview the Comptroller of the hospital,

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003038

did you?

A I did not interview the Comptroller, no.

Q And you were hired in 2001 when the hospital was still open; right?

A I was what?

Q You were hired in 2001 when the hospital was still open?

A Yes.

Q Did you review the case that Mr. Ben Ezra cited from Kansas, the Coventry case where thirty percent was used as a marginal cost rate?

A I don't recall Mr. Ben Ezra reciting that case. I recall the example out of the textbook and his knowledge.

Q You don't recall the Federal case, Coventry that he also relied on?

A I don't recall it, no.

Q Do you recall the American Medical Association Article Journal where sixteen percent was used for hospitals as a marginal cost rate?

A I don't recall that testimony.

Q Now, you talked about Mr. Ben Ezra's independence. Do you remember that? Oh, before we get to that, I'm sorry. You didn't perform any studies to determine an alternative marginal cost rate, did you?

A No, I did not.

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003039

A Yes.

Q Would you agree that the conflict of interest would have existed for Price Waterhouse if both NCRIC and Columbia were clients?

A A conflict of interest if they were both clients?

Q Uh-huh.

A It may be. It depends on what the issue is.

Q Isn't it true your firm prepared a report on behalf of Columbia's management in 2001?

A Are you referring to this report?

Q I am, sir.

A My understanding is that this report was prepared on behalf of HUD.

Q Well, could you turn to Page 11, the very first page on the report. I would reference you to the last paragraph in the first sentence. Isn't it true that Price Waterhouse said, "Due to purposes outlined above, this report is being prepared on behalf of both HUD and Columbia Management?"

A Where are you, 11? Yeah, I think that's what that sentence said, but you have to read the sentence in context of the entire paragraph, if you're trying to apply this to a standard. And I think a couple of things you have to start off at the beginning of the paragraph all the way up at the top, and you know, it says "That given CHW current

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003040

and raised additional capital.

Q All right. Is the stock, the forty percent of the company that was sold in 1999, is that traded publicly on a stock exchange?

A At the time it was traded publicly. It was traded on the NASDAC, that's called their small caps.

Q Is that still true today?

A Today it's traded on NADAC's national market and so it has a little bit larger trading volume, but not significantly.

Q What is the current stock price of the company, by the way?

A Stock is trading in the range of eleven and a quarter to eleven seventy-five; somewhere in that range. It has been pretty steady for the last couple of months.

Q Is NCRIC Insurance Company the only company?

A No, it's not.

Q Has it ever been the only company in the District of Columbia to provide medical malpractice insurance coverage?

A If it has, perhaps it was back when it formed in 1980, but since that time I think there have been companies that have come and gone in the District.

Q What is the market share that NCRIC has in the District of Columbia on insurance for doctors?

A According to AMF who is again, that rating agency

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003041

we talked about, they also accumulate market data, our market shares ranges between fifty and sixty percent.

Q And has that share, fifty to sixty percent of the market, has that been relatively in that range for a number of years now?

A It's been within that range since I've been here for the last eight years.

Q Since 1996?

A That's right.

Q Tell the jury what your duties as CEO and President are? What do they include?

A Well, I work first with the Board of Directors in developing a strategic plan, our mission. Our vision of the company. Where we're taking the company. Once that's developed, I then work with our management team to develop goals and objective for us to meet to be able to meet that strategic plan.

Q By the way, when you talk about the Board, I forgot to ask you, how members of the Board are there today?

A Today we have thirteen directors on the Board.

Q And how many of those are practicing physicians in the District of Columbia?

A All but four of us. We have nine physicians -- most of whom -- I guess all of whom are carryovers from the previous Board. We have added to the Board of Directors

Laser stock Form FMRRN
Corby USA 1-800-255-5040

Plan are based on your lost estimate for years that have not even closed out?

A That's right.

Q You're suing Columbia based on -- educated guesswork; isn't that right?

A We're suing Columbia under the terms and conditions of the contract to which they agreed.

Q Isn't it true that the terms and conditions of what the contract, the parties agreed to, one component was that the money would change hands only for closed out years?

A I believe there was an original agreement that was made that had a second part that is missing from your question and that is up until the time that the agreement terminated and when the agreement terminated, that oral agreement ended.

Q You have no recollection about that personally in terms of the oral agreement, do you?

A Sure, I do.

Q You were not personally involved in the forming of the oral agreement, were you?

A No.

Q You weren't there?

A No.

Q So you don't know anything about the terms of 1996

Laser stock Form FMRRN
Corby USA 1-800-255-5040
16d-003043

oral agreement between NCRIC and Columbia that money would be exchanged only for years where all claims had been resolved; correct?

A That's not correct. I have people reporting to me who make oral agreements all the time.

MR. GORSUCH: May I have his deposition, please? Your Honor, may I approach?

THE COURT: Yes.

BY MR. GORSUCH:

Q Mr. Pate, I would turn your attention to Page 57. You were asked -- Mr. Pate, let me just get to our place before we go to the deposition. "Isn't it true that you were not even aware that NCRIC and Columbia had formed an oral agreement?"

A That was my testimony, that's right.

Q And you're not aware about the terms of that agreement, therefore, are you?

A I'm aware of it.

Q Sir, you were not present for such a meeting; isn't that correct?

A That's correct.

Q And you're not aware whether there was an agreement formed between the parties; isn't that correct?

A As I sit here today?

Q Is it your testimony in your case you were not

Laser stock Form FMRRN
Corby USA 1-800-255-5040

aware whether there was an agreement between the parties?

A As I sit here today, I'm aware that there was an oral agreement between the parties.

Q At the time of your deposition in this case, you weren't even aware of such an agreement, were you?

A That's right.

Q You have all of a sudden since your deposition become aware of the terms of this agreement?

A Sure.

Q Even though all of a sudden you magically know what the terms of the agreement are, that's what you're telling the jury?

A It's not magic. It's called being prepared for trial and finding out about the details.

Q Isn't it true that when you testified under oath in your deposition, you said you were not familiar with it one way or the other?

A It is true.

Q Mr. Pate, NCRIC terminated the clinic policy just two days after it terminated the Retro Plan?

MR. PAGE: Objection to the scope, Your Honor.

THE COURT: Sustained.

MR. GORSUCH: You're not here to tell the jury about why you terminated the clinic plan; is that your testimony?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

THE COURT: Can you repeat the question, please?

BY MR. GORSUCH:

Q It's your position the termination of the clinic plan and the Retro Program were totally unrelated?

A That is correct.

Q Even though those two events took place within forty-eight hours of each other?

A That's correct

Q And they just happened to involve all the same people. Mr. Fargis, Mr. Osborn and Mr. Hempelman and not yourself?

A That's correct.

Q You talked a little bit about the trust fund being underfunded. Do you remember that testimony?

MR. PAGE: Objection, Your Honor. I don't think the witness was asked anything about that on direct.

MR. GORSUCH: He absolutely was.

THE COURT: I don't recall any questions about a trust fund to this particular witness.

MR. GORSUCH: Your Honor, we talked about why he terminated the policy.

MR. PAGE: Objection. He's mischaracterizing the evidence.

MR. GORSUCH: Strike that. I will move along. That's easy enough.

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003046

A That's correct.

Q And you have no idea whether Mr. Osborn expressly told Mr. Wilson that NCRIC and Columbia had a deal; correct?

A I'm sorry. Could you repeat that, please?

Q Sure. You have no idea whether Mr. Osborn expressly told Mr. Wilson that NCRIC and Columbia had reached a deal?

A No, I do not.

Q And you don't know whether Mr. Osborn told Mr. Wilson that he had authority to reach a binding agreement on behalf of NCRIC?

A That's right.

Q And Mr. Osborn doesn't work at NCRIC any longer; does he?

A No, he does not.

Q In fact, he has been terminated?

A That's correct.

Q And you terminated Mr. Osborn because of his inability to perform the duties required of him?

A We terminated Mr. Osborn in, I think it was January of the next year because he was unable to fulfill all of his duties. None of it related to his negotiation discussion with Columbia.

Q Your testimony is that he failed to perform the duties required of him?

Laser stock Form FMRRN
Corby USA 1-800-255-5040

16d-003047

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INCORPORATED Plaintiff VS. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER Defendant.	CIVIL ACTION NUMBER: CA-73 8-00 D

Washington, D. C.
Tuesday, February 10th, 2004.

The above-entitled action came on for a Hearing before the Honorable ANNA BLACKBURN-RIGSBY, Associate Judge, in Courtroom Number 48-A at or about 9:30 o'clock a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HIS ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

FOR THE PLAINTIFF:
RODNEY PAGE, SCOTT BADAMI, Esquire

FOR THE DEFENDANT:
LARRY WILSON, PRYIA AIYAR, Esquire
EPI SCHULMAN, NEAL GORSUCH, Esquire

DERRICK CONEY
OFFICIAL COURT REPORTER Telephone: 879-1053

16d-003048

truthful because public shareholders rely on them?

A. Yes.

Q. And you certify NCRIC's 10-Q disclosure of November, 2003, you signed that, right?

A. That's right.

Q. And you certified in doing so that it didn't omit any material fact necessary to make the filing true and accurate, right?

A. That's right.

Q. Isn't it true, however, Mr. Pate that even before you were deposed two years ago, back in January, 2002 -- strike that.

In the FCC filing, the 10-Q of November 2003, isn't it true that NCRIC stated that Columbia Hospital's counterclaims do not specify the amount of damages sought?

A. That's correct.

Q. And isn't it true, however, that even before you were deposed two years ago, back in January 2002, you knew that Columbia's counterclaims sought millions of dollars?

A. An unspecified amount of money.

Q. You knew that it specified millions of dollars; isn't that correct?

A. Yes. I would add that, however, our filings --

are regulatory filings before we sign them go through legal counsel review as well as auditing reviews those types of statements and we sought advice from our counsel specifically on that issue. And our legal counsel said that the representation that we made was accurate and fair.

Q. Mr. Pate, isn't it correct that you signed those statements and certified them personally as true and accurate?

A. Yes, I did.

Q. And that they do not omit any material information necessary to make them true?

A. That's right.

Q. And isn't it true that in November, 2003, you said Columbia's counterclaims don't specify the damages sought?

A. That's right.

Q. And it's also true that you knew two years earlier, in your deposition in January of 2002, that Columbia was seeking millions of dollars?

MR. PAGE: Asked and answered, Your Honor.

THE COURT: Overruled. I'll allow the witness to respond.

THE WITNESS: That's correct.

BY MR. GORSUCH:

16d-003050

Q. And, in fact, at your deposition in 2002 you were even aware that Peter Ben Ezra's report indicated that Columbia was seeking tens of millions of dollars?

A. That's correct.

Q. And isn't it true that prior to November, 2003, when you finally disclosed the existence of Columbia's counterclaims, prior to that time you had never even disclosed the existence of Columbia's counterclaims?

MR. PAGE: Objection. Relevance. Beyond the scope, Your Honor.

MR. GORSUCH: Your Honor, it goes to this truthfulness.

THE COURT: His truthfulness about what?

MR. GORSUCH: About his disclosures about this case, Your Honor.

MR. PAGE: The disclosures are not relevant.

THE COURT: The objection is sustained.

BY MR. GORSUCH:

Q. Isn't it true that part of November, 2003, you disclosed to the public NCRIC's claims against Columbia?

A. Yes.

Q. But you never disclosed Columbia's counterclaims against NCRIC, did you?

MR. PAGE: Same objection, Your Honor.

THE COURT: I'll allow the witness to answer

that question.

THE WITNESS: Our disclosure relevant to the action by Columbia against the company was disclosed in incriminate amounts as the facts of the case became clearer and clearer to us.

BY MR. GORSUCH:

Q. Isn't it true that Columbia's counterclaims have been on file since 2001?

A. Yes.

Q. And you didn't disclose their existence to your investigators until November of 2003?

A. No, that's not true.

Q. When did you disclose them beforehand?

A. There was -- there was a segment in the 10-Q's that we filed. I can't recall when we first started disclosing. There was an action and a counterclaim, but I'm fairly certain that we had some level of disclosure within the Q's.

Q. I'm going to hand what's been -- What is your S-1 Statement. If I may have that, please.

You know what an S-1 Statement is, Mr. Pate?

A. I do.

Q. You want to tell the jury?

A. It's a document that we filed for offering.

Q. It's what, in fact, an order to offer the $66

million worth of stock you sold last Summer, right? Correct?

A. We did not sell $66 million worth of stock.

Q. How much stock did you sell, Mr. Pate?

MR. PAGE: Your Honor, objection. This is not relevant. It's beyond the scope. It has nothing to do with any issue in this case.

THE COURT: The objection is sustained.

BY MR. GORSUCH:

Q. Isn't it true, Mr. Pate, that in that S-1 you never disclosed the existence of Columbia's counterclaims?

A. I don't know, offhand. I'd have to go through the document.

Q. I'd refer you to Page 37. Tell me if you can find it in there.

MR. PAGE: Your Honor, I object. It's beyond the disclosure. Whether it occurred or not has nothing to do with this case.

MR. GORSUCH: He already testified he did disclose it. I'm asking him to find it.

THE COURT: I'm not sure what the relevance of this line of questioning is, but I'll allow the witness to respond.

MR. GORSUCH: Thank you, Your Honor.

THE WITNESS: It's not on this Page 36.

BY MR. GORSUCH:

Q. And that's when -- That is the registration statement for when NCRIC sold over $60 million worth of stock last Summer?

MR. PAGE: Objection to the characterization. You've already sustained it.

THE COURT: Sustained.

BY MR. GORSUCH:

Q. You can't find it anywhere in that registration statement, can you?

A. This registration statement is fairly lengthy. I could take -- I could take and look through it if you'd like, but --

Q. Mr. Pate, 36 and 37 is where you disclosed the existence of NCRIC's claims, right?

A. My sense is that there's probably other sections within this document that talk about ongoing litigation.

Q. In fact, Pages 36 and 37 talk about this litigation, right?

A. Yes. It does.

Q. And it doesn't mention the existence of Columbia's counterclaims?

A. 36 and 37 do not, that's correct.

Insurance And Securities Department measures your market share at over 72 percent?

MR. PAGE: Objection, Your Honor. There's no foundation. The witness said he had never seen it before.

THE COURT: Sustained.

BY MR. GORSUCH:

Q. Do you have any reason to believe your market share, according to D. C. Department of Insurance and Securities Regulations is over 72 percent in 2002?

A. No.

Q. You recall saying on direct testimony that doctors are free to practice anywhere they'd like under their individual insurance policies?

You remember that testimony?

A. I do.

Q. Isn't it true that NCRIC issued an exclusion preventing doctors from working at Columbia's Community Health Clinic?

MR. PAGE: Objection. Scope, Your Honor.

THE COURT: Sustained.

MR. GORSUCH: Your Honor, his testimony was they could practice anywhere under the individual policies.

THE COURT: I'll allow the witness to respond.

MR. PAGE: Your Honor, first, I want to renew the motion, as I stated it, at the close of the case when Columbia rested on its counterclaims. You did dismiss Count 3, the breach of fiduciary duty. As I did before, Your Honor, I'm going to address them in reverse order just because it seems to me that it makes a little sense to do that.

MR. GORSUCH: I apologize. I do apologize. I'm sorry for interrupting, but before we rest, I apologize, we need to move in evidence of documents pertaining to punitive damages. I just don't want to, before we start this argument, to have been waived anything.

I think everyone knows we plan to move in 71, 71-A and 71-B. So just the record is very clear on that.

THE COURT: All right. And those documents, again, were the --

MR. GORSUCH: The 10-K and Q's, Your Honor. The financial public statements of NCRIC for punitive damages purposes.

THE COURT: All right. Is there any objection to that?

MR. PAGE: Well, yes. Goes to the punitive damage issue.

16d-003056

is not a defamatory statement about Columbia. It speaks not to Columbia.

It says -- It doesn't even use Columbia as a -- The word, Columbia, is not named. It would only be by same inference and leap that Columbia is somehow maligned in any way by that statement. It is equally possible the statement is a statement about NCRIC. That if the Retro Plan ends, the inference being NCRIC perhaps ended it, you guys should pack your bags and get out of here.

The very statement, itself, is clearly and inherently independent.

There is no other statement that has been attributed to NCRIC.

They're definitely is no statement, as counsel has suggested, that speaks to the financial stability of Columbia.

Now the way we heard counsel characterizing Dr. Glassman's testimony it was broader and it was -- There's a problem at the hospital. The hospital is at fault. The hospital is creating an issue. You guys should leave and get out of here because of the hospital and its financial condition. That's why we offered the reputation testimony.

But I repeat that -- And we know have the additional testimony that Dr. Glassman was not authorized

16d-003057

by the NCRIC management to speak to this and has no personal involvement in the administration of the contract.

I have just made a proffer to you as well in which I have recited our view that Columbia is a limited purpose public figure, if not a general purpose public figure, but the actual malice standard would apply. And that the evidence here, in no way, approaches the actual malice standard. And so we would move additionally that applying the public figure rules, these counts must fail. But even if they didn't, we think that the statements are so vague, none defamatory, none specific, that they cannot give rise to any defamatory damages or any reputational injuries.

So we move for judgment as a matter of law on those counts, 9 and 10.

I will take up Counts 8 and 7 together, if I could. Those are actual or constructive fraud and negligent misrepresentation.

And they're very similar. And they share elements that are similar. And we believe that the totality of the evidence indicates that the elements of the causes of action have not been established.

And, specifically, what has not been established is any reliance by Columbia on any

16d-003058

The negligence count, which was Count 6, is out. And we're now to the tortious interference counts which are 4 and 5.

One is tortious interference with perspective economic advantage and one is with present or contractual relationships.

I repeat the arguments that I made at the close of the case previously when Columbia rested, but I would say that the evidence, Your Honor, does not show the level of aggravated behavior, egregious conduct or tort necessary to change what is an ordinary contractual change of circumstances to change that into tortious interference.

And we believe that those counts should be dismissed because they fail the adequate standard of proof.

Count 3, as I mentioned ago, was dismissed.

Count 2, we move again for a judgment as a matter of law. The breach of implied duty of good faith and fair dealing does not have damages or claims that are independent of the breach of contract claim, which is Count 1.

It adds nothing to the cause of action that exist as Count 1 as to which we are not moving for judgment as a matter of law. And it is simply going to

16d-003059

I asked each one of those three doctors on cross examination did NCRIC ever come to you and ask you to leave?

Did NCRIC encourage you to leave?

Did NCRIC tell you to go to some other hospital Retro Plan?

The answer from all three of those witnesses called by Columbia was, no, NCRIC had done none of those things.

They did say, by the way -- as did Heather Johnson and Ken Blank and others -- that they were being heavily recruited by other hospitals. And they chose, none the less, to stay at Columbia.

So now you have the testimony of the doctors. And you've heard it and I think it is very telling in this case.

The key to the Columbia claim is that NCRIC destroyed this hospital because NCRIC forced this group, by name, of doctors away from the hospital and allegedly all their damages flow from that. That's what caused inevitably the collapse.

And yet you have seen three of the doctors on that list. Two of them in large groups who testified as to unanimous decisions. And their testimony is unequivocally they did not leave because of NCRIC.

16d-003060

You've heard three other doctors called by Columbia. They stayed at Columbia. And their testimony is not relevant, frankly, to this issue of why these doctors left.

Now, I need to make more one point about this. We don't dispute that there were doctors who left. And we don't dispute -- NCRIC does not dispute that the timing occurred at the time that the insurance arrangements came to an end in the Summer of 2000.

And there were doctors, clearly, who made their individual decisions, economically, about what was best for them. But as the Judge will instruct you tortious interference is not merely offering somebody a different deal. Tortious interference would contract is more than that.

What Columbia has to show in this case is that NCRIC took some extraordinary action to try to intimidate these doctors or coerce them or lie to them about what was going on. The evidence, ladies and gentlemen, is devoid of that.

The mere fact that doctors left at a time when the insurance changed is not a reason for NCRIC to be liable. So if that's not what really happened -- In other words, if the Columbia story is not the real story here, then what is the real story here?

16d-003061

sort. You didn't ask him about that. And Moore said, no.

And Mr. Gorsuch says, well, what about those plans that might have turned the hospital around. And what Steve Moore said was, well, I've studied a lot of hospitals and I've looked at a lot of them. And the management always thinks it's going to turn these hospitals around, but the reality is they can't. And that's why hospitals, like Columbia, close.

That's the small point of disagreement in this case between the expert that we called and Dr. Rifka. They actually agree on all of the problems that were facing Columbia but you are being asked to believe, contrary in our view to the reality, that somehow this was just going to go turn around overnight after a series of problems that are undisputed that had gone on at Columbia over the years.

Now, ladies and gentlemen, that's the real story of what happened here.

The real story is that it is sad and inevitable that Columbia Hospital was going to have these problems and that it was going to close.

The real story is that NCRIC had nothing to do with that. If anything, NCRIC in this situation, is a victim.

16d-003062

gentlemen, because it is owed money. It sued before Columbia went out of business.

Mr. Fargis said that they sued hoping that they could find a way to get a judgment before the hospital closed. It didn't work. We're here today. We have no judgment.

We don't think, frankly, that there's any way we could collect a judgment from them. We still want a judgment for $2.6 million and we're asking you to do that for the amount that's shown there, 2.67. And the reason is because it's right because Columbia has a duty to honor its contracts. It did not.

NCRIC went out of its way in dealing with Columbia.

NCRIC has extended credit when, probably, it was foolish to do so.

I want to also make this point: NCRIC has no obligation as an independent company to do anything for Columbia.

NCRIC had no moral obligation to continue to do business with Columbia. It did so because it was trying to be a good partner in the medical community.

I want you to remember the sequence of events and take a look at the evidence. And I'm not going to belabor because you have heard a lot of this and I'm

16d-003063

safety or equipment. Not a single contemporaneous document.

Don't you think that if they had one, they would have shown it to you.

Even Dr. Dukes had to admit, their own board member, that one reason he left Columbia was because of the insurance.

The closest NCRIC came to delivering on this promise was Dr. Johnson. You remember her. But she had to admit as her group wrote in a letter back in 2000, Defendant's 41, that it left the hospital. That it had stopped working at clinic because it had to do with insurance, not safety. Should the NCRIC insurance coverage be reinstated, please advise us.

Finally, NCRIC told you that they would prove that Columbia was mismanaged but Dr. Dukes admitted that Columbia was the best place he ever worked. And he actually helped run Columbia serving on the board of directors all the way until 2000 when he finally had to choose his allegiance between the money at NCRIC or Columbia's nonprofit mission.

Mr. Moore even admitted that Price Waterhouse, found in 2001, that Columbia's management had done a quote, "Admiral job", in cutting costs.

That Columbia's market share was increasing at

16d-003064

a time when all the competitors were not. That losses were cut in half in one year. And you heard that the Bankruptcy Court had approved a turnaround plan that within 18 months left the hospital with a profit in June, 2000. Ladies and gentlemen, that's unrefuted testimony.

You heard from Mr. Page who said cash was tight at Columbia. We've never denied that. Of course, it was. That's true at every hospital in Washington. But the fact that Columbia turned a profit in June, 2000, is unrefuted.

So much for what NCRIC promised to deliver.

You've heard the evidence and you know that what NCRIC did to Columbia was bad. It wasn't a Retro Plan, it was a retribution plan.

Did you ever hear Mr. Page even try to defend here for you what they did to Columbia's clinic.

When the 800 pound insurance guerilla just didn't get its way, it decided to take what it called it's doctors and get them absorbed into other hospitals where it controlled the insurance business.

Let's talk about what the evidence really did show. Columbia made certain promises to you as well in opening statement and I think the record reflects that we delivered on them.

1996, Defense Exhibit 5, here it is. NCRIC and

16d-003065

Columbia reached an oral agreement that the parties would exchange money only when all claims for year closed out and NCRIC promised to pay interest on that money. However, it was a recommendation of that interest settlements be paid pending final analysis of the full three years of the program.

And there's the promise of interest. An admission that the hospital was due money. That's 1996.

In 1997 you saw Defendant's Exhibit 10 that NCRIC was aware of the challenges facing the hospital. And instead of being its friend demanded as a condition for renewal a one million dollar security deposit. It exploited Columbia's weakness supposedly because it was worried about potential future liabilities but you know that 1997, not a single year under the plan enclosed out.

And the parties had agreed to wait to exchange money until they had. You just saw it in Defense Exhibit Number 5. They wanted money for a contingency that was pure fabrication.

You know that under the contract it's turned out that Columbia's owed money, not NCRIC. And that's because the quality of the doctors at Columbia was so high, Columbia was willing to bet on its doctors and that meant succeeded.

16d-003066

Mr. Pate said that he never heard about anyone complaining from Columbia about the million dollars. You remember that testimony this morning. But Mr. Pate had no personal involvement in the million dollar story. You know that, too.

And you know that Dr. Rifka did complain to Steve Fargis about the million dollars. He told you that the books were cooked and it was a holdup. And you know that was true.

You heard, as well, that the loss of the million dollars was a prime contributing factor to Columbia's bankruptcy's. Those were Mr. -- Dr. Wilson's words. No one has told you that it was the only factor. No one is denied that Columbia had financial problems, but every hospital had financial problems. But it's unrebutted testimony from Dr. Wilson and Dr. Rifka that that million dollar payment was the straw that broke the camel's back and sent Columbia into bankruptcy.

Let's talk about 1998. You heard that Columbia considered brining MIIX into D. C., and that it was cheaper for every single doctor at Columbia. Defense Exhibit 19, there it is. Again, Mr. Page doesn't want to talk about what happened in 1998.

You heard, too, that NCRIC responded when it found out about this program and the threat it meant to

16d-003067

Exhibit 95 and instead just drooped its demand to $750,000. Picked a new number.

As if these demands weren't intimidation enough, NCRIC's CEO, Mr. Pate, appeared in Larry Wilson's office late one afternoon in June -- not a phone call in August -- to warn of a train wreck if Columbia didn't back down again like it had in '97 over the security deposit and like it had in 1998 over MIIX.

You heard that testimony from Dr. Wilson and he was truthful to you.

Dr. Wilson took that threat seriously and he agreed to NCRIC's demands subject to board approval. And you saw in Defendant's Exhibit 35 that the board met on June 27th, 2000. That it wanted to go forward with the deal and told Dr. Wilson to continue negotiations but it had rejected a $750,000 demand when all the information it had from Mr. Feldman showed that Columbia, not NCRIC, was owed money under the contract but still Columbia decided to continue negotiating. Yet, the next day, without warning, you know that NCRIC, not Columbia, issued a termination notice. And there it is, Defendant's Exhibit 36, on NCRIC letterhead.

They might try and tell you differently, but there is it. It's a NCRIC termination notice. And you know NCRIC issued this to intensify the pressure on

16d-003068

Columbia to back down again on its demands for $750,000.

Now, NCRIC said to you, well, we had to comply with some insurance negotiation rule and that's why we issued this letter, but where's the evidence of that?

Why didn't they mention it in their termination letter if there's some insurance rule?

Have you seen the rule?

And if there was such a rule, why didn't they issue a termination notice in '96 when the parties operated without a contract for over a year?

There was no notice from then. Ladies and gentlemen of the jury, you know that this explanation is just so much spin developed after the fact to try and defend what is indefensible.

The only insurance ruling in this case that's in evidence is this one, Defense Exhibit 48 where the commission told Columbia that it was free to bring these counterclaims. That's the only evidence from any insurance function.

You know NCRIC is spinning, too, with its explanations about the termination notice because two days later -- less than 48 hours -- it turned up the pressure on Columbia by terminating the clinic policy, defense Exhibit 62. It's another thing Mr. Page didn't tell you about in his closing remarks. Didn't want to

16d-003069

talk about the clinic.

Mr. Pate didn't want to talk about the clinic. NCRIC was willing to threaten Columbia's ability to serve the four. And in order to skis another $750,000 that it wanted for renewal of the contract. It's that simple and stark.

Mr. Pate asked you to believe, on cross examination, that the two day difference between the termination notice and the clinic notice was just a, quote, "coincidence ", but it's not connected in any way. That sounds pretty slick. But you heard Mr. Hempleman's deposition testimony when NCRIC didn't bring to this courtroom. And he told you that NCRIC had never done anything like this before in over 100 places like the clinic that NCRIC had insured.

Mr. Hempleman said he didn't know why his superiors wanted the clinic terminated but he was following orders. Think about that. Threatening a nonprofit suability to serve the community as a pressure tactic in negotiations like some overgrown sand pit bully picking on a small trusting kid.

NCRIC now says it cancelled the clinic policy because it learned in the Kessler Case that the trust fund was depleted. This is just so much more spent.

No such reason was provided in the termination

notice, Defendant Exhibit 62. It's not there. And it just doesn't make sense. The clinic was renewed only six months earlier. It was current on its premiums.

Mr. Fargis admitted on cross examination that he knew about the trust fund's financial troubles as early as 1997. Three years earlier.

And you know as well that NCRIC used that trust fund status as a scare tactic with the doctors in the MIIX negotiations in 1995 -- 1998 when it looked like Columbia might go with MIIX. And there it is. There is Mr. Pate and Mr. Fargis' own words, scaring the doctors about the status of the trust fund two years before it issued the termination notice.

And you know that in 1998 and 1999, NCRIC received all the bankruptcy notices disclosing the status of Columbia's trust funds finances.

You also heard that Mr. Fargis admits that he didn't bother to review all those notices. You know it's undisputed as well that the trust funds tax returns are public records. Available because Columbia is a nonprofit. All they had to do was look that that was really the explanation, but it just doesn't hold together.

NCRIC points you only to Plaintiff's Exhibit 92 but that document doesn't say a thing about any new trust

16d-003071

fund discovery. It just says the hospital had financial troubles. Now, ladies and gentlemen of the jury, that has never been a secret.

It doesn't say a single thing about any trust fund discovery. In fact, the document reveals that NCRIC's own lawyer, Brian Nash, admitted that Columbia had an edge over NCRIC from plaintiff's perspectives in terms of relative liability.

The only thing that happened in the Kessler Case, as Mr. Nash knows and said, was that the mediator ordered Columbia to pay $875,000 and NCRIC to pay a little over a million, finding that Columbia's liability was less than NCRIC's. Those are this facts of the Kessler Case and Columbia paid what it owed, as it always has. So much for that sham defense.

After cancelling the Retro Plan and the Clinic Plan when Columbia still hadn't rolled over, you know that NCRIC decided that there had been a failure to communicate. And so on July 10th it issued massive new bills with $20,000 increases, Defendant's Exhibit 57. And you heard that NCRIC never done anything like this in any negotiating before even when the contract didn't exist in '96 and '97 and the parties just continued to operate. They didn't go back and issue undiscounted bills, they continued to issue discounted bills.

Mr. Pate offered you know explanation for this. Mr. Fargis didn't either. And there is none.

In fact we know the very next day, the day after issuing these bills, on July 11th, NCRIC adopted a plan of action aimed at getting doctors absorbed into Sibley and G. W., back to back.

And at the very same time you heard that NCRIC's chairman of the board, Dr. Glassman, told all the leaders of Columbia -- doctors, nurses and staff on the executive committee -- that they should pack their bags and go. Columbia's going to die if it doesn't renew the Retro Plan.

The train wreck had arrived just as NCRIC had planned.

And, now, did Dr. Glassman bother to come in here to testify to deny that allegation that Dr. Rifka heard?

He did not.

And you heard the panic ensued after these bills and the termination of notices and Dr. Glassman's warnings. And the doctors did start leaving.

Dr. Wilson thought he was still involved in good faith negotiations. He didn't know about NCRIC's secret plan of action. So Dr. Wilson continued to negotiate in good faith. And Defendant's Exhibit 61, on

16d-003073

August 15th, he thought he reached an agreement when Mr. Osborne for a new Retro Plan. A new Retro Plan. But just then Mr. Osborne literally disappeared off the face of the earth. He didn't return Dr. Wilson's calls. He was never to be heard from again. Terminated just like the Retro Plan.

Then Mr. Pate suddenly reappears and says that there's no deal even though, as you know, there was a deal. In fact, he admitted in a private E-mail, Plaintiff's Exhibit 94, that Osborne -- Dave Osborne and Larry reached agreement on 11 monthly payments of $45,000. That's his own E-mail that Osborne and Larry Wilson reached an agreement.

After Mr. Pate scotched that deal, Columbia was left to scramble. It found an insurer really to enter into the District. A good one. A G. E. Company. A company that was cheaper and better, according to Dr. Proctor, but it was too little too late. Doctors can't wait until the last week before making arrangements about where to operate on patients. And 30 to 40 doctors were gone to Sibley and G. W.

That wasn't all. On September 1st, NCRIC issued its bogus bill, Defendant's Exhibit 81. Even under its calculations NCRIC owed Columbia money for '94 and '95, which had just closed out. But rather than

16d-003074

issuing a check, NCRIC issued a lawsuit on October 3rd demanding money three years that have not closed out -- even to this day -- in violation of the party's agreement based on educated guesses about years where claims are still outstanding without any verification after collecting more than $12 million on this policy and paying out less than six.

And you heard testimony this morning that even to this day they have collected substantially more money than they've actually paid out, and that they want a judgment based on guesses about lost reserves for years that haven't closed out. That was never a part of any deal with Columbia.

And then in an act that can only be described as purely malicious, on October 1st, two days before filing this lawsuit, NCRIC issued exclusions preventing the doctors from working in the clinic.

You didn't hear about that from Mr. Page but you did hear from Mr. Hempleman, one of NCRIC'S many absent witnesses that he had never seen anything like this before.

You heard from Mr. Feldman as well that in 25 years -- 25 years in the insurance business he's never seen an exclusion like that either.

He's seen exclusions for things he told you

16d-003075

like nuclear war or terrorists or if someone commits a felony. He's seen those kinds of exclusions, but not for community health clinic. Part of what NCRIC's own expert found as a center of excellence in 2001.

What is the defense for that conduct?

NCRIC offers another, after the fact spin, it wants you to believe; says it was double coverage but you know by now that that really meant no coverage.

NCRIC cancelled the clinic policy. And then it turned around and cancelled the policies of the individual doctors for working in the clinic. Even the doctors with no insurance coverage were working in the clinic. It take quite a leap of the imagination and -- to ask anyone to believe that that's double coverage.

NCRIC's own board member, Dr. Cook -- another witness they did not bring to this trial -- wrote a letter, defendant's Exhibit 46. Another one of the flaming documents that NCRIC just hopes you will ignore admitting that he left the clinic because NCRIC yanked the insurance.

And you heard that NCRIC knew about this suppose double coverage issue since 1998 before it eve sold the clinic policy.

You heard Ann Gaffey. You remember Ann Gaffey. She told the truth when she was on the stand

16d-003076

but here it is, if you will, a top five list of the lies we've heard.

Number 5: Mr. Fargis' claim that the deposit premium has to be 62 percent even though the contract says 67.

Number 4: That NCRIC is Columbia's friend. Who wants friends like this?

Number 3: That Columbia terminated the Retro Plan. Where did they come up with that one?

Number 2: That NCRIC doesn't care where the doctors practice. Only the monopolist who controls nearly the whole city can say that. Of course, NCRIC cares of doctors practice some place that does business with a competition like MIIX or Med Pro. Of course they care.

And here are just three of many possible candidates for the number one untruth told to you in this courtroom: First, Mr. Pate's testimony that it was a coincidence that the Retro Plan and the clinic plan were terminated within 48 hours of each.

Number 1: Mr. Fargis' claim that it was just another mistake that NCRIC issued the clinic exclusion only two days before issuing this lawsuit.

And finally, perhaps the biggest whopper of them all: That the doctors didn't leave because of

16d-003077

insurance. We all know that didn't matter.

Now let's talk about the specific claims. First, let's talk about the breach of contract and the breach of duty of good faith and fair dealing.

For each of these claims we would seek two sorts of damages. First, we would like the security deposit back.

It was demanded back in 1997 before any years closed out and NCRIC said it was entitled to security because Columbia might some day owe it some money but it's's now seven years later and it's clear that NCRIC owes Columbia money for both of the years that closed out.

NCRIC has no basis for holding Columbia's money on the ground that some day, somewhere over the rainbow Columbia might owe it some money some day. Deposit, payment, credit, you've heard all the different liability they attached to it. Whatever it is, give it back.

The deal was to pay when the years closed out. There are only two years that are closed out. Columbia's owed money under both of those years and there's no basis for NCRIC holding on to Columbia's money.

And NCRIC is proven it is not a trustworthy custodian of Columbia's money.

Second: Under both of these claims, we also

16d-003078

seek money for the correct calculation of a contract using the actual contract terms and giving NCRIC full credit for the partial payment it made for '93 and '94.

You saw Mr. Feldman in Defense Exhibit Number 85 means that the correct calculation of the contract means that Columbia's owed $559,797.67. And that's just for the years -- the two years that it closed out. Columbia's not seeking any money for open years. There's no guesswork in that number.

So for the breach of contract and the breach of duty of good faith and fair dealing, we ask you for $1,559,797.67, exactly. Not a penny more or less.

Now, let's talk about the two tortious interference claims you will consider.

Can there be any question that NCRIC intentionally interfered with the hospital's relationship with its doctors when it promised to engage in good faith negotiations even after they adopted a secret plan of action to move the doctors. And then proceeded to carry out that plan by sending out the Retro Plan termination notice; by sending out the clinic notice; by sending out the massive bills to intimidate doctors when its own chairman of the board told Columbia's doctors to pack their bags. And then, in a slap in the face, turned around and issued exclusions making it impossible for

16d-003079

doctors to serve in Columbia's community clinic.

For that conduct, under both of the tortious interference counts you will be instructed about, we ask you for 21 -- $21.5 million for damages due to Columbia before the hospital closed. This is before the hospital closed.

You will hear that in the 22 months between July 2000 and May 2002, that's the amount of money we seek. And here's how we get that: You heard from Dr. Rifka and Mr. Moore that Columbia lost $10 million a year in revenue before versus after the doctors.

Mr. Moore was shown those numbers and he agreed that's what was in the IRS tax form.

Now, you also know from Peter Ben Ezra that you have to deduct marginal costs. And that those are 30 percent, using a conservative number that favors NCRIC. So you take 30 percent off of 10 million, that's $7 million a year.

Now, for 22 months that works out to be 13 million. Not 14, 13 million.

Plus you heard about the congressional funds that were appropriated and available from Congress ready for Columbia, but Columbia had closed and couldn't access them. That was money that was ready, sit there to go straight to the bottom line.

Plus, you heard about the bankruptcy fees.

You heard the million dollar payment was a major precipitating factor. And not a single witness is come in here to tell you about the contrary. Now, NCRIC knew Columbia was weak and still demanded that money anyway even though there had been no closing out of any years. And the only years to close out so for are all in Columbia's favor.

NCRIC was a substantial factor in causing that bankruptcy and it cannot evade responsibility for the losses it caused by pointing out that Columbia had other financial troubles, too.

The evidence about bankruptcy fees is between 1.5 and $3.5 million. So if you add up those numbers, that's the number we come to for what happened to Columbia before the doctors left and those numbers are basically uncontested.

Mr. Moore and Dr. Rifka agree that before versus after the doctors left was a $10 loss of revenue.

Let's a talk about what happened after the hospital died. We know that no doctors means no revenues for a hospital and that means no hospital. That the loss of 30 doctors meant that Columbia was dead.

NCRIC's expert, Mr. Moore, literally suggested the hospital was sick. So NCRIC could just put it out of

16d-003081

its misery but notice none of their doctors said anything like that.

Dr. Dukes said it was the best place he had ever worked and Dr. Johnson said it was a loss to the community. It's not okay to murder a hospital even it wasn't in peak financial condition. So the question is for you how much.

There are two ways to get there. First, you saw Peter Ben Ezra's analyses. And he did two separate analyses. One of which depended on a list of doctors -- of 24 doctors -- where NCRIC admits that 30 to 40 left. Mr. Pate admits that. So that's one method he used.

And you know he also used the revenue with it that didn't have to do with the names of specific doctors. So while Mr. Page criticizes Peter Ben Ezra for one method of calculation, he had two. And they both reached the same number.

And you know that after deducting for the math errors, it was $20.4 million that Peter Ben Ezra came up to for lost damages after the hospital. But there's another way to get to this same number that confirms the righteousness of that number and that's this: You heard that it was $7 million in lost revenue per year after deducting marginal costs. Mr. Moore and Dr. Rifka agreed on that.

16d-003082

So that's $7 million a year that was lost to Columbia in revenue due to the lost doctors that killed the hospital. And the question becomes how many years would you use that number. Peter Ben was very conservative in all of his assumptions. Nobody disagrees with that.

If you take that $7 million number and consider just three years that the hospital had survived -- just three years -- that would be $21 million. Almost the same exact same number Peter Ben Ezra came up with.

Their own expert, Mr. Moore, said that the hospital might have survived another year. That was his testimony. And don't you think he might have been shading it just a little at $465 an hour for NCRIC.

We ask you for three years, calculated at 7 million and Peter Ben Ezra numbers $21 million for what happened after the hospital closed.

Let's talk about punitive damages.

You have seen that NCRIC lied.

That it used its weight and power to intimidate a hospital in 1997 over the security cost.

In 1998, over MIIX. And time after time in 2000. Cancelling the Retro Plan, the Clinic Plan.

The chairman of the board scaring doctors; issuing massive bills; exclusions that vindictively

16d-003083

ending September, 2003. It represents less than one year's worth of sales.

One way of thinking about what might be an appropriate punishment in this case -- and that's your decision -- is weather NCRIC ought to spend a year working for a foundation whose mission it is to serve the health care of the women and children of this community.

Think of it as NCRIC's year of community service. Maybe some of them will have to go without their stock options and bonuses for a year.

While NCRIC has yet to perform its community service, ladies and gentlemen, you've done yours.

You know what happened in this case. You know how NCRIC bullied Columbia and threatened it and sued a charity for money it does not owe.

The time has come for fair compensation and, yes, a measure of punishment.

Now it is the time to take just some of NCRIC's huge assets and give them back to Columbia to give this long and sad story a dignified ending it deserves.

Ladies and gentleman, it took two full weeks of your lives. What you're doing is important to this community.

We're sorry to have taken up so much of your time, but you've gotten to the bottom of it and that's

16d-003084

was repeated to you at a minimum of three times in the argument you just heard. What was overlooked was that although there were a lot of details, the conclusion from that witness was that Columbia would inevitably fail. And that witness said it was impossible for that hospital to survive with its current business model. So beware of the facts taken out of context.

Beware of the exaggeration.

You've heard about the plan of action. Again something mentioned numerous times.

I think the witnesses from NCRIC adequately explained what the plan of action came about because of phone calls they received from doctors saying how can you help us and tell us what to do about our insurance coverage and keep our premiums low. That NCRIC responded to do phone call from Sibley saying meet with us.

Ladies and gentlemen, NCRIC had no obligation to deal exclusively with Columbia.

NCRIC had no obligation to extend credit to Columbia. This was a business transaction where NCRIC was acting in a business like fashion. And it's a business that does business with all of the hospitals in the District of Columbia.

Here is another example -- and that's what I would call -- I can't think of a better word for it --

16d-003085

dumbing down the evidence.

You heard this evidence -- this comment about the evidence that the loss reserves are educated guesses. And that as that is repeated to you three times, the only word that you keep hearing is, guess because Columbia conveniently fails to mention that it's an educated guess.

An educated guess and something that's required by the contract because the whole purpose of Retro Plan was to set up a schedule where lost reserves would be reported. They're referred to in the planned document, itself. And, accordingly, the idea of having an educated guess is the very heart of the plan.

Finally, one more technique that I want you to be careful about is what I would simply call the appeal to sympathy.

As I said no one is happy about Columbia failing. NCRIC has no incentive or motive to have the hospital fail.

The motive suggested has been, well, they just want to keep other insurance companies out but remember that -- the MIIX episode. Everything that NCRIC said about MIIX turned out to be true. That company failed. When Med Pro came along in the year, 2000, not one step was taken by NCRIC to keep Med Pro out of Columbia

16d-003086

Dr. Rifka is not entitled any damages. And we suggested to you that the only fair result is to honor that plan. And, as I said, we may never be able to collect it, but NCRIC should be entitled to a judgment for what it is opened. Thank you very much.

THE COURT: All right. Thank you. Ladies and gentlemen, we've come to the point in the proceedings where I'm going to give you the legal instructions that you're to use and apply during your jury deliberations.

And I have to tell you at the outset that the instructions are lengthy and I do have to read them to you so that we have an appropriate record of these proceedings. So I just ask for your patience a little longer and your attention a little longer.

I will provide a copy of the instructions -- a written instructions -- to you in the jury room during your deliberations. So you shouldn't feel like you have to write everything down verbatim. You'll receive a copy of the instructions along with a copy of the jury verdict form and a copy of all of the exhibits that have been properly admitted into evidence to have with you during your deliberations.

As I indicated at the beginning of the trial my function as the Judge in this trial has been to conduct an orderly, fair, and efficient trial; and to rule on

16d-003087

questions of law that have arisen throughout the trial. It's your duty to accept the law as I state it to you now without questioning the wisdom of these instructions.

MR. PAGE: Your Honor, I'm sorry. Way I interrupt for a moment?

THE COURT: Yes.

MR. PAGE: And I say this with all due respect. I'm sorry to interrupt, but it was -- I was under the impression there was some open items on these instructions.

THE COURT: I don't think so at this point. What I will do at the conclusion of the instructions is if there are still some questions before we finalize excuse the jury, we can discuss them.

MR. PAGE: Thank you.

THE COURT: But based on the comments from counsel yesterday afternoon, I've taken those into account to fashion the final instructions.

In other words, even if you disagree or do not understand the reasons for a particular instruction that I'm about to give you, you are bound to follow the instructions.

Your function as jurors is to decide the facts.

You are the exclusive judges of the facts.

16d-003088

It is a violation of your sworn duty to base your verdict on anything other than the evidence in this case.

In reaching a verdict you must consider and decide this case as an action between two persons of equal standing in the community and of equal worth.

A corporation, whether large or small, has the right to a fair trial just as a private individual.

All persons, including corporations, stand equal under the law and are to be treated as equals in this court. In other words, the fact that the plaintiff or the defendant is a corporation must not affect your decision.

You may consider only the evidence that was properly admitted in this case.

Evidence includes the sworn testimony of witnesses, exhibits admitted into evidence, and facts stipulated to and agreed to by counsel.

You may consider any facts to which all counsel have agreed or stipulated to be undisputed evidence.

The statements and the arguments of the lawyers, such as their opening statements and closing arguments, are not evidence. They are only intended to help you understand and interpret the evidence from each party's perspective.

16d-003089

counterclaims against NCRIC by a preponderance of evidence, then your verdict should be for Columbia on those counterclaims.

If you find that the evidence on the issue is evenly balanced or that Columbia has failed to prove any of the counterclaims against NCRIC by a preponderance of the evidence, then your verdict should be for NCRIC on that counterclaim.

A corporation can act only through the individuals that are its agent or employees.

In general, if any agent or employee of a corporation acts or makes statements while acting within the scope of his or her authority as an agent or within the scope of his or her duties as an employee, then under the law those acts and statements are of the corporation.

Any injury or damage is proximately caused by an act or a failure to act whenever it appears from a preponderance of the evidence that the act or failure to act played a substantial part in bringing about the injury or damage.

It must be shown that the injury or damage was either a direct result or a reasonably probable consequence of the act or failure to act.

I think I'm going to stop here just for a

16d-003090

to punitive damages but no definition of punitive damages.

MR. GORSUCH: Your Honor, it might simplify things if you just read 16.1 which is straight out of the jury instruction handbook.

MR. PAGE: That is right. That is -- Yesterday, when we discussed it --

THE COURT: It wasn't in yesterday's draft?

MR. PAGE: It was in yesterday's draft. So it would be 16.1.

The only other comment -- and you may have made a decision on this -- which I will respect if you've done this -- but you dropped the discussion of egregious conduct with respect to tortious interference.

THE COURT: I did. That was a conscious decision.

MR. PAGE: We note our exception to that.

THE COURT: All right.

MR. GORSUCH: Your Honor, this is not by way of objection but by way of typographical error, I think. On Page 12 at the last -- last sentence under tortious interference with perspective business advantage, it indicates that if you find the Columbia's failed to prove its claim for tortious interference with business relations, you must also find that Columbia failed to

16d-003091

A contract is an agreement between two or more parties to do or not to do something. The party's allege that there was an oral contract between them in addition to the written contract.

A valid oral contract can exist between parties.

The elements of an oral contract are no different from those of any other contract.

Both NCRIC and Columbia have alleged that there was an oral contract in 1996 between the parties under which the parties agreed that the payment of premium under the Retro Plan would not automatically be paid every year.

Columbia claims that NCRIC breached this oral contract by requesting the $1 million deposit payment of additional premium from Columbia in 1997 and demanding payment of additional premium due when the Retro Plan expired in September of 2000.

You should consider the contract as a whole.

You should not ignore any section of the contract and you should not give undue weight to one section over another.

In determining the terms of contract, you should first consider what a reasonable person in the position of that parties would have believed was the

16d-003092

meaning of the words.

Next, you may consider the circumstances that existed at the time the contract was made, including the apparent purpose of the parties in entering into the contract; the history of the negotiations leading up to the contract; and the statements of the parties about their statement of the contract.

In addition, you may consider the statements of any agent for a party about that party's actions in negotiating or drafting the contract, or about that party's understanding of the language of the contract.

In this case, the plaintiff claims that there was a breach of contract between the plaintiff and the defendant. Actually, each party has a breach of contract claim, just to be clear.

NCRIC claims that Columbia breached the contract and Columbia also claims that NCRIC breached the contract.

Under the law if one party without legal excuse fails to perform a duty owed under a contract, then the party has breached the contract.

In this case both parties agree that the Retro Plan is a valid and binding contract between NCRIC and Columbia.

The only issue for you to decide is if the --

16d-003093

is if the Retro Plan contract was breached by one or both of the parties.

Both NCRIC and Columbia claim that the other party breached the contract.

NCRIC claims that Columbia has breached the contract by not paying the additional premium now due.

Columbia claims that NCRIC breached the contract by not properly calculating the additional return premium.

Under the law if one party, without legal excuse, fails to fully perform a duty owed under the contract, then that party has breached the contract.

If you find that the either NCRIC or Columbia breached the contract, then the party is -- in breach is liable to the other party for damages.

If you find -- There are two types of breach of contract. One is called a material breach or a total breach of contract.

If one party breached the contract by failing to perform a contractual duty so important that it affects the central purpose of the contract, then that party has committed a material or total breach of contract.

If that party committed a material or total breach, then the other party has the right to terminate

16d-003094

the contract.

If you find that the defendant or the plaintiff, either NCRIC or Columbia, committed a material or total breach of the contract, then the other party was entitled to terminate the contract and receive damages and the party who is not in breach had no further duty to perform under the contract.

The other type of breach of contract is called a simple or partial breach.

If you find that either party received substantially what it bargained for to receive under the contract, then the breach was a simple breach.

If one of the other party committed a simple or a partial breach of a contract, then the contract remained in force and could not be terminated by the party not in breach. In that case a party could still be entitled to receive damages caused by the partial or simple breach.

If you find that either party breached this contract and the breach was not excused, then you must award damages to the party that was not in breach.

The measure of damages for a breach of contract is that amount of money necessary to place the injured party in the same economic position that party would have been in if the contract had not been breached.

16d-003095

To calculate the damages first determine the amount of money the injured party would have received had the contract not been breached.

Lastly, subtract from that any money the injured party saved because that party did not have to complete the contract.

The plaintiff or the counter -- The party bringing the claim for breach of contract has the burden of proving all elements of damages by a preponderance of the evidence. You are to award damages to fully compensate the none breaching party.

You must not award damages for present or future harm which is speculative or remote or which is based on guesswork or conjecture.

If you find that either party breached the contract and you find that there are no proven damages resulting from that breach, or that the damages are only speculative, then you may award nominal damages to the party that is not in breach.

Nominal damages are a small amount of money, such as $1, awarded without regard to the amount of loss.

If you find that one or the other party breached the contract, then you must award the party that was injured by the breach a sum of money which will

16d-003096

fairly and reasonably compensate that party for all the damage that that party experienced which was proximately caused by the breaching party.

The none breaching party is entitled to damages that the party who breached the contract negligence or wrongful conduct proximately caused.

A breaching party is only liable for damages that their conduct caused.

If you find that a breaching party's product -- conduct caused only part of the damages, then that party is liable only for that part of the damages that their conduct caused.

The burden of proof is upon the party bringing the claim to establish all elements of their damages by a preponderance of the evidence.

The party bringing the claim must prove that their -- must prove their damages with reasonable certainty. And you may only award damages to the party bringing a particular claim for past, present, or future harm that is not speculative.

Speculative damages are those that might be possible but are remote or based on guesswork.

A party does not have to prove their exact damages, however. You may award damages that are based on a just and reasonable estimate derived from relevant

16d-003097

evidence.

Similarly, a party does not need to show that there is an absolute certainty that the injury or loss will continue into the future. You may award damages to compensate a party for injury and losses that probably will continue.

In addition to the compensatory damages Columbia seeks punitive damages against NCRIC for some of its claims.

Punitive damages are damages above and beyond the amount of compensatory damages that you may award.

Punitive damages are awarded to punish a party for their conduct and to serve as an example to prevent others from acting in a similar way.

You may award punitive damages only if they are proved by clear and convincing evidence. This is a different and slightly higher standard than the standard of proof by a preponderance of the evidence.

So you may award punitive damages only if Columbia has proved with clear and convincing evidence that NCRIC acted with evil motive, actual malice, deliberate violence, or omission or with intent to injure or a willful disregard for the rights of Columbia and that NCRIC's conduct was, itself, outrageous, grossly fraudulent or reckless toward the safety of Columbia.

a preponderance of the evidence, first, that NCRIC entered into a contract with Columbia.

If you find that NCRIC and Columbia entered into a contract, you must find that NCRIC owed Columbia an implied duty of good faith and fair dealing in connection with that contract.

Second, you must find that NCRIC breached the duty by evading the spirit of the contract, willfully rendering imperfect performance or interfering with Columbia's performance. And, third, that Columbia was damaged as a result of this breach.

Columbia also has a claim against NCRIC for intentional interference with business relations and its claim for intentional interference with a perspective business advantage.

First on the claim for intentional interference with business relations: In order for Columbia's claim to succeed, Columbia must prove by a preponderance of the evidence, one, the existence of a valid business relationship.

Two, NCRIC's knowledge of the relationship.

Three, intentional interference inducing or causing a breach or termination of the relationship.

And, four, damages resulting from that breach.

If you find that Columbia cannot prove any one

16d-003099

of these elements, then you must find for NCRIC on Columbia's claim for tortious interference with business relations.

The elements that Columbia must prove by a preponderance of evidence to satisfy its tortious interference with perspective business advantage claim are, one, the existence of a valid business expectancy; two, NCRIC's knowledge of that expectancy; three, intentional interference inducing termination of that expectancy; and, four, damages resulting from that breach.

If you find that Columbia has failed to prove any of these elements, then you must find for NCRIC on Columbia's tortious interference with perspective business advantage claim.

You must not award compensatory damages more than once for the same injury. A party can only recover damages incurred as a proximate result of another's action one time.

Finally, ladies and gentlemen, just a few final words before you begin your deliberations in this case: Your deliberations in the jury room should not be just to support your own opinion but to ascertain the true facts in this case and to reach a unanimous verdict.

When you retire to the jury room, the first

16d-003100

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,

Plaintiff/Counter-Defendant,

v.

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant/Counter-Plaintiff.

Civil Action No. 00-0007308
Calendar 8 – Judge Blackburne-Rigsby

FILED
IN OPEN COURT
FEB 1 3 2004
Superior Court
of The District of Columbia
Washington, D.C.

VERDICT FORM

NCRIC'S CLAIM: BREACH OF CONTRACT

1. Do you find that NCRIC has proven, by a preponderance of the evidence, that Columbia breached its contract with NCRIC?

   Yes ___ No X

2. If you answered "Yes" to Question No. 1, do you find, by a preponderance of the evidence, that Columbia's breach of contract was the proximate cause of NCRIC's damages?

   Yes ___ No ___

3. If you answered "Yes" to Question No. 2, please answer the following questions:

   a. In what amount was NCRIC damaged? $_____

COLUMBIA'S CLAIM 1: BREACH OF CONTRACT

1. Do you find that Columbia has proven, by a preponderance of the evidence, that NCRIC breached its contract with Columbia?

   Yes X No ___

2. If you answered "Yes" to Question No. 1, do you find, by a preponderance of the evidence, that NCRIC's breach of contract was the proximate cause of Columbia's damages?

Yes X No ___

3. If you answered "Yes" to Question No. 2, please answer the following questions:

In what amount was Columbia damaged?

$ 220,002

COLUMBIA'S CLAIM 2: BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

1. Do you find that Columbia has proven, by a preponderance of the evidence, that NCRIC breached an implied covenant of good faith and fair dealing owed to Columbia?

Yes X No ___

2. If you answered "Yes" to Question No. 1, do you find, by a preponderance of the evidence, that NCRIC's breach of an implied covenant of good faith and fair dealing was the proximate cause of Columbia's damages?

Yes ___ No X

3. If you answered "Yes" to Question No. 2, please answer the following questions:

In what amount was Columbia damaged?

$ _____

COLUMBIA'S CLAIM 3: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

1. Do you find that Columbia has proven, by a preponderance of the evidence, that NCRIC intentionally interfered with Columbia's existing business relations?

   Yes X No ___

2. If you answered "Yes" to Question No. 1, do you find, by a preponderance of the evidence, that NCRIC's intentional interference was the proximate cause of Columbia's damages?

   Yes X No ___

3. If you answered "Yes" to Question No. 2, please answer the following questions:

   a. In what amount was Columbia damaged before the hospital closed?

   $ 13 Millions

   b. In what amount was Columbia damaged after the hospital closed?

   $ 5 million

   c. In what amount, if any, is Columbia entitled to punitive damages?

   $ 0

COLUMBIA'S CLAIM 4: TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE

1. Do you find that Columbia has proven, by a preponderance of the evidence, that NCRIC intentionally interfered with Columbia's continuing or prospective business relations?

   Yes ___ No X

2. If you answered "Yes" to Question No. 1, do you find, by a preponderance of the evidence, that NCRIC's intentional interference was the proximate cause of Columbia's damages?

Yes ___ No X

3. If you answered "Yes" to Question No. 2, please answer the following questions:

a. In what amount was Columbia damaged before the hospital closed?

$ _____

b. In what amount was Columbia damaged after the hospital closed?

$ _____

c. In what amount, if any, is Columbia entitled to punitive damages?

$ _____

DATED: February 13, 2004

#183
Foreperson

Juror Number: ~~#183~~

Juror Number #2

16d-003104

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, Inc.,	*	
	*	
Plaintiff,	*	
	*	Civil Action No.: 00-7308
vs.	*	Judge Anna Blackburne-Rigsby
	*	Calendar 8
	*	
Columbia Hospital for Women Medical Center, Inc.	*	
	*	
	*	
Defendant.	*	
	*	

ORDER DENYING IN PART AND GRANTING IN PART COLUMBIA'S MOTION FOR ADDITIONAL SANCTIONS WITH RESPECT TO NCRIC'S LATE PRODUCED EXPERT DOCUMENTS

This motion came before the Court during the above-captioned trial. Upon consideration of the defendant's motion and oral argument, and the plaintiff's oral argument in opposition thereto, the Court DENIED the motion regarding documentary evidence and GRANTED the motion regarding demonstrative evidence.

Accordingly, it is this 18th day of February, 2004 hereby ordered that the record shall reflect that the motion was denied in part and granted in part.

A. Blackburne-Rigsby
Judge Anna Blackburne-Rigsby

DOCKETED FEB 20 2004

MAILED FEB 20 2004

16d-003105

Copies to:
Kellogg, Huber, Hanson, Todd & Evans, PLLC
Neil M. Gorsuch
Eli C. Schulman
1615 M Street, NW
Suite 400
Washington D.C. 20036

Bryan Cave, LLP
Rodney F. Page
Scott M. Badami
700 Thirteenth St., NW
Washington D.C. 20005-3960

Roy I. Niedermayer
3 Bethesda Metro Center
Suite 430
Bethesda, MD 20814

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, Inc.,	*	
	*	
Plaintiff,	*	
	*	Civil Action No.: 00-7308
vs.	*	Judge Anna Blackburne-Rigsby
	*	Calendar 8
	*	
Columbia Hospital for Women Medical Center, Inc.	*	
	*	
	*	
Defendant.	*	
	*	

ORDER DENYING IN PART AND GRANTING IN PART COLUMBIA'S MOTION FOR ADDITIONAL SANCTIONS WITH RESPECT TO NCRIC'S LATE PRODUCED EXPERT DOCUMENTS

This motion came before the Court during the above-captioned trial. Upon consideration of the defendant's motion and oral argument, and the plaintiff's oral argument in opposition thereto, the Court DENIED the motion regarding documentary evidence and GRANTED the motion regarding demonstrative evidence.

Accordingly, it is this 17th day of February, 2004 hereby ordered that the record shall reflect that the motion was denied in part and granted in part.

Judge Anna Blackburne-Rigsby

DOCKETED FEB 18 2004

MAILED FEB 18 2004

16d-003107

Copies to:
Kellogg, Huber, Hanson, Todd & Evans, PLLC
Neil M. Gorsuch
Eli C. Schulman
1615 M Street, NW
Suite 400
Washington D.C. 20036

Bryan Cave, LLP
Rodney F. Page
Scott M. Badami
700 Thirteenth St., NW
Washington D.C. 20005-3960

Roy I. Niedermayer
3 Bethesda Metro Center
Suite 430
Bethesda, MD 20814

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, Inc.,	*	
	*	
Plaintiff,	*	
	*	Civil Action No.: 00-7308
vs.	*	Judge Anna Blackburne-Rigsby
	*	Calendar 8
	*	
Columbia Hospital for Women Medical Center, Inc.	*	
	*	
	*	
Defendant.	*	
	*	

ORDER DENYING IN PART AND GRANTING IN PART COLUMBIA'S MOTION FOR ADDITIONAL SANCTIONS WITH RESPECT TO NCRIC'S LATE PRODUCED EXPERT DOCUMENTS

This motion came before the Court during the above-captioned trial. Upon consideration of the defendant's motion and oral argument, and the plaintiff's oral argument in opposition thereto, the Court DENIED the motion regarding documentary evidence and GRANTED the motion regarding demonstrative evidence.

Accordingly, it is this 18th day of February, 2004 hereby ordered that the record shall reflect that the motion was denied in part and granted in part.

A. Blackburne-Rigsby
Judge Anna Blackburne-Rigsby

DOCKETED FEB 20 2004

MAILED FEB 20 2004

16d-003109

Copies to:
Kellogg, Huber, Hanson, Todd & Evans, PLLC
Neil M. Gorsuch
Eli C. Schulman
1615 M Street, NW
Suite 400
Washington D.C. 20036

Bryan Cave, LLP
Rodney F. Page
Scott M. Badami
700 Thirteenth St., NW
Washington D.C. 20005-3960

Roy I. Niedermayer
3 Bethesda Metro Center
Suite 430
Bethesda, MD 20814

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, Inc.,	*	
	*	
Plaintiff,	*	
	*	Civil Action No.: 00-7308
vs.	*	Judge Anna Blackburne-Rigsby
	*	Calendar 8
	*	
Columbia Hospital for Women Medical Center, Inc.	*	
	*	
	*	
Defendant.	*	
	*	

ORDER DENYING IN PART AND GRANTING IN PART COLUMBIA'S MOTION FOR ADDITIONAL SANCTIONS WITH RESPECT TO NCRIC'S LATE PRODUCED EXPERT DOCUMENTS

This motion came before the Court during the above-captioned trial. Upon consideration of the defendant's motion and oral argument, and the plaintiff's oral argument in opposition thereto, the Court DENIED the motion regarding documentary evidence and GRANTED the motion regarding demonstrative evidence.

Accordingly, it is this 17th day of February, 2004 hereby ordered that the record shall reflect that the motion was denied in part and granted in part.

Judge Anna Blackburne-Rigsby

DOCKETED FEB 18 2004

MAILED FEB 18 2004

16d-003111

Copies to:
Kellogg, Huber, Hanson, Todd & Evans, PLLC
Neil M. Gorsuch
Eli C. Schulman
1615 M Street, NW
Suite 400
Washington D.C. 20036

Bryan Cave, LLP
Rodney F. Page
Scott M. Badami
700 Thirteenth St., NW
Washington D.C. 20005-3960

Roy I. Niedermayer
3 Bethesda Metro Center
Suite 430
Bethesda, MD 20814

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC,INC.,

Plaintiff/Counter-Defendant

versus

FILED
CIVIL ACTIONS BRANCH
FEB 20 2004
Superior Court
of the District of Columbia
Washington, D.C.

00ca7308
Calendar Number 03
Judge Blackburne-Rigsby

COLUMBIA HOSPITOL FOR WOMEN MEDICAL CENTER,INC.,

Defendant/Counter-Plaintiff

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Anna Blackburne-Rigsby, Superior Court Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, it is this 13th day of February, 2004,

ORDERED

That judgment is hereby entered in favor of the defendant Columbia Hospital For Women Medical Center,Inc.,against the plaintiffs NCRIC,INC., and that the defendant recover of the plaintiffs its costs of action.

FURTHER ORDERED

That the Counter-Claimant COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER,INC.,recover of the counter Defendant NCRIC,INC., The sum of $18,220,002 with interest at the statutory rate and its costs of action.

DUANE B. DELANEY, ESQ.
Clerk of the Court

Jeffrey A. Woodson

Jeffrey A.Woodson,
Deputy Clerk

MAILED FEB 20 2004

DOCKETED FEB 20 2004

16d-003113

cc:

Rodney F.Page,Esq.
Scott M.Badami,Esq.
700 Thirteenth Street,N.W.
Suite 600
Washington,D.C. 20005-3960

Eli C.Schulman,Esq.
Kellogg,Huber,Hanson,Todd & Evans,PLLC
1615 M Street,N.W.,Suite 400
Washington,D.C. 20036

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Judge Blackburne-Rigsby**
Defendant.	

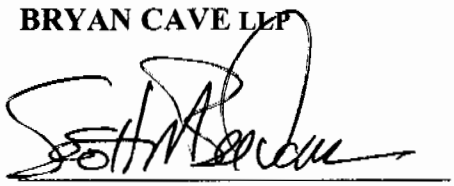
NCRIC'S MOTION FOR A NEW TRIAL AND RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

Plaintiff NCRIC, Inc. ("NCRIC"), pursuant to Super. Ct. R. Civ. P. 50(b) and 59, hereby renews its motion for judgment as a matter of law on defendant Columbia Hospital for Women Medical Center, Inc.'s ("Columbia's") tortious interference with business relations counterclaim. In the alternative, NCRIC moves for a new trial on Columbia's tortious interference with business relations and breach of contract counterclaims. NCRIC also seeks remittitur of Columbia's damage claims. NCRIC submits the accompanying Memorandum of Points and Authorities and Affidavit of Rodney Page in support of this motion.

As required by Rule 12-I, counsel for NCRIC contacted counsel for Columbia prior to filing this motion in an effort to obtain the requested relief.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Counsel for Plaintiff NCRIC, Inc.

Dated: March 5, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of NCRIC's Motion for Judgment as a Matter of Law or in the Alternative for a New Trial was served this 5 day of March 2004, via hand delivery, to:

Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center

Scott M. Badami

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	
Defendant.	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NCRIC'S MOTION FOR A NEW TRIAL AND RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Counsel for Plaintiff NCRIC, Inc.

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

BACKGROUND 2

STANDARD OF REVIEW 3

ARGUMENT 3

I. A NEW TRIAL IS REQUIRED. 4

A. The Jury Instructions Failed to Require that the Jury Find "Egregious" or Otherwise Wrongful Conduct Before Granting Liability for Tortious Interference with Business Relations. 4

B. The Jury's Findings on Columbia's Tortious-Interference and Breach-of-Contract Counts were Against the Substantial Weight of the Evidence. 8

1. Columbia Did Not Have Sufficient Support to Prove Causation for its Tortious-Interference-with-Business-Relations Counterclaim. 8

2. The Jury's Breach-of-Contract Damages Award Demonstrates Confusion or Improper Compromise. 12

C. The Expert Testimony from Peter Ben Ezra Should Have Been Excluded. 13

1. Mr. Ben Ezra's Testimony was Based on Speculative Factual Assumptions Lacking Support in the Record. 15

2. Mr. Ben Ezra Failed to Apply Generally Accepted Accounting Techniques. 17

D. The Court Should Recuse Itself Now and Order a New Trial Before a Different Judge. 18

E. In the Alternative, the Court Could Grant a New Trial Subject to a Remittitur. 21

II. NCRIC IS ENTITLED TO JUDGMENT AS A MATTER OF LAW 23

A. The Evidence, Even When Viewed in Columbia's Favor, Did Not Satisfy the Legal Elements of Tortious Interference With Business Relations. 23

1. The Evidence Failed to Establish "Egregious" or Otherwise Wrongful Conduct that Would Qualify as Tortious Interference. 24

2. The Evidence Failed to Establish a Legally Protected Business Relationship. 26

16d-003119

B. Columbia Failed to Prove Non-Speculative Damages Resulting From the Alleged Tortious Interference.....27

C. The $5 Million Post-Hospital-Closing Damages Should Be Stricken as a Matter of Law because they were Not Pleaded in Columbia's Counterclaim.....29

CONCLUSION 31

TABLE OF AUTHORITIES

CASES

Allstate Insurance Co. v. Curtis,
781 A.2d 725 (D.C. 2001) 3

Allstate Insurance Co. v. Ramos,
782 A.2d 280 (D.C. 2001) 12

Bedell v. Inver Housing, Inc.,
506 A.2d 202 (D.C. 1986) 27

In re Bell,
373 A.2d 232 (D.C. 1977) 20

Bell v. Dow Chemical Co.,
847 F.2d 1179 (5th Cir. 1988) 16-17

Belton v. United States,
581 A.2d 1205 (D.C. 1990) 20

Bennett Enterprises, Inc. v. Domino's Pizza, Inc.,
45 F.3d 493, 310 U.S. App. D.C. 192 (D.C. Cir. 1995) 4, 5

Berdyck v. Shinde,
713 N.E.2d 1098 (Ohio Ct. App. 1998) 20

Breezevale Ltd. v. Dickinson,
759 A.2d 627 (D.C. 2000) 3

Capitol Hill Hospital v. Jones,
532 A.2d 89 (D.C. 1987) 21

Cooke v. Griffiths-Garcia Corp.,
612 A.2d 1251 (D.C. 1992) 5

Deoudes v. G.B. Macke Corp.,
153 A.2d 309 (D.C. 1959) 5

District of Columbia v. Jackson,
810 A.2d 388 (D.C. 2002) 21

Doe v. Binker,
492 A.2d 857 (D.C. 1985) 12

East Penn Sanitation, Inc. v. Grinnell Haulers, Inc.,
682 A.2d 1207 (N.J. Super. Ct. App. Div. 1996) 6

In re Evans,
411 A.2d 984 (D.C. 1980) 20

Finkelstein v. District of Columbia,
593 A.2d 591 (D.C. 1991) 21

Fisher v. Best,
661 A.2d 1095 (D.C. 1995) 3, 4

FutureSource LLC v. Reuters Ltd.,
312 F.3d 281 (7th Cir. 2002) 5, 26

Garcia v. Llerena,
599 A.2d 1138 (D.C. 1991) 27

Gebremdhin v. Avis Rent-A-Car System, Inc.,
689 A.2d 1202 (D.C. 1997) 3

Genetic Systems Corp. v. Abbott Laboratoriess,
691 F. Supp. 407 (D.D.C. 1988) 5

Gibson v. United States,
792 A.2d 1059 (D.C. 2002) 19, 20

Ibn-Tamas v. United States,
407 A.2d 626 (D.C. 1979) 14, 17

International City Management Ass'n Retirement Corp. v.Watkins,
726 F. Supp. 1 (D.D.C. 1989) 5

In re J.A.,
601 A.2d 69 (D.C. 1991) 19, 20

Jones v. Federated Financial Reserve Corp.,
144 F.3d 961 (6th Cir. 1998) 8

Joy v. Bell Helicopter Textron, Inc.,
999 F.2d 549, 303 U.S. App. D.C. 1 (D.C. Cir. 1993) 14

KW Plastics v. United States Can Co.,
131 F. Supp. 2d 1289 (M.D. Ala. 2001) 17

Liebe v. City Finance Co.,
295 N.W.2d 16 (Wis. Ct. App. 1980) 6

Liljeberg v. Health Services Acquisition Corp.,
486 U.S. 847 (1988) 19, 20

In re Melton,
597 A.2d 892 (D.C. 1991) 17

Mercer Management Consulting, Inc. v. Wilde,
920 F. Supp. 219 (D.D.C. 1996) 4-5

Mowery v. Standard Oil Co.,
463 F. Supp. 762 (N.D. Ohio 1976), *aff'd*, 590 F.2d 335 (6th Cir. 1978) 17

Nelson v. McCreary,
694 A.2d 897 (D.C. 1997) 8

Phillips v. District of Columbia,
458 A.2d 722 (D.C. 1983) 21

Pratt v. University of the District of Columbia,
691 A.2d 158 (D.C. 1997) 13, 23, 27

R & A, Inc. v. Kozy Korner, Inc.,
672 A.2d 1062 (D.C. 1996) 27, 29

Rose v. Fiedler,
855 So. 2d 122 (Fla. Dist. Ct. App.. 2003) 20

Scott v. United States,
559 A.2d 745 (D.C. 1989) 3, 20

Sheppard v. Dickstein, Shapiro, Morin & Oshinsky,
59 F. Supp. 2d 27 (D.D.C. 1999) ..... passim

Sierra Club v. Callaway,
499 F.2d 982 (5th Cir. 1974) 23

Sullivan v. Baptist Memorial Hospital-Golden Triangle, Inc.,
722 So.2d 675 (Miss. 1998) 20

Turman v. United States,
555 A.2d 1037 (D.C. 1989) 20

Tyger Construction Co. v. Pensacola Construction Co.,
29 F.3d 137 (4th Cir. 1994) 16

United Educational Distributors, LLC v. Educational Testing Service,
564 S.E.2d 324 (S.C. Ct. App. 2002) 26

United States v. Chrysler Corp.,
157 F. Supp. 2d 849 (N.D. Ohio 2001) 23

Wagner v. Professional Engineers in California Government,
354 F.3d 1036 (9th Cir. 2004) 29

York v. United States,
785 A.2d 651 (D.C. 2001) 19, 20

Young-Henderson v. Spartanburg Area Mental Health Center,
945 F.2d 770 (4th Cir. 1991) 30

MISCELLANEOUS

Departments of Labor, Health & Human Services, and Education, and Related Agencies Appropriations Act, 2002, Pub. L. 107-116, 115 Stat. 2177, 2187 (Jan. 10, 2002) 23, 29

Restatement (Second) Torts § 768 (1979) 5

Restatement (Second) Torts § 769 (1979) 25

Restatement (Second) Torts § 772(a) (1979) 5

D.C. Super. Ct. R. Civ. P. 15(b) 30

D.C. Super. Ct. R. Civ. P. 15(d) 30

D.C. Super. Ct. R. Civ. P. 50(a)(1) 3

D.C. Super. Ct. R. Civ. P. 50(b) 2, 3, 24

D.C. Super. Ct. R. Civ. P. 59(a) 1

D.C. Super. Ct. R. Civ. P. 63-I 19

PRELIMINARY STATEMENT

The instructions given to the jury, and the evidence that was presented at trial, made it possible for this jury to award $18 million in damages against plaintiff NCRIC, Inc. ("NCRIC") without first concluding that NCRIC engaged in any improper conduct. The instructions failed to direct the jury to consider only *wrongful* conduct when determining whether NCRIC "intentional[ly] interfere[d]" and thereby caused a breach or termination of specified physicians' relationships with defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"). *See* Jury Instr. p. 12. Interference alone, which would include proper conduct such as advertising that convinces third parties to break one contract and enter another, does not give rise to a tort claim. The jury instructions for intentional interference given in this case cannot be squared with the case law – or indeed with this Court's own ruling on NCRIC's summary judgment motion in which it explained the type of "egregious" conduct necessary to prove this tort. *See infra.* p. 5. Particularly given NCRIC's defense at trial that its actions were justified in the normal course of its business, that crucial omitted instruction denied NCRIC a properly-instructed jury, and requires a new trial. *See* Super. Ct. R. Civ. P. 59(a).

Further, NCRIC moves for a new trial because: (1) the weight of the evidence failed to support Columbia's causation argument; (2) the jury's damage award on the contract claim demonstrates that the jury was wholly confused; and (3) the Court permitted Peter Ben Ezra to testify as an expert even though his plainly biased conclusions fell far short of the standard for admission of expert testimony. Finally, NCRIC moves for a new trial because the Trial Judge should have recused herself in light of her years-long treatment at Columbia Fertility Associates by a physician who not only is personally associated with Columbia, but whose partner was Chairman of the Board of Columbia and a key witness at trial.

NCRIC also renews its motion for judgment as a matter of law. *See* Super. Ct. R. Civ. P. 50(b). First, the evidence adduced at trial failed to give rise to even a reasonable inference that NCRIC engaged in the sort of "egregious" conduct legally required to satisfy a key element of tortious interference with business relations. Second, Columbia failed to prove a legally cognizable business relation with any of the physicians of the kind required by law to support a tortious-interference claim.

Finally, even if Columbia had established liability on its tortious-interference claim, NCRIC would be entitled to judgment as a matter of law because Columbia's damages evidence was wholly speculative. The $13 million pre-hospital-closing component of these damages is premised on an unsupported calculation of net revenue. Such guesswork, as a matter of law, is insufficient to support a damages award. Further, the $5 million post-hospital-closing award represents gross revenue as for which Columbia *made no attempt at all* to discount to produce a net-revenue-lost figure. Not only would it be wholly speculative to assume that all cash coming in would go straight to the bottom line, but such an assumption defies common sense. In any event, because Columbia offered no evidence to support this contention, the $5 million damages award should be stricken as well as a matter of law.

BACKGROUND

NCRIC sued Columbia for breach of contract. Columbia, in an attempt to inflate a straightforward contract dispute concerning premium calculations into a complex tort action concerning the course of the parties' business relationship, then filed an eleven-count counter-claim. This Court dismissed seven of the eleven counts as a matter of law, one before the trial began, one after Columbia closed its case-in-chief, and five more after the close of all the evidence. Of Columbia's remaining four counts, the jury awarded damages on Columbia's

breach of contract and tortious-interference claims. It rejected Columbia's remaining two counts, and also rejected NCRIC's single breach-of-contract claim against Columbia.

STANDARD OF REVIEW

The Court has "broad" latitude to grant NCRIC's Rule 59 motion for a new trial. *Fisher v. Best*, 661 A.2d 1095, 1098 (D.C. 1995). Both improper jury instructions and admission of evidence that should have been excluded provide grounds to grant a new trial, *see Gebremdhin v. Avis Rent-A-Car Sys., Inc.*, 689 A.2d 1202, 1204-05 (D.C. 1997) (jury instructions); *Allstate Ins. Co. v. Curtis*, 781 A.2d 725, 726 (D.C. 2001) (admission of evidence), as does a judge's improper refusal to recuse. *See, e.g., Scott v. United States*, 559 A.2d 745, 756 (D.C. 1989).

NCRIC also renews its motions for judgment as a matter of law pursuant to Super. Ct. R. Civ. P. 50(b). If during a jury trial "a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the Court may determine the issues against that party and grant a motion for judgment as a matter of law." Super. Ct. R. Civ. P. 50(a)(1). While the Court considering a Rule 50 motion must view the evidence in the light most favorable to the non-moving party, when there is no legally sufficient evidence to support a claim "*it is the duty of the trial court* to enter judgment as a matter of law . . . ." *Breezevale Ltd. v. Dickinson,* 759 A.2d 627, 633 n.5 (D.C. 2000) (emphasis added).

ARGUMENT

NCRIC seeks a new trial based on a series of errors that prejudiced it as well as the insufficiency of the evidence. It also renews its motion for judgment as a matter of law on Columbia's tortious-interference claim.

I. A NEW TRIAL IS REQUIRED.

NCRIC seeks a new trial because of legal errors that prejudiced it, as well as a jury verdict that is against the weight of the evidence and demonstrates confusion. NCRIC also seeks a new trial based on the Court's refusal to recuse itself. Each of the issues discussed below independently supports the grant of a new trial. Taken together, they collectively require a new trial because letting the verdict stand would be "a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict." *Fisher*, 661 A.2d at 1098 (citation omitted).

A. The Jury Instructions Failed to Require that the Jury Find "Egregious" or Otherwise Wrongful Conduct Before Granting Liability for Tortious Interference with Business Relations.

The jury instructions on the tortious-interference-with-business-relations count permitted the jury to find against NCRIC without first concluding that NCRIC committed "egregious" conduct. Perhaps by inadvertence, the instructions also did not even include any other limitation that would have explained that, for NCRIC to be subject to liability, its conduct had to be in *any* way wrongful or improper. That error was compounded by the omission from the special interrogatories on the jury verdict form of any mention of egregious conduct.

Under District of Columbia law, the elements of tortious interference with business relations are (1) the existence of a valid business relationship; (2) knowledge of the relationship on the part of the interferer; (3) intentional interference causing a breach or termination of the relationship; and (4) resultant damage. *Sheppard v. Dickstein, Shapiro, Morin & Oshinsky*, 59 F. Supp. 2d 27, 34 (D.D.C. 1999) (citing *Bennett Enters., Inc. v. Domino's Pizza, Inc.*, 45 F.3d 493, 498, 310 U.S. App. D.C. 192, 197 (D.C. Cir. 1995)). The law limits tortious-interference actions to cases in which a party engages in conduct that not only interferes, but is in addition improper and wrongful. *Mercer Mgmt. Consulting, Inc. v Wilde*, 920 F. Supp. 219, 239

16d-003128

(D.D.C. 1996); *International City Mgmt. Ass'n Retirement Corp. v. Watkins, 726 F. Supp. 1, 6 (D.D.C. 1989)*(citing Restatement (Second) Torts § 768 cmt. e); *Genetic Sys. Corp.*, 691 F. Supp. at 423.

It does so by requiring proof of such egregious and wrongful conduct as part of the "intentional interference" element of the tort. Columbia itself *conceded* that its tortious-interference claim required proof of egregious and otherwise wrongful conduct on the part of NCRIC. *See* Columbia's Opposition to NCRIC's Summary Judgment Mot. at 47. And this Court explicitly so held in its April 11, 2003 Order Denying Summary Judgment ("Order"). The Order states:

> Unfair competition is essentially an unprivileged interference with prospective advantage. *Id.* A general intent to interfere or knowledge that conduct will injure the plaintiff's business dealings is insufficient to impose liability. *Id.* A competitor's conduct must be more egregious, for example, it must involve libel, slander, physical coercion, fraud, misrepresentation, or disparagement.

Order at 10 (citing *Genetic Sys. Corp. v. Abbott Labs.*, 691 F. Supp. 407, 423 (D.D.C. 1988)). Were the law otherwise, most ordinary business activities would become actionable as tortious interference.

As this Court already has pointed out, egregious and otherwise wrongful conduct for purposes of tortious interference is conduct such as "libel, slander, physical coercion, fraud, misrepresentation, or disparagement." Order at 10; *accord Genetic Sys. Corp.*, 691 F. Supp. at 423; *Cooke v. Griffiths-Garcia Corp.*, 612 A.2d 1251 (D.C. 1992) (citing *Deoudes v. G.B. Macke Corp.*, 153 A.2d 309 (D.C. 1959)). A general intent to interfere, or knowledge that one's conduct will injure another's business dealings, is insufficient to create liability for tortious interference with business relations. *Bennett*, 45 F.3d at 499; *Sheppard*, 59 F. Supp. 2d at 34, 310 U.S. App. D.C. at 198; *Genetic Sys.*, 691 F. Supp. at 423. Thus, as a matter of law, the

provision of "truthful information" can never constitute tortious interference. *See* Restatement (Second) Torts § 772(a) (1979). *FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 284 (7th Cir. 2002) (rejecting tortious interference claim premised on defendant's provision of truthful information to its own customers); *East Penn Sanitation, Inc. v. Grinnell Haulers, Inc.*, 682 A.2d 1207, 1218 (N.J. Super. Ct. App. Div. 1996) ("a party may not be held liable for tortious interference for merely providing truthful information"); *Liebe v. City Fin. Co.*, 295 N.W.2d 16, 18-20 (Wis. Ct. App. 1980) ("Transmission of truthful information is privileged and proper," and thus cannot support a claim for tortious interference).

Consistent with the case law and this Court's summary judgment order requiring proof of egregious conduct to satisfy the "intentional interference" element of the tort, NCRIC's proposed jury instructions included an instruction that the jury must find NCRIC's conduct was "egregious." *See* NCRIC's Proposed Jury Instructions No. 15, attached as Exhibit 1. The instruction then defined what conduct qualifies as egregious under the applicable law. *See id.* NCRIC's proposed verdict form also contained a special interrogatory on egregious conduct. *See* NCRIC's Proposed Verdict Form No. 16 at p. 8, attached as Exhibit 2. Although Columbia did not request a similar instruction in its proposed jury instructions, it conceded in response to NCRIC's proposed instructions that:

> Should the Court wish to give such an instruction, however, Columbia proposes the following instruction that is grounded in pertinent authority:
>
> A general intent to interfere or knowledge that conduct will injure the plaintiff's business dealings is insufficient to impose liability. *A competitor's conduct must be more egregious, for example, it must involve libel, slander, physical coercion, fraud, misrepresentation, or disparagement*"

Columbia's Objections to NCRIC's Proposed Jury Instructions at 18 (emphasis added). Thus, while Columbia may have taken issue with the specific "egregious" instruction NCRIC proposed, even Columbia acknowledged that *some* instruction on egregiousness would be appropriate.

Both NCRIC and Columbia proposed extensive jury instructions, which the Court distilled into a more limited set of instructions that was actually delivered to the jury. In the process, however, the Court omitted both NCRIC's proposed intent instruction concerning the need to prove "egregious" conduct as well as the substitute intent instruction that Columbia offered in its opposition as an alternative. The Court stated on the record that it intended to omit the word "egregious," 2/10/2004 Tr. at 160[1], but it never explained whether it intended to omit all mention of wrongful and improper conduct and therefore not offer any explanation as to what "intentionally interfere" means.

By omitting, inadvertently or not, any mention of egregious conduct – and indeed any mention of wrongful conduct at all -- the instructions actually left open the possibility that the jury could conclude that NCRIC intentionally interfered with the attending physicians' practice of admitting patients at Columbia, but that NCRIC did so only through legal and proper means. Because the jury was not given any instruction at all that the conduct to consider must, at a minimum, be wrongful – and particularly in light of NCRIC's evidence at trial that its actions were in conformity with its lawful obligations – the jury could have awarded damages based simply on a conclusion that NCRIC engaged in "intentional interference inducing or causing a breach or termination of the relationship," Jury Instr. at p. 12, even if it believed the "intentional

[1] NCRIC's exhibits include all of the transcript citations that have been made available to date. Relevant pages from each transcript day are contained as separate exhibits submitted along with this memorandum. Excerpts from the February 2, 2004 transcript are attached as Exhibit 3; excerpts from the February 3, 2004 transcript are attached as Exhibit 4; and excerpts from the February 10, 2004 transcripts are attached as Exhibit 5.

16d-003131

interference" involved only lawful and permissible conduct in the normal course of business. Thus even if Columbia had introduced evidence of egregious conduct, and NCRIC argues that it did not, *see infra* p. 8-11, a new trial still would be required. Under the incomplete instruction given, the jury was free to find liability without determining as a matter of fact that NCRIC engaged in any wrongful or egregious conduct.

As a result, the instructions given made it possible for the jury to have found liability without finding as a matter of fact that NCRIC's conduct satisfied each element of tortious interference. The only way to correct that error is for the Court to grant a new trial. *See Nelson v. McCreary*, 694 A.2d 897, 901 (D.C. 1997) (ordering new trial because jury instructions deficient); *Jones v. Federated Fin. Reserve Corp.*, 144 F.3d 961, 966 (6th Cir. 1998) (A party is entitled to a new trial if the jury instructions, "taken as a whole, are misleading or give an inadequate understanding of the law.").

B. The Jury's Findings on Columbia's Tortious-Interference and Breach-of-Contract Counts were Against the Substantial Weight of the Evidence.

1. Columbia Did Not Have Sufficient Support to Prove Causation for its Tortious-Interference-with-Business-Relations Counterclaim.

The jury's conclusion that NCRIC *caused* physicians to stop admitting at Columbia was against the substantial weight of the evidence. Columbia argued that NCRIC tortiously interfered with its relationships with the attending faculty by somehow "luring" them to defect to other hospitals and "forcing" them to stop referring patients to Columbia. Columbia showed the jury a chart listing the names of 24 physicians and three practice groups who supposedly left because of actions by NCRIC.

But Columbia failed to introduce sufficient evidence to show that NCRIC *caused* the departures. *Indeed not one attending-faculty physician over the course of the two-week trial testified that he or she was pressured by NCRIC to leave Columbia.* The only attending-faculty

physicians who addressed the reasons for their departure at trial stated that they left for reasons having nothing to do with NCRIC.

Columbia called to testify just three former attending-faculty physicians: Drs. Wayne Cooper, Odell McCants, and Steven Procter. On cross-examination, each testified that he was never asked, encouraged or pressured by NCRIC to leave Columbia. In fact, Drs. Cooper, McCants and Procter each *decided to stay with Columbia* after the NCRIC Retro Plan ended in September 2000. Thus their testimony provides no direct evidence concerning the basis for any physician's departure.

Perhaps recognizing this hole in its evidence, during closing argument, Columbia misled the jury concerning the factual basis for its claim that NCRIC caused *attending-faculty* physicians to stop admitting patients at Columbia. First, while purportedly laying out Columbia's causation case during closing arguments, Columbia's counsel described in dramatic detail testimony concerning the departure of *clinic* physicians who stopped practicing there after NCRIC issued its exclusion concerning the clinic. *See* 2/10/2004 Tr. at 126-27. But Columbia's tortious-interference claim is that it was damaged by the alleged loss of revenue when *attending-faculty* physicians who had received Retro Plan subsidies stopped admitting patients at Columbia. The discussion of the *clinic* physicians, who were not connected to Columbia's lost-revenue claim, was an inappropriate distraction. Indeed, the letters from the physicians so heavily relied upon by Columbia (from Drs. Cooper, Johnson, and Koch) do not provide any evidence that NCRIC tortiously interfered with any physician's relationship with the hospital. Even if, as Columbia's counsel argued, the letters show that the "doctors left because of [the] insurance" (2/10/2004 Tr. at 128) that does not prove any of the egregious conduct necessary to support a claim of tortious interference.

NCRIC called attending-faculty physicians to testify who confirmed that they left Columbia for reasons having nothing to do with NCRIC. Those physicians whom NCRIC called had actually left the hospital around the time that the Retro Plan ended. And each of them, in uncontroverted testimony, testified that NCRIC did *not* cause them to leave the hospital. Drs. Ken Blank, Heather Johnson and Martin Dukes all testified that they and the other physicians in their practices left Columbia for reasons relating to Columbia's declining patient care standards, decaying physical conditions, low staff morale, longstanding financial problems and reduced talent in its nursing and support staff. All of them confirmed that no one from NCRIC encouraged – let alone pressured – them to leave Columbia or to reduce their admissions to Columbia. They further testified that such was the case with the partners in their medical practices, all of whom made independent decisions to leave the hospital for reasons having nothing to do with NCRIC. Drs. Blank and Johnson both testified that, even if the Retro Plan had been renewed in September 2000, both of their practice groups (the OB/GYN Physicians of Washington and the Women's Physician's Association) would have left Columbia in any event.

Dr. Blank, for example, testified that he and his group of six doctors made a unanimous decision in the Spring of 2000 to leave Columbia due to the deteriorating financial condition of the hospital, poor morale of the staff, and the declining state of the equipment. Dr. Blank and his group made their decision months before the Retro Plan ended and before any of them even heard that the Retro Plan might be expiring.

Dr. Johnson, who spoke on behalf of a group of five physicians, testified that her practice group left because of deteriorating conditions at Columbia. Dr. Johnson also testified that, because of Columbia's financial problems, she had to bring in her own light bulbs and scrub suits; that Columbia ran out of towels and sutures; and that equipment would break and it took a

long time to fix. She further testified that that good nurses got better offers and left the hospital, leaving the remaining nurses to work harder and cover more shifts and that morale was very low among the staff.[2]

Dr. Dukes, a member of the Board of Directors of Columbia Hospital for a number of years, noted that Columbia had to borrow supplies from other hospitals and that Columbia was in financial trouble. Paychecks to staff bounced and the hospital had to pay vendors cash for its purchases because Columbia could not get credit. Dr. Dukes also testified that Columbia lacked adequate equipment and that he had to reschedule patient procedures due to equipment problems. Dr. Dukes further testified that he reduced his patient admissions at Columbia due to the hospital's financial difficulties, dissatisfaction with the direction of the hospital, patient complaints, the declining physical appearance of the hospital and insurance. Although his desire to remain with NCRIC as an insured was one factor in his decision to leave, Dr. Dukes, stated under oath that no one from NCRIC encouraged, induced or pressured him to stop or reduce his patient admissions at Columbia.

Taken together, the physicians called by NCRIC represented 11 of the 24 physicians, and two of the three practice groups, whose departures formed the basis for Columbia's claim for damages. Moreover, according to the chart prepared by Mr. Ben Ezra, these physicians accounted for more than two-thirds of the claimed lost cash flow to the hospital. Their testimony was uncontroverted. Columbia produced *not one* former attending-faculty physician who testified that he or she left the hospital as a result of NCRIC's conduct, and Columbia couldn't elicit any testimony on cross-examination that NCRIC ever encouraged,

[2] As noted above, Dr. Johnson's letters fail to support Columbia's tortious interference claim. Dr. Johnson testified she sent the letters as a "goodbye" to the staff at Columbia and that the purpose of the letters was not to review all of the reasons she and her group left Columbia. Additionally, one letter refers to the clinic policy, not to patient admissions at the hospital covered by the Retro Plan.

induced or pressured attending faculty to leave or reduce admissions. For these reasons, the Court should grant a new trial because the verdict was against the substantial weight of the evidence.

2. The Jury's Breach-of-Contract Damages Award Demonstrates Confusion or Improper Compromise.

Columbia did not ask for – and did not offer any evidence to support – an award of $220,002 on its breach-of-contract claim, yet that is what the jury delivered. While it is generally within the province of the jury to set the amount of damages, the District of Columbia Court of Appeals has recognized that, "[n]otwithstanding the jury's broad discretion in assessing damages, there must be substantial evidence upon which the award is predicated." *Doe v. Binker*, 492 A.2d 857, 860 (D.C. 1985). Where the evidence fails to support a jury's damages award, that award should be vacated and a new trial ordered. *See Allstate Ins. Co. v. Ramos*, 782 A.2d 280, 284 (D.C. 2001) (reversing damages award and remanding case where there was "no evidence in the record to support an award of damages" that exceeded the cap on an insurance policy).

No possible combination or permutation of the evidence in the record could result in the inexplicable $220,002 figure the jury selected. Columbia claimed that NCRIC's alleged breach of the Retro Plan caused damages totaling $559,797.67. In addition, Columbia claimed that NCRIC owed a $1,000,000 deposit made by Columbia in 1998. The jury's damage award apparently resulted from some sort of confusion or compromise that was not supported by any legally sufficient evidentiary basis. Indeed, the jury may well have been confused by Columbia's closing argument in which its counsel badly misstated the evidence in the record. In closing, Columbia's counsel explained that Columbia was seeking contract damages for only the two years of the Retro Plan for which all malpractice claims had been resolved and which were

therefore closed. *See* 2/10/2004 Tr. at 130 ("There are only two years that are closed out. Columbia's owed money under both of those years . . . ."); *id.* at 131 ("Columbia's not seeking any money for open years."). Counsel then said that the evidence in the record from Mr. Feldman showed that "Columbia's owed $559,797.67. And that's just for the . . . two years that it closed out." *Id.* But in fact, Mr. Feldman's calculations, admitted into evidence as Defendant's Exhibit 85, clearly show that the $559,797.67 figure represents an estimate of amounts owed *for all six years of the Retro Plan.* Columbia's counsel's misstatement of the factual record likely confused the jury and left them groping for a way to settle on a damages award to support their conclusions as to the proper construction of the contract. In the end, they awarded a damages amount that cannot possibly be reconciled with the factual record. Because the damages award could only have been premised on confusion or compromise, a new trial is in order. *See Pratt v. University of the District of Columbia*, 691 A.2d 158,159 (D.C. 1997) ("[a] trial judge may reduce a damage award when 'it is apparent as a matter of law that certain identifiable sums included in the verdict should not have been there'") (citation omitted).

C. The Expert Testimony from Peter Ben Ezra Should Have Been Excluded.

The testimony of Peter Ben Ezra should have been excluded for two independent reasons: (1) it was based on wholly speculative factual assumptions not supported by the record; and (2) his analysis failed to apply a generally-accepted methodology. Over NCRIC's repeated objections, the Court allowed Mr. Ben Ezra to testify as an expert and to present entirely speculative testimony concerning damages in the guise of "expert opinion." Permitting his testimony improperly prejudiced NCRIC by cloaking Mr. Ben Ezra's statements with the authority of that of an expert and by misleading the jury into believing that his testimony represented more than speculation, and thus could provide a basis for the award of damages. Yet

16d-003137

Mr. Ben Ezra's conclusions were not grounded in evidence, data and reliable methodology, and their submission to the jury as evidence warrants a new trial.

This Court may not permit the jury to hear speculative and unreliable testimony couched as expert opinion. As the Court of Appeals has observed, "because expert or scientific testimony possesses an 'aura of special reliability and trustworthiness,' the proffer of such testimony must be carefully scrutinized." *Ibn-Tamas v. United States*, 407 A.2d 626, 632 (D.C. 1979) (citation omitted). Courts "must resist 'the temptation to answer objections to receipt of expert testimony with the shorthand remark that the jury will give it "the weight it deserves."' Indeed, we have already indicated that we will turn a 'sharp eye' to 'those instances, hopefully few, where . . . the decision to receive expert testimony was simply tossed off to the jury under a "let it all in" philosophy.'" *Joy v. Bell Helicopter Textron, Inc.*, 999 F.2d 549, 569, 303 U.S. App. D.C. 1, 21 (D.C. Cir. 1993) (citations omitted).

At a December 19, 2003 pretrial conference in this matter, the Court explicitly acknowledged that Columbia faced "hurdles that still need[ed] to be met" before Mr. Ben Ezra's testimony could reach a jury. The Court had good reason to be reluctant to accept Mr. Ben Ezra as an expert. In addition to the problems with his testimony described above, his bias alone was grounds for his exclusion. Mr. Ben Ezra served on two occasions as Chairman of the Columbia Board of Directors, signed the papers putting Columbia into bankruptcy in 1998, and was appointed by the Columbia Board to oversee this very litigation. Permitting this insider to testify with the Court's apparent blessing as a "specially reliable" independent expert created a significant risk of impermissibly prejudicing NCRIC.

1. Mr. Ben Ezra's Testimony was Based on Speculative Factual Assumptions Lacking Support in the Record.

Columbia said it offered Mr. Ben Ezra for the limited purpose of explaining to the jury how to estimate the revenue lost to the hospital as a result of specified physicians reducing the number of patients they admitted to Columbia or ending their relationship with Columbia altogether. Mr. Ben Ezra testified that he did not conduct any independent analysis or investigation to support any of the underlying data that formed the basis for his computations at the time he made the calculations. Because the underlying data – which was provided to him by counsel and gleaned from a hypothetical example in an accounting textbook – lack any factual basis, his expert testimony should have been excluded.

Mr. Ben Ezra testified that he computed damages from lost patient admissions as follows. He first received a list from Columbia's trial counsel of the physicians he was to *assume* either stopped admitting patients to Columbia completely or reduced admissions to Columbia based on NCRIC's conduct. He then determined from Columbia's records the amount of revenue the hospital received in the year ending September 30, 2000, and the following year. He calculated the change in revenue between the two years and adjusted for uncollectible amounts. He then assumed, based on a hypothetical example from an accounting textbook called "Introduction to Management Accounting," that the hospital's marginal cost with respect to the lost patients would have been 30 percent of the collections, and deducted these marginal costs.[3] He then assumed that, for *each of the next 20 years*, the lost revenue would be the *same as in the*

[3] "Marginal cost" is the amount of money the hospital would have had to spend on everything from bandages to laundry detergent had the lost patients come to the hospital. Mr. Ben Ezra estimated that these costs would total 30 percent of the total collected from these patients had they been admitted. The projected change in cash flow to the hospital does not include these marginal costs because, since these patients were never admitted, the hospital saved money by not having to care for them. In other words, while, on Columbia's theory, the hospital would have lost money by not receiving any payments for these patients, it would have saved some money by buying fewer bandages and less laundry detergent since these patients went elsewhere.

first year, but he applied a discount factor to the later years to calculate the present value. Based on that calculation, he produced an estimate of lost cash flow.

Mr. Ben Ezra's testimony should have been excluded because there was no factual support whatsoever for two of his key assumptions – (1) that the physicians on the list given to him by counsel either stopped admitting patients to Columbia or reduced their admissions to Columbia *based on NCRIC's conduct*, and (2) that the hospital's marginal costs totaled 30 percent of collections. First, *not a single one* of the 24 physicians whose admissions data Mr. Ben Ezra used as the basis for his damage calculations testified that he or she actually left Columbia or reduced admissions to the hospital because of conduct by NCRIC. Indeed, as described above, physicians representing practice groups which constituted a majority of the revenue included in Mr. Ben Ezra's analysis testified at trial that they left Columbia for reasons having nothing to do with NCRIC. *See supra* pp. 8-12. Second, at the time when Mr. Ben Ezra came up with the 30 percent marginal-cost assumption, it was based on a hypothetical example in a textbook, not on any actual data concerning Columbia that Mr. Ben Ezra knew about.

Mr. Ben Ezra's analysis was further distorted by the use of inaccurate data that he did not check. If fact, some of the data he used was inconsistent with data provided by Columbia in its audited financial statements. Specifically, as W. McKay Henderson, a partner in PricewaterhouseCoopers testified, the revenue figures Mr. Ben Ezra generated for Columbia did not tie with the figures contained in Columbia's audited financial statements and in its tax returns.

Courts regularly reject proffered expert testimony when the testimony is speculative and based on assumptions not supported by the record. *See, e.g., Tyger Constr. Co. v. Pensacola Constr. Co.*, 29 F.3d 137, 142 (4th Cir. 1994); *Bell v. Dow Chem. Co.*, 847 F.2d

1179 (5th Cir. 1988) (affirming summary judgment where expert testimony of relevant antitrust market rested on an erroneous assumption of fact); *Mowery v. Standard Oil Co.*, 463 F. Supp. 762, 773 n.14 (N.D. Ohio 1976) ("[e]xpert testimony given without reference to the facts in evidence is clearly insufficient . . ."), *aff'd*, 590 F.2d 335 (6th Cir. 1978). Given the complete absence of competent evidence to support the underlying data on which Mr. Ben Ezra relied, the Court should have excluded his calculations in their entirety.

2. Mr. Ben Ezra Failed to Apply Generally Accepted Accounting Techniques.

The methodology relied on by an expert must be "generally accepted," *Ibn-Tamas*, 407 A.2d at 638, and the data underlying that methodology must be "of a type reasonably relied upon by experts in the particular field." *In re Melton*, 597 A.2d 892, 901-02 (D.C. 1991) (en banc). Mr. Ben Ezra purported to use a discounted cash flow analysis in his presentation to the jury. While such a methodology, if properly applied, is based on sound economic principles, Mr. Ben Ezra's application of it was fundamentally unreasonable and unreliable and thus should have been excluded. *See KW Plastics v. United States Can Co.*, 131 F. Supp. 2d 1289, 1292 (M.D. Ala. 2001) (excluding expert's calculation of lost profits, which was based on "impermissibly flawed" application of "sound economic principles").

As noted above, Mr. Ben Ezra simply assumed, with no record basis whatsoever, that the hospital's change in revenue from decreased admissions for specified physicians from the year ending September 30, 2000 to the year ending September 30, 2001 would be constant for the following twenty years. *See* 2/3/04 Tr. at 355. There are several obvious reasons why that assumption is hopelessly inaccurate and thus does not qualify as generally accepted. First, if for any one of the selected physicians, the year ending September 30, 2000 was a particularly good year, then even if the physician stopped admitting at Columbia altogether after that date,

using the year ending September 30, 2000 as the baseline would overstate lost cash flow because future years would most likely mirror an average year, not the abnormally high year. *See* 2/3/04 Tr. at 343-44. Second, Mr. Ben Ezra assumed that all of the decrease in revenue for the year ending September 30, 2001 for the specified doctors who reduced admissions to Columbia was caused by NCRIC. *See* 2/3/04 Tr. at 338-40. That analytical assumption ignores the fact that admissions naturally vary from year to year. Thus if a physician had a particularly bad year for the year ending September 30, 2001, that bad year would be assumed to continue indefinitely into the future, and to have been caused by NCRIC. Third, Mr. Ben Ezra assumed that, absent NCRIC's alleged tortious conduct, patient admissions for the selected physicians would have been the same for each of the next twenty years. But given the dire financial straits of the hospital, Mr. Ben Ezra should have assumed some greater attrition in affiliated physicians than the hospital had seen in the past. Under the circumstances, as Mr. Henderson testified, Mr. Ben Ezra's methodology simply could not be considered generally accepted.

D. The Court Should Recuse Itself Now and Order a New Trial Before a Different Judge.

The Court should have recused itself based on the Judge's extended treatment by a physician who was closely affiliated with Columbia, and was a partner of the Chairman of the Board of Columbia Hospital, Dr. Safa Rifka – who was Columbia's principal witness. During cross-examination, Dr. Rifka was asked about monetary benefits he and his practice group obtained from Columbia over the years. *See* Affidavit of Rodney F. Page ("Page Aff.") ¶ 3 (attached as Exhibit 6). Dr. Rifka testified that he was a partner in Columbia Fertility Associates with other physicians that had practiced at Columbia for years and had received numerous financial benefits from the hospital, including free office space and other amenities. *See* 2/2/04 Tr. at 226-28. When asked to identify his partners, Dr. Rifka named Dr. Maurice Butler, and

confirmed that Dr. Butler had practiced with him for many years and shared in the financial benefits Columbia Fertility Associates had received from Columbia. Page Aff. ¶ 3.

During *voir dire*, the parties had specifically requested, and the Court had agreed, to ask prospective juror questions concerning treatment by specified doctors including Dr. Rifka as well as treatment at Columbia. *See* Page Aff. ¶ 6. The Judge at the time did not disclose her treatment. Rather, the Judge for the first time, in the middle of Dr. Rifka's testimony, informed counsel that Dr. Butler had been her physician for several years. The Judge stated that she had been treated by him in the practice group in which Dr. Rifka was the principal partner. *Id.* ¶ 5. On that day and on the next morning of trial, the Court revealed further that the treatment had extended over a significant period of time and had included treatment at Columbia Hospital itself. *Id.* On February 4, 2004, NCRIC moved that the Court recuse itself based on the information revealed, *id.* ¶ 7, but the Court denied the motion. NCRIC renews it now.

Canon 3(E)(1) of the Code of Judicial Conduct states "'[a] judge *shall* disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.'" *York v. United States*, 785 A.2d 651, 655 (D.C. 2001). D.C. Super. Ct. R. Civ. P. 63-I provides for the disqualification of a judge due to personal bias or prejudice against either party or in favor of any adverse party.[4]

It is well established that actual bias or prejudice is unnecessary before recusal is required under the Canons; rather, the Court need only conclude that the facts "'might reasonably cause an objective observer to question the [judge's] impartiality.'" *Gibson v. United States*, 792 A.2d 1059, 1068 (D.C. 2002) (quoting *Liljeberg v. Health Servs. Acquisition Corp.*,

[4] The pretrial procedure of filing an affidavit asserting bias has been held to be inapplicable in cases where the alleged bias is unknown to the party until it is discovered *during* trial. *See In re J.A.*, 601 A.2d 69 (D.C. 1991); *see also York v. United States*, 785 A.2d 651 (D.C. 2001). As noted above, attached as Exhibit 6 is the Affidavit of Rodney F. Page asserting the claims made here, as well as the required certificate of good faith.

486 U.S. 847, 865 (1988)). "Thus, even if there is no bias in fact, an appearance of bias or prejudice requires recusal if it is sufficient to raise a question in the mind of 'the average citizen' about the judge's impartiality." *Gibson*, 792 A.2d at 1068 (quoting *York*, 785 A.2d at 655). A judge's failure to recuse when there is an appearance of bias or lack of impartiality requires the grant of a new trial. *See Scott v. United States*, 559 A.2d 745, 749 (D.C. 1989); *In re J.A.*, 601 A.2d 69, 79 (D.C. 1991); *Belton v. United States*, 581 A.2d 1205, 1213-15 (D.C. 1990); *Turman v. United States*, 555 A.2d 1037, 1039 (D.C. 1989); *Gibson*, 792 A.2d at 1068; *In re Evans*, 411 A.2d 984, 993 (D.C. 1980); *In re Bell*, 373 A.2d 232, 234 (D.C. 1977).

The doctor-patient relationship between the Judge and Dr. Butler created, at a minimum, an appearance of impropriety that should have led to recusal. Indeed, in other cases, judges have recused for just this reason. *See, e.g., Rose v. Fiedler*, 855 So. 2d 122, 123 (Fla. Dist. Ct. App. 2003) (judge recused after becoming a patient of physician-defendant); *Berdyck v. Shinde*, 713 N.E.2d 1098, 1106 (Ohio Ct. App. 1998) (judge recused because his wife previously had been patient of physician-defendant); *Sullivan v. Baptist Mem'l Hosp.-Golden Triangle, Inc.*, 722 So.2d 675, 678 n.8 (Miss. 1998) (judge recused because he and members of his family had been treated by physician-plaintiff). The often intensely personal nature of the doctor-patient relationship is well recognized by society, courts and citizens. Particularly in light of the nature and length of the Court's course of treatment, the physician-patient relationship in these circumstances is especially strong. The facts here might reasonably cause an objective observer to question the Court's impartiality. *Gibson,* 792 A.2d at 1068 (quoting *Liljeberg*, 486 U.S. at 865). Accordingly, the Court should recuse itself and order a new trial.

E. In the Alternative, the Court Could Grant a New Trial Subject to a Remittitur.

Under District of Columbia law, a trial judge has broad discretion to order a new trial subject to a remittitur when a jury's damage award "'is so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate.'" *Capitol Hill Hosp. v. Jones*, 532 A.2d 89, 93 n.13 (D.C. 1987) (quoting *Phillips v. District of Columbia*, 458 A.2d 722, 724 (D.C. 1983)). "When a party moves to strike a verdict as excessive, the trial court must consider whether that verdict resulted from passion, prejudice, mistake, oversight, or consideration of improper elements." *Finkelstein v. District of Columbia*, 593 A.2d 591, 596 (D.C. 1991) (en banc) (affirming remittitur based on trial court's conclusion that the award likely resulted from the jury trying to send the D.C. Jail a message in response to the testimony it heard about jail conditions). *See also District of Columbia v. Jackson*, 810 A.2d 388 (D.C. 2002) (upholding trial court's remittitur of compensatory damage award from $2.5 million to $180,000 in wrongful death action on the grounds that the award was out of proportion to decedent's pain and suffering).

Remittitur would be appropriate here for three reasons. First, even assuming the jury credited Mr. Ben Ezra's testimony, which NCRIC contends should never have been admitted, *see supra p.* 13, the award of $13 million in *pre-closing* damages cannot be supported by his testimony. Mr. Ben Ezra estimated the lost cash flow from October 1, 2000 to September 30, 2002 – which is four months after the hospital closed, to be only $4,914,574.23. Moreover, of the 24 physicians and three practice groups whose admissions data he used for his computations, NCRIC (through the testimony of Drs. Blank, Johnson, and Dukes) introduced uncontroverted evidence showing that 13 physicians left for reasons unrelated to NCRIC, and that these 13 represented two-thirds of the cash flow Columbia claimed it lost. Thus Mr. Ben

Ezra's calculation must be discounted by two-thirds, which produces a lost-cash-flow estimate for the two years of $1,638,191.41. Even that number overstates the evidence, because the hospital closed in May 2002, not September 30, 2002.

Second, Columbia's repeated inflammatory claims that, for example, when Columbia was "sick," NCRIC cavalierly "just put it out of its misery," 2/10/2004 Tr. at 133-34; that NCRIC was "the 800 pound insurance guerilla," *id.* at 109, and its Chief Executive Officer's testimony "sounds pretty slick," *id.* at 118, as well as by its request for huge punitive damages totaling almost $60 million, likely misled the jury to believe that such astronomical damages would be proper in this case. Columbia compounded its appeal to passion by grossly misstating NCRIC's annual earnings. During closing argument, Columbia's counsel stated that NCRIC "earned" "$59 million . . . in [the] nine months ending September, 2003." 2/10/2004 Tr. at 136-37. In fact, NCRIC's public financial statements show its net income for that period totaled only $1.4 million, which is a mere 2.4 percent of the amount Columbia claimed NCRIC earned. *See* Def. Exhibit 71B p. 13. Particularly given how weak Columbia's damages evidence actually was, a remittitur would be in order here to correct a clearly excessive damage award.

Third, as for the $5 million in post-closing damages, those funds should be stricken for two reasons. First, Columbia's counterclaim nowhere includes these post-hospital-closing damages, and Columbia cannot invent new theories for liability for the first time at trial. *See infra* at p. 29. Second, because the $5 million appropriation represents *gross* revenue, not the actual net revenue lost by the hospital due to its failure to receive a congressional appropriation, it is too speculative to support a damages award. *See infra* at p. 28-29.

Moreover, the amount of the appropriation that forms the basis of this award was *not* $5 million, as testified to at trial by Dr. Rifka and argued in closing by Columbia's counsel.

16d-003146

See 2/2/2004 Tr. at 175 (testimony); 2/10/2004 Tr. at 132-33 (closing argument).[5] In fact, Congress had appropriated only *$4 million* for the hospital. *See* Departments of Labor, Health & Human Services, and Education, and Related Agencies Appropriations Act, 2002, Pub. L. 107-116, 115 Stat. 2177, 2187 (Jan. 10, 2002) ("2002 Appropriations Act"); *Sierra Club v. Callaway*, 499 F.2d 982, 989-90 (5th Cir. 1974) (court may take judicial notice of congressional appropriation); *United States v. Chrysler Corp.*, 157 F. Supp. 2d 849, 860 n.19 (N.D. Ohio 2001) (same). "A trial judge may reduce a damage award when 'it is apparent as a matter of law that certain identifiable sums included in the verdict should not have been there.'" *Pratt v. University of the District of Columbia*, 691 A.2d 158, 159 (D.C. 1997) (citation omitted). Thus, at a minimum, the Court should grant a remittitur as to this $1 million.

II. NCRIC IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

NCRIC renews its previous motions for judgment as a matter of law. *See* Super. Ct. R. Civ. P. 50(b).

A. The Evidence, Even When Viewed in Columbia's Favor, Did Not Satisfy the Legal Elements of Tortious Interference With Business Relations.

Even viewing the evidence in the light most favorable to Columbia, Columbia has failed to prove two essential elements necessary to establish tortious interference with business relations: (1) the existence of a valid business relationship; and (2) intentional interference causing a breach or termination of the relationship. *See Sheppard*, 59 F. Supp. 2d at 34.

---

[5] Columbia requested $21.5 million in its closing consisting of three components: $13 million in lost revenue from attending-faculty physicians, $3.5 million in bankruptcy costs, and an unspecified amount for the congressional appropriation. 2/10/2004 Tr. at 132-33. Deducting the other two components from the $21.5 million requested leaves $5 million for the congressional appropriation, which is the amount as to which Dr. Rifka testified. While Columbia included this amount in its "pre-closing" request, the jury properly labeled it damages for the period "after the hospital closed," Verdict form at 3, because Columbia contended it did not receive the funds because of its closure.

16d-003147

Because failure to prove any one of these elements defeats Columbia's claim, NCRIC is entitled to judgment as a matter of law on the tortious-interference claim.

1. The Evidence Failed to Establish "Egregious" or Otherwise Wrongful Conduct that Would Qualify as Tortious Interference.

NCRIC is entitled to judgment as a matter of law because the evidence, even when viewed in Columbia's favor, fails to show that NCRIC engaged in the sort of egregious or otherwise wrongful conduct that would qualify as "interference" for purposes of a tortious interference claim. As this Court itself previously recognized, to prevail on this claim, the law required Columbia to prove "egregious" or otherwise wrongful conduct such as "libel, slander, physical coercion, fraud, misrepresentation, or disparagement." Order Denying NCRIC's Motion for Summary Judgment at 10; *see generally* pp. 4-8, *supra*.

At trial Columbia attempted to satisfy its burden to prove improper conduct by arguing that NCRIC committed defamation, fraud, misrepresentation and disparagement, as alleged in various of its other counterclaims. All of these counterclaims, however, were dismissed by this Court as a matter of law, because as to all of them Columbia failed to carry its burden of proof. For example, Columbia argued that Dr. Leonard Glassman, a physician on NCRIC's Board, made a statement "to the effect that doctors might need to think about moving their practice someplace else if they weren't able to continue under the Retro Plan." 2/10/04 Tr. at 65. The Court rejected Columbia's defamation claim premised on those statements because the record did not contain "a clear causal connection . . . to show exactly who the statement was made to, under what circumstances, and for what purpose . . . ." *Id.* at 66. Columbia's failed claims cannot, as a matter of law, qualify as wrongful conduct that could give rise to a tortious-interference claim.

16d-003148

The other conduct Columbia claimed was intentional inference with business relations included routine business conduct – such as NCRIC's notifications of the applicability of NCRIC insurance to its physician-insureds working for the Columbia Physicians Group, and its billing of its physician-insureds who had participated in the Retro Plan. Those entirely proper – and indeed, as shown by the evidence at trial, *contractually required* – actions cannot qualify as improper conduct sufficient for a tortious-interference claim. Because NCRIC had an ongoing business relationship with the physicians whose conduct it is accused of interfering with, NCRIC quite properly gave its physician-insureds notifications, information and advice concerning the future status of subsidies under the Retro Plan, as well as of the risks of practicing at a financially unstable hospital. *See* Restatement (Second) Torts § 769 (1979)(no intentional interference for specified types of communications with third parties in whom an actor has a financial interest). Similarly, any decision to let the Retro Plan end cannot serve as a basis for a tortuous-interference claim because allowing a contract to expire without renewing it is not a tortious act – and certainly not an "egregious" act. No one claims that either NCRIC or Columbia was legally obligated to renew the Retro Plan after September 30, 2000 – and indeed evidence at trial showed that *Columbia*, not NCRIC, was the party that decided not to renew the Plan.

In short, the conduct Columbia relied upon does not qualify as any independent tort. Columbia failed to provide any other basis to conclude that NCRIC's actions were wrongful or otherwise improper. Indeed, even if Columbia could support its claim that NCRIC engaged in a strategy to encourage its physician-insureds to stop practicing at Columbia, Columbia provided no evidence that NCRIC was not lawfully and properly entitled or required to do so under its contracts with its physician-insureds and with Columbia. Thus Columbia's

argument concerning NCRIC's plans to assist physician-insureds in moves to other hospitals, 2/10/04 Tr. at 107, does not support its tortious interference claim because NCRIC had a legitimate business interest in assisting and retaining *its customers* if its customers decided to practice at other hospitals. Indeed, as NCRIC's Senior Vice President Steve Fargis testified, NCRIC was *required* by the D.C. Department of Insurance to notify its physician-insureds, for example, concerning an increase in their premiums. Further, the contract permitted NCRIC to bill physicians the full amount of their premiums if the Retro Plan was terminated. Under these circumstances, the evidence fails as a matter of law to support a tortious-interference claim. *FutureSource LLC*, 312 F.3d at 284 (rejecting tortious interference claim premised on defendant's provision of truthful information to customers to whom defendant owed contractual duties); *United Educ. Distribs., LLC v. Educational Testing Serv.*, 564 S.E.2d 324 (S.C. Ct. App. 2002) (no intentional interference absent evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with third parties).

2. The Evidence Failed to Establish a Legally Protected Business Relationship.

The business relationship as to which Columbia claimed NCRIC interfered was Columbia's relationship with "attending faculty"; physicians who participated in the NCRIC Retro Plan. Under the assumptions urged by Columbia, these physicians would be expected routinely to admit their patients to Columbia for the balance of their careers. They would do so year after year, and the hospital expected that each of the attending physicians would continue to do so for the indefinite future. Yet it is undisputed in the record, and Columbia does not and cannot dispute, that these attending faculty physicians had no written or oral contract requiring them to admit even one future patient to Columbia. They were absolutely free at any time to stop admitting patients to Columbia for any reason or for no reason at all.

Columbia's relationship with these attending faculty physicians simply was not the sort of business relationship as to which the common-law tort of tortious interference with business relations is designed to protect. Even when an *employee* has an at-will employment contract with an employer, such a relationship does not necessarily give rise to a "specific, future relationship" sufficient to predicate a tortious interference claim. *See e.g.*, *Sheppard*, 59 F. Supp. 2d at 34. In this case, the attending faculty did not even have an at-will employment relationship with the hospital. Any expectation on the part of the hospital would not even be as specific as the at-will employment relationship found to be inadequate in *Sheppard.*

B. Columbia Failed to Prove Non-Speculative Damages Resulting From the Alleged Tortious Interference.

Columbia's tortious-interference claim fails as a matter of law for the separate and independent reason that all of the damages Columbia claims to have suffered are entirely speculative. *See Pratt v. University of District of Columbia,* 691 A.2d at 159 ("A jury verdict may not rest on speculation as to damages."). Both the award of $13 million for pre-closing lost-cash flow damages and the $5 million post-closing award for a missed congressional appropriation also lack the requisite certainty to support a judgment.

Columbia's $13 million pre-closure damages award is inherently speculative and is therefore, as a matter of law, insufficient. A request for lost profits (or in this case, lost cash flow) will be rejected as too speculative unless a party can prove its damages "to a reasonable degree of certainty." *R & A, Inc. v. Kozy Korner, Inc.*, 672 A.2d 1062, 1068 (D.C. 1996) (internal citation omitted); *accord Garcia v. Llerena*, 599 A.2d 1138, 1143 (D.C. 1991); *Bedell v. Inver Housing, Inc.*, 506 A.2d 202, 206 (D.C. 1986) (rejecting lost-profits claim premised on "vague, unsubstantiated statement" by trial witness). In *Garcia*, the Court of Appeals held that an estimate of lost profits was too speculative when it was premised on an estimate that the

16d-003151

party's "net return was approximately a third" of his gross revenue. 599 A.2d at 1143. Similarly here, Mr. Ben Ezra estimated marginal costs – which is another term for the "net return" in *Garcia*, – to be 30 percent of collections *even though he had no data from Columbia to support that figure when he came up with it. See supra* p. 16. The Court of Appeals in *Garcia* rejected the "net return" estimate because the party "did not lay any foundation or identify any source for the formula . . . relied upon in estimating . . . net returns." *Id.* at 1144. So too should Columbia's net cash flow estimates be rejected because Columbia laid no foundation for the 30-percent figure relied on by Columbia when requesting pre-closing damages from the jury. *See* 2/10/2004 Tr. at 132.

Moreover, any estimate of lost future revenue would be particularly speculative because, as Dr. Rifka conceded at trial, 2/2/04 Tr. at 205-07, Columbia lost money every year since he joined the board in 1996 until it closed. Columbia had a receiver appointed in 1997. Columbia declared bankruptcy in 1998. Even assuming NCRIC engaged in wrongful conduct, which it did not, when the hospital's insolvency from causes independent of NCRIC would have either forced it to shut its doors or made conditions at the hospital so unbearable that attending faculty stopped admitting patients there is a matter of pure speculation. Under these circumstances, Columbia's projections of lost revenue as a result of NCRIC are, as a matter of law, too speculative to support judgment for Columbia.

Finally, the $5 million in post-closing damages for a congressional appropriation[6] is inherently speculative because Columbia made no attempt *at all* to estimate the damages it actually suffered when, after it closed, it did not receive these funds. The 2002 Appropriations

[6] In closing argument, Columbia's counsel referred to this amount as pre-closing damages, but the jury appropriately characterized it as post-closing. *See supra* p. 22-23 n. 5.

Act specified that Columbia was to receive the funds "to support community outreach programs for women." 115 Stat. at 2187. Of course, because Columbia closed and did not receive these funds, it did not incur any expenses with regard to providing outreach services. Any financial harm to the hospital would be the *net* revenue lost, *i.e.* the amount of the congressional appropriation *minus* the money not spent by the hospital by not providing the "community outreach programs" post-closing. *See e.g., R & A, Inc.*, 672 A.2d at 1068 (deducting "primary variable expenses" from "gross sales" to arrive at the "lost profit" damages estimate). Because Columbia did not even attempt to provide a basis for that calculation, the $5 million post-closing damages award should be stricken as a matter of law.

C. The $5 Million Post-Hospital-Closing Damages Should Be Stricken as a Matter of Law because they were Not Pleaded in Columbia's Counterclaim.

The $5 million post-hospital-closing damages should also be stricken because they were not included in Columbia's counterclaim. Columbia filed its Amended Counterclaim on January 5, 2001. In paragraph 128, it listed the damages it claims to have suffered from NCRIC's alleged tortious interference as "loss of revenue resulting from loss of patient referrals." The congressional appropriation Columbia claims it could not access was a *2002* appropriation, and Dr. Rifka testified that Columbia could not access it because of the hospital's closure in 2002. *See* 2/2/2004 Tr. at 175. Those damages, of course, were not included in Columbia's *January 2001* counterclaim.

When new claims for damages arise after the close of the pleadings, a party must request the court's permission to add the new claim by filing a motion to supplement the pleadings. *See* Super. Ct. R. Civ. P. 15(d). When a party fails to do so, it cannot then seek recovery for the post-pleading damages that were not included in the party's pleading. *See Wagner v. Professional Eng'rs in Calif. Gov't*, 354 F.3d 1036, 1052 (9th Cir. 2004) (applying

equivalent federal rule and denying request for damages accruing after the date of the amended complaint); *Young-Henderson v. Spartanburg Area Mental Health Ctr.*, 945 F.2d 770, 775 (4th Cir. 1991) ("As a general rule, facts accruing after the suit is brought may not be inserted by way of amendment but must be added by supplemental pleading.").

While the parties may, by consent, allow an issue not raised in the pleadings to be tried without requiring amendment to the pleadings, Super. Ct. Civ. R. 15(b), here NCRIC specifically objected to the inclusion of this evidence. *See* 2/2/2004 Tr. at 174, 175-76. NCRIC was prejudiced by the inclusion of this evidence because it was denied a reasonable opportunity to conduct discovery about it. It specifically moved for supplemental discovery (which would have included post-closing damages), but the Court denied the motion. *See* Order denying NCRIC's Motion to Enlarge the Time for Discovery, docketed April 7, 2003. That ruling was compounded by Columbia's counsel's instructions during the Rule 30(b)(6) deposition of Columbia *directing the witness not to answer questions concerning such damages.* Thus Columbia refused to permit NCRIC to take discovery on this damages claim and then presented the claim for the first time at trial.

Columbia contended it was damaged when, in *May 2002*, the hospital closed and it could not access a congressional appropriation. Waiting eighteen months to raise this issue is not the "reasonable notice and upon such terms as are just" that Super. Ct. R. Civ. P. 15(d) contemplates.

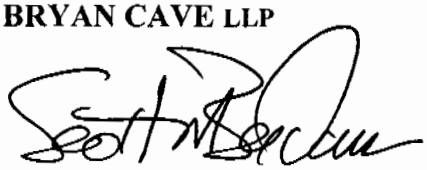
CONCLUSION

For the foregoing reasons, NCRIC respectfully requests that the Court grant it a new trial. NCRIC also renews its requests for judgment as a matter of law in its favor on Columbia's tortious-interference-with-business-relations counterclaim.

ORAL ARGUMENT REQUESTED.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Counsel for Plaintiff NCRIC, Inc.

Dated: March 5, 2004

16d-003155

EXHIBIT 1

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Next Event: Pretrial Conference -- July 31, 2003
Defendant.	

NCRIC'S PROPOSED JURY INSTRUCTIONS

16d-003157

NCRIC Proposed Jury Instructions No.15

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS/TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE

Intent

In order to prove that NCRIC tortiously interfered with Columbia's business relationships or prospective business advantage, you must find that NCRIC engaged in what is termed "egregious" conduct. You must find that any interference by NCRIC was wrongful by some measure beyond the fact of the interference itself. Obviously all interference by one business entity with another such as competition between competitors or related business entities is not illegal. In addition, it is insufficient that NCRIC may have possessed a general intent to interfere or possessed knowledge that its conduct may injure Columbia's business dealing. In these circumstances, you must find for NCRIC on both Columbia's tortious interference with business relations and tortious interference with prospective business advantage claims.

On the other hand, if you do find that NCRIC engaged in "egregious" conduct, you must find that Columbia has satisfied the intentional interference element of its tortious interference claims. "Egregious" conduct includes conduct such as libel, slander, physical coercion, fraud, misrepresentation or disparagement.

Source: ***Genetic Sys. Corp. v. Abbott Labs.*****, 691 F. Supp. 407, 422-23 (D.D.C. 1988);** ***Bennett Enters., Inc. v. Domino's Pizza, Inc.*****, 45 F.3d 493, 499, 310 U.S. App. D.C. 192, 198 (D.C. Cir. 1995).**

EXHIBIT 2

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	**Judge Blackburne-Rigsby**
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Next Event: Pretrial Conference -- July 31, 2003.**
Defendant.	

NCRIC'S PROPOSED VERDICT FORMS

Pursuant to Superior Court Rule 16 and the Court's General Order regarding pretrial procedures, Plaintiff NCRIC, Inc., submits the following proposed verdict forms.

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
Margaret G. Perl, D.C. Bar No. 472003
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005
(202) 508-6116

Roy I. Niedermayer (D.C. Bar No. 180380)
3 Bethesda Metro Center
Suite 430
Bethesda, Maryland 20814

Counsel for Plaintiff NCRIC, Inc.

Dated: July 24, 2003

EXHIBIT 3

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INC.,

Plaintiff/
Counter-Defendant,

v. : Civil Action No. 7308-00

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant/
Counter-Plaintiff.

Washington, D. C.

Monday, February 2, 2004

The above-entitled action came on for a jury trial before the Honorable ANNA BLACKBURN-RIGSBY, Associate Judge, in Courtroom Number 48-A.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

RODNEY PAGE, Esquire
SCOTT M. BADAMI, Esquire

On behalf of the Defendant:

NEIL GORSUCH, Esquire
ELI SCHULMAN, Esquire
PRIYA AIYAR, Esquire

DONNA K. HAWKINS
Official Court Reporter Telephone: 879-1035

16d-003162

own and Mr. Wilson went with me to two of them to try to convince them or to try to merge with these non-for-profit entities.

Q Did anyone ever tell you they didn't want to merge with you because it was unsafe?

A No.

Q Was any other reason given other than the drop?

A Our drop in numbers made us not a good candidate to merge with a non-for-profit entity.

Q Did NCRIC's actions have any effect on Columbia's fund raising efforts?

A Yes, it did.

Q Did Columbia have a fund raising effort underway as part of your reorganization plan?

MR. PAGE: Your Honor, I object. This goes to damages which I would like to be heard on if we have a moment.

MR. GORSUCH: Personal knowledge, Your Honor.

MR. PAGE: It doesn't matter.

THE COURT: There was previous testimony and I will allow the witness to answer.

THE WITNESS: We had a Board, a Hospital Board, and the Board's job was to do fund raising events and fund raising from the community.

BY MR. GORSUCH:

Q Did you seek money from Congress?

16d-003163

A I did.

Q Were you able to get money from Congress?

A I was.

Q How much?

A It was for Columbia's Outreach Program, the money, the service that we do to the community because we have done it for about more than half a century for free. And now we felt we need some help from Congress and we were getting five million dollars for the year of 2001 and five million dollars for the year 2002.

Q Were you ever able to use that second year's money?

A The second year we were not able to access it. It closed.

Q Did you have private funding underway in 2000?

A Yes, we did.

Q What was planned?

A Many events planned to solicit corporations and private donors and it was planned to go to the community and raise funds. And all of this was the task of the Development Board that I have a seat on.

Q And how much were you expecting to raise with these fund raising efforts?

MR. PAGE: Objection. Counsel would ask to approach, please.

(Bench conference.)

Laser stock form FMRRN
Lorry USA 1-800-255-5040

MR. PAGE: Your Honor, my objection is that there are a series of items that one of them is lost fund raising, for example, In discovery in this case when Dr. Rifka was deposed, he was prevented from answering questions about how much money was lost on the grounds that they have an expert who would testify. And the witness was instructed not to answer questions as to how much the losses were calculated for any damages and instead, here is an insert from Mr. Rifka's deposition where he's instructed by counsel that he's not to prescribe the calculations and damages because it's a different witness. He says Dr. Wilson -- it turns out he did the same thing with Larry Wilson on the 26B4 statement with respect to all of these damages including lost fund raising activities.

Now, it's one thing for him to testify that he planned to have a fund raiser, but the intent here is to go into dollar amounts lost. They can't do that because only they stopped us from discovery and they made no disclosure. And Peter Ben Ezra did his report saying I haven't done that calculation. And so our view is they have waived that. They can't now surprise us at trial with dollar numbers that we have never heard, and that's what they are driving at.

MR. GORSUCH: This is a limited motion at best that should have been filed. The fact this is a fact witness and he has personal knowledge. And Peter Ben Ezra --

16d-003165
Laser stock FORM FMRRN
Corby USA 1-800-255-5040

Q Now, Doctor, you would certainly agree that the hospital never was able to make money in any fiscal year while you were associated with it?

A Associated in what capacity?

Q Any capacity?

A No, this is not a true sentence.

Q Well, let's go back over it. Let's start at the time you joined the Board.

A Yes.

Q And if I recall your testimony correctly, you joined the Board sometime in 1996; is that right?

A That's correct.

Q Because you had been elected as an officer of the medical staff?

A I was elected president of the medical staff which automatically gained me a spot on the Board of Directors.

Q And at the time you joined the Board, it was losing money; right?

A In '96 to my recollection they are losing money.

Q And the fiscal year of the hospital was from June to June?

A Correct.

Q Or the year ended on June 30th of each year, the fiscal year?

16d-003166

A Yes.

Q And it lost money again in the Fiscal Year 1997; isn't that right?

A Yes.

Q And it lost money in Fiscal Year 1998?

A It was in bankruptcy.

Q It lost money in Fiscal Year 1999?

A Yes.

Q And in Fiscal Year 2000 ending on June 30th of 2000, it lost money again?

A We lost less and we were making some money in 2000. If you look carefully, you will find that there is a month or two where we earned or scored a profit. And we were turning the corner. We were on our way up. Our admissions were up and we were making some money. Our cost-cutting measures had taken effect and our LMO Reorganization for reimbursement which were going up. We have already opened suites up on the fourth floor. We widened our services so we put in a Medical Center and we put in an Endoscopy Center and we did a lot of changes that were showing in a positive way in around June of 2000 because in a hospital you cannot microwave events. You have to take it slowly.

Q Let's look at those minutes again from June 27th, the ones you have in front of you.

A And the number is what?

16d-003167

Q Exhibit 35. We talked about it a minute ago. The same Minutes had a financial report on the same page that there was a discussion about the NCRIC Retrospective Plan. Do you see that, sir?

A Yes.

Q Look under the President's Report. The president was Mr. Wilson; correct?

A Yes.

Q He reported that for the period ending April 30th, the loss for that month was one million, two hundred and thirty thousand dollars; right?

A Correct.

Q He also said you were in a very tight cash position; right?

A We never said that we owned a bank.

Q And in fact, the reason you could not accept the proposal from NCRIC to pay seven hundred and fifty thousand dollars is that you didn't have enough cash?

A No, because your numbers were wrong. You cooked the books. You rigged the data and you're mandating us to pay money that we don't owe you. You have done this two other occasions. You have done this in '97 when you presented us with a bill of 1.7 million dollars only from your own generosity to squeeze it down to one million. Money that was not due you. You took it from us at the

16d-003168

A This is it. Melinda Murray left, I think, in '96 or early '97. Probably in '96 she left. That was the last in-house lawyer that Columbia had.

Q You also had a lawyer named Barbara Hutch; did you not?

A Barbara Hutch was a Risk Management. She was hired as a Risk Manager. Not as a lawyer.

Q So these were the employees of the hospital that were to give you advice on insurance and Risk Management; these lawyers?

A Risk Management.

Q Now, you yourself were recruited to come to Columbia Hospital sometime in the early nineties; right?

A No.

Q Did I have the date wrong?

A What's the date?

Q Sometime around 1990 you were recruited to come to the hospital; am I right about that?

A No.

Q What date?

A 1986.

Q But you were recruited; right?

A I was recruited.

Q And in fact, you were given a contract to bring your Infertility Clinic to the hospital?

16d-003169

A I didn't have a clinic. I was given a contract for Columbia and the contract was very simple. Columbia had recruited me from Georgetown because at that time the Georgeton-Columbia affiliation was terminated and they gave me an offer to come to Columbia under a contract which if you want me to explain I will explain. If not, then you ask me.

Q Well, the contract paid you a sum of 1.1 million dollars a year?

A The contract didn't pay me anything. I paid myself. These are my patients. The contract was Columbia will pay for my nurses and will pay for my rent and will pay for collection of my money. And I practiced in my own private practice. Columbia took forty percent first, initially thirty percent, and gave me seventy percent, and then that contract you're referring to in the nineties was forty percent for Columbia and sixty percent for me. And so they are collecting my own money from my own patients frdm my own practice from all over the world. Columbia was not paying me. I was paying myself and I was paying Columbia a percentage of it. And I was paying myself through my pratice insurance from you guys, NCRIC. I was paying my health insurance and I had my own retirement plan and I met all the safe harbor of the IRS for all independent contractors and that contract was terminated later

16d-003170

Laser Stock Form FMRRN
COPY USA 1-800-255-5040

on in 1999.

Q You received throughout this time office space from Columbia?

A For the forty percent that they took from me in their own professional building, they provided me with office space, nursing support, collection. And I gave them forty percent of the money that I made.

Q No other doctor --

A And I paid for my malpractice and I paid for my health insurance and I paid for my retirement plan separately. Separate from Columbia.

Q And no other doctors had that arrangement with Columbia Hospital, did they?

A Yes, there was another doctor, at least that I know of, who had that arrangement.

Q And that doctor was Dr. Asterbadi?

A No, that doctor was Dr. Richard Fault (phonetic) who was the second guy in the Fertility Division.

Q Now, let me ask you a little bit about the description you described in the hospital and cutting edge nature of it. You talked about it on Friday when you testified and you referred to certain microscopes and various instruments. What you were describing, Doctor, was equipment that is necessary for your infertility work; correct?

16d-003171

EXHIBIT 4

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

- - - - - - - - - - - - - - - - - - -x

NCRIC, INC.,

Plaintiff/
Counter-Defendant,

v. : Civil Action No. 7308-00

COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.,

Defendant/
Counter-Plaintiff.

- - - - - - - - - - - - - - - - - - -x

Washington, D. C.

Tuesday, February 3, 2004

The above-entitled action resumed for a jury trial before the Honorable ANNA BLACKBURN-RIGSBY, Associate Judge, in Courtroom Number 48-A.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

RODNEY PAGE, Esquire
SCOTT M. BADAMI, Esquire

On behalf of the Defendant:

NEIL GORSUCH, Esquire
ELI SCHULMAN, Esquire
PRIYA AIYAR, Esquire

DONNA K. HAWKINS
Official Court Reporter Telephone: 879-1035

16d-003173

isn't that correct?

A Yes, in my role as an advisor to the Board. Remember, I didn't have the responsibility to make the decision. I was just an advisor. I was an invited guest. I did ask questions, but it was not my decision.

Q All right. Your analysis depends in its entirety on an assumption that NCRCI caused these doctors to leave the hospital. That's a correct statement, isn't it?

A That is correct.

Q You're not here today to testify in any manner as to whether NCRIC was, in fact, responsible for any damages to the hospital; right?

A That is my understanding.

Q Your testimony is limited strictly to the calculation of damages; right?

A That is correct.

Q And you were given a list of doctors from your lawyers and you used that list of doctors to make your damage calculation; correct?

A That's correct. I received a list from the Kellogg Huber Hansrn law firm, who are my clients. I performed tests on that list and I called out some of the doctors, and the remaining doctors, I then used for the report.

Q If any of those doctors left the hospital for

Laser stock Form FMRRN
Corby USA 1-800-255-5040

reasons other than being considered or forced by NCRIC, then they should not be included in your analysis; correct?

A That is correct. That's why my report has it broken out by each individual doctor, so that if it turns out that Doctor X left for another reason, then that amount is in the report and it can be taken off the total line.

Q For example, Dr. Martin Dukes is one of the doctors you're calculating as a doctor who left because he was coerced by NCRIC and his patient load creates a calculation of damages; right?

A That is correct. However --

Q Now, you assumed, did you not, -- excuse me. Go ahead.

THE COURT: Did you finish your answer?

THE WITNESS: No, I did not. I know in the case of Dr. Martin Dukes, he was also on the Board of Columbia Hospital for Women and he was also on the Board of NCRIC. I'm also aware that he gets favorable rates from NCRIC because he only paid a part-time premium instead of a full-time premium. And yet it appeared to me that he was practicing full-time at Columbia like the rest of his peers.

Q And did that affect anything in your calculation?

A No, it did not.

Q You just assumed that he left because he was part

16d-003175

Laser stock Form FMRRN

Corby USA 1-800-255-5040

of a damage claim; correct?

A That is correct. That NCRIC was the cause of his departure.

Q So once again, if any of the doctors on this list, in fact were motivated by other reasons, you did not take that into account; correct?

A No, the doctors that are on the list for the final report, those twenty-four doctors and three practice units, okay, if it turned out that one or more of those doctors left for another reason other than NCRIC, then those should be called off that list and the report has the doctor's names. And so you can subtract that from the total. That's why I did it as a group as well as individually.

Q You made no independent verfication by going around to those doctors to find out why they had left the hospital, did you?

A That is correct. It's my understanding that my role was to calculate the damages and not to figure out the cause.

Q The data that you used and associated with each doctor's name came from the financial records of Columbia Hospital; right?

A It came from the Information Techology Department of the Hospital.

Q So it did not come from the financial records of

16d-003176

that times twenty in your first analysis?

A No. Well, remember what I did. I took the arithmetic different. I adjusted it for collectibility basically a little over five percent reduction and then I took this amount and reduced it by another thirty percent, which is to take care of the marginal costs. And then that difference is what I used for my projections.

Q All right. I agree and I didn't mean to imply otherwise. You made the adjustments first, but then you multiplied times twenty once you obtained that number?

A I didn't multiply. As you see, I added.

Q I will take that.

A And what the graph that was shown or the chart that was shown up on the screen shows is the addition. That is actually off of an Excel spread sheet.

Q You made no effort to determine whether any of those doctors during those two years had any trend as a part of their admission pattern, though, did you?

A That is correct.

Q So, you don't know, for example, whether in time period No. 1, particular doctors may have been in either an increasing or decreasing pattern of their admissions to Columbia?

A That is correct.

Q You took no account of the fact that the doctors'

Laser stock Form FMRRN
Corby USA 1-800-255-5040

practices may have gone up and down at Columbia individually? You just assumed a single point in time from which you could project all of your damages; correct?

A That is correct.

Q And the data was available to you to determine what those doctors had sent to the hospital and patient load in earlier years, wasn't it?

A No, it was not.

Q You had the data for the year preceding the twelve months. Are you saying that data from the earlier time period was not also available to you, sir?

A Data was made available to me. However, when I saw the data, it was quite apparent to me that it was incomplete. I sent it back to the Information Techology people through my client. They tried to run it several different ways, but were unable to obtain the data, so that the other data was not available. I know it was incomplete and I will not use incorrect data.

Q So the hospital records --

A Excuse me, please.

Q I'm sorry. I thought you were finished. Go right ahead.

THE COURT: Sometimes it's not clear when you have completed, in all fairness to counsel.

THE WITNESS: Okay. If I had used the data that I

16d-003178

doctors that admitted or used to admit to Columbia. There is no opinion as to the rest of the operating activites.

Q Now, you chose for your analysis a period of twenty years to project the lossess that you said were accrued; correct?

A For this analysis I used a twenty year period. Now, knowing what I know now, the hospital closing, I could have used a period far geater than twenty years.

Q Well, in fact, wouldn't the appropriate period have been eighteen months since that was all that the hospital stayed open?

A No, because -- and I'm not a cause witness, but --

Q Well, in that case, don't speculate about costs, sir.

MR. GORSUCH: I would ask him to be able to answer the question, please.

THE COURT: Well, the answer is appropriate only if it does not relate to causation issues.

THE WITNESS: Okay. If the hospital had the necessary cash to operate after a group of doctors had left or cut back on their admissions to Columbia, then Columbia would be in business today.

BY MR. GORSUCH:

Q You're not, in fact, rendering an opinion as to whether Columbia would have survived -- whether the doctors

Laser stock Form FMRRN
Corby USA 1-800-255-5040

EXHIBIT 5

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC, INCORPORATED Plaintiff	:	
VS.	:	CIVIL ACTION NUMBER: CA-7318-00
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER Defendant.	:	

Washington, D. C.
Tuesday, February 10th, 2004.

The above-entitled action came on for a Hearing before the Honorable ANNA BLACKBURN-RIGSBY, Associate Judge, in Courtroom Number 48-A at or about 9:30 o'clock a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HIS ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

RECEIVED
FEB 25 7 36 AM '04
SUPERIOR COURT
CRIMINAL DIVISION

APPEARANCES:

FOR THE PLAINTIFF:
RODNEY PAGE, SCOTT BADAMI, Esquire

FOR THE DEFENDANT:
LARRY WILSON, PRYIA AIYAR, Esquire
EPI SCHULMAN, NEAL GORSUCH, Esquire

DERRICK CONEY
OFFICIAL COURT REPORTER Telephone: 879-1053

negligent misrepresentation claim; with respect to the defamation and liable claim, with respect to the trade liable and injurious falsehood claim; and respect to the conversion claim.

All right. And I'm take each one of those in turn in a moment. In -- when this matter was breached in summary judgment, I expressed some concerns about the viability of the defamation claim at that time but indicated -- denied it at that time so we can could wait and see what the evidence at trial was.

And if the parties will recall there was, as proffered for purposes of summary judgment, that there would be testimony about certain statements made in Columbia's cafeteria, in addition to some additional statements that were allegedly made by Dr. Glassman. However, the evidence at trial did not yield what may have been anticipated at the point we were in summary judgment.

The only evidence that we have at trial is testimony about statements that were made by Dr. Glassman to some doctors at the hospital that may have been overheard and that I believe Dr. Rifka testified to. Statements to the effect that doctors might need to think about moving their practice someplace else if they weren't able to continue under the Retro Plan.

Columbia's interpretation is that those were statements specifically about the financial viability about Columbia Hospital which were not true statements. And NCRIC's interpretation or recollection is that statements did not -- at least as they were characterized by the witness at trial -- the statements did not relate specifically to Columbia Hospital but were the opinion of Dr. Glassman in a conversation with a few other doctors that was overheard by someone.

And the question is whether that rises to the level of defamation and/or liable, per say. And I think it requires too many leaps. That there hasn't been a clear causal connection made to show exactly who the statement was made to, under what circumstances, and for what purpose it was made.

And that that statement by Dr. Glassman was false or that that statement by Dr. Glassman was, in fact, the cause of financial harm and injury to Columbia Hospital.

I think it would require the jury to take too many leaps and connect too many dots that should have been connected by evidence specifically presented here at trial.

Similarly, the injurious falsehood claim, which is very similar to the defamation and liable per say

damaging documents that show its motive. It's like an elephant in this room that it hopes you won't notice.

For example Defendant's Exhibit 37 where they admit that they had a plan of action to assist doctors in moving to other hospitals, absorbing them into Sibley Hospitals and creating a new program at G. W. and Georgetown as well.

And Defendant's 18 where Mr. Pate writes Columbia Hospital saying, you should understand that NCRIC contends to continuing providing its much needed insurance protection to the physicians in this program with or without the support of Columbia.

NCRIC also promised to show you that the doctors left because the hospital is unsafe or lacked equipment, but you heard Dr. McCants and Dr. Proctor and Dr. Cooper and Dr. Rifka all say that the doctors left because of insurance.

And you heard NCRIC's own Mr. Moore, $465 an hour expert, admit that Columbia in 2001 was a center of excellence. That it provided high quality health care services and cutting edge technology. We didn't pay for $465 an hour for him to testify to that effect. They did.

NCRIC will show you no documents. Not a single document suggesting that the doctors left because of

16d-003184

a time when all the competitors were not. That losses were cut in half in one year. And you heard that the Bankruptcy Court had approved a turnaround plan that within 18 months left the hospital with a profit in June, 2000. Ladies and gentlemen, that's unrefuted testimony.

You heard from Mr. Page who said cash was tight at Columbia. We've never denied that. Of course, it was. That's true at every hospital in Washington. But the fact that Columbia turned a profit in June, 2000, is unrefuted.

So much for what NCRIC promised to deliver.

You've heard the evidence and you know that what NCRIC did to Columbia was bad. It wasn't a Retro Plan, it was a retribution plan.

Did you ever hear Mr. Page even try to defend here for you what they did to Columbia's clinic.

When the 800 pound insurance guerilla just didn't get its way, it decided to take what it called it's doctors and get them absorbed into other hospitals where it controlled the insurance business.

Let's talk about what the evidence really did show. Columbia made certain promises to you as well in opening statement and I think the record reflects that we delivered on them.

1996, Defense Exhibit 5, here it is. NCRIC and

talk about the clinic.

Mr. Pate didn't want to talk about the clinic. NCRIC was willing to threaten Columbia's ability to serve the four. And in order to skis another $750,000 that it wanted for renewal of the contract. It's that simple and stark.

Mr. Pate asked you to believe, on cross examination, that the two day difference between the termination notice and the clinic notice was just a, quote, "coincidence ", but it's not connected in any way. That sounds pretty slick. But you heard Mr. Hempleman's deposition testimony when NCRIC didn't bring to this courtroom. And he told you that NCRIC had never done anything like this before in over 100 places like the clinic that NCRIC had insured.

Mr. Hempleman said he didn't know why his superiors wanted the clinic terminated but he was following orders. Think about that. Threatening a nonprofit suability to serve the community as a pressure tactic in negotiations like some overgrown sand pit bully picking on a small trusting kid.

NCRIC now says it cancelled the clinic policy because it learned in the Kessler Case that the trust fund was depleted. This is just so much more spent.

No such reason was provided in the termination

What did he stand to gain from that testimony?

This $40 statutory witness fee.

Dr. McCants said that five doctors left the clinic. A significant number of all faculty left after the Retro Plan cancelled.

Dr. Proctor said five doctors left the clinic and half the doctors left shortly after NCRIC cancelled the Retro Plan.

And Dr. Rifka, who stands nothing to gain here except for the dignity of the hospital, five doctors left the clinic and thirty doctors left after NCRIC cancelled the Retro Plan. That's what our witnesses say, but just don't believe them. Look at what NCRIC's witnesses actually said.

Dr. Blank personally left one month after NCRIC terminated the insurance policy. That's when he left. He's insured by NCRIC and he's had $690,000 in claims against him covered by NCRIC.

Dr. Dukes admits that one reason why he left Columbia was due to insurance. He sites other reasons, but he admits insurance was one reason.

He's a director of NCRIC.

He has $80,000 in free stock after telling you that he had very little free stock.

He gets $50,000 director free. He's being paid

$200 an hour for sitting here in this courtroom and he's insured by NCRIC.

Dr. Johnson: Well, she had to admit because of her own letter, Defendant's Exhibit 41, that she stopped working in the clinic because of lack of insurance.

Dr. Cook, who they didn't bring, another one of their own board members resigned his position to delight the specific malpractice coverage for work in the clinic. Defendant's Exhibit 46.

And even if you don't want to believe the doctors, believe Mr. Pate on this one. He said, in both his deposition testimony you heard and then on the stand, that 30 to 40 doctors left around this time and insurance was quote,"One reason."

Our witnesses, ladies and gentlemen, had no incentive to lie to you about this. Their's, however, have everything to lose.

There's were confronted too by their own prior inconsistent statements over and over again. You remember it. And when you do, consider the credibility of people like Mr. Moore, Mr. Henderson, Mr. Fargis, and Mr. Pate.

Second, beyond the witnesses look at the numbers. The numbers don't lie.

Remember Defendant's Exhibit 47, Mr. Page

showed that to you in opening statement and asked you to look at the trend line. You can put that up. But he didn't ask you to look at the actual data points.

Well, we asked Mr. Moore to do that while he was on the stand during cross examination and he admitted quote " Something happened in September 2000c". Well, Mr. Moore was right about, at least, that much. Something did happen. And what happened was that Columbia's oxygen supply was cut off. Its doctors had left and had proceeded to die slow and painful death until 400 employees were laid off at the end of May, 2002.

Finally, besides the witnesses and the data, look at the documents. NCRIC has no explanation for Defendant's Exhibit 41, 46, or 52, contemporaneous letters showing that doctors left because of insurance.

NCRIC is not presented a single document siting any other cause. So when they pick at Peter Ben Ezra's list, look at these three factors: What the witnesses said, what the data says, and what the letter said. They all support that a lot of doctors left in September, 2000. Even Mr. Pate says 30 to 40.

Ladies and gentlemen of the jury, there have been more than a few untruths spoken in this courtroom over the last couple of weeks. I can't address them all

insurance. We all know that didn't matter.

Now let's talk about the specific claims. First, let's talk about the breach of contract and the breach of duty of good faith and fair dealing.

For each of these claims we would seek two sorts of damages. First, we would like the security deposit back.

It was demanded back in 1997 before any years closed out and NCRIC said it was entitled to security because Columbia might some day owe it some money but it's's now seven years later and it's clear that NCRIC owes Columbia money for both of the years that closed out.

NCRIC has no basis for holding Columbia's money on the ground that some day, somewhere over the rainbow Columbia might owe it some money some day. Deposit, payment, credit, you've heard all the different liability they attached to it. Whatever it is, give it back.

The deal was to pay when the years closed out. There are only two years that are closed out. Columbia's owed money under both of those years and there's no basis for NCRIC holding on to Columbia's money.

And NCRIC is proven it is not a trustworthy custodian of Columbia's money.

Second: Under both of these claims, we also

seek money for the correct calculation of a contract using the actual contract terms and giving NCRIC full credit for the partial payment it made for '93 and '94.

You saw Mr. Feldman in Defense Exhibit Number 85 means that the correct calculation of the contract means that Columbia's owed $559,797.67. And that's just for the years -- the two years that it closed out. Columbia's not seeking any money for open years. There's no guesswork in that number.

So for the breach of contract and the breach of duty of good faith and fair dealing, we ask you for $1,559,797.67, exactly. Not a penny more or less.

Now, let's talk about the two tortious interference claims you will consider.

Can there be any question that NCRIC intentionally interfered with the hospital's relationship with its doctors when it promised to engage in good faith negotiations even after they adopted a secret plan of action to move the doctors. And then proceeded to carry out that plan by sending out the Retro Plan termination notice; by sending out the clinic notice; by sending out the massive bills to intimidate doctors when its own chairman of the board told Columbia's doctors to pack their bags. And then, in a slap in the face, turned around and issued exclusions making it impossible for

doctors to serve in Columbia's community clinic.

For that conduct, under both of the tortious interference counts you will be instructed about, we ask you for 21 -- $21.5 million for damages due to Columbia before the hospital closed. This is before the hospital closed.

You will hear that in the 22 months between July 2000 and May 2002, that's the amount of money we seek. And here's how we get that: You heard from Dr. Rifka and Mr. Moore that Columbia lost $10 million a year in revenue before versus after the doctors.

Mr. Moore was shown those numbers and he agreed that's what was in the IRS tax form.

Now, you also know from Peter Ben Ezra that you have to deduct marginal costs. And that those are 30 percent, using a conservative number that favors NCRIC. So you take 30 percent off of 10 million, that's $7 million a year.

Now, for 22 months that works out to be 13 million. Not 14, 13 million.

Plus you heard about the congressional funds that were appropriated and available from Congress ready for Columbia, but Columbia had closed and couldn't access them. That was money that was ready, sit there to go straight to the bottom line.

Plus, you heard about the bankruptcy fees.

You heard the million dollar payment was a major precipitating factor. And not a single witness is come in here to tell you about the contrary. Now, NCRIC knew Columbia was weak and still demanded that money anyway even though there had been no closing out of any years. And the only years to close out so for are all in Columbia's favor.

NCRIC was a substantial factor in causing that bankruptcy and it cannot evade responsibility for the losses it caused by pointing out that Columbia had other financial troubles, too.

The evidence about bankruptcy fees is between 1.5 and $3.5 million. So if you add up those numbers, that's the number we come to for what happened to Columbia before the doctors left and those numbers are basically uncontested.

Mr. Moore and Dr. Rifka agree that before versus after the doctors left was a $10 loss of revenue.

Let's a talk about what happened after the hospital died. We know that no doctors means no revenues for a hospital and that means no hospital. That the loss of 30 doctors meant that Columbia was dead.

NCRIC's expert, Mr. Moore, literally suggested the hospital was sick. So NCRIC could just put it out of

its misery but notice none of their doctors said anything like that.

Dr. Dukes said it was the best place he had ever worked and Dr. Johnson said it was a loss to the community. It's not okay to murder a hospital even it wasn't in peak financial condition. So the question is for you how much.

There are two ways to get there. First, you saw Peter Ben Ezra's analyses. And he did two separate analyses. One of which depended on a list of doctors -- of 24 doctors -- where NCRIC admits that 30 to 40 left. Mr. Pate admits that. So that's one method he used.

And you know he also used the revenue with it that didn't have to do with the names of specific doctors. So while Mr. Page criticizes Peter Ben Ezra for one method of calculation, he had two. And they both reached the same number.

And you know that after deducting for the math errors, it was $20.4 million that Peter Ben Ezra came up to for lost damages after the hospital. But there's another way to get to this same number that confirms the righteousness of that number and that's this: You heard that it was $7 million in lost revenue per year after deducting marginal costs. Mr. Moore and Dr. Rifka agreed on that.

punish doctors for working in a clinic. And then suing Columbia based on guesswork and speculation.

How do you punish NCRIC for that kind of comment, and how do you punish someone for killing a charity hospital chartered by Congress to serve the women and children of this community. Something it had done for 136 years without interruption through two world wars and a great depression.

We ask you to bear in mind three facts when you consider punitive damages: First, NCRIC has cash in the bank of $13 million.

Forget about what it has in investments -- $160 million in investments sitting in banks and in bonds and notes with the U. S. Security Treasuries. 13 million in cash. And that's 71-B at two.

Second, NCRIC has stockholder equity. Stockholder equity of $84 million. After paying off all of its liabilities, that's what it has. It's like the value it has in its home after it's paid off all of its mortgages, all of its debts. It's how much NCRIC has earned from the conduct like we've seen in this case off the backs of the hospital and its doctors and its nurses.

Columbia doesn't want more than it's entitled to. $59 million is how much NCRIC earned in nine months

16d-003195

ending September, 2003. It represents less than one year's worth of sales.

One way of thinking about what might be an appropriate punishment in this case -- and that's your decision -- is weather NCRIC ought to spend a year working for a foundation whose mission it is to serve the health care of the women and children of this community.

Think of it as NCRIC's year of community service. Maybe some of them will have to go without their stock options and bonuses for a year.

While NCRIC has yet to perform its community service, ladies and gentlemen, you've done yours.

You know what happened in this case. You know how NCRIC bullied Columbia and threatened it and sued a charity for money it does not owe.

The time has come for fair compensation and, yes, a measure of punishment.

Now it is the time to take just some of NCRIC's huge assets and give them back to Columbia to give this long and sad story a dignified ending it deserves.

Ladies and gentleman, it took two full weeks of your lives. What you're doing is important to this community.

We're sorry to have taken up so much of your time, but you've gotten to the bottom of it and that's

16d-003196

to punitive damages but no definition of punitive damages.

MR. GORSUCH: Your Honor, it might simplify things if you just read 16.1 which is straight out of the jury instruction handbook.

MR. PAGE: That is right. That is -- Yesterday, when we discussed it --

THE COURT: It wasn't in yesterday's draft?

MR. PAGE: It was in yesterday's draft. So it would be 16.1.

The only other comment -- and you may have made a decision on this -- which I will respect if you've done this -- but you dropped the discussion of egregious conduct with respect to tortious interference.

THE COURT: I did. That was a conscious decision.

MR. PAGE: We note our exception to that.

THE COURT: All right.

MR. GORSUCH: Your Honor, this is not by way of objection but by way of typographical error, I think. On Page 12 at the last -- last sentence under tortious interference with perspective business advantage, it indicates that if you find the Columbia's failed to prove its claim for tortious interference with business relations, you must also find that Columbia failed to

16d-003197

EXHIBIT 6

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	
Defendant.	

ORDER GRANTING NCRIC'S MOTION FOR A NEW TRIAL AND RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

Pending before the Court is NCRIC's Motion For a New Trial and Renewed Motion for Judgment as a Matter of Law. For the reasons stated in the Motion, and upon consideration of the points and authorities submitted by the parties, any oral argument presented, and the issues being fully considered, the Court finds that good cause exists to grant the Motion, and, therefore it is so:

ORDERED, that NCRIC's Renewed Motion for Judgment as a Matter of Law is **GRANTED** as to Columbia's Tortious Interference with Business Relations claim and that claim is hereby **DISMISSED**;

[**ORDERED**, that NCRIC's Motion for a New Trial is hereby **GRANTED**];

[**ORDERED**, that NCRIC's request for Remittutur with respect to Columbia's damages is hereby **GRANTED** and Columbia's judgment is hereby reduced to $_____.]

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Dated: _____ ___, 2004.

Copies to:

Rodney F. Page, Esq.
Scott M. Badami, Esq.
BRYAN CAVE LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Motion, Statement of Points and Authorities in Support and Proposed Order were served this 5 day of March 2004, via hand delivery, to:

Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

and that true and correct copies of the foregoing have been provided by hand delivery to the Chambers of Judge Blackburne-Rigsby as required by this Court's rules.

Scott M. Badami

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	
Defendant.	

AFFIDAVIT AND CERTIFICATE OF GOOD FAITH OF RODNEY F. PAGE IN SUPPORT OF THE POST-TRIAL MOTIONS FILED BY PLAINTIFF NCRIC, INC.

Rodney F. Page, being first duly sworn, deposes and says as follows:

1. I am a partner in the law firm Bryan Cave LLP. I served as lead trial counsel for plaintiff NCRIC Inc. ("NCRIC") in this matter. The facts set forth in this affidavit are based on my personal knowledge except where otherwise noted herein.

2. The facts set forth in this Affidavit did not become known to me prior to the trial in this matter and were revealed only during the course of testimony during the trial.

3. On Tuesday, February 3, 2004, during the cross-examination of the Chairman of the Board of Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia"), Dr. Safa Rifka, I cross-examined the witness concerning any

monetary benefits Dr. Rifka and his practice obtained from Defendant Columbia. I asked him to name the doctors who practiced with him, and he named Dr. Jerome Maurice Butler. Dr. Butler is one of two partners of Dr. Rifka.

4. On information and belief, Columbia Fertility Associates maintained its offices at or next to the Columbia Hospital for Women location which were part of the Columbia "campus." Moreover, according to a website maintained by the U.S. Centers for Disease Control and Prevention, the laboratory used by Columbia Fertility Associates, which is where patients' *in vitro* fertilizations would actually occur, was the "Columbia Hospital for Women ART Laboratory."

5. During the break in testimony following my cross-examination of Dr. Rifka on February 3, 2004, the trial judge, the Honorable Anna Blackburne-Rigsby stated to counsel, outside the presence of the jury, that Dr. Maurice Butler had been her physician "on and off" for a number of years and that she had been treated by the practice group in which Dr. Rifka was a principal partner. The judge also indicated she had last been treated by Dr. Butler approximately one year before the trial. During the colloquy that followed, on that day and on the next morning of trial, the trial judge revealed further that the treatment had extended over a period of time, that it had taken place at the office of the practice at or near Columbia Hospital, and that she had not noted her connection with Dr. Rifka's practice until the name of Dr. Butler was mentioned.

6. During the *voir dire* of the jury panel, one of the questions specifically asked by the Court of prospective jurors was whether they had any relationship with any doctors who were identified as being potential witnesses, including Dr. Rifka,

(Question No. 20) and, separately, whether they had been patients at Columbia Hospital (Question No. 8). Notwithstanding the parties' expressed interest in these questions as an area of potential bias, Judge Blackburne-Rigsby did not reveal during the *voir dire,* nor at any time prior to the trial, that she had been a patient of Columbia Fertility Associates.

7. On February 4, 2004, NCRIC moved for the court to recuse itself based on the information revealed. The grounds stated for this motion were that NCRIC believes that there is an appearance of prejudice or bias resulting from the trial judge's affiliation with, treatment by, and friendship with, doctors who have been a part of the practice at Columbia Hospital and whose practice was so closely affiliated with Columbia. I stated that, had NCRIC known of the Judge's status as a patient of Dr. Butler, the motion would have been made before trial. Further, NCRIC argued that, even if the Judge had not realized the fact of such treatment until the trial began, nonetheless the affiliation gave the appearance of a lack of impartiality that required immediate recusal.

8. In this case, the testimony of Dr. Rifka, the head of the practice at Columbia Fertility Associates, was central to Columbia's case. His credibility was a key issue in the case, particularly in light of his self-serving testimony that Columbia was on the verge in 2000 of reversing its decades-long financial distress and would have done so but for alleged "retaliation" by Plaintiff.

9. Because Columbia Fertility Associates is a small group practice, having only three partners physicians according to Dr. Rifka's testimony, there is the obvious

possibility that any patient of one doctor in the practice would have had contact with and been treated by the other physicians in the practice.

10. The trial court denied NCRIC's motion for a recusal on February 4, 2004, and the trial continued to its conclusion.

Rodney F. Page

Subscribed and sworn to before
me this 4th day of March 2004.

Melanie L. Roy
Notary Public

My Commission expires: 01-01-2008

Certificate of Good Faith: Pursuant to D.C. Superior Court Rule of Civil Procedure 63-I(b), undersigned counsel affirms that NCRIC's motion to recuse and affidavit in support are being filed in good faith.

Rodney F. Page

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	
Defendant.	

NCRIC'S MOTION FOR APPROVAL OF SUPERSEDEAS BOND AND TO STAY EXECUTION PENDING DECISION ON ITS RULES 50 AND 59 MOTIONS AND ANY APPEAL

Pursuant to D.C. Superior Court Rules of Civil Procedure 62(b) and 62(d), plaintiff NCRIC, Inc. ("NCRIC") respectfully moves this Court for an Order staying execution of the judgment in the above-captioned case docketed on February 20, 2004 pending the disposition of NCRIC's Rules 50 and 59 motions and any appeal, and for approval of its supersedeas bond.

A party filing a timely notice of appeal is entitled to a stay of enforcement as a matter of right under Rule 62(d) if a supersedeas bond is filed with the Court. Federal Prescription Serv, Inc. v. American Pharm. Ass'n, 636 F.2d 755, 760-61, 205 U.S. App. D.C. 47, 53 (D.C. Cir. 1980) (appealing party may obtain stay as a matter of right upon filing supersedeas bond with court, however, court may dispense with bond requirement under certain

circumstances).[1] The stay becomes effective once the court has approved the bond. See Pierola v. Moschonas, 687 A.2d 942, 945 n.2 (D.C. 1997); see also Sup. Ct. R. Civ. P. 62(d).

While Courts in the District of Columbia have discretion to stay the execution of judgments "'whenever it is deemed necessary to accomplish the ends of justice,'" Finance Am. Corp. v. Moyler, 494 A.2d 926, 931 (D.C. 1985) (quoting Conrad v. Medina, 47 A.2d 562, 565 (D.C. 1946)), there is specific statutory authority for the stay of a money judgment pending disposition of: (1) a renewed Motion for Judgment as a Matter of Law; (2) a Motion for a New Trial; and/or (3) a Motion to Alter/Amend a Judgment. Sup. Ct. R. Civ. P. 62(b). Where, as here, a supersedeas bond is filed to secure a money judgment pending resolution of a timely motion, granting a stay of execution certainly accomplishes the ends of justice. See Consumers United Ins. Co. v. Smith, 644 A.2d 1328, 1336 (D.C. 1994) (Superior Court properly "granted [Consumers'] emergency motion, staying execution of the judgment pending its disposition of the motions for j.n.o.v. and a new trial, on the condition that [Consumers] post a supersedeas bond."). Timely filed along with this motion for a stay is NCRIC's Motion for Judgment a New Trial and Renewed Motion for Judgment as a Matter of Law. Rule 62(b) clearly authorizes the relief NCRIC seeks in light of the supersedeas bond it is posting and its pending Rules 50 and 59 motions.

Attached as Exhibit A to this motion is a supersedeas bond in the amount of $19,500,000, an amount sufficient to cover the judgment, interest, costs, and delay while the post-trial motions are being considered by this Court. This bond will compensate the judgment creditor for the delay in execution in the event the judgment is not altered or amended. The form of this bond is that which has been approved by this Court in similar cases.

---

[1] D.C. Superior Court Rule of Civil Procedure 62 is identical to Fed.R.Civ.P. 62. in all material respects. See Hoban v. Washington Metro. Area Transit Auth., 841 F.2d 1157, 268 U.S. App. D.C. 332(D.C. Cir. 1988).

Respectfully submitted,

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Counsel for Plaintiff NCRIC, Inc.

Dated: March 5, 2004

16d-003209

EXHIBIT A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	Bond No. 016030972
Defendant.	

SUPERSEDAS BOND

Plaintiff NCRIC, Inc. ("NCRIC") has filed a Motion for Judgment as a Matter of Law and a Motion for a New Trial to reverse or modify the judgment of the Superior Court of the District of Columbia in the above-captioned action docketed on February 20, 2004. In the event any portion of the judgment survives these motions, NCRIC intends to file a Notice of Appeal with the District of Columbia Court of Appeals.

To supersede the judgment during the pendency of the aforesaid motions and any such appeal, NCRIC as principal and Liberty Mutual Insurance Company, a corporation incorporated under the law of the state of Massachusetts and duly authorized to do business in the District of Columbia, as surety, are bound and held unto the Superior Court of the District of Columbia and/or the District of Columbia Court of Appeals in an amount not to exceed $19,500,000 (nineteen million five hundred thousand dollars) for the satisfaction of the judgment in full with costs, interest, and damages for delay as set forth below.

Wherefore, the undersigned NCRIC as principal and Liberty Mutual Insurance Company as surety, appearing and submitting to the jurisdiction of the Court, hereby undertake

for themselves and each of them, and each of their heirs, executors, administrators, successors and assigns to comply with the condition set forth above and do further agree that, if the judgment against NCRIC is affirmed following any final decision by the trial court and appeal, or if NCRIC fails to prosecute such appeal, or it is dismissed, if NCRIC then fails to satisfy the judgment in full with costs, interest, and damages for delay in an amount no greater than $19,500,000 (nineteen million five hundred thousand dollars), the damages and costs, not exceeding the cash sum identified herein, may be ascertained in such manner as this Court shall direct; that this Court may give a judgment in favor of any person aggrieved against them for the damages and costs suffered or sustained by such aggrieved party, and that said judgment may be rendered in the above-captioned case against all or any of them whose names are signed below.

If the judgment is set aside on resolution of the post trial motions or following any appeal or if NCRIC pays all sums awarded by the judgment in this action, this obligation shall become void.

Signed, sealed, and delivered this 4th day of March, 2004, in the presence of:

NCRIC Inc.

Witness: Melanie L. Dix By: William E Burgess

Liberty Mutual Insurance Company

Witness: Martha Whitlock By: Julia B. Taylor

Julia B. Taylor, Attorney-in-Fact

NOTICE FROM SURETY REQUIRED BY TERRORISM RISK INSURANCE ACT OF 2002

In accordance with the Terrorism Risk Insurance Act of 2002 (referred to hereinafter as the "Act"), this disclosure notice is provided for surety bonds on which one or more of the following companies is the issuing surety: Liberty Mutual Insurance Company; Liberty Mutual Fire Insurance Company; LM Insurance Corporation; The First Liberty Insurance Corporation; Liberty Insurance Corporation; Employers Insurance Company of Wausau (formerly "EMPLOYERS INSURANCE OF WAUSAU A Mutual Company"); Peerless Insurance Company; and any other company that is a part of or added to the Liberty Mutual Group for which surety business is underwritten by Liberty Bond Services (referred to collectively hereinafter as the "Issuing Sureties").

NOTICE FORMS PART OF BOND

This notice forms part of surety bonds issued by any one or more of the Issuing Sureties.

DISCLOSURE OF PREMIUM

The premium attributable to any bond coverage for "acts of terrorism" as defined in Section *102(1)* of the Act is Zero Dollars ($0.00).

DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES

The United States will reimburse the Issuing Sureties for ninety percent (90%) of any covered losses from terrorist acts certified under the Act exceeding the applicable surety deductible.

1275975

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint

DAVID C. MOYLAN, JULIA B. TAYLOR, SUSAN B. WILLETT, MATTHEW P. PILCONIS, TERESA E. WILLIAMS, ALL OF THE CITY OF WASHINGTON, DISTRICT OF COLUMBIA .....

.....

, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding **FIFTY MILLION AND 00/100**********_____ DOLLARS ($ **50,000,000.00*****_____) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 30th day of April, 2003.

LIBERTY MUTUAL INSURANCE COMPANY

By Garnet W. Elliott
Garnet W. Elliott, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 30th day of April, 2003, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.

TERESA PASTELLA COMMONWEALTH OF PENNSYLVANIA NOTARY PUBLIC

Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires Mar. 28, 2005
Member, Pennsylvania Association of Notaries

By Teresa Pastella
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 4 day of March, 2004.

By David M. Carey
David M. Carey, Assistant Secretary

16d-003214

Currency rate, shipping and handling fee, and taxes may apply to international wire transfers.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	Civil Action No. 00-0007308 Calendar #8
v.	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	
Defendant.	

ORDER APPROVING SUPERSEDEAS BOND AND STAYING EXECUTION

On March 5, 2004, plaintiff NCRIC Inc. ("NCRIC") filed a timely motion to stay execution of the judgment docketed February 20, 2004 in the above-captioned action, along with a proposed supersedeas bond. It appears to the Court that the proposed supersedeas bond is in the correct form, in a sufficient amount to provide adequate security, and is backed by a duly qualified surety. Accordingly, it is therefore **ORDERED** this ____ day of March, 2004 that:

1. The supersedeas bond in the form, amount, and with the surety as shown in Exhibit A to NCRIC's motion is approved by the Court.

2. The execution of the judgment docketed in this action on February 20, 2004, and any proceedings to enforce said judgment, are hereby stayed pending a determination of NCRIC's Motion for a New Trial and Renewed Motion for Judgment as a Matter of Law, and any appeal taken from the judgment.

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

16d-003216

Copies to:

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Neil M. Gorsuch, Esq.
Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

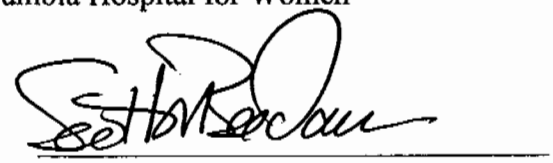
16d-003217

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion and Proposed Order were served this 5 day of March 2004, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women



Scott M. Badami

16d-003218

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	**Judge Blackburne-Rigsby**
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	
Defendant.	

NCRIC'S NOTICE TO AMEND THE CERTIFICATE OF WITNESSES

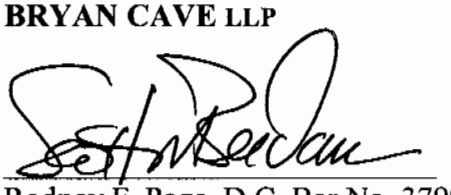
Plaintiff NCRIC, Inc. ("NCRIC"), pursuant to Super. Ct. R. Civ. P. 54-I(a), requests this Court amend the Certificate of Witnesses filed by Defendant Columbia Hospital for Women Medical Center, Inc. ("Columbia).

The Certificate of Witnesses should be amended to reduce the number of days Dr. Safa Rifka is credited for testifying at trial from three to two, because his appearance as a witness at trial on three separate days was necessitated by his own unavailability, not to the length of his testimony nor the trial schedule. NCRIC further requests that the Certificate of Witnesses be amended to strike Drs. Wayne Cooper, Odell McCants and Stephen Procter because their testimony was not relevant, material or reasonably necessary to the disposition of any issue in the case. *See Ingber v. Ross*, 479 A.2d 1256, 1265-66 (D.C. 1984)(citing *Spiritwood Grain Co. v. Northern Pac. Ry.*, 179 F.2d 338, 344 (8th Cir. 1950); 6 James Wm. Moore *et al.*, *Moore's Federal Practice* § 54.77[5-1] (2d ed. 1983)). The testimony of Drs. Cooper, McCants and Procter did not relate to Columbia's breach of contract, breach of duty of good faith and fair dealing or tortious interference counterclaims, nor to any of the counterclaims dismissed by the

Court prior to submission of the case to the jury. Accordingly, costs for these witnesses should not be allowed.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Counsel for Plaintiff NCRIC, Inc.

Dated: March 5, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice was served this 5 day of March 2004, via hand delivery, to:

Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

Scott M. Badami

NO CHAMBERS COPY REC'D

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
Civil Clerk's Office
MAR 17 2004
Superior Court of the
District of Columbia
Washington, D.C.

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Post-Trial Motions
	)	
Defendant/Counter-Plaintiff.	)	
	)	

CONSENT MOTION FOR EXTENSION OF TIME

The jury rendered its verdict in this case on February 13, 2004. Because judgment was not entered on the docket until one week later, NCRIC had a total of three weeks to prepare its post-trial papers, at which time it filed Rule 50 and 59 motions totaling over 30 pages. Columbia respectfully requests an extension of one week in which to respond to NCRIC's filings, thereby giving it also a total of three weeks. Counsel for NCRIC has authorized Columbia to represent that NCRIC does not object to this relief. A proposed order is attached.

DATED: March 17, 2004

Respectfully submitted,

Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Priya R. Aiyar, admitted *pro hac vice*
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Counsel to Columbia Hospital for Women Medical Center, Inc.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Post-Trial Motions
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

UPON CONSIDERATION of the *Consent Motion for Extension of Time*, the record herein, and for good cause shown, it is hereby ORDERED that the Motion is GRANTED, and it is FURTHER ORDERED that Columbia's opposition to NCRIC's *Motion for a New Trial and Renewed Motion for Judgment as a Matter of Law* shall be due March 26, 2004.

ENTERED this ____ day of _____, 2004.

_____
Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF
COLUMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT
NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that on this 17th day of March, 2004, a copy of the foregoing *Consent Motion for Extension of Time* was served upon the following by first class United States mail:

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

I further certify that, on this 17th day of March, 2004, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Eli C. Schulman

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
CIVIL CLERK'S OFFICE
MAR 19 2004
SUPERIOR COURT
DISTRICT OF COLUMBIA
WASHINGTON, DC

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Post-Trial Motions
	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S RESPONSE TO NCRIC'S NOTICE TO AMEND THE CERTIFICATE OF WITNESSES

1. On February 24, 2004, four days after judgment was entered in this matter, Columbia served its *Certificate of Witnesses* upon NCRIC pursuant to Superior Court Rule 54-I. Under the terms of that rule, any motion by NCRIC to amend or strike the certificate had to be made within five days thereafter. *See* SCR 54-I(a). NCRIC made no timely motion and sought no extension. Eight business days after Columbia filed its certificate, NCRIC filed a "notice," not a motion, on March 5, 2004. NCRIC's failure to comply with the Court's rules is sufficient to dispose of this matter.

2. With respect to Dr. Rifka, NCRIC urges that he be "credited" with testifying at trial for two, rather than three, days because the need for him to appear on a third day was caused by his own schedule. NCRIC's dispute over a single day's $40 witness fee is not only a waste of judicial resources, it is misguided. Though he appeared on three separate days, Dr. Rifka accepted only one day's witness fee of $40, and Columbia's bill of costs will reflect this fact. Pursuant to the express terms of Rule 54-I and CA Form 104, however, Columbia was expressly obligated in its Certificate of Witnesses to list the number of days that Dr. Rifka attended Court

as a witness. Columbia complied with this Rule and its certificate is indisputably accurate; even NCRIC doesn't dispute this. Because Dr. Rifka refused more than a single day's witness fee, moreover, NCRIC's professed concern about paying an extra day's witness fee is no issue: under Columbia's bill of costs NCRIC will actually "save" $40 by not having to pay costs even for his second (let alone third) day of testimony.

3. NCRIC urges the Court to strike Drs. Wayne Cooper, Odell McCants, and Stephen Procter because, allegedly, "their testimony was not relevant, material or reasonably necessary." Notice at 1. As will be explained in greater detail in Columbia's opposition to NCRIC's post-trial motions, their testimony was highly relevant and material on two separate elements NCRIC contests. Each of the three testified about the loyalty of Columbia's doctors to the hospital, evidence probative of the first element of Columbia's tortious interference claim – *i.e.*, the existence of a legally binding business relationship. *E.g.*, 2/2 Tr. 19-21 (Cooper); 1/29 Tr. 285 (Procter); 2/2 Tr. 100-01 (McCants). Similarly, each testified to facts probative of NCRIC's causation of Columbia's injuries. *E.g.*, 2/2 Tr. 15-16 (Cooper). In light of the jury's verdict, NCRIC's effort to strike these individuals from the *Certificate of Witnesses* – with a financial consequence of $120 – is inexplicable. Indeed, NCRIC cites no case declining to award costs – let alone under similar circumstances. The sole D.C. case cited by NCRIC, *Ingber v. Ross*, 479 A.2d 1256, 1265-66 (D.C. 1984), *awarded* the costs sought there, finding that the testimony at issue *was* "clearly relevant and material," and the Eighth Circuit case relied upon by NCRIC, *Spiritwood Grain Co. v. Northern Pacific Ry.*, 179 F.2d 338, 344 (8th Cir. 1950), affirmed an award of costs for all of appellees' witnesses who attended trial *even though none of them ended up testifying* because the trial court granted appellees' motion for a directed verdict.

Conclusion

The Court should deny NCRIC's request to amend the *Certificate of Witnesses*. A proposed order is attached.

DATED: March 19, 2004

Respectfully submitted,

Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Priya R. Aiyar, admitted *pro hac vice*
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

16d-003228

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of *NCRIC's Notice To Amend the Certificate of Witnesses*, and Columbia's response thereto, it is hereby ORDERED that NCRIC's request that the *Certificate of Witnesses* be amended is DENIED.

ENTERED this ____ day of _____, 2004.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Mark C. Hansen, Esq.
Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

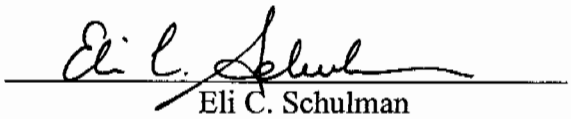
Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that, on this 19th day of March 2004, a copy of the foregoing *Columbia's Response to NCRIC's Notice To Amend the Certificate of Witnesses* was served upon the following by hand delivery:

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 19th day of March 2004, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.



Eli C. Schulman

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

March 19, 2004

By Hand

Clerk of the Court
Civil Division Clerk's Office
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room JM170
Washington, D.C. 20001

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***
Civil Action No. 0007308-00

Dear Sir or Madam:

Enclosed for filing is the original and one copy of *Columbia's Response to NCRIC's Notice To Amend the Certificate of Witnesses*. Please date-stamp the copy and return it to the messenger. A courtesy copy will be delivered to Judge Blackburne-Rigsby under separate cover.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me at (202) 326-7936.

Sincerely,

Eli C. Schulman

Enclosures

BRYAN CAVE

Rebecca A. Ford
Direct: (202) 508-6086
raford@bryancave.com

March 25, 2004

BY HAND

Clerk of the Court
DC Superior Court
500 Indiana Avenue, N.W.
Washington, DC 20001

Re: *NCRIC, Inc. v. Columbia Hospital For Women Medical Center, Inc.; Case No. 00-0007308*

Dear Clerk:

Enclosed please find NCRIC's Reply In Support of its Notice to Amend the Certificate of Witnesses, for filing in the above-captioned case.

In addition to the original being submitted for filing, please date stamp the copy and return it to me in the enclosed, self-addressed, stamped envelope. If you have any questions about this matter, I can be reached at (202) 508-6086.

Sincerely yours,

Rebecca A. Ford

Rebecca A. Ford

Encls: (2)

Bryan Cave LLP
700 Thirteenth Street NW
Washington, DC 20005-3960
Tel (202) 508-6000
Fax (202) 508-6200
www.bryancave.com

Chicago
Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
Los Angeles
New York
Phoenix
Riyadh
Shanghai
St. Louis
United Arab Emirates (Dubai)
Washington, DC

And Bryan Cave,
A Multinational Partnership,
London

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	
Defendant.	

NCRIC'S REPLY IN SUPPORT OF ITS
NOTICE TO AMEND THE CERTIFICATE OF WITNESSES

On February 24, 2004, Defendant, Columbia Hospital for Women Medical Center, Inc. ("Columbia") filed a Certificate of Witnesses and served it on Plaintiff, NCRIC, Inc. ("NCRIC") via First Class Mail. Despite Columbia's assertion to the contrary,[1] on March 5, 2004, NCRIC timely filed its Notice to Amend the Certificate of Witnesses. *See* Super. Ct. R. Civ. P. 6(a), (e) and 54-I(a).

In its Response, Columbia concedes, as it must, that Dr. Rifka should not be paid witness fees for three days of trial, when his attendance on three separate days was necessitated by his own unavailability. Response, ¶ 2. As to the testimony of Drs. Cooper, McCants and Procter, Columbia alleges their testimony was "highly relevant and material" to its tortious interference claim, and therefore, they should not be stricken from the Certificate of Witnesses. Response, ¶ 3. In support of its assertion, Columbia states that, "[e]ach of the three [doctors] testified about the loyalty of Columbia's doctors to the hospital, evidence probative of the first

[1] *See* Columbia's Response to NCRIC's Motion to Amend Certificate of Witnesses ("Response"), ¶ 1.

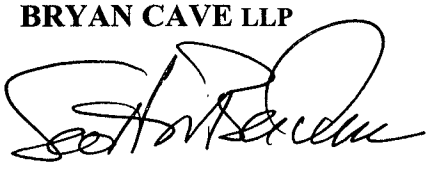
element of Columbia's tortious interference claim – *i.e.*, the existence of a legally binding business relationship." *Id.* The testimony of Drs. Cooper, McCants and Procter, however, is not relevant to whether there was a legally binding business relationship between Columbia and the doctors who stopped or reduced patient admissions there. Drs. Cooper, McCants and Procter did not stop or reduce their admissions to Columbia. 2/2/2004 Tr. at 35 (Cooper); 2/2/2004 Tr. at 104 (McCants); and 1/29/04 Tr. at 299-300 (Procter).

Columbia also asserts that, "each [doctor] testified to facts probative of NCRIC's causation of Columbia's injuries." Response, ¶ 3. In support of this argument, Columbia cites only to Dr. Cooper's testimony, which is not probative of causation. 2/2/2004 Tr. at 19-20. Dr. Cooper testified that he made an independent economic decision about whether to continue to practice at Columbia (2/2/2004 Tr. at 38), and that no one from NCRIC encouraged him to stop or reduce his patient admissions to Columbia. *Id.* at 37-38. Dr. Cooper's testimony is not relevant to causation, nor has Columbia cited to any other testimony by these witnesses that is.

Importantly, Columbia claimed damages for *NCRIC insureds* who stopped or reduced patient admissions at Columbia at or near the time the Retro Plan ended. Dr. McCants, however, was not a NCRIC insured and did not stop or reduce his patient admissions at Columbia (2/2/2004 Tr. at 104). Further, Drs. Cooper and Proctor, while NCRIC insureds, testified that they made independent decisions to drop their NCRIC insurance and continue to practice at Columbia (1/29/04 Tr. at 299-300 (Procter)), and that no one from NCRIC asked, suggested or encouraged them to leave Columbia (2/2/2004 Tr. at 37-38) (Cooper)). For these reasons, it is impossible for their testimony to be material to Columbia's tortious interference claim, or any other claim in the case. Accordingly, NCRIC requests that this Court amend the Certificate filed by Columbia to strike these witnesses.

Respectfully submitted,

BRYAN CAVE LLP



Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Counsel for Plaintiff NCRIC, Inc.

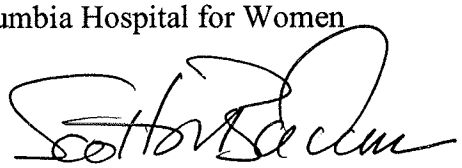
Dated: March 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply in Support of NCRIC's Notice to Amend the Certificate of Witnesses was served this 25 day of March 2004, via First Class Mail, to:

Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women



Scott M. Badami

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308**
	Calendar #8
v.	
	Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	
Defendant.	

ORDER GRANTING NCRIC'S NOTICE
TO AMEND THE CERTIFICATE OF WITNESSES

Pending before the Court is NCRIC's Notice to Amend the Certificate of Witnesses. For the reasons stated in the Notice, and upon consideration of the Response and Reply submitted by the parties, and the issues being fully considered, the Court finds that good cause exists for the relief requested and, therefore it is so:

ORDERED, that the Certificate of Witnesses be amended to reduce the days Dr. Rifka is credited with testifying at trial from three to two; it is further

ORDERED, that the Certificate of Witnesses be amended to strike Drs. Wayne Cooper, Odell McCants and Stephen Proctor, because their testimony was not relevant, material or reasonably necessary to the disposition of any issue in the case.

_____
The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Dated: _____ ___, 2004.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 – Judge Blackburne-Rigsby

COLUMBIA'S OPPOSITION TO NCRIC'S MOTIONS FOR NEW TRIAL, REMITTITUR, AND JUDGMENT AS A MATTER OF LAW

Neil M. Gorsuch
Eli C. Schulman
Priya R. Aiyar
Kellogg, Huber, Hansen
Todd & Evans, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

March 26, 2004

16d-003239

Table of Contents

Page

Introduction 1

Discussion 3

I. NCRIC IS NOT ENTITLED TO A NEW TRIAL 3

A. NCRIC Was Not Entitled to an Erroneous "Egregious Conduct" Instruction 4

1. The Court Properly Instructed the Jury 4

2. No "Miscarriage of Justice" Took Place Here 10

B. Ample Evidence Established Causation in Columbia's Tortious Interference Claim 11

1. The Jury's Finding of Causation Was Supported by Substantial Evidence 12

(a) Columbia's Witnesses 12

(b) Exhibits 15

(c) NCRIC's Witnesses 17

2. NCRIC's Causation Arguments Misstate the Evidence and Law 18

C. Sufficient Evidence Supported the Jury's Contract Damages Award 21

D. Ben Ezra's Testimony Was Properly Received 24

1. NCRIC Merely Rehashes Settled Rulings 24

2. Ben Ezra's Testimony Was Clearly Admissible Under *Dyas* 25

3. NCRIC's *Daubert*-Style Argument Are Irrelevant Under *Dyas* and Wrong on Their Own Terms 27

E. NCRIC's Recusal Motion Is Baseless 31

II. NCRIC IS NOT ENTITLED TO REMITTITUR 34

16d-003240

III. AMPLE EVIDENCE SUPPORTS THE JURY'S VERDICT AND NCRIC'S CONTRARY ARGUMENTS FOR JUDGMENT AS A MATTER OF LAW ARE WITHOUT MERIT 41

A. The Jury's Finding that NCRIC Tortiously Interfered With Columbia's Business Relations Was Supported by the Evidence 42

1. NCRIC Waived Its Challenge to the Sufficiency of the Evidence Regarding Tortious Interference 42

2. The Jury's Finding on Existing Business Relations Was Supported by Sufficient Evidence 43

3. The Jury's Finding of Intentional Interference Was Supported by the Record 45

B. Columbia's Evidence Far Exceeds the Requirements for Proof of Its Tort Damages 48

Conclusion 52

16d-003241

Table of Authorities

State Cases

Affordable Elegance Travel, Inc. v. Worldspan, L.P.,
774 A.2d 320 (D.C. 2001) 34, 37

Alfred A. Altimont, Inc. v. Chatelain, Samperton & Nolan,
374 A.2d 284 (D.C. 1977) 4, 7, 44

Allstate Ins. Co. v. Ramos,
782 A.2d 280 (D.C. 2001) 22

Anderson v. United States,
754 A.2d 920 (D.C. 2000) 31

Bedell v. Inver Housing, Inc.,
506 A.2d 202 (D.C. 1986) 49

Bragg v. Owens-Corning Fiberglas Corp.,
734 A.2d 643 (D.C. 1999) 41

Brown v. Carr,
503 A.2d 1241 (D.C. 1986) 5

Capitol Hill Hospital v. Jones,
532 A.2d 89 (D.C. 1987) 37

Casco v. District of Columbia Dev., L.L.C.,
834 A.2d 77 (D.C. 2003) 4, 5, 44, 47

Castillo v. E.I. Du Pont de Nemours & Co.,
854 So. 2d 1264 (Fla. 2003) 26

Ceco Corp. v. Coleman,
441 A.2d 940 (D.C. 1982) 11

Coleman v. Chudnow,
35 A.2d 925 (D.C. 1944) 8

Corrado v. Thomas,
790 A.2d 1022 (Pa. Super. Ct. 2003) 34

Croley v. Republican Nat'l Comm.,
759 A.2d 682 (D.C. 2000) 29, 49, 51

District of Columbia v. Banks,
646 A.2d 972 (D.C. 1994) 9, 10, 11

District of Columbia v. Barnard,
144 A.2d 418 (D.C. 1958) 10

District of Columbia v. Freeman,
477 A.2d 713 (D.C. 1984) 11

District of Columbia v. Helen B. Hickey & Kenny Constr. Co.,
150 A.2d 463 (D.C. 1959) 42

District of Columbia v. Jackson,
810 A.2d 388 (D.C. 2002) 37

District of Columbia v. Mitchell,
533 A.2d 629 (D.C. 1987) 8

District of Columbia v. Murtaugh,
728 A.2d 1237 (D.C. 1999) 3

Doe v. Binker,
492 A.2d 857 (D.C. 1985) 22, 37

Doe v. Medlantic Health Care Group, Inc.,
814 A.2d 939 (D.C. 2003) 24, 38

Donaldson v. Central Illinois Public Serv. Co.,
730 N.E.2d 68 (Ill. Ct.App. 2000),
aff'd, 767 N.E.2d 314 (Ill. 2002) 27

Durphy v. Kaiser Found. Health Plan of Mid-Atl. States, Inc.,
698 A.2d 459 (D.C. 1997) 41

Dyas v. United States,
376 A.2d 827 (D.C. 1977) 2, 25, 26

Dyer v. William S. Bergman & Assocs., Inc.,
657 A.2d 1132 (D.C. 1995) 5, 18, 19, 46

Etheredge v. District of Columbia,
635 A.2d 908 (D.C. 1993) 41

Finkelstein v. District of Columbia,
593 A.2d 591 (D.C. 1990) 38

Garcia v. Llerena,
599 A.2d 1138 (D.C. 1991) 49

Gleason v. L. Frank Co.,
328 A.2d 96 (D.C. 1974) 42

Gregory v. United States,
393 A.2d 132 (D.C. 1978) 34

Haight v. District of Columbia,
783 A.2d 590 (D.C. 2001) 3

Hawthorne v. Canavan,
756 A.2d 397 (D.C. 2000) 4, 8, 10

House of Wines, Inc. v. Sumter,
510 A.2d 492 (D.C. 1986) 31

Ibn-Tamas v. United States,
407 A.2d 626 (D.C. 1979) 26

Johnson v. Cullman Medical Center,
615 So. 2d 621 (Ala. Ct. Civ. App. 1993) 34

Klindera v. Worley Mills, Inc.,
634 P.2d 1295 (N.M. Ct. App. 1981) 34

Knight v. Georgetown Univ.,
725 A.2d 472 (D.C. 1999) ..... *passim*

Lyons v. Barrazotto,
667 A.2d 314 (D.C. 1995) 41

McAdams v. Moser,
253 S.E.2d 496 (N.C. Ct. App. 1979) 23

McCullough v. United States,
827 A.2d 48 (D.C. 2003) 24, 39

Melton, In re,
597 A.2d 892 (D.C. 1991) 25, 27

Molovinsky v. Fair Employment Council of Greater Washington, Inc.,
683 A.2d 142 (D.C. 1996) 41, 43, 51

Moss v. Stockard,
580 A.2d 1011 (D.C. 1990) 10, 11

Nixon v. United States,
728 A.2d 582 (D.C. 1999) 25

Phillips v. District of Columbia,
458 A.2d 722 (D.C. 1983) 37

Pope v. Romac Int'l,
829 A.2d 945 (D.C. 2003) 44

Pratt v. University of the District of Columbia,
691 A.2d 158 (D.C. 1997) 22, 49

R & A, Inc. v. Kozy Korner, Inc.,
672 A.2d 1062 (D.C. 1996) 29, 49

Railan v. Katyal,
766 A.2d 998 (D.C. 2001) 3

Reed v. United States,
828 A.2d 159 (D.C. 2003) 27

Richbow v. District of Columbia,
600 A.2d 1063 (D.C. 1991) 3

Roberti v. Andy's Termite & Pest Control, Inc.,
6 Cal. Rptr. 3d 827 (Cal. Ct. App. 2003) 26

Scales v. United States,
687 A.2d 927 (D.C. 1996) 24

Scott v. United States,
559 A.2d 745 (D.C. 1989) 34

Shlopak v. Davison,
34 A.2d 126 (D.C. 1943) 23

Simons v. Federal Bar Bldg. Corp.,
275 A.2d 545 (D.C. 1971) 4, 8, 10

Sorrells v. Garfinckel's,
565 A.2d 290 (D.C. 1989) 5, 44, 47

Spar v. Obwoya,
369 A.2d 173 (D.C. 1977) 35

Thoma v. Kettler Bros. Inc.,
632 A.2d 725 (D.C. 1993) 9

United Educ. Distribs., LLC v. Educational Testing Serv.,
564 S.E.2d 324 (S.C. Ct. App. 2002) 48

Watts v. Smith,
226 A.2d 160 (D.C. 1967) 8

Williams v. Board of Trustee of Mount Jezreel Baptist Church,
589 A.2d 901 (D.C. 1991) 24

Woodruff v. Wright,
51 S.W.3d 727 (Tex. Ct. App. 2001) 34

York v. United States,
785 A.2d 651 (D.C. 2001) 34

Federal Cases

Bell v. Dow Chem. Co.,
847 F.2d 1179 (5th Cir. 1988) 27

Bennett Enters., Inc. v. Domino's Pizza, Inc.,
45 F.3d 493 (D.C. Cir. 1995) 6

Carter v. Duncan-Huggins Ltd.,
727 F.2d 1225 (D.C. Cir. 1984) 23, 40

Catts v. Phalen,
43 U.S. (2 How.) 376 (1844) 9

Conwood v. UST, Inc.,
290 F.3d 768 (6th Cir. 2002) 30

Cooper v. Sillers,
30 App. D.C. 567 (D.C. Cir. 1908) 51

Coventry Health Care of Kansas, Inc. v. Via Christi Health System Inc.,
176 F. Supp. 2d 1207 (D. Kan. 2001) 28

Daubert v. Merrell-Dow Pharm., Inc.,
509 U.S. 579 (1993) 27

Desert Palace, Inc. v. Costa,
123 S. Ct. 2148 (2003) 20

Esch v. Yazoo Manufacturing Co.,
510 F. Supp. 53 (E.D. Wis. 1981) 30

Frye v. United States,
293 F. 1013 (D.C. Cir. 1923) 26

FutureSource LLC v. Reuters Ltd.,
312 F.3d 281 (7th Cir. 2002) 48

Genetic Sys. Corp. v. Abbott Labs.,
691 F. Supp. 407 (D.D.C. 1988) 5, 6

George v. United States,
125 F.2d 559 (D.C. Cir. 1942) 9

Henry v. Champlain Enterprises, Inc.,
288 F. Supp. 2d 202 (N.D.N.Y. 2003) 26

Howard v. Capital Transit Co.,
163 F.2d 910 (D.C. Cir. 1947) 9

KW Plastics v. United States Can Co.,
131 F. Supp. 2d 1289 (M.D. Ala. 2001) 27

Knowledge Based Techs., Inv. v. IBM Corp.,
1998 U.S. Dist. LEXIS 4602 (S.D.N.Y. Apr. 8, 1998) 26

Luck v. Baltimore & Ohio R.R.,
510 F.2d 663 (D.C. Cir. 1974) 22, 23

Mahon v. Reading Co.,
367 F.2d 25 (3d Cir. 1966) 9

McCann v. Wal-Mart Stores, Inc.,
210 F.3d 51 (1st Cir. 2000) 9

Mowery v. Standard Oil Co.,
463 F. Supp. 762 (N.D. Ohio 1976) 27

Nissho-Iwai Co., Ltd. v. Occidental Crude Sales,
848 F.2d 613 (5th Cir. 1988) 23, 38

Norwest Bank Minnesota Nat'l Assoc. v. FDIC,
312 F.3d 447 (D.C. Cir. 2002) 51

Okusami v. Psychiatric Ins. of Wash.,
959 F.2d 1062 (D.C. Cir. 1992) 44

Peerless Corp. v. United States,
185 F.3d 922 (8th Cir. 1999) 21

Randy's Studebaker Sales, Inc. v. Nissan Motor Corp.,
533 F.2d 510 (10th Cir. 1976) 30

Ray v. Wal-Mart Stores, Inc.,
120 F.3d 882 (8th Cir. 1997) 31

Rogers v. Ingersoll-Rand Co.,
144 F.3d 841 (D.C. Cir. 1998) 9

Sheppard v. Dickstein, Shapiro, Morin & Oshinsky,
59 F. Supp. 2d 27 (D.D.C. 1999) 45

Stewart v. Capital Transit Co.,
108 F.2d 1 (D.C. Cir. 1939) 9

Tyger Constr. Co. v. Pensacola Constr. Co.,
29 F.3d 137 (4th Cir. 1994) 27

United States v. Adams,
73 F. Supp. 2d 1 (D.D.C. 1999) 34

United States v. Neill,
964 F. Supp. 438 (D.D.C. 1997) 40

United States v. Park,
421 U.S. 658 (1975) 10

United States v. Sullivan,
1 F.3d 1191 (11th Cir. 1993) 23

Wagner v. Professional Eng'rs in Calif. Government,
354 F.3d 1036 (9th Cir. 2004) 52

Wilcox v. Plummer,
29 U.S. (4 Pet.) 172 (1829) 52

Young-Henderson v. Spartanburg Area Mental Health Ctr.,
945 F.2d 770 (4th Cir. 1991) 52

Other Materials

9 James W. Moore, Moore's Federal Practice Sec. 50.43[3][b] 42

9A Charles A. Wright, *et al.*, *Federal Practice & Procedure*
§ 2507 (2d ed. 1995) 9

11 Charles A. Wright *et al.*, *Federal Practice & Procedure*
§ 2805 (2d ed. 1995) 21, 24, 38

Webster's II College Dictionary (1995) 5

ABA Code of Judicial Conduct Canon 3 33

Rules

D.C. Super. Ct. Rule 63-I 31

Super. Ct. Rule 51 4

Super. Ct. Rule 49 9

Super. Ct. Rule 50(b) 41, 43

Super. Ct. Rule 16(b)(5) 52

Fed. R. Civ. P. 12(b)(6) 5

Introduction

After more than three years of pretrial proceedings and a two-week trial, the jury returned a verdict rejecting NCRIC, Inc.'s claim against Columbia Hospital for Women Medical Center, Inc. ("Columbia"), and awarding $18.2 million on the hospital's counterclaims. NCRIC seeks to overturn the jury's verdict with a grab-bag of arguments, some of which the Court has heard and rejected many times before, others of which NCRIC failed to preserve, and all of which lack merit.

Motion for New Trial. NCRIC has only a single quarrel with the Court's charge to the jury, claiming that the Court should have instructed that "egregious conduct" is the touchstone for liability in a claim for tortious interference. But NCRIC fails to cite a single authority requiring proof of "egregious conduct" to prevail on a claim for tortious interference. The Court properly rejected NCRIC's instruction and correctly stated the elements for a claim of tortious interference in the District. Moreover, given the evidence of NCRIC's conduct – including its retributive cancellation of an insurance policy covering a community health clinic and its unprecedented issuance of exclusionary endorsements to any doctor who sought to treat clinic patients – the jury's verdict is amply supported by the record.

NCRIC argues that the jury lacked sufficient evidence to find for Columbia on the causation element of its tortious interference claims, or to support its damages award for breach of contract. But NCRIC asks the Court to disregard the fact-finding province of the jury, rely exclusively on carefully selected snippets of NCRIC's favorite evidence, and turn a blind eye to the mass of contrary proof from which a reasonable jury could (and did) find for Columbia.

NCRIC again contests the admissibility of Peter Ben Ezra's testimony, rehashing arguments the Court has rejected before many times. Tellingly, NCRIC fails to cite, let alone seek to apply, the controlling legal standard for the admission of expert opinion in the District, *Dyas v. United States*, 376 A.2d 827 (D.C. 1977). In a final note of apparent desperation, NCRIC renews its recusal demand. NCRIC, however, ignores the obligation of courts not to recuse, overlooks the complete absence of case law to support its motion, and submits a statement of the facts that is incomplete and inaccurate in important respects. (Point I).

Motion for Reduced Damages. The jury's mid-range award fell easily within what the evidence supported and, thus, there is no ground for remittitur. Indeed, the jury would have been entitled, on the proof elicited at trial, to award millions *more* in compensatory and punitive damages. The fact that the jury did not speaks volumes about the carefulness of its deliberations and the reasonableness of its decision. NCRIC is not free to second-guess an award supported by sufficient evidence. (Point II).

Motion for Judgment as a Matter of Law. In a few perfunctory pages, NCRIC suggests that insufficient proof supported the jury's finding that (a) Columbia had an ongoing business relationship with its doctors, and (b) NCRIC intentionally sought to interfere with Columbia's business expectancy. But there is *ample* evidence to support both findings; indeed, NCRIC conceded as much at trial with respect to the first element it now purports to contest. Finally, NCRIC's claim that Columbia failed to present sufficient evidence of its tort damages is contradicted by Columbia's presentation of multiple, independent, and corroborating sources of proof of its damages, including, in part, testimony from NCRIC's own expert. NCRIC especially attacks Columbia's post-

16d-003251

closure damages and speculates that they must be associated with the lost congressional appropriation. But such speculation is not a ground for overturning the jury's verdict. Columbia's post-closure damages are independently and sufficiently supported by evidence of lost physician-driven revenues. In any event, NCRIC did not seek a special interrogatory asking the jury to identify the source for its post-closure damages award and thus waived this argument. Finally, record evidence supports the conclusion that the congressional appropriation Columbia lost was earmarked for programs the hospital already operated, with or without federal financing, so that these monies would have gone straight to aiding Columbia's bottom line. (Point III).

Discussion

I. NCRIC IS NOT ENTITLED TO A NEW TRIAL

A new trial is appropriate only if the jury's verdict is "against . . . the clear or great weight of the evidence," *Richbow v. District of Columbia*, 600 A.2d 1063, 1066 (D.C. 1991) (internal quotation marks omitted), or if allowing the verdict to stand would result in "a miscarriage of justice," *District of Columbia v. Murtaugh*, 728 A.2d 1237, 1241 (D.C. 1999). Neither such precondition exists here. When reviewing the evidence on a new trial motion, moreover, courts will not "set aside a jury verdict only because [they] would have reached a different result." *Railan v. Katyal*, 766 A.2d 998, 1013 (D.C. 2001); *Haight v. District of Columbia*, 783 A.2d 590, 597 (D.C. 2001) (reversing grant of new trial as an abuse of discretion and explaining that "the court does not simply replicate the jury's task").

A. NCRIC Was Not Entitled to an Erroneous "Egregious Conduct" Instruction

The "composition of instructions is largely a matter within the discretion of the trial court," and the Court of Appeals "refrain[s] from handing down any hard or fast rules." *Simons v. Federal Bar Bldg. Corp.*, 275 A.2d 545, 549 (D.C. 1971). Trial courts thus have "broad discretion in fashioning appropriate jury instructions, and [the] refusal to grant a request for a particular instruction is not a ground for reversal if the court's charge, considered as a whole, fairly and accurately states the applicable law." *Hawthorne v. Canavan*, 756 A.2d 397, 402 n.7 (D.C. 2000). Further, it is well-settled that any objection to a jury instruction must state "distinctly the matter objected to and the grounds of the objection." Super. Ct. R. 51. And this requirement is strictly construed: "objections to jury instructions must be specific enough to direct the judge's attention to the correct rule of law." *Knight v. Georgetown Univ.*, 725 A.2d 472, 482 (D.C. 1999). NCRIC does not come close to making a case for reversal under these binding standards.

1. The Court Properly Instructed the Jury

The Court of Appeals has explained repeatedly, and in a case decided just last year, that a prima facie claim of tortious interference requires a showing of four elements: (1) the existence of a valid business relationship; (2) knowledge of that relationship; (3) intentional interference with that relationship; and (4) resulting damage. *Alfred A. Altimont, Inc. v. Chatelain, Samperton & Nolan*, 374 A.2d 284, 289 (D.C. 1977); *Casco v. District of Columbia Dev., L.L.C.*, 834 A.2d 77, 83-84 (D.C. 2003).

In this case, the Court followed such controlling precedent to the letter, providing instructions that tracked the elements described by the Court of Appeals precisely and

word for word. Jury Instr. at 12; 2/10 Tr. 171-72. Under the Court's instruction and the Court of Appeals' precedent, Columbia was obliged to show that it had a valid business relationship with its doctors; that NCRIC knew of this relationship; that NCRIC *interfered* with that relationship; that NCRIC did so *intentionally*;[1] and that NCRIC's intentional inference was the proximate cause of Columbia's damages. The Court stated the law of the District clearly and correctly and, accordingly, NCRIC has no basis to complain.[2]

NCRIC does not cite – and we are unaware of – any controlling authority requiring a jury to find "egregious conduct" before finding a defendant liable for tortious interference. Certainly the cases cited by NCRIC do not support that contention. *Genetic Systems Corp. v. Abbott Laboratories*, 691 F. Supp. 407, 422-23 (D.D.C. 1988), from the federal system, simply granted a Rule 12(b)(6) dismissal where the only interference plaintiff alleged was the fact that defendant managed to win an exclusive contract for supplying blood screening equipment to the Red Cross, a contract plaintiff had hoped to

---

[1] The plain meaning – and, indeed, dictionary definition – of "intention" is to have a "plan of action." *See* Webster's II College Dictionary 576 (1995) (first definition). That is exactly what Columbia alleged and proved at trial. *See infra* Part I.B (discussing NCRIC's self-described "Plan of Action for Columbia").

[2] In fact, the Court of Appeals has held far less "egregious" conduct than that proven here sufficient to constitute tortious interference. For example, in *Casco*, the Court of Appeals reversed a trial court judgment as a matter of law in favor of a defendant landlord agency of the D.C. government, even though there was no showing of "egregious conduct," but only that defendant had issued a notice of default to a tenant in an effort to strike a better economic deal for itself under the parties' lease. 834 A.2d at 84. In doing so, the Court of Appeals expressly rejected cases from other jurisdictions holding that a defendant's pursuit of its own economic interests cannot be tortious interference. *Id.* In *Dyer v. William S. Bergman & Associates, Inc.*, 657 A.2d 1132 (D.C. 1995), the Court of Appeals affirmed a tortious interference judgment based on a simple breach of contract where the defendant-former employee solicited business in violation of a non-compete agreement with his former employer. *Id.* at 1138. In *Sorrells v. Garfinckel's*, 565 A.2d 285 (D.C. 1989), the Court affirmed a judgment of tortious interference where defendant had merely failed to supply an employee with a stool or a phone to make sales calls, and had engaged in other similar conduct. *See id.* at 290-92. Plainly, this Court stated the law of the District correctly. *See also Casco*, 834 A.2d at 84 ("The elements of tortious interference with prospective business advantage mirror those of interference with contract."); *Brown v. Carr*, 503 A.2d 1241, 1247 (D.C. 1986) (intentional interference with business relations "runs parallel to that of interference with existing contracts").

win. *See id.* The district court held that these allegations standing alone do not suggest that defendant bore the intent to interfere with plaintiff's (purely prospective) business relations. The court nowhere laid down the hard and fast rule peddled by NCRIC that "egregious conduct" must be proved to establish a claim (let alone do so in a case where business relations are existing at the time of the tort, as here). To the contrary, the express holding of *Genetic Systems* was that "knowledge [that one's conduct will interfere] or such effects alone, without allegations of *intent to interfere* by Abbott, cannot support plaintiff's claim," and, in identical terms to the charge given by this Court, the court in *Genetic Systems* stated the elements of tortious interference with prospective economic advantage. *Id.*[3]

The only other case cited in NCRIC's proffered "egregious conduct" instruction nowhere mentions, let alone enforces, such a standard. *Bennett Enters., Inc. v. Domino's Pizza, Inc.*, 45 F.3d 493 (D.C. Cir. 1995). That case held only that an "ill motive *or* intent to disrupt [an] economic advantage" is sufficient to establish tortious interference with prospective business relations. *Id.* at 499 (emphasis added). In this case, the Court expressly instructed that just such a finding of intent to disrupt existing business relations was necessary for the jury to establish liability. Jury Instr. at 12; 2/10 Tr. 171-72.

Not only was NCRIC's "egregious conduct" instruction without support in any case law, it would have improperly shifted the burden of proof. Under D.C. law, once the four prima facie elements of *Altimont* are established, including an intent to interfere, the

[3] To the extent *Genetic Systems* spoke of "egregious conduct," it did so in the context of rejecting an argument that mere knowledge by the defendants was sufficient. *See* 691 F. Supp. at 423. In any event, *Genetic Systems* explicitly noted uncertainty over which law applied in that case – the options were D.C., Illinois, and Washington state law – and the court viewed the elements as uncontroversial in those three jurisdictions. Tellingly, the court did not cite any District of Columbia Court of Appeals cases, but rather cited an Illinois case and a Ninth Circuit case in the passage where it used the word "egregious." *See id.*

burden shifts to the *opposing party* to demonstrate that its conduct was "legally justified or privileged." 374 A.2d at 289. NCRIC's proffered instruction, however, would have functionally undone this rule, requiring Columbia to show that NCRIC's actions were *not* legally justified or privileged – rather than requiring NCRIC to justify its intentional interference or prove that it was somehow privileged.

NCRIC cites extraneous snippets from the Court's summary judgment opinion in purported support of its cause (Mot. 5-6), but that opinion merely acknowledged the variety of evidence that could prove tortious intent. SJ Order 10. Indeed, the Court denied NCRIC's motion because NCRIC's ongoing series of "scare tactics" had the effect of causing doctors to leave (exactly what was proved at trial). *Id.* Likewise, NCRIC seeks to make much of Columbia's proposed instructions, but it does not quote from Columbia's primary tortious interference instruction, citing instead only an *alternative* Columbia offered for use *only* in the event that the Court agreed with NCRIC's (mistaken) premise that "egregious conduct" is required. Nothing in those sources remotely establishes that NCRIC was entitled to an "egregious conduct" instruction.

To the extent that NCRIC's brief may now be understood to complain that the Court's instructions should have included something in addition to or other than a discussion of "egregious conduct," *see* Mot. 7, any such argument has been waived. Prior to the Court's charge on tortious interference, NCRIC noted that the Court had "dropped the discussion of egregious conduct." 2/10 Tr. 160. The Court responded that it made a "conscious decision" on that issue, and NCRIC "note[d] our exception to that." *Id.* That colloquy thus referred only to "egregious conduct" and nothing else.

The Court of Appeals has explained that, under Rule 51, "objections to jury instructions must be specific enough to direct the judge's attention to the correct rule of law." *Knight*, 725 A.2d at 482. NCRIC's objection did no such thing, directing the Court's attention not to any correct rule of law, but instead *only* to the absence of its erroneous "egregious conduct" instruction. *See also District of Columbia v. Mitchell*, 533 A.2d 629, 636-37 (D.C. 1987) (rejecting "broader objection raised for the first time on appeal" because objecting party "did not preserve the issue now before the court"); *Watts v. Smith*, 226 A.2d 160, 163 (D.C. 1967) ("failure to renew objections after the charge had been given to the jury" means that party "waived his objections and accepted them as satisfactory").

Moreover, to the extent that NCRIC now might be understood to suggest that this Court was obligated to take snippets from NCRIC's proffered instructions and reshape them into a correct statement of law, that assertion is also incorrect. Courts have broad discretion in accepting or rejecting explanatory elaborations when shaping jury instructions. *See* p. 4, *supra* (outlining broad discretion afforded in jury instructions); *see also Simons*, 275 A.2d at 550 (court had discretion whether to give explanatory charge that fraud may consist of suppression of a material fact); *Hawthorne*, 756 A.2d at 402 (no error where court declined to give an instruction regarding the quantum of proof required to establish proximate causation); *Coleman v. Chudnow*, 35 A.2d 925, 926-27 (D.C. 1944) (court was within its discretion to decline explanatory charge that negligence can be proved without reference to government regulations).

In this vein, it is long-settled that where a party offers an instruction that misstates the law in any respect, it cannot expect the "trial judge to recast or modify [that]

erroneous or misleading instruction" to make it an accurate statement of law. *Id.* at 926. A trial court simply is under no duty "to rewrite an improper instruction to capture a kernel that may have some validity; it is counsel's job to present an unimpeachable instruction." *McCann v. Wal-Mart Stores, Inc.*, 210 F.3d 51, 55 (1st Cir. 2000). *See also Rogers v. Ingersoll-Rand Co.*, 144 F.3d 841, 845 (D.C. Cir. 1998) (trial court is "under no obligation to tinker with [a] flawed proposed instruction until it [i]s legally acceptable"); *Howard v. Capital Transit Co.*, 163 F.2d 910, 912 (D.C. Cir. 1947) (trial court has no duty "to rewrite an incorrect request to charge"); *George v. United States*, 125 F.2d 559, 563 (D.C. Cir. 1942) (same); *Stewart v. Capital Transit Co.*, 108 F.2d 1, 3 (D.C. Cir. 1939) ("[t]he trial court was under no independent duty to supply correct instructions, the plaintiffs' requests being defective").[4]

Without such a rule, moreover, litigants would have every incentive to request, as NCRIC did, a legally overreaching, incorrect instruction; then sit back and watch as their instruction is rejected; offer no legally correct alternative instruction; fail to object after the jury is charged; and then take a "chance on a favorable verdict [while] reserving a right to impeach it if it happens to go the other way." *District of Columbia v. Banks*, 646 A.2d 972, 978 (D.C. 1994).[5]

---

[4] *Accord Catts v. Phalen*, 43 U.S. (2 How.) 376, 382 (1844) ("a party cannot assign for error, the refusal of an instruction to which he has not a right to the full extent as stated and in its precise terms"); *Thoma v. Kettler Bros., Inc.*, 632 A.2d 725, 731 (D.C. 1993) (Sullivan, J., concurring); *Mahon v. Reading Co.*, 367 F.2d 25, 33 (3d Cir. 1966) ("no error" for a court to decline to separate what was "partly right and partly wrong" in proffered instruction because there is "no duty on the court to redraw requested instructions").

[5] NCRIC obliquely complains about the omission of "egregious conduct" from the special interrogatories on the verdict form. Mot. 5. NCRIC failed, however, to raise any objection to the final verdict form and thus cannot be heard to complain now. Super. Ct. R. 49; 9A Charles A. Wright *et al.*, *Federal Practice & Procedure* § 2507, at 182-83 (2d ed. 1995).

2. No "Miscarriage of Justice" Took Place Here

Like any other argument in support of a motion for new trial, a claim of instructional error will be reversed only if allowing the jury's verdict to stand would result in a miscarriage of justice. *See Simons*, 275 A.2d at 550 (affirming trial court's refusal to adopt proposed instruction and noting the "error, if any, was harmless"). And the Court of Appeals has explained that any "claim of instructional error must be 'considered in the context of the entire record at *trial*,' including argument" of counsel, before reversal can be justified. *Moss v. Stockard*, 580 A.2d 1011, 1027 (D.C. 1990) (quoting *United States v. Park*, 421 U.S. 658, 674-75 & n.16 (1975)); *see also Hawthorne*, 756 A.2d at 402 n.7; *Simons*, 275 A.2d at 549-50; *District of Columbia v. Barnard*, 144 A.2d 418, 420 (D.C. 1958).

Even if NCRIC had been entitled to its proffered "egregiousness" instruction, there is no basis for reversal taking this record as a whole. Columbia introduced ample evidence of just such egregious interference with Columbia's existing business relations. *See* Parts I.B & III.A, *infra* (recounting evidence). And the Court of Appeals has refused to overturn verdicts, even in the presence of genuine instructional error, under far more attenuated circumstances. In *Banks*, for example, the losing party failed to object to the trial court's instruction on the quantum of evidence necessary to impose liability, and the Court of Appeals noted that the trial judge's instruction was, unlike in this case, incorrect. 646 A.2d at 977. Nonetheless, the Court affirmed on the ground that "an impartial jury might reasonably find" gross negligence, even though the jury was "unambiguously told that the [defendant] could be liable" without a finding of gross negligence. *Id.* at 976-78. *Banks* thus holds that, where sufficient evidence would have supported a jury verdict

based on a state of mind greater than charged in the instruction, the erroneous instruction will not constitute a "miscarriage of justice." *Id.* No different result should obtain in this case given the evidence adduced at trial. Confirming this, NCRIC was left entirely free to argue, and repeatedly did argue, its interpretation of what constitutes tortious interference to the jury – a factor the Court of Appeals found significant in *Moss*. *See also Ceco Corp. v. Coleman*, 441 A.2d 940, 947 (D.C. 1982).[6]

B. Ample Evidence Established Causation in Columbia's Tortious Interference Claim

Under settled law, a plaintiff need not show that the defendant's tortious actions were the *sole* cause of its injury to recover damages. Rather, as the Court instructed without objection, Columbia was required to prove only that NCRIC's conduct was one *substantial* factor in bringing about the damages sought. *See* Jury Instr. 5-12; 2/10 Tr. 158. *See also* Standardized Civil Jury Instruction for the District of Columbia No. 5-12 (same); *District of Columbia v. Freeman*, 477 A.2d 713, 715-16 (D.C. 1984) (same). Columbia presented overwhelming evidence, from multiple, corroborating sources, establishing that NCRIC's challenged conduct *was* a substantial factor in the doctors' decision to move their practices from Columbia. The jury's unanimous proximate cause

[6] *See, e.g.*, 2/10 Tr. 86 ("[w]hat Columbia has to show in this case is that NCRIC took some extraordinary action to try to intimidate these doctors or coerce them or lie to them about what was going on"); 2/10 Tr. 85 ("The key to the Columbia claim is that NCRIC destroyed this hospital because NCRIC forced this group, by name, of doctors away from the hospital."); 2/10 Tr. 86 ("[T]ortious interference is not merely offering somebody a different deal."); 2/10 Tr. 103 ("NCRIC has no obligation as an independent company to do anything for Columbia."); 2/10 Tr. 140 ("NCRIC had no obligation to deal exclusively with Columbia."); 2/10 Tr. 141 ("NCRIC has no [motive] to have the hospital fail."). Notably, Columbia did not object to or contest any of this, but instead argued that NCRIC *had* threatened and then engaged in a deliberate – and egregious – scheme of intimidation and retribution against the hospital when Columbia refused to accede to NCRIC's demand that the hospital cough up hundreds of thousands of dollars for renewal at a time when it was NCRIC, not Columbia, who owed money. *E.g.*, 2/10 Tr. 109-110, 111-12, 115-20, 122-24, 129-30, 131-32.

finding (confirmed by special interrogatory) was neither against the "great weight" of the evidence nor a "miscarriage of justice" sufficient to warrant a new trial.

1. The Jury's Finding of Causation Was Supported by Substantial Evidence

(a) Columbia's Witnesses. Columbia's witnesses testified that, as early as 1998, when Columbia contemplated introducing a new insurance company to the District, NCRIC prepared a plan of action to respond retributively by taking Columbia's physicians to other hospitals. 1/30 Tr. 387, 390-92 (Rifka). They also explained that NCRIC had a practice, begun during contract renegotiations in 1997 and 1998, of demanding from Columbia money that it did not owe as a condition for any future insurance coverage. 1/30 Tr. 362-64 (Rifka); 2/4 Tr. 476-77 (Wilson). Witnesses testified that NCRIC had the power to make and enforce such demands because of the paucity of competition and its dominant market position in the District. 1/30 Tr. 377-78 (Rifka); 2/2 Tr. 70 (Feldman); *see also* 2/9 Tr. 1008-09 (Pate); 2/10 Tr. 13 (Pate).

After Columbia backed down and acceded to NCRIC's demands in 1997 and 1998, Dr. Rifka and Dr. Wilson testified that the pattern repeated itself in 2000. That year, NCRIC first demanded $944,000, and then $750,000, as a condition for renewal, even though NCRIC, not Columbia, owed money under the parties' agreements. 2/2 Tr. 110-11 (Rifka); 2/4 Tr. 479-81 (Wilson); DX 35. When Columbia hesitated, NCRIC again began to threaten Columbia. NCRIC's CEO, out of the blue, appeared in Dr. Wilson's office and threatened a "train wreck" if Columbia did not bend to NCRIC's demands. 2/4 Tr. 483 (Wilson). And, when Columbia's Board of Directors ultimately refused to yield, NCRIC issued a notice of termination for the Retro Plan. DX 36. Though NCRIC sought to suggest at trial that it "had" to issue such a notice in the

16d-003261

absence of an agreement for future years, the jury was free to discredit this testimony, especially when NCRIC never offered this explanation at the time or at any point prior to trial. 2/4 Tr. 488 (Wilson); 2/10 Tr. 117 (closing). Indeed, witnesses explained that NCRIC had never done anything like this in past years during prior renegotiations – even when the parties operated *without* any written agreement for over a year, between 1996 and 1997. 1/30 Tr. 361-62 (Rifka); 2/4 Tr. 492 (Wilson). On a motion for new trial, NCRIC simply is not free to substitute its credibility determinations for the jury's. *Railan*, 766 A.2d at 1013; *Haight*, 783 A.2d at 597.

Two days after issuing the Retro Plan termination notice – and without any explanation – NCRIC terminated a separate policy covering Columbia's community health clinic serving the poor, even though the clinic was current on its premium, its insurance contract had been renewed just six months earlier without a word of concern from NCRIC, and the policy was not up for renewal or renegotiation until the end of the year. 2/2 Tr. 114-16 (Rifka); 2/4 Tr. 487, 489 (Wilson); DX 62. Columbia's witnesses testified that NCRIC's actions, aimed at increasing pressure on Columbia to accede to NCRIC's renewal demands, struck panic within the hospital, and doctors began making arrangements to move their practices. 2/2 Tr. 15-16 (Cooper); 2/2 Tr. 113 (Rifka); DX 52; *see also* 2/4 Tr. 592-93 (Johnson); 2/4 Tr. 633 (Dukes).

Less than two weeks later, Columbia's problems were exacerbated when NCRIC issued undiscounted bills to the doctors, reflecting premium increases of tens of thousands of dollars. DX 57; 2/2 Tr. 122-24 (Rifka). While NCRIC now claims (again) that insurance rules "required" it to issue such bills, the jury was entitled to discredit this testimony, especially when NCRIC pointed to no such insurance rules at the time it

issued the bills; it identified no such authority at trial; and it never issued bills like this during previous contract renegotiations, or even when the parties operated without any contract for over a year. 2/2 Tr. 125-28 (Rifka); 2/4 Tr. 491-92 (Wilson); 2/5 Tr. 773-74 (Fargis); DX 57; 2/10 Tr. 120-21 (closing). At approximately the same time that NCRIC issued the undiscounted bills, moreover, its Chairman told the assembled leadership of the hospital that, if Columbia did not agree to terms with NCRIC, the hospital would close and doctors should begin looking for work elsewhere. 2/2 Tr. 141-44 (Rifka). Such conduct reinforced the turmoil within the hospital, and doctors left in droves. 2/2 Tr. 144 (Rifka); 2/4 Tr. 504-05 (Wilson).[7]

Nor did NCRIC's plan of retribution stop there. Unsatisfied because Columbia still had not yielded to its demands, NCRIC issued an unprecedented "exclusionary endorsement" removing insurance coverage from doctors practicing at Columbia's clinic. Michael Feldman, an insurance broker with over 30 years of experience in the industry, testified that he had seen many exclusions, covering events such as nuclear war, terrorism, or felonious conduct, but that he had never seen an exclusion pinpointing a particular location, let alone a certified community health clinic. *See* 2/2 Tr. 68-69.

Testimony from Columbia's witnesses demonstrated that the hospital's doctors were extremely loyal to the hospital, and had remained so throughout previous financial

[7] A NCRIC employee, David Osborn, was used by senior NCRIC management as a pawn in these proceedings. Osborn told Dr. Wilson that he would continue negotiations in good faith with Columbia toward reaching a new agreement. 2/2 Tr. 122 (Rifka); 2/4 Tr. 522-23 (Wilson). And, in fact, Osborn and Dr. Wilson continued negotiations through August 15, 2000. 2/4 Tr. 494 (Wilson). Yet, when Dr. Wilson, who had spoken to Osborn by phone on a nearly daily basis throughout the summer, tried to reach Osborn multiple times on August 15 to finalize what was a favorable deal for Columbia, he was unable to reach him. 2/4 Tr. 497 (Wilson). Ultimately, NCRIC's CEO, Ray Pate, returned the call and told Dr. Wilson that NCRIC would not honor the deal Osborn had signed, though Pate acknowledged internally within NCRIC that a deal had been reached, PX 94; Osborn was never heard from again, and was fired by NCRIC in January 2001. 2/4 Tr. 499 (Wilson); 2/4 Tr. 810 (Fargis); 2/9 Tr. 1080 (Pate).

16d-003263

difficulties, including a receivership and bankruptcy. 1/29 Tr. 236 (Chamblee); 2/2 Tr. 19-20 (Cooper); 2/2 Tr. 151 (Rifka); 1/29 Tr. 290 (Proctor); 2/2 Tr. 100-01 (McCants); 2/4 Tr. 568-69 (Blank); 2/4 Tr. 600 (Johnson). Yet, they all testified, a mass "exodus" of doctors occurred in late 2000. *E.g.*, 2/2 Tr. 19-20 (Cooper); 2/2 Tr. 151 (Rifka); 1/29 Tr. 289 (Proctor); 2/4 Tr. 604 (Johnson). And they testified that this exodus had nothing to do with causes other than NCRIC. *E.g.*, 2/2 Tr. 19-20 (Cooper); 2/2 Tr. 151, 164 (Rifka); 1/29 Tr. 280-81 (Proctor); 2/2 Tr. 99-100 (McCants). Instead, they explained that doctors left Columbia specifically because of the scare tactics NCRIC employed, including the unprecedented "termination" of the Retro Plan, the out-of-the-blue and unjustified decision to pull coverage from the clinic, the (again unprecedented) issuance of huge new bills, Dr. Glassman's explicit and uncontroverted warnings to hospital doctors and staff, and the vindictive exclusionary endorsement of individual policies for doctors working in the clinic. 2/2 Tr. 99 (McCants); 2/2 Tr. 117, 128, 164-65 (Rifka); 2/4 Tr. 505 (Wilson); 2/2 Tr. 19-20 (Cooper). Such testimony, standing alone, establishes that NCRIC was a substantial cause of Columbia's damages.

(b) Exhibits. Columbia introduced evidence showing that, as early as 1998, when Columbia contemplated introducing a new insurance company to the District, NCRIC prepared an explicit plan of action to take Columbia's physicians to other hospitals where NCRIC controlled the insurance business. *E.g.*, DX 18 (letter from CEO Pate to Columbia stating "[y]ou should understand that NCRIC intends to continue providing its much needed insurance protection to the physicians in this program with or without the support of CHW"); DX 22 (NCRIC presentation to doctors, stating "if [Columbia] does not want to continue its relationship with NCRIC, your coverage is

16d-003264

portable to other programs"); DX 25 (draft letter from Fargis to Columbia doctors informing them that, "[s]hould you desire a continued premium reduction through a similar program, you may have the opportunity to participate with a NCRIC-sponsored plan at Sibley Memorial Hospital, or, The George Washington University Hospital . . . please contact us regarding your decision to participate with one of the above programs"); DX 15 & PX 172 (spreadsheets listing doctors' names and hospitals at which each had privileges, compiled by NCRIC's Fargis to evaluate where NCRIC might seek to move attending-faculty physicians upon learning that Columbia was considering plan with alternate carrier).

While Columbia eventually backed down in 1998, the evidence showed that, when Columbia did not immediately accede to NCRIC's contract renewal demands in 2000, NCRIC carried out its earlier threats. Indeed, after Columbia refused to give in to NCRIC's baseless financial conditions for renewal in June 2000, NCRIC management and a committee of its Board expressly adopted a "Plan of Action for Columbia" that detailed NCRIC's intention to have Columbia doctors "absorb[ed]" into its existing program at Sibley Hospital and into a "new program" at George Washington that NCRIC started specifically in response to Columbia's recalcitrance. DX 37. NCRIC's documents, too, offer examples of it carrying out this plan, facilitating the departure of doctors to other hospitals, and thus showing causation. *E.g.*, DX 57 (NCRIC bills showing massive increase in premiums for doctors who stayed at Columbia, and discounts for doctors who moved to other hospitals).

Columbia also introduced exhibits from doctors specifically explaining that they or other doctors would be forced to stop practicing at Columbia because NCRIC had

wrongfully terminated coverage. *E.g.*, DX 41 (Women's Physician Group explaining that it would no longer work in the clinic because of insufficient liability coverage); DX 46 (letter from Dr. Koch, a NCRIC Board member, explaining that he "resigned my position due to the lack of specific malpractice coverage for my work in the clinic . . . [m]y malpractice carrier, NCRIC, will no longer cover my work through the clinic as of 11/15/00"); DX 52 (letter from Dr. Cooper, stating that Columbia "will probably lose 1/2 to 2/3 of your physicians and the patients that they bring to the hospital," and that "everyone seems to be making plans to leave Columbia and to go to either Sibley or G.W."). Plainly, the jury was free to credit such evidence.

Columbia's financial records prove causation as well. The evidence showed that Columbia's patient admissions were steady and increasing between 1998 and 2000. DX 47. At the same time, Columbia provided uncontroverted evidence that it turned a profit for the first time in many years in May and June 2000, and was on track for a profitable year. 2/2 Tr. 166-67 (Rifka); 2/4 Tr. 506 (Wilson). After the onset of NCRIC's tortious conduct, however, every one of Columbia's financial indicators – births, admissions, surgeries, and in-patient days – suddenly and precipitously fell. DX 47. Such dramatic declines, occurring at the exact moment of, and in tandem with, NCRIC's challenged conduct, were sufficient by themselves to prove causation.

(c) NCRIC's Witnesses. NCRIC's witnesses also provided overwhelming evidence of causation. For example, Stephen Moore conceded that Columbia's revenue records reflected steady performance through 1998 and 2000. 2/6 Tr. 928-29. Moore acknowledged as well that, between 1999 and 2000, Columbia's market share increased and was far outpacing competitors Sibley and George Washington. 2/6 Tr. 932-33.

16d-003266

Moore was further forced to concede that, at the very moment NCRIC undertook its tortious conduct, all of Columbia's financial indicators dropped in a dramatic "step down" function. 2/6 Tr. 931. Dr. Dukes, NCRIC's corporate representative and Board member, frankly admitted that insurance issues were "one reason" why he left Columbia, a place he said was the best place he had ever worked. 2/4 Tr. 632-33, 656. NCRIC's CEO admitted that 30 to 40 doctors left Columbia and insurance was "one issue related to the decision." 2/3 Tr. 252 (Pate). Dr. Johnson was forced to concede that she stopped work at the clinic only because NCRIC had discontinued coverage. 2/4 Tr. 594, 596. Dr. Dukes acknowledged, too, that he had seen letters from doctors citing insurance as the reason they stopped working in the clinic, and that he had not seen any letters citing other reasons for their departures. 2/4 Tr. 652. NCRIC's witnesses also testified that, prior to the exodus of doctors at the time of NCRIC's tortious conduct, they had never seen 30 or so doctors leave Columbia within a matter of weeks. 2/4 Tr. 573 (Blank); 2/4 Tr. 604 (Johnson); 2/4 Tr. 650 (Dukes).

2. NCRIC's Causation Arguments Misstate the Evidence and Law

NCRIC fails to cite a *single case* in which a new trial was granted on a remotely similar record. Nor does NCRIC disclose that the Court of Appeals has affirmed findings of causation on weaker records. *E.g.*, *Dyer*, 657 A.2d at 1137-38 (holding that, although "there was no direct evidence" of tortious interference, entirely circumstantial evidence sufficed).

Operating in a vacuum of legal authority, NCRIC's entire argument consists of four pages spent recounting its favorite evidence and mischaracterizing Columbia's. NCRIC emphasizes, for example, that two of its doctor witnesses (Dr. Johnson and Dr.

16d-003267

Blank) claimed that they coincidentally happened to leave Columbia in the summer or fall of 2000. (The third doctor whom NCRIC mentions, Dr. Dukes, frankly admitted that insurance was a reason why he left.) A reasonable jury could choose to reject such explanations as unsatisfactory or unresponsive to the evidence described above, particularly because both witnesses still depended on NCRIC for insurance, 2/4 Tr. 578 (Blank); Dr. Blank had over $1 million paid out on his behalf by NCRIC, 2/4 Tr. 578-79; and Dr. Dukes had been paid large sums by NCRIC for serving on its Board, 2/4 Tr. 640-41, 659-60. Further, a reasonable jury could determine that Drs. Blank, Johnson, and Dukes – who, NCRIC submits, "represented" certain practice groups on the list used by Peter Ben Ezra in one of his damages calculations – *did* leave because of NCRIC, given the "coincidental" timing of their departures, Dr. Dukes's admission about the role of insurance in his decision to leave, and Dr. Johnson's admission (and letter reflecting) that she stopped working in the clinic only because NCRIC terminated coverage. Columbia expressly argued just such points to the jury. 2/10 Tr. 108 (closing); *see also* 2/4 Tr. 632 (Dukes); 2/4 Tr. 594 (Johnson); DX 41.

NCRIC also submits that Columbia's witnesses did not provide "direct" evidence concerning why doctors left. But Columbia witnesses repeatedly testified, from their personal observations and knowledge, that doctors left in the fall of 2000 because of NCRIC's challenged conduct – and this certainly qualifies as "direct" evidence. *See* p. 15, *supra*. Nor does the fact that some of a party's evidence is circumstantial rather than direct entitle it to any less weight. To the contrary, "[c]ircumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct

evidence." *Desert Palace, Inc. v. Costa*, 123 S. Ct. 2148, 2154 (2003). *See also Dyer*, 657 A.2d at 1137.

Finally, NCRIC curiously claims that the evidence regarding the departure of clinic doctors is irrelevant. While NCRIC does not dispute that its conduct *caused* doctors to stop practicing in the clinic, it asserts that it should escape liability because Columbia did not seek damages for the loss of clinic physicians. NCRIC's assertion is baseless. Dr. Rifka and Dr. Wilson testified, and Columbia argued in closing, all without objection, that one measure of damages suffered by Columbia from NCRIC's tortious actions was the difference in revenue between the years before and after NCRIC's conduct. *See* 2/2 Tr. 165-66 (Rifka); 2/4 Tr. 505-06 (Wilson); 2/10 Tr. 132-35 (closing). This measure of damages took into account *all* revenue that Columbia lost because of the departure of doctors, including those who worked at the clinic. NCRIC's expert Moore testified to this same revenue loss, agreeing that Columbia's revenue for the year before NCRIC cancelled the Retro Plan and clinic policy was approximately $10 million more than its revenue for the year after such conduct. *See* 2/6 Tr. 929-30. Contrary to NCRIC's unsupported intimations, clinic physicians were critical to Columbia's successful operation, and their loss contributed to the damages suffered by the hospital. 1/29 Tr. 271-72 (Proctor); 1/30 Tr. 349-51 (Rifka); 2/2 Tr. 99-101 (McCants). NCRIC's inability to deny that it induced clinic physicians to leave underscores the strength of Columbia's causation evidence.[8]

[8]NCRIC fleetingly complains that the contemporaneous letters from Columbia doctors about their reasons for leaving, even if they do demonstrate causation, fail to show that NCRIC's conduct was "egregious." Mot. 9. As explained above, "egregious" conduct is not the law; intentional interference is. *See* Part I.A, *supra*. Besides, NCRIC's argument conflates different elements of tortious interference. NCRIC's motion for a new trial attacks only the jury's finding on causation, not its findings on other elements of tortious interference, such as intent. *See* Mot. 8. And, in all events, as discussed below, Columbia introduced ample evidence to support the jury's conclusions with respect to intent. *See* Part III.A, *infra*.

16d-003269

C. Sufficient Evidence Supported the Jury's Contract Damages Award

NCRIC argues that insufficient evidence exists to sustain the jury's breach of contract award. Mot. 12. At no point during trial, however, did NCRIC challenge the sufficiency of the evidence on Columbia's contract claim. Rather, NCRIC explicitly disavowed any such challenge. *See* 2/10 Tr. 39; 2/4 Tr. 535. Accordingly, NCRIC cannot now be heard to argue the sufficiency of Columbia's proof. *See* 11 Wright *et al.*, § 2805, at 57-58 ("A principle that strikes very deep is that a new trial will not be granted on grounds not called to the court's attention during trial unless the error was so fundamental that gross injustice would result."); *Peerless Corp. v. United States*, 185 F.3d 922, 928-29 (8th Cir. 1999).

Even if NCRIC had preserved its current sufficiency challenge to Columbia's contract damages, it lacks merit. Under settled law, so long as the award fits within the range supported by the evidence, it will not be disturbed. *See Knight*, 725 A.2d at 486 ("a jury verdict is excessive when it is so inordinately large as obviously to exceed the maximum limit of a reasonable range within the jury may properly operate, or when it is beyond all reason, or is so great as to shock the conscience"); cases cited pp. 34-35, *infra* (explaining deferential standard of review applied to damages awards in post-trial review). Here, the jury's award of $220,002 was well within the range supported by the evidence, which would have supported damages from a nominal award of $1, as NCRIC argued, up to at least $1,559,797.67.[9] NCRIC disputes none of this and its primary case,

---

[9] 2/10 Tr. 130-31, 163-69. $1 million was given to NCRIC by Columbia in 1997 as a security deposit under the contract. *See* 1/30 Tr. 364-65, 367 (Rifka); 2/2 Tr. 51-52 (Feldman); 2/3 Tr. 387, 390 (Gaffey); DX 22, 79 (NCRIC documents describing the $1 million as a "deposit"). In addition, under any reasonable calculation of contract damages, Columbia was owed hundreds of thousands of dollars. *E.g.*, DX 85 (identifying sums for each year, including over $500,000 due to Columbia for 1994-95 alone), PX 178 (NCRIC's own document conceding Columbia was owed nearly $200,000 for 1994-95).

16d-003270

Doe v. Binker, 492 A.2d 857 (D.C. 1985), confirms that the jury's award must be affirmed. In *Doe*, the Court of Appeals reversed a remittitur, even though the jury's award was nearly twice the amount testified to by plaintiff's expert; in doing so, the court expressly instructed that, to survive post-trial challenge, the evidence supporting damages "must be more than a scintilla, but it need not point entirely in one direction." *Id.* at 860 (internal quotation marks omitted).[10]

NCRIC resorts to suggesting that the jury's award was the result of improper compromise by speculating that various permutations of the evidence would not total the amount of the jury's award. Mot. 12. Notably, NCRIC cites no case granting a new trial based on such surmise. Nor can it: under settled law, the movant must present actual *evidence* of wrongful juror conduct. *E.g.*, *Luck v. Baltimore & Ohio R.R.*, 510 F.2d 663, 668 (D.C. Cir. 1974) ("Appellant also speculates that several factors may have caused the jury to render a compromise verdict. We find no reason to explore these factors, as mere speculation will not suffice to prove that the jury reached its verdict improperly."). NCRIC attempts no such showing.

In any event, the evidence presented the jury with a wide spectrum of possible contract awards; this was hardly a case in which the jury could only find that NCRIC was liable either for the full amount that Columbia requested or for nothing at all. A reasonable jury might have concluded that NCRIC applied the wrong deposit premium, or the correct one. *See* 2/5 Tr. 713, 718 (Fargis) (deposit premium had to be 62%, though

[10]NCRIC's remaining cases are likewise inapposite. *Allstate Insurance Co. v. Ramos*, 782 A.2d 280 (D.C. 2001), reversed a verdict only after ruling that the four letters on which it was based were inadmissible hearsay. In *Pratt v. University of the District of Columbia*, 691 A.2d 158, 159 (D.C. 1997), the court affirmed the reduction of a jury award for back pay only after finding that liability for the period in question was based on "bare surmise" that the plaintiff might have extended his contract with the defendant university.

16d-003271

contract said 67%). The jury reasonably could have determined that NCRIC applied the wrong minimum premium for some years, but not others, *see* 2/5 Tr. 821 (Fargis) (correct minimum premium was 75% for two years, though contract said 60%). It also could have found that NCRIC should have applied either a discount of 33% (DX 76 at 6) or one of 30%, *see* 2/5 Tr. 817-18 (Fargis). The jury was likewise free to conclude that amounts were owed for some years (*e.g.*, where all claims had closed out), but not others (*e.g.*, where claims remained open). In fact, *under its own calculations*, NCRIC owed Columbia nearly $200,000 for the closed year of 1994-95. *See* PX 178 (NCRIC reconciliation).

Had NCRIC wanted a special interrogatory asking the jury about the manner in which it calculated its award, it could have sought one. But where, as here, no such interrogatory was sought and the jury had a variety of options available to it from the evidence, courts will not assign labels of "improper compromise," let alone do so on mere speculation. *See, e.g., Luck*, 510 F.2d at 668; *Shlopak v. Davison*, 34 A.2d 126, 128 (D.C. 1943) ("the evidence here revealed this is not" an "all or nothing" case; holding that "the jury was justified in striking what it found was a fair balance of debits and credits between the parties"); *Carter v. Duncan-Huggins Ltd.*, 727 F.2d 1225, 1239-39 (D.C. Cir. 1984) (in reviewing a jury award, a court "need not – and indeed cannot – reconstruct the precise mathematical formula that the jury adopted; [n]or need we explore every possible quantitative analysis or compute the basis of each penny and dollar in the award").[11]

[11] *Accord United States v. Sullivan*, 1 F.3d 1191, 1196 (11th Cir. 1993) ("testimony throughout the trial indicated that numerous factors could affect" damages, so "[t]he jury was free to listen to the testimony, reject both figures offered by the parties, and arrive at a figure which seemed reasonable to it"); *McAdams v. Moser*, 253 S.E.2d 496, 499-500 (N.C. Ct. App. 1979) (no basis for setting verdict aside as improper

D. Ben Ezra's Testimony Was Properly Received

1. NCRIC Merely Rehashes Settled Rulings

NCRIC argues once again that Peter Ben Ezra should not have been permitted to testify. *Compare* S.J. Mot. 41-44 *and* Mot. in Limine 2-13, *with* Mot. 13-18. The Court has already rejected this argument multiple times, and it need not revisit its prior rulings. While the law of the case doctrine may not forbid a judge from reconsidering her own interlocutory orders, the doctrine "still has force in that situation because . . . the efficient disposition of the case demands that each stage of the litigation build on the last, and not afford an opportunity to reargue every previous ruling," *Williams v. Board of Tr. of Mount Jezreel Baptist Church*, 589 A.2d 901, 907 (D.C. 1991) (internal quotation marks omitted); *see also Scales v. United States*, 687 A.2d 927, 937 (D.C. 1996) ("pretrial ruling[s] [on admissibility are] the law of the case and cannot ordinarily be revisited").

---

compromise simply because it did not comport with either plantiff's or defendant's contention of the amount due; jury had to determine which of various materials and services were outside the parties' agreement).

While NCRIC speculates that counsel's characterization of Feldman's testimony and DX 85 in closing argument may have influenced the jury (Mot. 12-13), again such surmise is not a substitute for evidence of juror misconduct. Further, NCRIC never objected to counsel's argument and, thus, cannot be heard to argue for a new trial on that basis now. 11 Wright & Miller § 2805; *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 953 (D.C. 2003) (refusing new trial despite "reprehensible" closing argument where party failed to object); *Nissho-Iwai Co., Ltd. v. Occidental Crude Sales*, 848 F.2d 613, 619 (5th Cir. 1988) (reversing order for new trial because party waived its right to challenge closing argument). The jury, too, was expressly instructed that arguments of counsel about the evidence are not evidence and it is presumed to have followed those instructions. *See* Jury Instr. §§ 2-1, 2-5; 2/10 Tr. 149; *McCullough v. United States*, 827 A.2d 48, 55 (D.C. 2003) ("It is well settled in this jurisdiction that jurors are presumed to follow instructions."). Last but not least, if anything, counsel *understated* Columbia's contract damages: DX 85 would have authorized damages, before the return of the $1 million deposit, of as much as $765,347.39 for the two closed years, 1993-94 and 1994-95. *See* DX 85, PX 69 (sum of $587,568.66 and $350,593.73, minus the $172,815 that NCRIC paid Columbia in 1998). It is inexplicable how the fact that Columbia chose to argue for a more conservative figure, as it did repeatedly, emphasizing that the hospital wanted no more than it was entitled to, 2/10 Tr. 131-35, can amount to reversible prejudice to NCRIC.

2. *Ben Ezra's Testimony Was Clearly Admissible Under* Dyas

Even if the Court were inclined to reconsider its prior rulings, NCRIC gives it no reason to alter course now. To the contrary, NCRIC fails even to direct the Court to the legal standard governing the admission of expert evidence in the District, the three-part *Dyas* test:

> (1) the subject matter must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average [juror], (2) the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth, and (3) expert testimony is inadmissible if the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert.

Nixon v. United States, 728 A.2d 582 (D.C. 1999) (quoting *Dyas v. United States*, 376 A.2d 832). A trial court's admission of evidence under this test is given "wide latitude," and when expert evidence is received, "reversals for abuse of discretion are rare." *In re Melton,* 597 A.2d 892, 897 (D.C. 1991) (en banc). In fact, NCRIC cites not a single case from the Court of Appeals reversing the admission of expert testimony.

Remarkably, too, NCRIC's motion fails to address, let alone contest, any of the *Dyas* elements. NCRIC does not dispute that the accounting and discounted cash flow issues on which Ben Ezra testified were issues suited for expert testimony; rather, NCRIC brought and qualified its own accounting expert to testify on the very same issues. *See* 2/6 Tr. 947-52 (Henderson). NCRIC nowhere contests that Ben Ezra had sufficient skill in the accounting profession.[12] And, finally, NCRIC does not dispute that the state of the

[12] Ben Ezra has practiced accounting for more than twenty years, taught discounted cash flow and accounting techniques to thousands of university students and practicing C.P.A.s, and contributed to authoritative textbooks in the field, among many other accomplishments. 2/3 Tr. 272-74. While NCRIC briefly complains about Ben Ezra's supposed bias, it does not argue that his connection disqualifies him under the *Dyas* standard, nor could it: admissibility under *Dyas* turns on qualifications, and Ben Ezra's are unchallenged. Besides, Ben Ezra's connections to Columbia were fully disclosed and the jury was free to

16d-003274

art in accounting permits an expert to come to a reasonable opinion in this case. To the contrary, NCRIC concedes just this, admitting that discounted cash flow analysis – the analysis Ben Ezra employed here – is a generally accepted accounting methodology. Mot. 17. *See also Henry v. Champlain Enters., Inc.*, 288 F. Supp. 2d 202, 221 (N.D.N.Y. 2003) (citing authority for the conclusion that "the discounted cash flow method, is [generally] accepted").

To be sure, NCRIC does dispute how best to *apply* a discounted cash flow methodology to the facts of this case. *See* Mot. 15-18. But under *Dyas*, such disputes go to weight, not admissibility. As the Court of Appeals, in a case cited by NCRIC, has explained, the "satisfaction of the third *Dyas* criterion begins – and ends – with a determination of whether there is general acceptance of a particular scientific methodology, not an acceptance, beyond that, of particular study results based on that methodology." *Ibn-Tamas v. United States*, 407 A.2d 626, 638 (D.C. 1979) (emphasis added) (reversing trial court's exclusion of testimony and following *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)). NCRIC's particularized arguments about Ben Ezra's *application* of the generally accepted discount cash flow methodology are squarely foreclosed under this holding.[13]

---

weigh them in assessing his credibility. Indeed, courts have allowed opinion testimony on damages from individuals who, unlike Ben Ezra, stood to gain personally from any favorable verdict. *E.g.*, *Knowledge Based Technologies, Inc. v. IBM Corp.*, No. 96 CIV. 9461 (JSR), 1998 U.S. Dist. LEXIS 4602, at *1 (S.D.N.Y. Apr. 8, 1998) (collecting cases and explaining that "courts routinely permit expert testimony by parties, employees, and others with financial and other plain interests in the outcome of the litigation").

[13] Other jurisdictions following *Frye* have likewise rejected challenges exactly such as NCRIC's. *E.g.*, *Castillo v. E.I. Du Pont de Nemours & Co.*, 854 So. 2d 1264, 1276 (Fla. 2003) (reversing intermediate appellate court, explaining that it "erroneously assessed the Castillos' expert testimony under *Frye* by considering not just the underlying science, but the application of the data generated from that science in reaching the expert's ultimate conclusion"); *Roberti v. Andy's Termite & Pest Control, Inc.*, 6 Cal. Rptr. 3d 827, 834 (Cal. Ct. App. 2003) (reversing trial court and holding that defendant's objections to conclusions, not methodology, "pertain[ed] to the weight of the underlying bases for the expert opinion, not its

3. *NCRIC's* Daubert*-Style Arguments Are Irrelevant Under* Dyas *and Wrong on Their Own Terms*

Having failed to address the controlling legal standard, NCRIC compounds its error by seeking exclusion entirely on federal cases decided under *Daubert v. Merrell-Dow Pharm., Inc.*, 509 U.S. 579 (1993). But the Court of Appeals has expressly rejected overtures to discard *Dyas* and *Frye* as statements of the District's law in favor of *Daubert*. *E.g.*, *Reed v. United States*, 828 A.2d 159, 164 n.3 (D.C. 2003).

Even if *Dyas* could somehow be ignored in favor of *Daubert*, NCRIC's smorgasbord of arguments against Ben Ezra would still fail. NCRIC offers *KW Plastics v. United States Can Co.*, 131 F. Supp. 2d 1289 (M.D. Ala. 2001), as its paradigm *Daubert*-style case. But the expert there admitted that he was "guessing" about several variables. *Id.* at 1292-93. The court also found that assumptions made in the expert's report and in his deposition were so inconsistent as to be "at war" with each other. *Id.* No such glaring and conceded errors can be found here. *Daubert* itself commands, moreover, that "vigorous cross-examination [and the] presentation of contrary proof" – not exclusion – are the appropriate means for attacking allegedly "shaky" expert evidence. 509 U.S. at 596.[14]

---

admissibility"); *Donaldson v. Central Illinois Pub. Serv. Co.*, 730 N.E.2d 68, 78, 80 (Ill. Ct. App. 2000) (admitting expert testimony based on "extrapolation," an accepted methodology, despite noting that they were "not terribly strong opinions," and observing that "[t]he weight of the testimony simply does not affect its admissibility"), *aff'd*, 767 N.E.2d 314 (Ill. 2002).

[14] NCRIC's other federal cases are no more helpful to its cause. *E.g.*, *Tyger Constr. Co. v. Pensacola Constr. Co.*, 29 F.3d 137, 143-44 (4th Cir. 1994) (excluding expert when his assumption that defendant's conduct caused a delay was contradicted by every single witness who testified on the subject); *Bell v. Dow Chem. Co.*, 847 F.2d 1179, 1184 (5th Cir. 1988) (granting summary judgment when expert did not have *any* evidence of the market share possessed in the relevant market and instead erroneously focused on distinct separate market); *Mowery v. Standard Oil Co.*, 463 F. Supp. 762, 773 n.14 (N.D. Ohio 1976) (rejecting testimony when expert assumed facts "not established by the evidence"). NCRIC's sole citation to a D.C. case affirmatively undermines its motion: the court there admitted the expert testimony and emphasized that it did so in part because satisfaction of the third prong of *Dyas* was not "seriously . . . in doubt." *In re Melton*, 597 A.2d at 898.

16d-003276

NCRIC complains that Ben Ezra relied on a list, supplied by counsel, of physicians who stopped referring patients to Columbia, or reduced such referrals, without investigating whether those doctors did so because of NCRIC's conduct. Mot. 16. But the record shows that Ben Ezra *did* test the list of doctors supplied by counsel and culled it down from 37 potential candidates to just 24 doctors who left in the last half of 2000, the period of NCRIC's alleged – and proven – tortious interference. 2/3 Tr. 325-27 (Ben Ezra). Nor does NCRIC dispute that these doctors in fact left Columbia during this period. Instead, NCRIC complains merely that Drs. Blank, Dukes, and Johnson did not *admit* on the stand that they left because of NCRIC's financial pressure tactics. But such an admission is irrelevant. The jury was free to conclude from the evidence presented and its assessment of the credibility of the witnesses that these doctors – and many beyond Ben Ezra's list of 24 – *did* leave because of NCRIC's conduct. *See* pp. 12-18, *supra*.

NCRIC next complains that Ben Ezra's 30% marginal cost figure was unsupported by the evidence. Mot. 16. But Ben Ezra's figure was shown to be conservative and based on a wealth of evidence. Ben Ezra testified that, when preparing financials for use in the daily management and operation of the hospital *prior* to any lawsuit, he spoke with the Comptroller of Columbia, who is the best source for marginal cost information, and was instructed to employ a 30% figure. 2/3 Tr. 303-04. Ben Ezra also examined precedent and found that a federal court had expressly held that a 30% marginal cost rate was appropriate for hospitals. *Id.* at 304-05; *see also Coventry Health Care of Kansas, Inc. v. Via Christi Health Sys. Inc.*, 176 F. Supp. 2d 1207, 1224 (D. Kan. 2001). Ben Ezra also referred to a textbook that used real-life problems, which employed

16d-003277

a 30% marginal cost rate. 2/3 Tr. 302-03. Finally, articles in the Journal of the American Medical Association showed that hospital marginal costs range between 16% and 18% – far lower (and more favorable to Columbia) than the rate Ben Ezra employed. *Id.* at 305. NCRIC, meanwhile, offered *no competing evidence* on the marginal rate issue. 2/9 Tr. 992-93 (Henderson). NCRIC cites no case, even in the federal *Daubert* regime, precluding expert testimony under remotely analogous circumstances.

NCRIC also complains that Ben Ezra's use of data from fiscal years 2000 and 2001 (immediately before and after NCRIC's tortious conduct) might be unrepresentative "*if*" Columbia had a particularly good year before NCRIC's torts, or a particularly bad year afterward, even allowing for NCRIC's misconduct. Mot. 17-18 (emphasis added). But NCRIC only conjectures that data for fiscal years 2000 and 2001 were unrepresentative, without citing any record evidence. *Id.* In any event, Ben Ezra testified that he did test data from those years, and reached the conclusion that they *were* reliable. 2/3 Tr. 293-94. NCRIC's own expert, Stephen Moore, confirmed this conclusion in part, admitting that Columbia's revenues in fiscal year 2000 were "about the same" when compared with the prior year. 2/6 Tr. 929. Ben Ezra further testified that he used all of the reliable cash receipt information that was physically available. 2/3 Tr. 344. NCRIC cites no authority suggesting that *any* court requires an expert to do anything more than this. To the contrary, the D.C. Court of Appeals has *reversed* a trial court's exclusion of evidence in similar circumstances, holding that the calculation of damages by comparing two nine-month periods before and after alleged tortious conduct was an acceptable way to measure damages. *See R & A, Inc. v. Kozy Korner, Inc.*, 672 A.2d 1062, 1068 (D.C. 1996). *See also Croley v. Republican Nat'l Comm.*, 759 A.2d 682, 691-94 (D.C. 2000)

16d-003278

(reversing trial court's order vacating as speculative $600,000 in lost future earnings; estimates of lost future earnings based on studies of persons with comparable educational background and evidence of contracts secured by plaintiff in his business were sufficient to justify award).[15]

Finally, NCRIC suggests that Ben Ezra should have employed a higher attrition rate after NCRIC's tortious conduct because of the financial difficulties faced by Columbia. Mot. 18. But witness after witness explained that doctors had remained loyal to Columbia through prior financial troubles, including bankruptcy and receivership, and left *only* at the time when NCRIC committed its tortious acts. 2/2 Tr. 20-21 (Cooper), 2/2 Tr. 100-01 (McCants), 2/4 Tr. 600 (Johnson), 2/4 Tr. 569 (Blank), 2/2 Tr. 128, 144, 150 (Rifka), 2/4 Tr. 492-94 (Wilson). Ben Ezra was surely entitled to rely on such record evidence in giving his opinion; NCRIC offers no reason or authority to conclude otherwise.

Though NCRIC can identify no error in the admission of Ben Ezra's testimony, his opinion constituted only *one* way for the jury to measure lost physician-generated

[15] Notably, despite prior complaints, NCRIC does not now expressly voice any complaint about Ben Ezra's selection of a 20-year period for damages. Nor would such an argument help it. Ben Ezra used a 20-year period only in *one* of his damages models, not the other which focused, instead, on physician retirement ages, another issue NCRIC once contested, but no longer does. 2/3 Tr. 327. Each model independently produced over $20 million in lost revenues. Besides, Ben Ezra testified that his decision to employ a 20-year period in one of his damages models was guided by two pieces of evidence. First, Columbia's physician managers told Ben Ezra that it would take the hospital at least a generation (*i.e.*, 20 years) to recover, if it could ever recover, from the loss of the doctors caused by NCRIC's tortious conduct. 2/3 Tr. 311 (Ben Ezra). And, in fact, other witnesses confirmed this fact. *See also* 2/2 Tr. 17-18 (Cooper), 101-02 (McCants), 166 (Rifka); Tr. 2/4 506 (Wilson). Second, Ben Ezra explained that, economically, it would take approximately 20 years for Columbia to recoup the full value of the practices lost because of NCRIC's tortious conduct using a conservative (and now unchallenged, though previously contested) discount rate of 10.5%. 2/3 Tr. 310-11. NCRIC disputed neither of these record facts at trial and Ben Ezra was surely entitled to rely upon the facts in the record in offering his opinion. Even federal courts routinely allow experts to testify to substantial discounted future losses. *E.g., Randy's Studebaker Sales, Inc. v. Nissan Motor Corp.*, 533 F.2d 510, 518 (10th Cir. 1976) (10 years of future damages); *Esch v. Yazoo Mfg. Co.*, 510 F. Supp. 53, 56 (E.D. Wis. 1981); *Conwood v. UST, Inc.*, 290 F.3d 768 (6th Cir. 2002) (damages 10 years into future).

revenues, and it was, in fact, more conservative than the alternative Rifka/Wilson/Moore method argued to the jury without objection. *See* pp. 35-36, *infra* (describing alternative). Accordingly, any conceivable error was plainly harmless. *See House of Wines, Inc. v. Sumter*, 510 A.2d 492, 498 (D.C. 1986) (any error in admission of a special master's recommendations was harmless when the jury awarded less than he recommended); *Ray v. Wal-Mart Stores, Inc.*, 120 F.3d 882, 885 (8th Cir. 1997) (asserted error in admission of damages expert was harmless where alternative evidence supported award).

E. NCRIC's Recusal Motion Is Baseless

"[A] judge has as strong an obligation not to recuse when the situation does not require [it]," and recusal was hardly required in this case. *Anderson v. United States*, 754 A.2d 920, 925 (D.C. 2000) (internal quotation marks omitted).

Late on the fifth day of trial, counsel for NCRIC, out of the blue, asked Dr. Rifka about his partnership arrangements. NCRIC had posed no similar questions to any other doctor witness, and its questions were not linked to any issue in the case. In response, Dr. Rifka explained that he did not practice with any partners when Columbia was still open. 2/3 Tr. 441. Dr. Rifka added that he currently practices with two partners, Preston Sachs and Maurice Butler. *Id.* at 442. Counsel for NCRIC displayed a particular interest in Dr. Butler, asking Dr. Rifka for Dr. Butler's full name. *Id.* Counsel asked no other follow-up questions. Promptly thereafter, the Court disclosed that she had been treated by Dr. Butler, but had been unaware of any relationship between Dr. Butler and Dr. Rifka until she heard that day's testimony. *Id.*[16]

[16] Notwithstanding his peculiar line of questioning, counsel for NCRIC represented that he also had just become aware of the relationship between Dr. Rifka and Dr. Butler, and Dr. Butler and the judge. Of

The undisputed facts show that: Dr. Butler was never named as a potential witness in this case by either party; his name had not come up in the context of any pre-trial matters or at any point in the trial prior to the afternoon of February 3, 2004, 2/4 Tr. 459; the Court had been unaware whether Dr. Butler practiced with any other doctors at the time she was his patient, 2/3 Tr. 452; and the judge had never been a patient of Dr. Rifka's and did not even know Dr. Rifka, 2/4 Tr. 459-60. The undisputed facts further reveal that, so far as the Court knew, Dr. Rifka never had any role in her care. *Id.* It is also undisputed that this case is not about patient care, and that the Court had no role in assessing the credibility of witnesses. *Id.* at 460.

NCRIC's motion and affidavit (badly) misstate the facts. NCRIC's affidavit refers to the "obvious possibility that any patient of one doctor in [Dr. Butler's] practice would have had contact with and been treated by the other physicians in the practice." Page Aff. ¶ 9. The record is clear, however, that the Court was never treated by, and had no contact with, Dr. Rifka. 2/4 Tr. 459-60. NCRIC asserts that Dr. Rifka "confirmed that Dr. Butler had practiced with him for many years and shared in the financial benefits Columbia Fertility Associates had received from Columbia." Mot. 19. But, in fact, Dr. Rifka testified without contradiction that he had no partners while he practiced at Columbia. 2/3 Tr. 441. NCRIC represents that "the Judge stated that she had been treated by [Dr. Butler] in the practice group in which Dr. Rifka was the principal partner." Mot. 29; Page Aff. ¶ 5. Yet, in fact, the Court stated that she did not know whether she had ever been a patient of a practice in which Dr. Rifka was a partner or principal. 2/3 Tr. 452. NCRIC alleges that the trial judge had been treated at Columbia

---

course, had counsel been aware of these relationships earlier, he would have been required to make any motion to recuse in a timely fashion, rather than in the middle of trial. *See* D.C. Super. Ct. R. 63-I.

16d-003281

itself. Mot. 19. But that, too, is unsupported by the record: the judge explained that she had been treated in the physicians' office building next door to the hospital, and that office building was not owned by the hospital. 2/4 Tr. 461; *see also* 2/2 Tr. 187 (Rifka).

NCRIC's motion depends not only on a misstatement of the facts, but also on an entirely novel legal proposition: the Court was somehow compromised simply because she was treated by someone who, at some point (perhaps after the cessation of treatment) became a partner with someone else who was a witness at trial. NCRIC has cited, and can cite, absolutely no authority for such a proposition. Indeed, in each of the three cases it offers, trial judges recused because they or members of their families were patients of doctors who were *parties* to the case – a critical distinction that NCRIC overlooks. Moreover, two of NCRIC's cases (*Rose* and *Berdyck*) involved patient care allegations where the judge's care by those doctors conceivably might have led to concerns about an appearance of impropriety. By contrast, this litigation did not. Tellingly, too, all three of NCRIC's cases involved voluntary recusals; NCRIC cites no case reversing a trial judge's decision not to recuse.[17]

NCRIC ignores the fact that, applying the very judicial code of conduct provision that NCRIC cites here (ABA Code of Judicial Conduct Canon 3), courts routinely reject

[17]NCRIC claims that it was concerned during voir dire about whether potential jurors had relationships with doctors who were identified as potential witnesses, and with whether jurors had been treated at Columbia. But this speaks not at all to the legal standard for judicial recusal. Besides, the judge was not treated at Columbia and NCRIC never sought to determine whether prospective jurors had been treated by partners of witnesses. Indeed, NCRIC never identified the partners of doctors whom it expected to call as witnesses; never requested that Columbia identify partners of its witnesses; and never sought to disqualify a juror on the ground that the juror had been a patient of a witness's partner. Finally, contrary to its current assertion, NCRIC did not move to exclude for cause all prospective jurors who were treated at Columbia. Juror #055, for example, had received treatment at Columbia and two of her sister's children had been born there. The juror also stated that Morton Roberts, a doctor on both NCRIC's and Columbia's witness lists, might be an associate of her gynecologist. NCRIC never moved to exclude this juror for cause. 1/28 Tr. 114-15.

16d-003282

recusal motions in the face of credible evidence of potential bias – far from anything presented here. For example, courts have held that:

- An allegation that the trial judge and the defendant had previously been opposing litigants in a suit was, even if taken as true, legally insufficient to warrant recusal (*Gregory v. United States*, 393 A.2d 132, 142-43 (D.C. 1978));

- A trial judge who was married to a Metropolitan Police Department ("MPD") detective, and whose brother had been Chief of the MPD, properly denied a motion to recuse in a case where the complainant and other witnesses were MPD officers (*York v. United States*, 785 A.2d 651 (D.C. 2001)). The D.C. Court of Appeals explicitly endorsed an opinion of the Advisory Committee on Judicial Conduct holding that a judge whose husband was an MPD Deputy Chief need not recuse herself from cases in which MPD officers were witnesses, or cases involving charges of assault on MPD officers, unless the officers were under her husband's command (*id.* at 656 n.9); and

- A trial judge had no obligation to recuse where he had previously represented the government in a civil lawsuit against a class of individuals including the defendant (*United States v. Adams*, 73 F. Supp. 2d 1 (D.D.C. 1999)).[18]

No different result should obtain in this case.

II. NCRIC IS NOT ENTITLED TO REMITTITUR

Remittitur is appropriate only where the verdict is so inordinately large as to exceed the maximum range supported by the evidence, or when it is so great as to shock

[18] *Accord Corrado v. Thomas*, 790 A.2d 1022, 1035 (Pa. Super. Ct. 2003) (trial judge had no obligation to recuse even though she knew one of the defendant physicians and was a friend of one of the named defense witnesses); *Klindera v. Worley Mills, Inc.*, 634 P.2d 1295 (N.M. Ct. App. 1981) (recusal was not required – in fact, the judge had an obligation *not* to recuse – even though he, his wife, and his daughter had been treated by an orthopedic surgeon who testified for the defendants at trial); *Woodruff v. Wright*, 51 S.W.3d 727, 737-38 (Tex. Ct. App. 2001) (judge properly declined to recuse even though he knew one of the defendant physicians, the defendant had performed heart surgery on the judge's mother, and the judge had actually performed the defendant's wedding ceremony); *Johnson v. Cullman Med. Ctr.*, 615 So. 2d 621 (Ala. Ct. Civ. App. 1993) (trial judge correctly declined to recuse even when his son served on the defendant hospital's board of directors).

Even if NCRIC could show that the trial judge had an obligation to recuse (something it manifestly has not done and cannot do), its demanded remedy – a new trial – is clearly inappropriate. In *Scott v. United States*, 559 A.2d 745, 749 (D.C. 1989) (en banc), the D.C. Court of Appeals held that a "special harmless error" test applies in determining whether to vacate a judgment based on a violation of ABA Canon 3(C)(1). Under that test, courts are required to consider "the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process." *Id.* at 753. NCRIC has pointed to *no evidence of bias* by this Court or the remotest possibility that failing to order a new trial would produce injustice in other cases or undermine the public's confidence in the judicial process.

16d-003283

the conscience. *Knight*, 725 A.2d at 486. Indeed, once the "fact of damages" is proved, the proof necessary to establish the amount of damages is subject to a laxer standard; a party need only provide a "reasonable estimate." *Affordable Elegance Travel, Inc. v. Worldspan, L.P.*, 774 A.2d 320, 329 (D.C. 2001) (internal quotation marks omitted). The Court of Appeals has further explained that a party should not "be deprived of compensatory damages merely because they cannot be computed with exactitude." *Spar v. Obwoya*, 369 A.2d 173, 180 (D.C. 1977). Far from shocking the conscience, the jury's $18 million tort award fits comfortably within the record evidence.

First, either one of Ben Ezra's two distinct damages models would have been sufficient to support a damages award in excess of $20 million, more than the jury awarded, based on annual losses of approximately $2.6 million before discounting. 2/3 Tr. 322-23, 330-33. The record reflects, moreover, that Ben Ezra's estimates were based on multiple inputs that favored NCRIC, not Columbia. 2/3 Tr. 292-93, 296, 302, 307, 309-10.

Second, separate evidence received without objection from Rifka, Wilson and Moore established that Columbia's revenues declined by approximately $10 million per year following NCRIC's tortious conduct. 2/3 Tr. 165-66 (Rifka); 2/4 Tr. 504-05 (Wilson); 2/6 Tr. 928-30 (Moore). A single piece of testimony from Ben Ezra – the conservative marginal-cost figure of 30% – reduces the $10 million to $7 million and yields two years of damages totaling $14 million, or $13 million for 22 months *prior* to the hospital's closure. 2/3 Tr. 301-05. That is precisely what Columbia argued at closing, without objection, and what the jury awarded for pre-closure damages. 2/10 Tr. 132. There was, moreover, evidence in the record that a more reasonable marginal cost

figure would have been 16% to 18%, 2/3 Tr. 305 (Ben Ezra), and application of such a figure would have produced an even greater award of approximately *$16 million* for pre-closure lost revenues alone.

Third, with respect to *post*-closure lost revenues under the Rifka/Wilson/Moore model, even just three years of lost revenues, measured at $7 million per year using a 30% marginal rate, would have supported a post-closure award of as much as $21 million, as Columbia (again) argued without objection to the jury. 2/10 Tr. 135. And there was ample testimony from which the jury was entitled to infer that, but for NCRIC's conduct, Columbia would have remained open for three additional years, or even longer. Columbia turned profitable in the summer of 2000, it was on track for a profitable year, and the hospital's successful execution of its turnaround plan left no doubt among its senior management that the hospital was well positioned to remain open and flourish. 2/4 Tr. 506, 508 (Wilson); 2/2 Tr. 166-67, 206 (Rifka). Indeed, NCRIC's own expert admitted that Columbia: was taking market share from other area hospitals; had implemented "admirable" cost cutting measures; had introduced profitable new services; and could have remained open for some additional period but for the loss of doctors. 2/6 Tr. 914, 923-24, 932-35 (Moore). The jury's modest $5 million award for post-closure damages represents just 9 months of lost revenue under this model – and even NCRIC's own expert could not rule out that Columbia would have survived this long had its doctors remained. *Id.*

Fourth, on top of lost operational revenues, the trial record also supported an award of $1.5 to $3.5 million in pre-closure damages incurred from Columbia's bankruptcy. 2/10 Tr. 33 (closing); 2/4 Tr. 477 (Wilson).

16d-003285

Finally, there was evidence that Columbia lost a congressional appropriation of $5 million. 2/2 Tr. 174-75 (Rifka).

On the basis of the foregoing, the evidence unquestionably supported an award of $18 million in tort damages. Indeed, that amount falls in the very middle of the range supported by the evidence and argued without objection to the jury. *See* 2/10 Tr. 132-35 (arguing for up to $40 million in compensatory damages, depending on choices to be made by the jury). The reasonableness of the jury's award is further evidenced by its thoughtful deliberations and its decision not to award any punitive damages, even though such an award would have been fully supported by the record. Where, as here, the jury's award falls within the range supported by the evidence, a remittitur is unwarranted. *E.g.*, *Doe*, 492 A.2d at 860 (reversing remittitur); *Knight*, 725 A.2d at 486; *Affordable Elegance*, 774 A.2d at 329.

NCRIC cites four cases in support of its argument. But in two of these cases, the courts found remittitur *inappropriate*. *See Phillips v. District of Columbia*, 458 A.2d 722, 724 (D.C. 1983) (reversing remittitur as abuse of discretion); *Capitol Hill Hosp. v. Jones*, 532 A.2d 89 (D.C. 1987) (affirming denial of remittitur where evidence supported jury's award, though, unlike here, the award was "at the high end of the permissible spectrum"). NCRIC's remaining two cases involved remittitur of damage awards for pain and suffering, which, unlike a business's lost revenues, are "difficult in any circumstances to quantify." *Finkelstein v. District of Columbia*, 593 A.2d 591, 602 (D.C. 1990); *see also id.* at 598. And in *Finkelstein*, the court ruled that remittitur was warranted only because there was "*no support* in the record for a compensatory award of that magnitude." *Id.* at 596 (emphasis added). *See also District of Columbia v. Jackson*,

16d-003286

810 A.2d 388, 397 (D.C. 2002) (finding damages of more than $2 million out of proportion with decedent's real but brief suffering of no more than eight seconds before losing consciousness). By contrast, Columbia's regularly kept financial statements and tax returns quantified the hospital's lost revenues and cash flow. Ben Ezra, NCRIC's expert Moore, and Columbia's Chairman of the Board Dr. Rifka and CEO Dr. Wilson all properly relied on those materials.

Absent case law support, NCRIC offers three arguments untethered to legal authority. First, NCRIC suggests that the $13 million award for pre-closure damages cannot be supported by Ben Ezra's testimony. Mot. 21. But NCRIC ignores testimony of Rifka, Wilson, and Moore that Columbia lost approximately $10 million in annual revenues after the departure of the doctors – $7 million yearly after deduction for marginal costs, or $13 million for the 22 months prior to closure. The jury was free to credit this wholly independent record proof; NCRIC does not argue otherwise now and did not object to that evidence at trial. Indeed, the jury could have awarded millions more in pre-closure damages. *See* pp. 35-37, *supra* (explaining that jury could have awarded up to $16 million in pre-closure lost doctor revenues, and an additional $3.5 million in bankruptcy expenses).

Second, NCRIC objects to various aspects of Columbia's summation on the ground that counsel "inflam[ed]" the passions of the jury. Mot. 22. But NCRIC did not object to a single remark it now disputes, so any claim of error is waived. *Doe*, 814 A.2d at 953; *Nissho*, 848 F.2d at 619; 11 Wright & Miller § 2805. Moreover, and despite NCRIC's representation otherwise, Columbia's counsel expressly stated in closing that the $59 million figure reflected NCRIC's "*sales*." 2/10 Tr. 137 (emphasis added). In

16d-003287

doing so, moreover, counsel explicitly referenced NCRIC's financial statements, which were admitted in evidence and reflected that, in fact, NCRIC's sales exceeded $59 million over just a nine-month period. 2/10 Tr. 36-37; DX 71B. In any event, the jury was properly instructed that argument by counsel was not evidence (*see* Jury Instr. §§ 2-1, 2-5; 2/10 Tr. 149), and it is presumed to have followed these instructions. *McCullough*, 827 A.2d at 55. Plainly, too, the jury was not "inflame[ed]" as NCRIC now contends, because it awarded none of the punitive damages about which NCRIC now oddly complains.[19]

Third, NCRIC asks the Court to assume that the $5 million awarded by the jury in post-closure damages represents the lost congressional appropriation, and then proceeds to argue that a $1 million remittitur is required because the appropriation allegedly was in the amount of $4 million rather than $5 million – a fact that NCRIC asks the Court to find by judicial notice. Mot. 22-23. But, dispositively, NCRIC ignores trial proof establishing post-closure damages of $5 million (and more) entirely *without reference* to

[19] The other objections NCRIC now raises about summation likewise: were never made at trial; depend on mischaracterizations of the jury argument; and are irrelevant because the judge properly instructed the jury that argument is not evidence. NCRIC complains, for example, that counsel argued that NCRIC cavalierly "put [the hospital] out its misery." Mot. 22. But this is a fair characterization of NCRIC's own defense at trial: NCRIC's expert, Stephen Moore, argued against the award of post-closure damages on the ground that Columbia was dying anyway and, thus, NCRIC's conduct, even if tortious, was harmless. 2/6 Tr. 898-99 (Moore). NCRIC's counsel made the same argument at closing: "[Columbia] was going to close." 2/10 Tr. 93. And while counsel did call NCRIC the "800 pound insurance gorilla," 2/10 Tr. 109, the record was replete with evidence that NCRIC possessed massive power and influence in the D.C. insurance market, and that the lack of meaningful competition allowed NCRIC to abuse Columbia by demanding money it was not owed, holding over the hospital the threat (made as early as 1998) of taking its doctors to other hospitals. 1/30 Tr. 362-64 (Rifka); 2/4 Tr. 476-77 (Wilson). Columbia also fairly commented on the credibility of NCRIC's senior executives and experts, many of whom were repeatedly confronted with their own prior inconsistent statements. *E.g.*, 2/6 Tr. 917-23 (Moore); 2/5 Tr. 796-97, 821-23, 827-28, 832-33, 834-35, 847-48, 851-52, 859-60 (Fargis); 2/9 Tr. 988-89, 995 (Henderson); 2/9 Tr. 1074-76 (Pate). For example, NCRIC's own CEO admitted that he filed public SEC statements, supposedly free from any material omissions, that failed to mention Columbia's counterclaims or the amounts they sought – and did so even *after* he was aware that Columbia had filed such claims and sought multiple millions of dollars in damages. 2/10 Tr. 6-11.

16d-003288

the congressional appropriation, based instead on lost physician-driven revenues. *See* p. 36, *supra* ($5 million represents 9 months of lost revenues under the Rifka/Wilson/Moore model, or less than two years worth of lost revenues under Ben Ezra's models). Given the presence of sufficient alternative proof, NCRIC's argument is beside the point. The only question on a motion for remittitur is whether the jury's award obviously exceeds the record evidence from *any* source, not the particular source upon which NCRIC chooses to focus. *See* pp. 34-35, *supra* (citing authority); *Carter*, 727 F.2d at 1239 (court's role is not to "reconstruct the precise mathematical formula the jury adopted").

Of course, NCRIC could have proposed a special interrogatory asking the jury to identify the source of post-closure damages, but this it did not do. And, even if NCRIC could somehow properly speculate that the post-closure award was attributable to the lost congressional appropriation (it cannot), NCRIC offers no authority for remitting a damages award based on judicial notice of facts outside the closed evidentiary trial record. The case for such notice is particularly weak where, as here, NCRIC never objected to the admission of the testimony concerning congressional appropriations,[20] never conducted any cross-examination on the issue, never presented any contrary proof, and never objected to closing argument about those appropriations. NCRIC is not free to circumvent the trial process by asking the Court to take judicial notice of matters that it

[20] Though NCRIC now claims that it offered the Court timely objection to exclude these damages, that simply is not so. NCRIC did not object at all to Dr. Rifka's testimony about congressional funding but rather, following that uncontested testimony, objected to testimony regarding private fundraising efforts. 2/2 Tr. at 174-76 ("Q: Did you seek money from Congress? A: I did. Q: How much? A: . . . [W]e were getting five million dollars for the year of 2001 and five million dollars for the year 2002. Q: Were you ever able to use that second year's money? A: The second year we were not able to access it. It closed. Q: Did you have private funding underway in 2000? A: Yes, we did. Q: What was planned? A: Many events . . . . Q: And how much were you expecting to raise with these fund raising efforts? MR. PAGE: Objection.").

16d-003289

simply failed to raise. *E.g.*, *United States v. Neill*, 964 F. Supp. 438, 445 (D.D.C. 1997) (purpose of judicial notice "is not to provide an escape hatch for counsel's errors or to offer a strategic mechanism for a defendant to re-open the record after the jury begins to deliberate").

III. AMPLE EVIDENCE SUPPORTS THE JURY'S VERDICT AND NCRIC'S CONTRARY ARGUMENTS FOR JUDGMENT AS A MATTER OF LAW ARE WITHOUT MERIT

NCRIC's arguments for judgment as a matter of law run headlong into settled legal principles. *First*, under Rule 50, "a judgment notwithstanding the verdict is appropriate only in extreme cases." *Lyons v. Barrazotto*, 667 A.2d 314, 320 (D.C. 1995) (reversing trial court's entry of judgment notwithstanding the verdict). *Second*, the Court of Appeals has "emphasized frequently that when there is some evidence from which jurors could find the requisite elements of [the tort], or when the case turns on disputed facts and the credibility of witnesses, the case must be submitted to the jury for determination." *Id.* This Court must therefore review the evidence in the light most favorable to Columbia, "who is entitled to every legitimate inference therefrom." *Etheredge v. District of Columbia*, 635 A.2d 908, 915 (D.C. 1993). Only where there is "but one reasonable conclusion as to the proper judgment" may an issue be taken from the jury. *Bragg v. Owens-Corning Fiberglas Corp.*, 734 A.2d 643, 648 (D.C. 1999); *Durphy v. Kaiser Found. Health Plan of Mid-Atl. States, Inc.*, 698 A.2d 459, 465 (D.C. 1997).

Third, in making this determination, courts "must take care to avoid weighing the evidence, passing on the credibility of witnesses, or substituting [their] judgment for that of the jury." *Bragg*, 734 A.2d at 648. *Fourth*, the Court of Appeals has repeatedly

16d-003290

emphasized its "literal construction" of Rule 50(b) and held that "the failure to include a particular ground in a motion for directed verdict will bar the consideration of this ground in a subsequent motion for judgment notwithstanding the verdict." *Molovinsky v. Fair Employment Council of Greater Washington, Inc.*, 683 A.2d 142, 147-48 (D.C. 1996); *Gleason v. L. Frank Co.*, 328 A.2d 96, 98 (D.C. 1974). The prohibition against raising new grounds post-verdict is required by the Seventh Amendment. *See* 9 James W. Moore, *et al.*, *Moore's Federal Practice* Sec. 50.43[3][b].

A. The Jury's Finding that NCRIC Tortiously Interfered With Columbia's Business Relations Was Supported by the Evidence

The Court correctly instructed that, to establish a claim for tortious interference with business relations, the evidence must demonstrate four elements. *See* pp. 4-5, *supra*. Purporting to renew its previous motions for judgment as a matter of law, NCRIC challenges the sufficiency of the evidence regarding only two of these elements: (1) the existence of a valid business relationship; and (2) intentional interference causing termination of the relationship. Neither attack is availing.

1. NCRIC Waived Its Challenge to the Sufficiency of the Evidence Regarding Tortious Interference

The only time NCRIC challenged the sufficiency of Columbia's evidence supporting the second element (intentional interference) was at the close of Columbia's case-in-chief. At the close of *all* evidence, NCRIC did no more than state that it "repeat[ed] the arguments that [it] made at the close of the case previously when Columbia rested," 2/10 Tr. 39. Such an allusion, however, is insufficient under settled D.C. law to preserve a Rule 50 argument previously made when Columbia rested. "Although lawyers and courts frequently refer to 'renewing' [a Rule 50] motion, the fact

16d-003291

is that when a motion for directed verdict is made at the close of plaintiff's evidence and is denied, and the defendant then offers evidence, the motion for directed verdict is out of the case and cannot be renewed." *District of Columbia v. Helen B. Hickey & Kenny Constr. Co.*, 150 A.2d 463, 466 (D.C. 1959). *See also Gleason*, 328 A.2d at 98. NCRIC's challenge to the sufficiency of Columbia's evidence on the intentional interference element is, accordingly, waived.

Even if NCRIC had preserved an objection to the second element it now seeks to challenge, it raised *no* issue – *any* time during trial – regarding the first element it now attacks, the existence-of-a-valid-business-relationship element of Columbia's tortious interference claim. To the contrary, NCRIC *conceded* the existence of sufficient evidence on this element at the close of Columbia's proof. *See* 2/4 Tr. 538 ("in the District of Columbia the law is business expectancy could be th[e] contract [which is the subject of interference] and they have put on evidence of that"). Accordingly, NCRIC waived any challenge to the sufficiency of this element. Super. Ct. R. 50(b); *Molovinsky*, 683 A.2d at 147-48.

2. The Jury's Finding on Existing Business Relations Was Supported by Sufficient Evidence

In any event, abundant evidence established that Columbia had ongoing business relationships with its attending faculty, and that Columbia reasonably expected those relationships to continue. Dr. Rifka testified, for example, that members of the attending faculty were doctors who historically referred the bulk of their patients to Columbia, and who were expected to do the same in the future. 1/30 Tr. 346-47; 2/3 Tr. 447-48. He explained, too, that attending faculty members were loyal and tended to stay at the hospital for their entire careers, often well beyond age 65; that Columbia depended for its

16d-003292

survival upon the business brought in by its doctors; and that other hospitals had similar expectations of their physicians. 1/30 Tr. 347-49. Sandy Chamblee, who chaired Columbia's Board and headed the hospital's performance improvement committee, confirmed all of these points. 1/29 Tr. 233-36. So did Dr. McCants and Peter Ben Ezra. 2/2 Tr. 101 (McCants); 2/3 Tr. 328 (Ben Ezra). As Dr. Cooper, who himself practiced at Columbia for over 20 years before the hospital closed, explained: prior to the cancellation of the Retro Plan, "nobody ever left Columbia"; doctors "basically practiced there until they died or retired." 2/2 Tr. 20 (Cooper). Such testimony provided ample evidence from which the jury could conclude that Columbia and its doctors had a valid business relationship.

Faced with all this evidence, NCRIC argues only that physicians had no written contract. Mot. 26. But as NCRIC appeared to recognize at trial, 2/4 Tr. 538, black-letter D.C. law recognizes not only that a written contract is unnecessary to state a claim for tortious interference, but that even interference with purely *prospective* business relations (here, the jury found that such relations were *existing*) is actionable. *Altimont*, 347 A.2d at 289; *Casco*, 834 A.2d at 84. *Cf. Okusami v. Psychiatric Inst. of Wash.*, 959 F.2d 1062, 1066 (D.C. Cir. 1992) (taking for granted in case regarding physician's application for admitting privileges that physician's business relationship with his patients satisfies requirement of valid business relationship for claim of tortious interference). NCRIC also now argues that an at-will employment relationship "does not necessarily" give rise to a cognizable business relationship for a claim of tortious interference, citing *Sheppard v. Dickstein, Shapiro, Morin & Oshinsky*, 59 F. Supp. 2d 27 (D.C. 1999). Mot. 27. But, although the facts in *Sheppard* were found insufficient to suggest a cognizable business

relationship, the Court of Appeals has held that at-will employment relationships *can* support a claim of tortious interference on other facts. *Sorrells*, 565 A.2d at 288-89; *Pope v. Romac Int'l*, 829 A.2d 945, 947 n.4 (D.C. 2003). Indeed, in *Sheppard*, the court simply observed that the plaintiff had "failed to identify any facts" in *that* case demonstrating such a relationship. 59 F. Supp. 2d at 34. By contrast, the extensive evidence here, when viewed in the light most favorable to Columbia as it must be, demonstrates that a valid business relationship had existed for years between Columbia and its doctors.

3. The Jury's Finding of Intentional Interference Was Supported by the Record

A reasonable jury easily could conclude (and did conclude) that NCRIC *intentionally* induced Columbia doctors to leave the hospital for other institutions where NCRIC controlled the insurance business. *See* Part I.B, *supra* (outlining evidence).

Resisting this conclusion, NCRIC repeats its baseless assertion that Columbia was required to prove "egregious conduct." Mot. 24. But, even though proof of "egregious conduct" is unnecessary, ample evidence existed from which the jury could infer that NCRIC had engaged in such conduct. For example, the Chairman of NCRIC's Board told Columbia's doctors and staff to pack their bags and leave the hospital. 2/2 Tr. 144 (Rifka). NCRIC's CEO threatened Columbia's CEO with a "train wreck" if the hospital failed to pay an amount of money that it did not actually owe. 2/4 Tr. 483 (Wilson). NCRIC's COO frankly admitted, too, that the factors he used to calculate the amounts due were nowhere to be found in the parties' contract and, when confronted by Columbia personnel with these errors, he did not correct them but rather complained that Columbia was relying on the language of the contract. 2/5 Tr. 812-24 (Fargis); DX 89.

16d-003294

Moreover, when Columbia refused to accede to NCRIC's baseless demands, NCRIC vindictively terminated both the Retro Plan and a separate policy covering Columbia's community health clinic for the poor. 2/2 Tr. 94 (McCants), 113-15 (Rifka). NCRIC did so even though the clinic was current on its premiums and the policy was not up for renewal for months, an action that even NCRIC's Vice President admitted was unprecedented. 2/3 Tr. 261 (Hempelman). NCRIC's CEO, Ray Pate, could offer no explanation for the simultaneous termination of the Retro Plan and clinic policy, claiming that it was simply a coincidence. 2/9 Tr. 1078. Later, NCRIC issued an exclusionary endorsement under which doctors were not covered by their individual policies for work in Columbia's clinic. 2/2 Tr. 68-69 (Feldman); 2/2 Tr. 146-47 (Rifka). Hempelman and Feldman both testified, again without contradiction, that this action was unprecedented either within NCRIC or the entire insurance industry. 2/2 Tr. 69 (Feldman); 2/3 Tr. 261 (Hempelman). And Hempelman testified that none of his superiors had ever told him why NCRIC wanted to cancel the clinic policy or to issue the exclusions, and that he had never asked; he simply followed his superiors' orders. 2/3 Tr. 257-59. *See also* Part I.B, *supra* (recounting additional evidence).

As Dr. Rifka explained, the implications of the exclusion issued by NCRIC were striking: a physician's personal policy from NCRIC would cover that physician if he or she delivered a baby in a park or on a bus – but not at Columbia's community health clinic. 2/2 Tr. 145-47. NCRIC's COO offered no credible explanation for the exclusions, suggesting only that they were supposed to prevent "double coverage," even though they in fact left clinic physicians with *no* coverage, and he said it was simply a "mistake" that they had not been issued earlier. 2/5 Tr. 853-57 (Fargis). A reasonable

jury, viewing the evidence in the light most favorable to Columbia, could easily find such explanations incredible and NCRIC's conduct egregious. Indeed, courts have found far less evidence than what Columbia produced to constitute malicious conduct sufficient even to sustain a punitive award. *See, e.g.*, *Dyer*, 657 A.2d at 1138 (sustaining award of punitive damages for tortious interference simply for taking *one* client in violation of a non-compete agreement).

NCRIC insists that the actions identified by Columbia as constituting intentional interference included some actions NCRIC took to advance its own economic interests. Mot. 25. This argument misses the mark both legally and factually. Legally, a defendant's actions are *not* protected under District law merely because they are "taken in furtherance of its economic interests." *Casco*, 834 A.2d at 84 (rejecting contrary case law from other jurisdictions). Factually, Columbia adduced substantial evidence that various NCRIC actions were anything but "routine." *See* pp. 12-18, *supra*; 2/3 Tr. 256-61 (Hempelman admitting NCRIC's actions were unprecedented); 2/2 Tr. 68-69 (Feldman to same effect); 2/5 Tr. 812-24 (Fargis admitting that he disregarded plain terms of contract time after time); 2/2 Tr. 115-16, 123-25 (Rifka); 2/9 Tr. 1078 (Pate). Viewing the evidence in the light most favorable to Columbia, such anomalies plainly could have been interpreted by the jury as intentional, vindictive conduct on NCRIC's part.

NCRIC also maintains that its decision to terminate the contract cannot support a tortious interference claim because NCRIC was under no obligation to renew the Plan. This argument, too, fails both in law and fact. In *Casco*, 834 A.2d at 84, the Court of Appeals held that the termination of a contract, even in the absence of any breach and

16d-003296

though within the party's rights, could support a claim for tortious interference if the circumstances surrounding the termination evinced an intent to interfere with business relations. Similarly, the court in *Sorrells*, 565 A.2d at 288-89, rejected the notion that tortious interference doctrine could not apply to the termination of an at-will employee on the ground that there is no obligation to renew such at-will contracts or otherwise continue the employment of an at-will employee. In any event, the evidence at trial provided an ample basis from which the jury could conclude that NCRIC did not innocently sit by and let the contract expire, but rather purposefully crafted (and then carried out) a deliberate plan to take doctors away from Columbia when Columbia refused to accede to NCRIC's baseless financial demands for renewal. *See* Part I.B, *supra*.[21]

B. Columbia's Evidence Far Exceeds the Requirements for Proof of Its Tort Damages

In this portion of its motion, NCRIC challenges damages for the third time in its post-trial briefing. *See also* Parts I.C & II, *supra*. But, once again, post-trial review of damages evidence is subject to limited judicial review and a jury's award will be overturned only if it exceeds the maximum amount supported by the evidence or shocks the conscience, *see* pp. 34-35, *supra* – standards which require the Court to uphold Columbia's tort award as to both pre-closure and post-closure damages.

---

[21] Though *Casco* made clear that a party *can* interfere in the District even when pursuing its own economic motives, rejecting authority from other jurisdictions suggesting otherwise, NCRIC nonetheless relies exclusively on such foreign authority. Mot. 26. Besides, one of its cases, *United Educ. Distribs., LLC v. Educational Testing Serv.*, 564 S.E.2d 324, 328 (S.C. Ct. App. 2002), does nothing more than say that "[g]enerally" there will not be interference where a party is engaged in the "proper pursuit" of its own contractual relations, and then go on to state that a showing of an *intent to interfere* with another party's business relationship is essential. In NCRIC's other case, *FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 284 (7th Cir. 2002), the defendant merely informed the plaintiff's customers that it was ceasing to provide service to the plaintiff when the parties' contract terminated. NCRIC, of course, was proved to have done a great deal more than that with respect to Columbia's doctors, launching a deliberate strategy to lure them to other institutions where they could be absorbed into NCRIC insurance programs.

16d-003297

The jury's pre-closure award of $13 million equates to lost revenues based on the Rifka/Wilson/Moore model for 22 months, precisely the amount Columbia sought in closing. *See* p. 35, *supra.* On the evidence before it, moreover, the jury easily could have awarded several million dollars more in pre-closure damages. *See id.*

The jury's post-closure award of $5 million could have, as NCRIC speculates, been based on the lost congressional appropriation alone. *See* p. 37, *supra.* Alternatively, the jury was entitled to award Columbia additional lost revenue attributable to the lost doctors to compensate during the time which it would have continued in business beyond the point that it did, but for NCRIC's tortious acts. In that event, the award of $5 million in post-closure damages would have amounted to less than 2 years worth of lost physician revenues under the Ben Ezra model, or 9 months worth of such revenues under the Rifka/Wilson/Moore model. *See id.* Under any of these scenarios, Columbia's post-closure damages were fully supported by the evidence.

NCRIC argues for judgment as a matter of law on Columbia's pre-closure damages on the ground that the 30% marginal cost figure was "speculative." Mot. 27 (citing *Garcia v. Llerena*, 599 A.2d 1138 (D.C. 1991)). In *Garcia*, however, the plaintiff "did not use actual income or expense figures," *id.* at 1144 n.11, but instead used a "mysterious 'one-third of gross' formula" that was nowhere explained in the record, *id.*, and "altered his own estimates" during the course of his testimony, *id.* at 1144 n.12. No such thing occurred here. Ben Ezra explained and provided multiple pieces of corroborating evidence for the 30% marginal cost figure to which he testified, and never strayed from the figures that he supplied. *See* pp. 28-29, *supra.* He testified, as well, that he relied on the best available data, and that no better data was available. *See Croley*, 759

16d-003298

A.2d at 691-94 (reversing trial court's rejection of estimates of lost future earnings based on studies of persons with similar educational background).[22]

Next, NCRIC argues that its wrongful conduct is irrelevant because the hospital would have closed or lost doctors anyway. Mot. 28. But this argument does not address the damages Columbia incurred *before* it closed. And, with respect to *post*-closure damages, the jury's award of $5 million is supported by three independent strands of evidence, any one of which was sufficient, standing alone, to support the jury's award: the congressional appropriation; less than 9 months worth of lost revenue under the Rifka/Wilson/Moore model; or less than 2 years of lost cash flow using Ben Ezra's more conservative model. *See* pp. 35-37, *supra*.

Finally, NCRIC suggests that the Court should grant judgment as a matter of law on post-closure damages because the $5 million congressional appropriation represented gross revenues, without deduction for marginal costs associated with performing the community services on which the appropriation was predicated. Mot. 28-29. But this argument again completely disregards the fact that two other, alternative strands of sufficient evidence (Rifka/Wilson/Moore and Ben Ezra) exist to support the post-closure award without reference to the congressional appropriation, and NCRIC never sought a special interrogatory asking the jury to identify the source of its post-closure award.

Even if NCRIC could (somehow) ignore such independently sufficient evidence and focus on the sufficiency of the congressional appropriation evidence in isolation, its

---

[22] NCRIC's authorities are of no use to it. *R & A*, 672 A.2d 1062, *reversed* the trial court's decision that the evidence was insufficient to support an award of damages. *Bedell v. Inver Housing, Inc.*, 506 A.2d 202 (D.C. 1986), featured a litigant who failed to put in any evidence of the level of his business prior to the tortious acts. *See id.* at 206. And *Pratt v. University of the District of Columbia*, 691 A.2d 158 (D.C. 1997), is inapposite because it dealt with a remittitur of damages to a plaintiff where there was a complete absence of evidence that his employment contract would have been renewed. *See id.* at 159.

16d-003299

argument asks the Court to *assume* that there would have been marginal costs associated with those funds. But the record entitled the jury to conclude that Columbia was *already performing* the community outreach programs for which it received the award and, thus, the congressional appropriation would have gone to Columbia's bottom line; indeed, Columbia's existing community outreach programs were well documented and NCRIC offered no contrary proof. 1/29 Tr. 226-27 (Chamblee); 2/2 Tr. 174-75 (Rifka); 1/29 Tr. 278-79 (Proctor). NCRIC cites no evidence that *new* community outreach programs were required to obtain the award; nor could it. Again, moreover, once the fact of injury is proved, the *amount* of damages awarded need only be a "reasonable estimate," and the Court of Appeals has reversed efforts to deny plaintiffs full recovery, based on a review of the evidence in the light most favorable to them. *E.g.*, *Croley*, 759 A.2d at 694-95; *Doe*, 492 A.2d at 864.

Nor can NCRIC plausibly claim now that evidence about the congressional appropriation should be excluded because it amounts to a "new claim" that would have required the filing of an amended counterclaim pleading. Mot. 29-30. NCRIC did not raise any objection to the admission of the congressional appropriation evidence at trial, let alone one based on a supposed pleading deficiency, and thus has waived any "pleading deficiency" point. *E.g.*, *Molovinsky*, 683 A.2d at 147-48. The damages at issue, moreover, hardly constitute a new "claim" for relief but, rather, reflect continuing harm arising from the already-pleaded nucleus of facts: as a result of NCRIC's tortious conduct, doctors fled, the hospital closed, and Columbia lost its appropriation. "It is well settled that, though damages accrue after the institution of the suit, they may be recovered, provided they are the natural and proximate consequences of the act

complained of, and do not themselves constitute a new cause of action. Actual damages in such a case are assessable up to the date of the verdict." *Cooper v. Sillers*, 30 App. D.C. 567, 572 (1908). *Accord Norwest Bank Minnesota Nat'l Ass'n v. FDIC*, 312 F.3d 447, 452 (D.C. Cir. 2002) ("'it is perfectly clear, that the proof of actual damage may extend to facts that occur and grow out of the injury, even up to the day of the verdict'") (quoting *Wilcox v. Plummer*, 29 U.S. (4 Pet.) 172, 182 (1829)).[23]

Conclusion

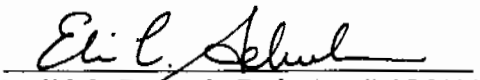
NCRIC's motions for new trial, remittitur, and judgment as a matter of law should be denied. A proposed order is attached.

[23] The two cases cited by NCRIC are not remotely to the contrary. Mot. 29-30. In *Wagner v. Professional Eng'rs in Cal. Gov't*, 354 F.3d 1036 (9th Cir. 2004), the plaintiffs sought to plead not new damages but new "transactions," and they voluntarily sought leave to file a supplemental pleading under Rule 15(d). *Id.* at 1052. When leave was denied, however, they sought – inconsistently – to argue that their original pleading could have been construed broadly so as to include the events at issue, and the court rejected that argument. Similarly, the reference in *Young-Henderson v. Spartanburg Area Mental Health Ctr.*, 945 F.2d 770 (4th Cir. 1991), to the need to file a supplemental pleading does not concern an effort to seek subsequent damages from already-pleaded events, but rather an attempt by the plaintiff to pursue entirely new "claims." *Id.* at 775. NCRIC also complains that Columbia directed its Rule 30(b)(6) witness not to answer questions "concerning such damages." Mot. 30. But NCRIC offers not a single citation in support of this specious assertion, and the time for bringing any disputes over discovery has, in any event, long since passed. Super. Ct. R. 16(b)(5).

16d-003301

DATED: March 26, 2004

Respectfully submitted,



Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Priya R. Aiyar, admitted *pro hac vice*
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
Columbia Hospital for Women
Medical Center, Inc.

16d-003302

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 -- Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

ORDER

UPON CONSIDERATION of NCRIC's *Motion for a New Trial and Renewed Motion for Judgment as a Matter of Law*, Columbia's opposition thereto, and the record herein, it is hereby ORDERED that NCRIC's motions for new trial, remittitur, and judgment as a matter of law are all DENIED.

ENTERED this ____ day of _____, 2004.

_____
Judge Anna Blackburne-Rigsby
Superior Court of the District of Columbia

Copies to:

Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(fax) (202) 326-7999

Attorneys for:
DEFENDANT/COUNTER-PLAINTIFF COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960
(fax) (202) 508-6200

Roy I. Niedermayer, Esq.
3 Bethesda Metro Center, Suite 430
Bethesda, MD 20814
(fax) (301) 951-4456

Attorneys for:
PLAINTIFF/COUNTER-DEFENDANT NCRIC, INC.

CERTIFICATE OF SERVICE

I, Eli C. Schulman, hereby certify that, on this 26th day of March 2004, a copy of the foregoing *Columbia's Opposition to NCRIC's Motions for New Trial, Remittitur, and Judgment as a Matter of Law* was served upon the following by hand delivery:

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 26th day of March 2004, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Eli C. Schulman

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC., Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar #8 Judge Blackburne-Rigsby

REPLY MEMORANDUM IN SUPPORT OF NCRIC'S MOTION FOR A NEW TRIAL AND RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

BRYAN CAVE LLP

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6000 telephone
(202) 508-6200 facsimile

Counsel for Plaintiff NCRIC, Inc.

TABLE OF CONTENTS

I. THE JURY'S TORTIOUS-INTERFERENCE LIABILITY FINDING SHOULD NOT STAND. 1

A. Columbia's Defense of the Jury Instructions Ignores the Law, Columbia's Prior Concessions, and This Court's Prior Rulings 1

B. Columbia's Argument that the Jury Could Have Found Egregious Conduct, and Thus the Omitted Jury Instruction Should Be Overlooked, Misses the Point. 6

C. Columbia's Tortious-Interference Evidence Fails as a Matter of Law. 7

II. THE COURT SHOULD STRIKE THE DAMAGES AWARD OR IN THE ALTERNATIVE GRANT A REMITTITUR. 12

A. The Jury's Award of $13 Million in Pre-Closing Damages Is Speculative and Against the Weight of the Evidence. 12

B. Columbia Cannot Now Disown Its Failure To Plead the $5 Million Congressional Appropriation in Its Counterclaim or Avoid Its Overstatement of Any Such Damages by $1 million 14

C. The Jury's Inexplicable Contract Damages Award Should Be Stricken. 16

III. COLUMBIA'S ARGUMENTS TO RESUSCITATE PETER BEN EZRA AS AN EXPERT ARE RED HERRINGS 17

IV. COLUMBIA'S ARGUMENT AGAINST RECUSAL CANNOT BE RECONCILED WITH ITS OWN AUTHORITY. 19

CONCLUSION 21

16d-003307

TABLE OF AUTHORITIES

FEDERAL CASES

Bennett Enterprises, Inc. v. Domino's Pizza, Inc., 310 U.S. App. D.C. 192, 45 F.3d 493 (1995) 3, 4

FutureSource LLC v. Reuters Ltd., 312 F.3d 281 (7th Cir. 2002), *cert. denied*, 123 S. Ct. 1769 (2003) 9

Genetic Systems Corp. v. Abbott Laboratories, 691 F. Supp. 407 (D.D.C. 1988) 2, 3, 4

Luck v. Baltimore & Ohio R.R. Co., 166 U.S. App. D.C. 283, 510 F.2d 663 (1974) 17

Mercer Management Consulting, Inc. v. Wilde, 920 F. Supp. 219 (D.D.C. 1996) 2

STATE CASES

Bahura v. S.E.W. Investors, 754 A.2d 928 (D.C. 2000) 18

Breezevale Ltd. v. Dickinson, 759 A.2d 627 (D.C. 2000), *aff'd en banc*, 783 A.2d 573 (D.C. 2001) 8

CASCO Marina Development, L.L.C. v. D.C. Redevelopment Land Agency, 834 A.2d 77 (D.C. 2003) 4, 9

District of Columbia v. Banks, 646 A.2d 972 (D.C. 1994) 6

District of Columbia v. Helen B. Hickey & Kenny Construction Co., 150 A.2d 463 (D.C. 1959) 7

Doe v. Binker, 492 A.2d 857 (D.C. 1985) 17

Dyas v. United States, 376 A.2d 827 (D.C. 1977) 18

Dyer v. William S. Bergman & Associates, 657 A.2d 1132 (D.C. 1995) 4

Finkelstein v. District of Columbia, 593 A.2d 591 (D.C. 1991) 13-14

Fisher v. Best, 661 A.2d 1095 (D.C. 1995) 8

Gebremdhin v. Avis Rent-A-Car System, Inc, 689 A.2d 1202 (D.C. 1997) 6, 8

Howard University v. Best, 547 A.2d 144 (D.C. 1988) 7

Lyons v. Barrazotto, 667 A.2d 314 (D.C. 1995), *aff'd en banc*, 783 A.2d 573 D.C. 2001)....8

McCullough v. United States, 827 A.2d 48 (D.C. 2003)....7

Reed v. United States, 828 A.2d 159 (D.C. 2003)....18

Scott v. United States, 559 A.2d 745 (D.C. 1989)....21

Sorrells v. Garfinckel's, Brooks Brothers, Miller & Rhoads, Inc., 565 A.2d 285 (D.C. 1989)....4, 10

Wingfield v. Peoples Drug Store, Inc., 379 A.2d 685 (D.C. 1977)....6

York v. United States, 785 A.2d 651 (D.C. 2001)....19, 21

MISCELLANEOUS

115 Stat. 2177, 2187 (2002)....14

147 Cong. Rec. H10242 (daily ed. Dec. 18, 2001)....14

Code of Judicial Conduct for the District of Columbia Courts Canon 3(E)(1)....19

Columbia's sprawling Opposition attempts to escape the consequences of Columbia's overreaching and misstatements at trial. Columbia now seeks to defend the complete omission of any egregious-or-wrongful-conduct instruction from the jury instructions on tortious interference – even though Columbia previously had conceded, and indeed this Court twice previously had ruled, that such conduct must be proved to satisfy an element of the tort. Columbia attempts to show the sufficiency of the evidence simply by rehashing its theory of the case and its interpretation of the evidence presented at trial. But Columbia's spin on the evidence does not correct the fact that such evidence simply does not qualify as tortious interference. As for the damages calculation which Columbia first proposed to the jury during summation, and which the jury adopted, Columbia now disowns its misstatements about the damages evidence by proposing ways to explain the jury's verdict other than by acknowledging that the jury relied on the statements of Columbia's own counsel. And for those points as to which Columbia has no plausible explanation, Columbia pretends that NCRIC has waived its objections. But, as this Court is well aware, NCRIC objected early and often to Columbia's liability and damages evidence, and it plainly objected to the jury instructions.

I. THE JURY'S TORTIOUS-INTERFERENCE LIABILITY FINDING SHOULD NOT STAND.

A. Columbia's Defense of the Jury Instructions Ignores the Law, Columbia's Prior Concessions, and This Court's Prior Rulings.

Columbia argues that, because the jury instructions recited the four elements necessary to prove tortious interference, it is irrelevant that the Court failed to instruct the jury that satisfying one of those elements – intentional interference – requires proof of egregious or otherwise wrongful conduct. Columbia claims to be "unaware of . . . any controlling authority" establishing that the intentional interference necessary to prove this tort must be egregious and wrongful. Opp. 5. NCRIC's opening brief ("Memorandum" or "Mem."), however, cited a string

of cases so holding. *See* Mem. at 4-5 (citing, *e.g.*, *Mercer Mgmt. Consulting, Inc. v. Wilde*, 920 F. Supp. 219, 239 (D.D.C. 1996) ("Competitive activity does not by itself constitute intentional interference . . . *unless accomplished by wrongful or improper means, such as fraud, violence, or civil suits*." (internal quotations omitted) (emphasis added)); *Genetic Sys. Corp. v. Abbott Labs.*, 691 F. Supp. 407, 423 (D.D.C. 1988) ("A competitor's conduct must be more egregious, for example, it must involve libel, slander, physical coercion, fraud, misrepresentation, or disparagement.")).

Columbia's search for controlling legal authority could have been as short as reading this Court's prior rulings in this case – rulings by not only the present judge, but likewise her predecessor. This Court twice has held that, to prove tortious interference, "conduct must be more egregious, for example, it must involve libel, slander, physical coercion, fraud, misrepresentation, or disparagement." Order Denying Summary Judgment at 10 (Apr. 11, 2003); *accord* Order on NCRIC's Motion To Dismiss at 3 (July 3, 2001) (Davis, J.) (defendant must "plead some form of 'egregious' behavior"). In fact, had Columbia consulted its own repeated prior arguments to this Court, it would have realized that it has *conceded* that it needed to prove wrongful conduct to prevail on its tortious-interference claim. *See* Tr. of Argument on Summary Judgment Mot. at 61, 63 (Dec. 12, 2002) (Columbia's counsel states: "that's what Judge Davis found was sufficient to state a claim for the kind of *egregious conduct* that supports a tortious interference claim; that's certainly the law of the case in this case" (emphasis added)); Columbia's Mem. of Points & Auth. in Opp. to NCRIC's Mot. for Sum. Judg. at 47 (Mar. 7, 2002) ("Whether NCRIC's malicious, retaliatory conduct was sufficiently 'egregious' or 'wrongful' is, at a minimum, a jury question" (capitalization changed)); Columbia's Supp. Mem. of Points & Auth. in Opp. to Pl.'s Mot. To Dismiss Counterclaims at 11 (Jan. 26, 2001) ("any

type of malicious intent or egregious behavior will" satisfy the standard for tortious interference). Columbia even proposed one such version in response to NCRIC's proposed jury instructions. *See* Mem. 6-7. Columbia's position is not only contrary to what this Court repeatedly has ruled, but also contrary to Columbia's own previous acknowledgements of the law.

Columbia attempts to distinguish two cases cited by NCRIC that set forth the governing legal standard, *Genetic Systems* and *Bennett Enterprises*, but its attempts fail. Columbia argues that *Genetic Systems* should be disregarded both because it involved a motion to dismiss and because it did not rely on District of Columbia law. *See* Opp. 5-6 & n.3. But in the course of ruling on the motion to dismiss, *Genetic Systems* plainly did hold that "egregious" conduct such as "libel, slander, physical coercion, fraud, misrepresentation, or disparagement" is necessary to state an intentional interference claim. 691 F. Supp. at 423. That it so held on a motion to dismiss in no way undermines that ruling. As for Columbia's second objection, the court made explicitly clear that it was applying a rule that is *consistent* in the law of the District of Columbia as well as two other states, and that the differences in law among these states were "irrelevant" to the issues in the case. *Id.* at 422 n.75.

Columbia also argues that this Court's instruction satisfied *Bennett Enterprises* because it tracked that case's language concerning proof of "intent to disrupt [an] economic advantage." Opp. 6 (quoting *Bennett Enters., Inc. v. Domino's Pizza, Inc.*, 310 U.S. App. D.C. 192, 198, 45 F.3d 493, 499 (1995)). But the pages of the record cited by Columbia to support its argument, Jury Instr. p. 12 and 2/10/04 Tr. 171-72, do not reflect a *Bennett Enterprises* instruction – the Court here instructed the jury only that it needed to find "intentional interference inducing termination of the expectancy," Jury Instr. p. 12, and "intentional interference inducing or causing a breach or termination of the relationship," 2/10/04 Tr. 171.

Moreover, contrary to Columbia's argument in its Opposition, *Bennett Enterprises* nowhere provides that an intent to disrupt, without egregious or otherwise wrongful conduct, would be actionable as tortious interference. In fact, *Bennett Enterprises* specifically relies on *Genetic Systems* as setting forth what constitutes "tortious interference . . . under District of Columbia law." *Bennett Enters.*, 310 U.S. App. D.C. at 198, 45 F.3d at 499.

Columbia next argues that in prior cases, the Court of Appeals "has held far less 'egregious' conduct than that proven here sufficient to constitute tortious interference." Opp. 5 n.2. That argument misses the point – it is not known what the jury would consider "proven" here, and therefore how it compares to the cases Columbia cites, because the jury was never asked to resolve the factual dispute as to whether NCRIC engaged in the allegedly "egregious" conduct to which Columbia's witnesses testified. *Id.* Moreover, Columbia misstates the facts and holdings of the three cases it offers to support its argument that egregious conduct need not be proved. *See* Opp. 5 n.2. None of its cases suggests that egregious or otherwise wrongful conduct need not be proved to prevail on a tortious interference claim, and all involved egregious conduct. *See CASCO Marina Dev., L.L.C. v. D.C. Redevelopment Land Agency*, 834 A.2d 77, 84 (D.C. 2003) (requiring "improper" conduct to state a claim for tortious interference and denying a motion to dismiss based on allegations that a government agency, *wrongfully* and for the purpose of leveraging a better economic bargain, withheld consent even though, by law, it was required to provide such consent); *Dyer v. William S. Bergman & Assocs.*, 657 A.2d 1132, 1137-38 (D.C. 1995) (affirming tortious-interference verdict based on conduct, including "misappropriating . . . records and . . . *wrongfully* stealing" a principal client, that was egregious enough to support a punitive damages award (emphasis added)); *Sorrells v. Garfinckel's, Brooks Bros., Miller & Rhoads, Inc.*, 565 A.2d 285, 290-92 (D.C. 1989) (holding that a showing of

"improper" conduct is required and finding sufficient evidence of malice based on evidence that defendant harmed plaintiff's sales by ridiculing her in public, denying her use of a telephone to call potential customers, and wrongfully withdrawing other materials necessary for plaintiff to do her job). While Columbia may disagree with the intricacies of the egregious-conduct standard, it cannot reinvent binding precedent, ignore its own concessions that some form of egregious conduct must be proved, and disown the law of the case.

Finally, Columbia asks the Court to ignore the erroneous jury instruction based on a far-fetched claim that NCRIC failed to object properly to the instructions. But Columbia itself *concedes* that NCRIC specifically objected on the record that the Court's proposed jury instructions "dropped the discussion of egregious conduct." Opp. 7 (quoting 2/10/04 Tr. 160). While Columbia's Opposition then shortens this quotation and contends that NCRIC's objection referred "only to 'egregious conduct' and nothing else," *id.*, NCRIC's objection, read in context, clearly refers to the omission of NCRIC Proposed Jury Instruction No. 15. That proposed instruction provided a detailed egregious-and-wrongful-conduct instruction with citations to pertinent cases that, incidentally, included the Court's own description from its April 11, 2003 summary judgment ruling of the tortious-interference standard. The record also includes a second instance in which NCRIC insisted that the jury instructions include an egregious-and-wrongful-conduct instruction. *See* 2/9/04 Tr. 1106-07 (discussing previous version of same instruction, counsel for NCRIC explained the need for an instruction that "the intent [element] for these torts [requires proof of] aggravated conduct.").[1]

[1] Columbia's Opposition also suggests that any instructional error should be overlooked in light of the Court's latitude in fashioning appropriate jury instructions. Opp. 4. Such latitude, however, of course has important limits. There is no doubt that an instruction is erroneous and grounds for reversal if it excludes a major point of law which the jury should have been made

B. Columbia's Argument that the Jury Could Have Found Egregious Conduct, and Thus the Omitted Jury Instruction Should Be Overlooked, Misses the Point.

Perhaps recognizing that it did, in fact, need to prove that NCRIC engaged in egregious or otherwise wrongful conduct, Columbia argues also that the evidence *could have supported* such a finding. But that argument is irrelevant for purposes of considering whether the jury instructions were valid. For under the instructions actually given, and in light of the hotly contested factual dispute as to whether NCRIC engaged in egregious and wrongful conduct, it is impossible to determine whether the jury's verdict actually reflected a finding of egregious or wrongful conduct.

Columbia contends that the instructional error should be ignored because there has been no "miscarriage of justice." Opp. 10. The legal standard it recites, however, is premised on a case concerning the standard to apply when erroneous instructions are given *but a party fails to object to the instructions*. *See id.* 10-11 (discussing *District of Columbia v. Banks*, 646 A.2d 972, 977 (D.C. 1994) (defendant "never objected to this instruction, nor did it express any dissatisfaction with it, either directly or indirectly")). When, as here, a party properly objects to an instruction, the erroneous instruction provides grounds for a new trial if it is "misleading and prejudicial." *Gebremdhin v. Avis Rent-A-Car Sys., Inc*, 689 A.2d 1202, 1204 (D.C. 1997). That standard, and not Columbia's "miscarriage of justice" standard, applies here. Because the parties at trial disputed whether NCRIC's conduct was wrongful, the omission of an instruction requiring any such finding clearly and obviously prejudiced NCRIC.[2]

---

aware in order to reach a fair and informed verdict. *See Wingfield v. Peoples Drug Store, Inc.*, 379 A.2d 685, 688-89 (D.C. 1977).

[2] Columbia also attempts to argue that the instructional error was harmless because NCRIC's counsel argued the correct standard to the jury. *See* Opp. 11 n.6. But as Columbia acknowledges later in its brief, jurors are bound and presumed to follow the jury instructions

C. Columbia's Tortious-Interference Evidence Fails as a Matter of Law.

Columbia objects to NCRIC's challenge to the sufficiency of the evidence by providing an exhaustive recitation of two of its trial arguments – that NCRIC terminated the Retro Plan with a plan to help physicians move to other hospitals, and that NCRIC wrongfully interfered with Columbia's clinic. Opp. 12-20, 45-48. Its first argument fails because the conduct it describes is not in any way wrongful; its second argument fails because it has no relation whatsoever to the harm Columbia claims NCRIC caused.[3]

As a preliminary matter, Columbia's Opposition mistakenly states several times that the "miscarriage of justice" standard governs consideration of NCRIC's new-trial motion. *See* Opp. 7, 10, 12. That is totally incorrect. It is long settled that "[t]rial courts [also] have the

---

given by the Court, not the argument of counsel. *See* Opp. 24 n.11 (citing *McCullough v. United States*, 827 A.2d 48, 55 (D.C. 2003) ("It is well settled in this jurisdiction that jurors are presumed to follow instructions.")).

[3] Through selective quotation of NCRIC's objection on the record, Columbia also argues that NCRIC waived this challenge because "[t]he only time NCRIC challenged the sufficiency of Columbia's evidence . . . was at the close of Columbia's case-in-chief." Opp. 42. Columbia cites a 1959 opinion stating that, when a party states *solely* that it is "renewing" a motion for judgment as a matter of law made at the end of the plaintiff's case-in-chief, such "renewal" is insufficient. Opp. 42-43 (discussing *District of Columbia v. Helen B. Hickey & Kenny Constr. Co*, 150 A.2d 463 (D.C. 1959)).

Here, however, NCRIC did much more than simply "renew" its motion. Columbia's Opposition says that NCRIC merely stated that it "repeated the arguments that [it] made at the close of the case previously when Columbia rested," Opp. 42, but in fact, immediately following that statement, NCRIC's counsel stated on the record that "I would say that the evidence, Your Honor, does not show the level of aggravated behavior, egregious conduct or tort necessary to change what is an ordinary contractual change of circumstances to change that into tortious interference. And we believe that those counts should be dismissed because they fail the [appropriate] standard of proof." 2/10/04 Tr. at 39. Thus unlike in *Helen B. Hickey*, NCRIC referenced its prior argument *and then specifically explained the basis for its renewed motion.* NCRIC's objection at the close of all of the evidence easily satisfies the Rule 50(a)(2) requirements for motions for judgment as a matter of law. *See Howard Univ. v. Best*, 547 A.2d 144, 147-48 (D.C. 1988) (detailing standard when considering sufficiency of Rule 50 motion and concluding that "'technical precision' is not required").

16d-003316

power and the duty to grant a new trial if the verdict is against the clear weight of the evidence." *Gebremdhin*, 689 A.2d at 1204 (internal quotation marks and brackets omitted). When considering such a motion, the Court is to consider "all the evidence both favorable and unfavorable." *Breezevale Ltd. v. Dickinson,* 759 A.2d 627, 638 (D.C. 2000) (quotation marks omitted) (citing *Lyons v. Barrazotto*, 667 A.2d 314, 324 (D.C. 1995)), *aff'd en banc*, 783 A.2d 573 (D.C. 2001). "[T]he trial judge need not view the evidence in the light most favorable to the non-moving party. Indeed, *the Judge can, in effect, be the thirteenth juror*, he may weigh evidence, disbelieve witnesses, and grant a new trial even when there is substantial evidence to sustain the verdict." *Fisher v. Best*, 661 A.2d 1095, 1098 (D.C. 1995) (internal quotation marks omitted; emphasis supplied).

As NCRIC explained in its opening brief, every one of the physicians who actually testified at trial made clear that NCRIC did not cause them to leave Columbia. Mem. 8-12. The evidence Columbia cites in its Opposition is either complete speculation or irrelevant. For example, while Columbia went to great pains at trial and in its Opposition to characterize the expiration of the Retro Plan as a "terminat[ion]" by NCRIC, *e.g.*, 2/4/04 Tr. 590; Opp. 12, 46, absolutely no testimony at trial even suggested that either party had any obligation to continue the Retro Plan on or after September 1, 2000. Columbia does not now contend otherwise. Thus the question of which side sent the first notice of termination is irrelevant.

Columbia recites its version of the contract renewal negotiations and NCRIC's communications with its physician-insureds and then claims that such business conduct could qualify as tortious interference. *See* Opp. 12-14, 45-48. But even if Columbia had proven that physicians left Columbia because of the cancellation of the Retro Plan and that NCRIC engaged in aggressive negotiation tactics, as Columbia argues in its Opposition at 15, such evidence

would be insufficient as a matter of law to prove causation. NCRIC had no obligation to continue the Retro Plan past August 31, 2000. Thus physicians reducing or ending their referrals after the proper expiration of the plan, which Columbia contends demonstrates tortious interference, Opp. 17-18, is in fact the normal, permissible change in business activity that one would expect upon the plan's expiration. Similarly, NCRIC's communications *with its customers* concerning the status of their policies, and its making plans to help *its own customers* if they decided to begin taking patients to other hospitals, is necessary business activity that is not tortious even if one result is that physicians stop admitting patients to Columbia. *See, e.g.*, *FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 284 (7th Cir. 2002), *cert. denied*, 123 S. Ct. 1769 (2003) (The provision of truthful information to customers to whom a party owed contractual duties is not tortious interference.).

The cases Columbia cites to support its argument to the contrary do not, as Columbia incorrectly argues, hold that the business activity testified to by Columbia's witnesses can qualify as tortious interference. Columbia contends that in *CASCO*, the Court of Appeals found that liability could be premised on actions taken "merely . . . in furtherance of [a company's] economic interests." Opp. 47-48. In *CASCO*, plaintiff claimed tortious interference when a government agency with the authority to prohibit a transaction only if one of the transacting parties was in default exercised that authority and prohibited the transaction. The Court of Appeals held the complaint against the agency sufficient to survive a motion to dismiss because plaintiff alleged that the counter-party "was not in default" but that the agency nevertheless "asserted default solely in order to realize financial gain rather than for reasons related to performance under the contract." *CASCO*, 834 A.2d at 80. Labeling a party "in default" when it is not would of course be patently wrongful behavior. The other case on which

Columbia relies, *Sorrells*, similarly involved wrongful conduct, including defendant's harming a department-store salesperson's sales, and therefore commissions, by ridiculing her in public, denying her use of a telephone to call potential customers, and wrongfully withdrawing other materials necessary for plaintiff to do her job. *See Sorrells*, 565 A.2d at 290-92.

Columbia also claims it provided sufficient evidence of wrongful conduct by soliciting testimony and introducing documents concerning NCRIC's cancellation of the policy covering Columbia's health clinic and NCRIC's issuance of exclusions to NCRIC-insureds practicing in the clinic. *See* Opp. 13-14, 16-17, 46-47. Of course, a physician's decision to stop practicing at the clinic would not affect hospital revenues from patient admissions because physician practice in the clinic is unrelated to private patient admissions to the hospital. Thus the effects of the expiration of the Retro Plan and of physicians moving their practices to other hospitals are completely distinct from any staffing problems at the clinic following NCRIC's cancellation of the clinic policy.

Both in its Opposition and in its argument to the jury, Columbia focused on the clinic policy even though the testimony at trial made clear that the clinic policy was completely distinct from the Retro Plan.[4] Columbia's tortious-interference claim was that NCRIC interfered with Retro Plan physicians admitting patients to the hospital, *not that NCRIC interfered with*

[4] Columbia argues in its Opposition that its witnesses testified that NCRIC's cancellation of the clinic policy somehow caused physicians, presumably who had been participating in the Retro Plan, to begin "making arrangements to move their practices." Opp. 13. Columbia includes citations to the testimony of four physicians, Drs. Cooper, Rifka, Johnson and Dukes. But nothing in the testimony it cites includes any statement in which a physician says that the cancellation of the *clinic* policy led the physician to stop referring *his or her private patients* to Columbia. *See* 2/2/04 Tr. 15-16 (Dr. Cooper's testimony concerning cancellation of *Retro Plan*, not *clinic* policy); *id.* 113 (Dr. Rifka's testimony concerning cancellation of *Retro Plan*, not *clinic* policy); 2/4/04 Tr. 592-93 (Dr. Johnson's testimony concerning when she "quit treating clinic patients" and discussing a letter about practice at the clinic, not about admitting private patients to Columbia); *id.* 633 (Dr. Dukes' testimony concerning cancellation of *Retro Plan*, not *clinic* policy).

16d-003319

physicians practicing at the clinic. See Columbia's Am. Ans. and Counterclaims at 25 (Jan. 5, 2001) (alleging injury "due to loss of revenue resulting from loss of patient referrals").[5] Thus whether or not NCRIC properly cancelled the clinic policy and issued exclusions to clinic physicians – and NCRIC maintains that it properly did so – the issue is irrelevant because there was no evidence at trial that a physician's ability to practice in the clinic had any effect on a Retro Plan physician's decision to admit private patients to the hospital.

Finally, with regard to Columbia's obligation to prove "existence of a valid business relationship" Columbia places great weight on the testimony of physicians about their loyalty to Columbia (Opp. 14-15); in fact, it is the linchpin of Columbia's argument on this element. However, as Drs. Blank, Johnson and Dukes testified, their affinity for and loyalty to Columbia had already begun to wane in late 1999 and early 2000 because of the hospital's continuing difficulties which made it clear that the hospital was likely on the verge of closing (2/4/04 Tr. 564-65), was becoming an unsafe place for their patients (2/4/04 Tr. 583), and was not the hospital it once was (2/4/04 Tr. 621). These were the reasons cited by physicians for leaving Columbia, not any alleged actions taken by NCRIC. 2/4/04 Tr. 562-63, 585, 634.[6]

---

[5] Columbia now attempts to argue that its counterclaim sought damages for harm to the clinic. *See* Opp. 20. It bases that newly invented damages claim on its argument at trial that the appropriate measure of damages was the hospital's overall change in revenue before and after the hospital's dispute with NCRIC. *See id.* But, contrary to Columbia's claim, none of the testimony it cites provides any support for the proposition that the departure of *clinic* physicians actually contributed to the hospital's loss of revenue. *See id.* (citing testimony of Drs. Proctor, Rifka, and McCants). Given the description of the clinic at trial of serving the District's poor and uninsured, Columbia's claim that the clinic brought revenue into the hospital rings hollow.

[6] As it had at trial, Columbia claims that a NCRIC employee who had negotiated with Columbia through August 2000 concerning a possible extension of the Retro Plan, David Osborn, was "never heard from again." Opp. 14 n.7. Even Columbia is forced to concede, however, that the trial testimony explained that Mr. Osborn remained at NCRIC for months after August 2000 until ultimately being fired in January 2001, *see id.*; and the trial record reflects that Mr. Osborn's termination was not in any way "related to his negotiation discussion with Columbia," *see* 2/9/04 Tr. 1080.

II. THE COURT SHOULD STRIKE THE DAMAGES AWARD OR IN THE ALTERNATIVE GRANT A REMITTITUR.

A. The Jury's Award of $13 Million in Pre-Closing Damages Is Speculative and Against the Weight of the Evidence.

As was pointed out in NCRIC's Memorandum, the $13 million the jury awarded Columbia in pre-closing damages on the tortious-interference claim should be stricken because it is too speculative, Mem. 27-28, or at a minimum it should be remitted to $1,638,191.41, Mem. 21-22. In attempting to defend the award, Columbia's Opposition abandons the testimony of *its own* damages expert, Peter Ben Ezra, which was the model the Court held to be "a reasonable formula to apply in this instance," 2/3/04 Tr. 299. It instead invented a different damages model introduced for the first time during closing argument.

In closing argument, Columbia contended for the first time that $13 million is an appropriate measure of pre-closing damages to compensate for the departure of specified physicians upon expiration of the Retro Plan. It based that new theory, supported only by *counsel's* argument, on taking the hospital's *overall* change in revenue from its 2000 fiscal year to its 2001 fiscal year ($10 million/year), discounted by 30 percent to account for marginal costs (thereby reduced to $7 million/year), and then applied to the 22 months before the hospital closed (totaling $13 million). 2/10/04 Tr. 132. Columbia's Opposition pretends that this damages calculation had evidentiary support – it goes so far as to label it the "Rifka/Wilson/Moore model for 22 months" of damages. Opp. 49. But contrary to Columbia's assertions, *see* Opp. 20, the *evidence* at trial was only that the hospital's total revenues declined by $10 million over one year – neither Dr. Rifka nor Mr. Wilson nor Mr. Moore testified that *all* of this decline in revenue could possibly be attributed to reduced admissions from former Retro Plan physicians. *See, e.g.*, 2/4/04 Tr. 505. In fact, no witness testified as to what all of the specific factors are that contribute to the hospital's revenues. (However, one witness, Mr.

Moore, testified that the hospital's revenue trend since 1995 – before the conduct at issue in this case – had been declining, and that between 2000 and 2001 – the period on which Columbia focused – "the hospital actually did better bottom line-wise financially." *See* 2/8/04 Tr. 930.) Only one person at trial took the inappropriate leap of attributing the entire decline in revenue from 2000 to 2001 to the departure of NCRIC-insured physicians: Columbia's counsel in closing argument.[7]

If the Court declines to strike these speculative damages in their entirety, NCRIC urges the Court to remit them to an amount consistent with what Columbia's own damages expert testified to: $1,638,191.41, Mem. 21-22. That amount is premised on Mr. Ben Ezra's contention that damages would total approximately $2.6 million per year, which Columbia now admits, *see* Opp. 35,[8] as there discounted to conform to the evidence presented at trial. *See* Mem. 21-22.

Columbia's Opposition pretends that a remittitur could be justified only if the Court determined that the damages award was "so inordinately large as to exceed the maximum range supported by the evidence, or when it is so great as to shock the conscience." Opp. 34-35. While those factors could certainly constitute a basis for remittitur, they are not the *sole* bases. The District of Columbia Court of Appeals has explained that, "[w]hen a party moves to strike a

---

[7] In closing argument, Columbia's counsel argued that Mr. Ben Ezra's analysis would produce the same calculation, but that argument grossly misstated the factual record. *See* 2/10/04 Tr. 135. Columbia's counsel told the jury that his $7 million-per-year number, when considered over three years, is $21 million, which is "exactly the number Peter Ben Ezra came up with." *Id.* But Mr. Ben Ezra actually testified that the hospital's decreased cash flow would total $22 million over *twenty* years, not *three* years. *See* 2/3/04 Tr. 311-12.

[8] Notwithstanding this admission, Columbia *also* states that Mr. Ben Ezra's testimony would have been sufficient to support a $20 million verdict, presumably as a way to make the $13 million verdict seem reasonable. *See* Opp. 35. But the jury's verdict form makes clear that the $13 million *was for only the 22 months before the hospital closed*, while Mr. Ben Ezra's $22 million estimate was for a *twenty-year* period.

verdict as excessive, the trial court must consider whether that verdict resulted from . . . mistake, oversight, or consideration of improper elements." *Finkelstein v. District of Columbia*, 593 A.2d 591, 596 (D.C. 1991) (en banc). Because of Columbia's counsel's invention of a new measure of damages during closing arguments, the jury made a mistake and considered improper elements.[9]

B. Columbia Cannot Now Disown Its Failure To Plead the $5 Million Congressional Appropriation in Its Counterclaim or Avoid Its Overstatement of Any Such Damages by $1 million.

The entire $5 million component of the jury verdict for a missed congressional appropriation should be stricken. As for the $1 million above and beyond what Congress actually appropriated, Columbia's counsel urges the Court to ignore the public record reflecting a $4 million appropriation and instead credit Dr. Rifka's testimony of a $5 million appropriation. Columbia's witness's testimony, and its counsel's argument for $5 million, are flatly contradicted by what is publicly available in the Congressional Record and the Statutes at Large. *See* 147 Cong. Rec. H10242 (daily ed. Dec. 18, 2001); 115 Stat. 2177, 2187 (2002). In light of Columbia's counsel's misstatement of the public record at trial, *see* 2/10/04 Tr. 53-54; Mem. 23 n.5, it is amazing that Columbia has not now agreed to at least a $1 million remittitur.

Columbia has three lines of attack, none successful, to justify the jury's award of $5 million on its claim that it lost a congressional appropriation when the hospital closed. First, Columbia asks the Court to excuse the fact that it failed to include any such damages in its

---

[9] Columbia quite improperly intersperses a wholly irrelevant personal attack on the credibility of NCRIC's CEO. *See* Opp. 39 n.19. Its Opposition implies, but does not actually state, that NCRIC's CEO made filings with the U.S. Securities and Exchange Commission that were incomplete or inaccurate. In fact, the record reflects without dispute, from the uncontradicted testimony of NCRIC's CEO, that NCRIC's securities filings were: (1) totally proper; and (2) consistent with the advice of NCRIC's legal advisors and accountants with regard to compliance with the technical accounting rules governing such securities filings. *See* 2/10/04 Tr. 6-7.

16d-003323

counterclaim on the ground that the damages are not a "new claim," but rather reflect "continuing harm." Opp. 51. For this proposition it is forced to cite a case dating back to 1908. Opp. 51-52. In fact, the harm pleaded in the counterclaim is decreased income from lost patient referrals. *See* Columbia's Am. Ans. and Counterclaims at 25 (Jan. 5, 2001) (alleging injury "due to loss of revenue resulting from loss of patient referrals"). Any losses from decreased patient referrals occurring after the date of filing of the counterclaim, and that were tortiously caused by NCRIC, would qualify as "continuing harm" that would be recoverable. However, the opportunity to take advantage of a congressional appropriation is a completely distinct damages theory pleaded nowhere in NCRIC's counterclaim, and thus does not qualify as recoverable "continuing harm" damages. Columbia's authorities are not to the contrary.

Second, Columbia pretends that the $5 million in post-closing damages could be something other than what Columbia specifically asked for in its closing argument. Columbia argued to the jury that, *in addition to* the $5 million for the congressional appropriation, it should receive as post-closing damages the $7 million per year for the three years that it claimed the hospital would have stayed open, or $21 million. *See* 2/10/04 Tr. 135. In an effort to convince the Court that the $5 million awarded could somehow be part of the $21 million in overall lost revenue, Columbia says that $7 million per year would equal $5 million for nine months. Opp. 36. It then posits that, although it asked for three-years worth of post-closing lost revenue damages, "the modest $5 million award for post-closure damages represents just 9 months of lost revenue under this model." *Id.* Columbia's desperate permutations to reach a comprehensible explanation for the $5 million, other than that it was what Columbia asked for in its lost-congressional-appropriation damages request, do not pass the common-sense test. Moreover, nine-months' worth of the $7 million in annual revenue loss Columbia projected would be

$5,250,000, not $5 million. This jury returned a verdict on the contract claim down to the dollar – had it done what Columbia hypothesizes for the tortious interference claim, it would not have simply ignored the last $250,000.

Finally, Columbia contends that NCRIC's challenge to this $5 million has been waived. Opp. 40 n.20, 51. But the record is clear that NCRIC objected to evidence concerning this missed congressional appropriation. When Dr. Rifka first testified (inaccurately) that Congress had appropriated $5 million for it, NCRIC objected on the record to his testimony on the ground that it had been denied discovery on the subject. 2/2/04 Tr. 176. Columbia's Opposition now contends that, because there were three questions between the testimony and the objection, the objection was untimely, *see* Opp. 40 n.20, but it cites no authority for that draconian proposition. Moreover, shortly before Columbia's closing argument, in which it requested the $5 million for the congressional appropriation, NCRIC specifically objected *twice* outside of the presence of the jury to Columbia arguing in closing concerning such alleged damages. *See* 2/10/04 Tr. 41, 55 (objecting to damages arising from "a grant from the federal government"). Columbia cites nothing to support its claim that NCRIC should have interrupted Columbia's counsel during his summation to renew its twice-made objection to the inclusion of such argument.

C. The Jury's Inexplicable Contract Damages Award Should Be Stricken.

NCRIC's opening Memorandum explained that the jury's award of $220,002 on Columbia's contract claim cannot be reconciled with any permutation of the evidence it had before it. Mem. 12-13. One reason for the jury's inexplicable verdict may be that Columbia's counsel sowed confusion during its closing argument by misstating the evidence in the record concerning the calculation of such damages. *See id.* 13. In its Opposition, Columbia nowhere attempts to defend its misstatement to the jury – instead it relies on inapposite case authority.

Columbia claims that *Doe v. Binker*, 492 A.2d 857 (D.C. 1985), supports its contention that any award within the range argued by the parties must stand. Opp. 21-22. *Doe* says no such thing. Rather, it found a jury's pain-and-suffering award proper only because there was "substantial circumstantial evidence presented" to support it. 492 A.2d at 861.

Columbia also contends, citing *Luck v. Baltimore & Ohio R.R. Co.*, 166 U.S. App. D.C. 283, 510 F.2d 663 (1974), that NCRIC's contract-damages argument must be rejected absent "actual *evidence* of wrongful juror conduct." Opp. 22 (emphasis in original). But *Luck* requires such evidence when a party argues that the jury engaged in "misconduct." 166 U.S. App. D.C. at 288, 510 F.2d at 668. Here, *Columbia's counsel* engaged in the misconduct by misleading the jury during closing argument; the jury's ultimate verdict demonstrated not misconduct, but confusion or mistake.

Finally, Columbia illogically argues that, because before the jury returned its verdict NCRIC did not raise an objection, NCRIC cannot, post-verdict, be heard to object to the amount of the verdict. Opp. 21. Of course, NCRIC could not have raised an objection to the amount of the verdict until that verdict had first been returned by the jury. It was not until the jury returned its verdict that NCRIC was able to determine that its award represented mistake and confusion.

III. COLUMBIA'S ARGUMENTS TO RESUSCITATE PETER BEN EZRA AS AN EXPERT ARE RED HERRINGS.

Columbia would have this Court believe that, if Peter Ben Ezra qualified as an expert under the *Dyas* test, then it had no choice other than to let his testimony go to the jury. *See* Op. 25-26. But that is not the law in the District of Columbia – nowhere does *Dyas* suggest that, once a court determines that a witness is *qualified* to testify as an expert, the Court's gatekeeper function is complete. By its terms, *Dyas* sets forth only the "subject matter and

testimonial qualifications governing the admissibility of expert testimony." *Dyas v. United States*, 376 A.2d 827, 832 (D.C. 1977).

NCRIC's Memorandum argues that Mr. Ben Ezra's testimony should have been excluded because, rather than being a disinterested expert, he was a plainly biased former Chairman of the Board of Columbia who had actually participated in Columbia's direction of this litigaiton, because his testimony was based on speculative factual assumptions lacking support in the record, and because he failed to apply generally accepted accounting techniques. Columbia retorts in its Opposition that the dispute of "how best to *apply* a discounted cash flow methodology to the facts of this case[, u]nder *Dyas*, . . . go[es] to weight, not admissibility." Opp. 26 (emphasis in original). But Columbia offers no citation to any specific passage in *Dyas* for that contention, and in fact *Dyas* says no such thing. *Dyas*' silence on the issue raised by NCRIC, admission of testimony based on rank speculation and a clearly flawed methodology, does not imply that admission of such testimony is required or even permitted.

Columbia's discussion of *Daubert* and *Reed v. United States*, 828 A.2d 159, (D.C. 2003) (declining to apply the *Daubert-Kumho* standard), similarly is irrelevant. District of Columbia law, following *Frye v. United States,* provides that expert testimony is to be excluded if it is not based on a methodology for which there is "'general acceptance.'" *See Bahura v. S.E.W. Investors*, 754 A.2d 928, 943 n.15 (D.C. 2000). NCRIC's motion does not argue that *Daubert* applies – it argues under the *Frye* standard that Mr. Ben Ezra's testimony should have been excluded because Mr. Ben Ezra *failed to apply generally accepted accounting principles.*[10]

[10] Columbia's most blatant red herring with regard to Mr. Ben Ezra is its extended discussion attempting to support Mr. Ben Ezra's use of a 20-year period for his damages projection. *See* Opp. 30 n.15. In light of this Court's prior rulings on this point, NCRIC did not actually raise this issue in its Memorandum. Columbia even acknowledges as much, *see id.* ("NCRIC does not

IV. COLUMBIA'S ARGUMENT AGAINST RECUSAL CANNOT BE RECONCILED WITH ITS OWN AUTHORITY.

Columbia contends that, because Dr. Butler was not listed or called as a witness at trial, the Court's extended treatment by him does not provide grounds for recusal. But Columbia's argument against recusal is not tethered to the law of this jurisdiction. Columbia fails even to state the operative legal standard, Code of Judicial Conduct for the District of Columbia Courts Canon 3(E)(1), which provides that a "judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." *See York v. United States*, 785 A.2d 651, 655 & n.7 (D.C. 2001) (explaining that the Canon is "binding on judges of . . . the Superior Court") (quotation marks omitted).

Columbia discusses the facts of *York* but ignores its holding that, when a judge has a close relationship to someone who is a witness at trial, recusal may be required under Canon 3(E)(1). *York* explains that recusal would be required where a judge is married to a commander of a police district and the witness is a police officer "under the command of her husband." 785 A.2d at 656 n.9. In *York*, "appellant failed to establish any significant connection between the judge's husband . . . [and the police-officer] witnesses involved in this case," and therefore recusal was not required. 785 A.2d at 656. The trial witnesses in *York* were police officers who were not under the judge's husband's direct command – the husband did not have "any connection whatsoever with those officers other than their common employment by the MPD." *Id.* at 657.

The relationship between Dr. Butler and Columbia's chief witness as trial, Dr. Rifka, was as close as, or closer than, that of a police officer and his direct commander. Dr. Butler and Dr. Rifka practiced together as part of a three-person partnership; the symbiotic

---

now expressly voice any complaint about Ben Ezra's selection of a 20-year damages period"), but it then spends over 200 words responding to this phantom argument.

relationship between these two doctors bears no relationship to the mere common-employer situation found not to require recusal in *York*. Thus while Columbia argues strenuously that, because Dr. Butler was not identified as a witness, the Court has no reason to recuse, that argument is irrelevant. *York* makes clear that the judge's close association to someone who works closely with a key trial witness provides a basis for recusal.

Perhaps recognizing the weakness of its legal argument, Columbia also argues against recusal by unfairly accusing NCRIC of mischaracterizing the factual record. Columbia contends incorrectly that NCRIC's statement that the Court had received treatment "at Columbia itself" is "unsupported by the record." Opp. 32-33. The trial record reflects that, while the Court was describing her treatment "on the grounds of Columbia," counsel for Columbia interrupted her and insisted to her that she had not been treated at Columbia. 2/4/04 Tr. 460-61. The Court responded, "Well I don't know. It says Columbia. I think the name of his practice group is Columbia Fertility Association. And so you go into the door of Columbia Hospital." *Id.* 461. Thus while *Columbia's counsel's* testimony is that the Court was not treated at Columbia, the Court itself said no such thing. Similarly, Columbia notes that NCRIC's affidavit in support of its motion explained the "obvious possibility that any patient of one doctor in [Dr. Butler's] practice would have had contact with and been treated by other physicians in the practice." Opp. 32 (quoting Page Aff. ¶ 9). The fact that the Court stated on the record that she had not been treated by Dr. Rifka does not, as Columbia contends, contradict or even take away from the significance of the statement in the affidavit. The affidavit speaks to the *appearance* of impartiality given that, in a three-physician practice of this nature, patients routinely see all doctors in the practice. Whether the Court actually was treated by Dr. Rifka does not affect the appearance issue.

Finally, Columbia inexplicably contends that, even if recusal is required under Canon 3(E)(1), the Court should not recuse and order a new trial. *See* Opp. 34 n.18. But in the case it cites for this claim, *Scott v. United States*, 559 A.2d 745 (D.C. 1989), the Court required a new trial based on the judge's failure to recuse. *See id.* at 756. Moreover, the case for ordering a new trial here is greater than in *Scott* because, after *Scott* was decided, in 1995 the Code of Judicial Conduct was revised. Before the revision, the Canons stated that a judge "should" recuse based on an appearance of impartiality; they now provide that a judge "shall" recuse under such circumstances. *York*, 785 A.2d at 655 n.7. Moreover, *Scott* is a D.C. Court of Appeals decision but here the motion is directed to the trial court itself. While the Court of Appeals might be reluctant to second-guess a trial court's decision on recusal, the trial court itself obviously faces no such constraint.

CONCLUSION

For the reasons stated herein and previously, NCRIC's motions should be granted.

Respectfully submitted,

BRYAN CAVE LLP

Scott M Badami by RA Ford

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar No. 435375
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6000 telephone
(202) 508-6200 facsimile

Counsel for Plaintiff NCRIC, Inc.

Dated: April 5, 2004

16d-003330

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Memorandum In Support of NCRIC's Motion For New Trial and Renewed Motion For Judgment As A Matter of Law was served this 5th day of April 2004, by hand delivery upon:

Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

I further certify that, on this 5th day of April 2004, a courtesy copy of the aforementioned Reply was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Scott M. Badami by RA Todd
Scott M. Badami

16d-003331

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,	
Plaintiff,	**Civil Action No. 00-0007308** **Calendar #8**
v.	
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	**Judge Blackburne-Rigsby**
Defendant.	

NCRIC'S OPPOSITION TO COLUMBIA'S MOTION FOR ASSESSMENT OF COSTS

Columbia Hospital for Women Medical Center, Inc. ("Columbia") has moved for an assessment of costs totaling $35,896.83, including: deposition costs, photocopying costs, delivery costs, witness fees, witness travel expenses and court fees. NCRIC, Inc. ("NCRIC") opposes Columbia's Motion for Assessment of Costs both because its request is grossly excessive and because most of its counterclaims were *rejected* either as a matter of law or by the jury. Columbia should receive no – or, at most, a greatly reduced – award of costs.[1]

Additionally, NCRIC requests that Columbia's motion be denied outright as Columbia has violated Super. Ct. Civ. R. 12-I(a) by filing the instant motion without contacting opposing counsel as required by the Rule. Columbia's motion does not, and indeed could not, include the appropriate certification of good faith because Columbia never attempted to reach an

[1] If the Court grants NCRIC's previously-filed Motion for Approval of Supersedeas Bond and to Stay Execution Pending Decision on its Rules 50 and 59 Motions and Any Appeal, any award of costs will be stayed. Columbia does not oppose NCRIC's motion for a stay. *See* 3/17/04 letter from Columbia's counsel, attached as Exhibit A. Accordingly, NCRIC respectfully requests that, either before or at the time the Court rules on Columbia's motion for costs, it also grant NCRIC's unopposed motion to stay execution.

agreement with NCRIC concerning taxation of costs. This is precisely the sort of motion where negotiation between the parties could lead to a compromise consent motion. By not even attempting to reach such a compromise, Columbia is unnecessarily burdening the Court.

I. DISCUSSION

A. Costs Should Not Be Awarded In This Case.

NCRIC challenges any award of costs to Columbia in this action.[2] Whether to award costs pursuant to Super. Ct. Civ. R. 54(d) is a decision within the discretion of the trial court. *Harris v. Sears Roebuck & Co.*, 695 A.2d 108, 109 (D.C. 1997). "The trial court has broad discretion . . . in deciding whether to award costs at all or instead ruling that each side must bear its own costs." *Sporicidin Co. v. Hauser*, 126 Daily Wash. L. Rptr. 1905, 1906 (D.C. Super. Ct. July 2, 1998). Courts in this jurisdiction and others have declined to award costs to a party when it was not successful on all of its claims. *See Sporicidin*, 126 Daily Wash. L. Rptr. at 1906 (and federal cases cited therein).[3]

In *Sporicidin*, the court declined to award costs to plaintiff despite the successful resolution of two of its claims and a jury verdict in its favor in the amount of $250,000. The court ruled that, in light of defendant's success in defeating plaintiff's legal malpractice claim and its major damage claim, each party was to be responsible for its own costs. *See id.* Importantly, the court noted plaintiff's malpractice and major damage claim were particularly weak. *Sporicidin* explained that, at the conclusion of trial it was apparent that plaintiff had failed

---

[2] Without first hearing argument from the parties on the propriety of an award of costs in this case, the Court stated in its Judgment in this matter that Columbia is to be awarded its costs. *See* Judgment (Feb. 20, 2004). For the reasons explained herein, NCRIC respectfully requests that the Court reconsider that ruling.

[3] "Rule 54 is substantially identical to Fed. Rule of Civil Procedure 54." Comment to Super. Ct. Civ. R. 54. *See also Harris*, 695 A.2d at 110 n.1 (observing that "Super. Ct. Civ. R. 54(d) is substantially identical to Fed. R. Civ. P. 54 and that we consider federal decisional authority to be persuasive.").

to prove as a matter of law a key element of those claims. *Id.* at 1906 n.5. The court went on to say, had those claims not been part of the case, "the court system and the defense would have been spared a substantial investment of time and resources." *Id.* at 1906. Given the weakness of those claims and the time and resources spent toward proving them, the court held that it would not be appropriate to require defendant to pay plaintiffs' costs. *Id.*

In this case, in response to NCRIC filing a single-count breach of contract claim, Columbia filed an eleven-count counterclaim. This Court dismissed *seven* of the eleven counts as a matter of law, one before the trial began, one after Columbia closed its case-in-chief (2/5 Tr. at pp. 667-69), and five more after the close of all the evidence (2/10 Tr. at pp. 64-65). Of Columbia's remaining four counts, the jury rejected two of them and awarded damages only on Columbia's breach-of-contract and tortious-interference claims. 2/13 Tr. at pp. 1-9. Even as to the two claims on which it prevailed, the jury awarded much less than Columbia sought on its contract claim and with respect to its tort claim, properly refused Columbia's grossly overreaching punitive-damages request. In this situation, where nine of the eleven counterclaims brought by Columbia failed (seven as a matter of law), and the damages award was far less than requested by Columbia, Columbia should not be deemed a prevailing party. Even if this Court were to determine that Columbia is the prevailing party, costs should not be awarded based upon the time and expense to the Court system and to NCRIC of trying the counterclaims, the majority of which did not even merit consideration by the jury. *See Sporicidin*, 126 Daily Wash. L. Rptr. at 1906 ("even if a party is deemed 'prevailing,' the award of costs is nonetheless discretionary") (citing *Talley v. Varma*, 689 A.2d 547, 555 (D.C. 1997); *Kleiman v. Aetna Cas. & Sur. Co.*, 581 A.2d 1263, 1267 (D.C. 1990); *Ingber v. Ross*, 479 A.2d 1256, 1265 (D.C. 1984)).

B. Objections to Specific Costs Sought by Columbia.

Subject to NCRIC's general objections to the award of any costs to Columbia in this matter, should the Court make such an award, NCRIC takes specific exception to the award of the following costs outlined in Columbia's Statement of Costs ("Stmt. of Costs"), attached as Exhibit A to its Motion for Assessment of Costs ("Motion for Costs"). In addition to striking the costs outlined below, should costs be awarded, NCRIC specifically requests a reduction in such award of two-thirds of the otherwise permissible costs to account for the claims dismissed by the Court as a matter of law. *See Sporicidin*, 126 Daily Wash. L. Rptr. at 1906 (and federal cases cited therein).

Any award of costs should be limited to those costs allowed pursuant to Super. Ct. Civ. R. 54-I,[4] and allocated fairly. "'The discretion given district judges to tax costs should be sparingly exercised with reference to expenses not specifically allowed by statute.'" *Harris*, 695 A.2d at 110 n.1 (citations omitted). *See also Talley*, 689 A.2d at 555 (while court fees and witness fees are ordinarily recoverable, absent unusual circumstances, parties must bear their personal expenses)(citing *Robinson v. Howard Univ.*, 455 A.2d 1363, 1370) (D.C. 1983)). Keeping in mind the Court of Appeals' admonition that the discretion of trial courts to award costs "must be exercised with 'restraint and discretion'" *Robinson*, 455 A.2d at 1370 (citation omitted)), NCRIC urges the Court to decline to award as costs Columbia's exorbitant and unspecified claims for deposition costs, photocopying costs, delivery fees, and a witness fee for a witness who did not even appear at trial.[5]

---

[4] Super. Ct. Civ. R. 54-I permits the court, in its discretion, to award costs for: depositions, reporters' transcripts on appeal, and premiums on bonds.

[5] *See, e.g., Talley v. Varma*, 689 A.2d 547(D.C. 1997) (reducing plaintiff 's requested photocopying costs of $6,351.29 to $500, for plaintiff's failure to provide specific information relating to copying costs or the reasons copies were necessary for trial).

1. Deposition Costs

Columbia seeks $10,886.45 in deposition costs. Stmt. of Costs at p. 1. While Columbia correctly cites cases from this jurisdiction that state that deposition costs may be awarded even if the deposition is not introduced at trial (*see Harris*, 695 A.2d at 110), the award of such costs is within the discretion of the trial court. *See* Super Ct. Civ. R. 54-I(b)); *Talley*, 689 A.2d at 556. Importantly, a prerequisite to the award of such costs is a finding by the trial court "that the deposition was necessary for case preparation." *Talley*, 689 A.2d at 556. *See also Kleiman v. Aetna Cas. Sur. Co.*, 581 A.2d at 1267.

With the exception of the depositions of R. Ray Pate, Bernard Hempelman, and Steven Fargis, Columbia alleges only generally that the depositions were necessary for its case presentation. Declaration In Support of Columbia's Motion For Assessment of Costs ("Schulman Decl.") ¶ 5. Columbia presents no basis, however, for the Court to make such a finding as to all of the depositions for which it seeks costs. Furthermore, in light of the exorbitant amount Columbia seeks as costs for the depositions and the number of Columbia's counterclaims dismissed by the Court, such an award should be denied, or at least, be significantly reduced.

2. Photocopying Costs

Columbia seeks a staggering $20,859.35 in photocopying costs. Stmt. of Costs at p. 1. Despite this exorbitant request, Columbia provides only limited details to justify such an award. Specifically, Columbia's Statement of Costs lacks any comprehensive description of what was copied, how many pages were copied or the reasons the copies were necessary for trial. Instead Columbia attempts to rely on a single paragraph in Mr. Schulman's Declaration as justification for this substantial award. *See* Schulman Decl. ¶ 4. Although Mr. Schulman states that Columbia seeks copying costs for trial exhibits, pre-trial exhibits, summary judgment

exhibits and documents produced in discovery, and that copying costs are "generally eight to ten cents per page," no further detail is provided. Without such detail, there is no way to know if such costs are reasonable or were in fact necessary for trial.

By way of example only, Columbia seeks an incredible $9,325.47 for the cost of photocopying six boxes of documents produced in discovery. Stmt. of Costs at p. 1; Schulman Decl. ¶ 4. Ten reams of paper, containing five-hundred pages each, fit into an average size litigation box. At 5,000 pages per box, a conservative estimate of the total number of pages required to fill the six boxes Columbia claims to have produced in discovery is 30,000. Using the midpoint of the copying costs cited in Mr. Schulman's declaration (*id.*), nine-cents per page, photocopying of the discovery documents would total only $2,700. There is no explanation that could justify $9,324.47 in photocopying costs requested by Columbia for these six boxes of discovery documents. Its overstatement of these costs casts doubt as to the legitimacy of the entire $20,859.35 requested by Columbia for photocopying. *See Talley*, 689 A.2d at 554-55 (upholding trial court's reduction of plaintiff's requested photocopying, duplication, photograph and medical record fees from $6,351.29 to $500, on the grounds that plaintiff's schedule of costs which was comprised of lists of generic charge items coupled with dates and monetary amounts only and failed to provide sufficient detail as to each claimed expense or to specify why each claimed expense was necessary for trial).

By providing dates and amounts of particular copying jobs, plaintiff in *Talley* provided more information in its statement of costs than Columbia provides here. Nevertheless, its copying costs were reduced to the reasonable sum of $500. A similar result is required here. Moreover, based on the dismissal of the majority of Columbia's counterclaims, the Court here should disallow such costs, or at a minimum, reduce them by two-thirds.

3. Delivery Costs

Columbia seeks an incredible $3,217.53 in delivery and service of process costs. Stmt. of Costs at p. 2. In support of its request, Columbia cites to a single, one page decision relying on federal court precedent from other jurisdictions, in which the total costs awarded were $109.53, including $40.13 in delivery and service costs. *See Camper v. Stewart-Lange*, 782 A.2d 762 (D.C. 2001). Delivery costs are not provided for in Rule 54 and should be denied. *See Burns v. Greater Southeast Community Hospital*, 119 Daily Wash. L. Rptr. 1869, 1873 (D.C. Super. Ct. July 11, 1991)("Although plaintiff seeks reimbursement for courier services, such services are not considered part of costs which may be taxed against the losing party."). *See also Talley*, 689 A.2d at 554 n.10 (defendant does not contest denial of costs for courier and messenger fees). Additionally, nowhere in its submission does Columbia provide sufficient detail to permit award of such costs. The Court should deny such costs in their entirety.

4. Witness Fees

Columbia seeks reimbursement of a witness fee for a witness who did not even testify at trial – Nabil Asterbadi. Stmt. of Costs at p. 2. In fact, to the best of NCRIC's knowledge, Mr. Asterbadi was not even present at the trial. Columbia has cited to no authority, and we are aware of none, allowing the award of witness fees for non-testifying witnesses when a trial was held. *Cf. Pearce v. E.F. Hutton Group, Inc.*, (Civ. A. No. 87-0008, 1989 WL 4969, Civ.A.No. 87-0008, *3 n.4 (D.D.C. Jan. 10, 1989)(disallowing costs for witness who did not appear at trial). Accordingly, the Court should deny this cost.

II. CONCLUSION

Columbia's motion is as excessive as it is premature. For the reasons stated herein, it should be denied.

Respectfully submitted,

BRYAN CAVE LLP

Scott M. Badami by RA 2nd

Rodney F. Page, D.C. Bar No. 37994
Scott M. Badami, D.C. Bar 435375
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
(202) 508-6116 telephone
(202) 508-6200 facsimile

Counsel for Plaintiff NCRIC, Inc.

Dated: April 7, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Columbia's Motion for Assessment of Costs was served this 7th day of April 2004, by hand delivery upon:

Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women

I further certify that, on this 7th day of April 2004, a courtesy copy of the aforementioned paper was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Scott M. Badami by RA

Scott M. Badami

16d-003340

EXHIBIT A

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

March 17, 2004

By Facsimile

Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005-3960

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***

Dear Scott:

I write to memorialize the substance of our phone conversation of yesterday. Columbia does not intend to oppose NCRIC's motion for a stay pending resolution of NCRIC's motions under Rules 50 and 59 and any appeal. Our position is predicated on the presence of the $19,500,000 surety bond with Liberty Mutual and NCRIC, Inc.'s assurance that the bond is currently in force and is not contingent on approval from the Court for its enforceability. As we discussed, Columbia reserves the right to withdraw its non-opposition to the stay request should there be any material change regarding NCRIC or the surety. Finally, you indicated that NCRIC had no objection to Columbia's having until March 26, 2004 to file its opposition to NCRIC's post-trial motions.

Sincerely,

Eli C. Schulman

Eli C. Schulman

RECEIVED
Civil Clerk's Office
APR 20 2004
Superior Court of the
District of Columbia
Washington, D.C.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC., Plaintiff/Counter-Defendant, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant/Counter-Plaintiff.	Civil Action No. 00-0007308 Calendar 8 – Judge Blackburne-Rigsby Next Event: Post-Trial Motions

COLUMBIA'S REPLY IN SUPPORT OF MOTION FOR ASSESSMENT OF COSTS

NCRIC's opposition offers the Court no reason to deny Columbia the costs it actually incurred in defeating NCRIC's meritless claim and succeeding on its counterclaims. NCRIC argues that Columbia should be denied *all* of its costs, because Columbia prevailed on some, but not all, of its counterclaims, even though the jury found for Columbia on NCRIC's claim and proceeded to award over $18 million in compensatory damages on Columbia's counterclaims. The D.C. Court of Appeals has already heard and rejected nearly identical efforts to deny parties who, like Columbia, have prevailed in substance, even if not on every single count.

NCRIC also argues that the specific costs Columbia incurred are excessive and seeks dramatically smaller awards (and sometimes none at all). But, again, NCRIC ignores binding precedent and its argument rests on self-serving speculation about what *it* considers to be reasonable costs, and does so without a shred of factual evidence to rebut Columbia's uncontested factual showings. Tellingly, too, NCRIC never remotely suggests that its own actual costs were less than Columbia's in any category covered by Columbia's motion for costs.

Columbia respectfully requests that the Court grant its motion and award the costs that Columbia has actually incurred in litigating this complex and hard-fought case for over three years.[1]

Discussion

I. THE COURT SHOULD REJECT NCRIC'S REQUEST THAT IT RECONSIDER ITS RULING THAT COLUMBIA IS ENTITLED TO AN AWARD OF COSTS

In entering judgment, the Court expressly ruled that Columbia is entitled to be awarded its costs. *See* Judgment (attached hereto as Ex. A) (ordering that "Counter-Claimant COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. . . . recover . . . its costs of action"). NCRIC's opposition brief asks the Court to reconsider that ruling. *See* NCRIC Opp. at 2-4. NCRIC contends that Columbia should not be considered a "prevailing party" under Rule 54 because it did not win each and every one of its counterclaims and did not recover all of its damages. *See id.* at 3.

This argument has been heard and rejected by the Court of Appeals. Under D.C. law, a prevailing party is one that "succeed[s] on any significant issue in litigation which achieves some of the benefit the part[y] sought in bringing suit." *Knight v. Georgetown Univ.*, 725 A.2d 472, 486 (D.C. 1999) (alterations in original) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). In language that could not be plainer, the Court of Appeals has instructed that "[e]ven if a party prevails on only one out of several related claims, that party is deemed a 'prevailing party' eligible for costs under Rule 54." *Knight*, 725 A.2d at 486-87. Here, the jury awarded Columbia over $18.2 million on its contract and tort claims. Columbia also defeated NCRIC's

[1]NCRIC complains that Columbia failed to meet and confer before claiming to be the "prevailing party" and seeking costs. But the Court's Judgment expressly ruled that Columbia *is* the prevailing party and entitled to its costs of action. *See* Ex. A. Still, out of an abundance of caution, counsel for Columbia conferred with counsel for NCRIC on April 15-19, 2004 in a good faith effort to determine whether any common ground existed. *See* April 19, 2004 Letter (attached hereto as Ex. C). As it has argued in its opposition brief, however, NCRIC responded to Columbia's overture by insisting that Columbia is entitled to *no* costs of any kind, *id.*, leaving no role for the very discussions between the parties that NCRIC had seemed to invite.

contract claim, defeating NCRIC's demand for $2.67 million in damages. These victories plainly qualify Columbia as the prevailing party. *See also Hardi v. Mezzanotte*, 818 A.2d 974, 986-87 (D.C. 2003) (affirming $14,000 costs award to a party awarded less than a million dollars in damages).

NCRIC's argument for reconsideration relies exclusively on a Superior Court decision in a highly unusual case, *Sporicidin Co. v. Hauser*, 126 Daily Wash. L. Rptr. 1905 (D.C. Super. Ct. July 2, 1998). There, a plaintiff brought a legal malpractice claim and a breach of fiduciary duty claim against Baker & Hostetler, seeking $71 million. Plaintiff also sought the return of every dollar in legal fees it had spent with that firm, totaling approximately $800,000. *See id.* at 1905. The jury rejected the malpractice and breach of fiduciary duty claims entirely, providing plaintiff instead with only $250,000 for what the jury adjudged to be unreasonable legal fees. *Id.* In deciding that this plaintiff did not deserve costs, the court observed that Sporicidin's verdict represented only a meager 0.3% of the damages sought, while the defendant had "fended off" a major claim. *See id.* at 1906 (internal quotation marks omitted). The court also specifically found the plaintiff failed to comply with its ruling limiting the time period for the presentation of witnesses, *id.*, and the D.C. Court of Appeals has explained that a court's discretion to disallow costs in such cases stems in part from the inherent power of courts to respond to abusive litigation practices. *See Robinson v. Howard University*, 455 A.2d 1363, 1369 (D.C. 1983).

None of the factors that led the *Sporicidin* court to decline to award costs are present here. The jury expressly adopted Columbia's view that NCRIC was entitled to nothing under the parties' contract – so Columbia, not NCRIC, "fended off" a major claim. Columbia never abused the rules for trial. And while certain of Columbia's peripheral claims did not proceed to the jury, all of the counts that formed the core of its countersuit against NCRIC did, along with

all of Columbia's fact evidence, not a piece of which was stricken or limited solely to counts that failed to go to the jury. The jury then proceeded to award Columbia over $18.2 million in damages in contract and tort, vindicating Columbia's view that it was NCRIC, the author of this lawsuit, that had engaged in tortious wrongdoing and contributed to the closure of a community hospital. This case can in no way be likened to the dubious claims and practices at issue in *Sporacidin* and NCRIC offers absolutely no basis for reversing the Court's decision that Columbia *is* entitled to its costs.

II. NCRIC'S OBJECTIONS TO SPECIFIC COSTS ARE WITHOUT MERIT.

NCRIC's remaining subsidiary challenges to Columbia's motion for costs are likewise without merit.

A. Deposition Costs.

NCRIC does not challenge the costs associated with three depositions. *See* NCRIC Opp. at 5 (noting that its argument does not apply to the Pate, Hempelman, and Fargis depositions). As to the remaining depositions for which Columbia seeks costs, NCRIC vaguely and generally asserts (without evidentiary support) that none was necessary for the trial of this case.

But NCRIC is well aware of the need for each of these depositions. In its motion and supporting declaration, Columbia explained that these depositions were necessary to gather evidence of NCRIC's conduct – including the breach of contract and tortious interference that formed the basis of the jury's verdict. *See* Schulman Decl. ¶ 5. NCRIC does not contest this evidentiary showing. Moreover, and most tellingly, all but two of the depositions now challenged by NCRIC as purportedly "unnecessary" were noticed *by NCRIC*. *See id.* ¶ 4 (depositions of Rifka, Wilson, Gasser, Asterbadi, Beaulieu, Johnson, Gaffey, and Ben Ezra were noticed by NCRIC). NCRIC can hardly contest the need for these depositions now.

As for the two remaining depositions – those of Grant Sohm and William Burgess – both were plainly necessary to the preparation of this case for trial.

Sohm served as NCRIC's Director of Underwriting, and, among other things, signed the June 30, 2000 letter to Larry Wilson canceling Columbia's clinic policy. *See* Supplemental Decl. of Eli Schulman ¶ 5 (attached hereto as Ex. B); *see also* DX 62. As such, he was a key potential witness of a central aspect of this case. As it turned out, Sohm pointed the finger at his superiors, saying that they were responsible for the content of his letter, thus directing Columbia's attention to them, rather than Sohm, during trial. *Id.* Columbia, however, could not have credibly prepared for trial without deposing the author of such a key piece of evidence. NCRIC does not contest any this with facts of its own but instead *concedes* that deposition costs may be awarded even if the deposition is not introduced at trial. *See* NCRIC Opp. at 5.

Burgess, meanwhile, served as NCRIC's Senior Vice President of Claims and Risk Management, attended numerous meetings with Columbia representatives relating to the Retro Plan, and testified at trial as a witness for NCRIC. *See* Schulman Supp. Decl. ¶ 5. Taking Burgess's deposition therefore was absolutely essential to Columbia's ability to prepare for cross-examination. *Id.*

B. Photocopying Costs.

NCRIC asks the Court to reduce these costs to the "reasonable sum of $500." NCRIC Opp. at 6. But NCRIC never explains how it arrives at that sum. And NCRIC's own hypothetical math assumes that the six boxes of documents produced in discovery could have led to costs of $2,700. *Id.*

NCRIC's various arguments are not only contradictory, they lack any evidentiary support and ignore the real costs of contemporary commercial litigation. NCRIC's purported math

example leading to $2,700 in photocopying costs, for example, overlooks the copying costs associated with copying all documents that may be responsive to a document request, copying that set, carefully reviewing that set for responsiveness, and ultimately copying and producing a smaller subset of documents that are, in fact, responsive. *See* Schulman Supp. Decl. ¶ 6. NCRIC also overlooks the copying costs associated with copying documents, such as loose papers, bound papers, stapled papers, and tabbed papers, that are not easily fed through a copier and therefore are charged at rates almost double the general eight to ten cents copying charge. *See id.* NCRIC further overlooks the responsible practice of making a master copy set of documents before producing them. *See id.* All of these steps were reasonable, responsible, and led to the costs Columbia actually incurred and reported to the Court. *Id.*

Tellingly, NCRIC responds only with rhetoric and no facts – let alone any evidence suggesting that its *own* copying costs in this complex case were lower than Columbia's.

C. Delivery Costs.

NCRIC challenges any award of delivery costs by denigrating *Camper v. Stewart-Lange*, 782 A.2d 762, 762 (D.C. 2001) (per curiam) as a "single, one page decision relying on federal court precedent from other jurisdictions." NCRIC Opp. at 7. In *Camper*'s place, NCRIC asks the Court to follow *Burns v. Greater Southeast Community Hosp.*, 119 Daily Wash. L. Rptr. 1869, 1873 (D.C. Super. Ct. July 11, 1991). *Camper*, however, is controlling authority in this jurisdiction and, to the extent NCRIC asks the Court to rely on a contrary 1991 Superior Court decision instead, it improperly invites legal error.[2]

[2] NCRIC's argument that costs not specifically listed in Rule 54 are not recoverable is belied by the very case upon which it relies. *See Burns*, 119 Daily Wash. L. Rptr. at 1869 ("[I]t is clear that Rule 54-I does not appear to be intended to be a complete listing of the costs which are taxable in the District courts."); *see also Camper*, 782 A.2d at 762 ("'The authority of a court to assess a particular item as costs is partly a matter of statute (or court rule) and partly a matter of custom, practice and usage.'") (quoting *Robinson*, 455 A.2d at 1368-69).

D. Witness Fees.

NCRIC's challenge here is limited to a $40.00 in witness fees incurred for Nabil Asterbadi. *See* NCRIC Opp. at 7. Without evidentiary support, NCRIC speculates that, "to the best of [its] knowledge, Mr. Asterbadi was not even present at trial." NCRIC Opp. at 7.

NCRIC is incorrect. Dr. Asterbadi served as President of Columbia's Medical Staff during the time of the events in question, and was deposed by NCRIC in this case. *See* Schulman Supp. Decl. ¶ 7. Counsel for Columbia made a good-faith, reasonable determination that his testimony might be necessary to rebut NCRIC's case. *See id.* Dr. Asterbadi was, therefore, present on the final day of trial, held in reserve as a rebuttal witness. *See id.* Columbia ultimately decided that NCRIC had failed to present evidence warranting rebuttal. *See id.* In the interest of the time and resources of the court, the jury, and the parties, Columbia ultimately released Dr. Asterbadi without putting him on the stand. *See id.*

The Court should award Columbia Dr. Asterbadi's witness fee because counsel for Columbia made a good-faith, reasonable determination that his testimony might have been necessary to rebut NCRIC's case. *See, e.g., Quy v. Air America, Inc.*, 667 F.2d 1059, 1065 (D.C. Cir. 1981) (holding that costs for nontestifying witness were reimbursable) ("The issue is not whether Mr. Stanley was in fact called to testify, but whether appellee's counsel made a good faith and reasonable judgment about the need for Mr. Stanley at trial."); *see also Nissho-Iwai Co., Ltd. v. Occidental Crude Sales, Inc.*, 729 F.2d 1530, 1532-33 (5th Cir. 1984) (holding that costs should be reimbursed for rebuttal witness who appeared at trial and was held in reserve but was not called because rebuttal was deemed unnecessary).

E. Court Fees

NCRIC does not offer any specific challenge to the $400.00 in court fees sought by Columbia. *See* Mot. at 2. The Court should, therefore, consider those fees to be uncontested.

Conclusion

For the foregoing reasons, the Court should grant Columbia's motion.

DATED: April 20, 2004

Respectfully submitted,

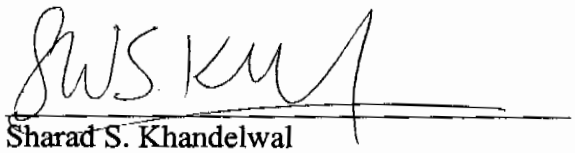
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Priya R. Aiyar, admitted *pro hac vice*
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
Columbia Hospital for Women Medical Center, Inc.

16d-003350

CERTIFICATE OF CONFERENCE

I, Sharad S. Khandelwal, hereby certify that, on April 15-19, 2004, I conferred with Rebecca Ford, counsel for NCRIC, Inc., in a good faith effort to resolve the issues presented in this motion. Despite our diligent efforts, resolution of these issues was not possible.



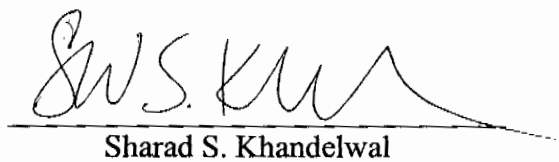
Sharad S. Khandelwal

CERTIFICATE OF SERVICE

I, Sharad S. Khandelwal, hereby certify that, on this 20th day of April 2004, a copy of the foregoing *Columbia's Reply in Support of Motion for Assessment of Costs* was served upon the following by hand delivery:

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 20th day of April, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.



Sharad S. Khandelwal

EXHIBIT A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC,INC.,

Plaintiff/Counter-Defendant

versus

00ca7308
Calendar Number 03
Judge Blackburne-Rigsby

COLUMBIA HOSPITOL FOR WOMEN
MEDICAL CENTER,INC.,

Defendant/Counter-Plaintiff

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Anna Blackburne-Rigsby, Superior Court Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, it is this 13th day of February, 2004,

ORDERED

That judgment is hereby entered in favor of the defendant Columbia Hospital For Women Medical Center,Inc.,against the plaintiffs NCRIC,INC., and that the defendant recover of the plaintiffs its costs of action.

FURTHER ORDERED

That the Counter-Claimant COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER,INC.,recover of the counter Defendant NCRIC,INC., The sum of $18,220,002 with interest at the statutory rate and its costs of action.

DUANE B. DELANEY, ESQ.
Clerk of the Court

Jeffrey A.Woodson,
Deputy Clerk

DOCKETED FEB 20 2004

MAILED FEB 20 2004

16d-003354

cc:

Rodney F.Page,Esq.
Scott M.Badami,Esq.
700 Thirteenth Street,N.W.
Suite 600
Washington,D.C. 20005-3960

Eli C.Schulman,Esq.
Kellogg,Huber,Hanson,Todd & Evans,PLLC
1615 M Street,N.W.,Suite 400
Washington,D.C. 20036

EXHIBIT B

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Post-Trial Motions
	)	
Defendant/Counter-Plaintiff.	)	

SUPPLEMENTAL DECLARATION OF ELI C. SCHULMAN IN SUPPORT OF COLUMBIA'S MOTION FOR ASSESSMENT OF COSTS

I, ELI C. SCHULMAN, declare as follows:

1. I am an attorney with the law firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., attorneys of record for Columbia Hospital for Women Medical Center, Inc. ("Columbia") in this action.

2. I am over 18 years of age. Unless otherwise stated, I have personal knowledge of the facts contained herein, and the facts contained herein are true to the best of my knowledge and belief.

3. This declaration supplements the declaration I executed on March 26, 2004 in support of Columbia's *Motion for Assessment of Costs*.

4. Columbia seeks costs for the depositions of Safa Rifka, Larry Wilson, Charles Gasser, Nabil Asterbadi, Gerald Beaulieu, Elnora Johnson, Ann Gaffey, and Peter Ben Ezra. Each of these depositions was noticed by NCRIC, Inc. ("NCRIC") and was therefore necessary for Columbia's trial preparation.

5. Columbia also seeks costs for the depositions of Grant Sohm and William Burgess. Sohm served as NCRIC's Director of Underwriting, and, among other things, signed the June 30, 2000 letter to Larry Wilson canceling Columbia's clinic policy. As such, he was a key potential witness of a central aspect of this case. As it turned out, Sohm pointed the finger at his superiors, saying that they were responsible for the content of his letter, thus directing Columbia's attention to them, rather than Sohm, during trial. Burgess, meanwhile, served as NCRIC's Senior Vice President of Claims and Risk Management, attended numerous meetings with Columbia representatives relating to the Retro Plan, and testified at trial as a witness for NCRIC. The Sohm and Burgess depositions were therefore necessary for Columbia's trial preparation.

6. Columbia seeks costs for copying documents produced in discovery to NCRIC. This includes the copying costs associated with copying all documents that may be responsive to a document request, copying that set, carefully reviewing that set for responsiveness, and ultimately copying and producing a smaller subset of documents that are, in fact, responsive. This also includes the copying costs associated with copying documents, such as loose papers, bound papers, stapled papers, and tabbed papers, that are not easily fed through a copier and therefore are charged at rates almost double the general eight to ten cents copying charge. This also includes the copying costs associated with the responsible practice of making a master copy set of documents before producing them. All of these steps were reasonable, responsible, and led to the costs Columbia actually incurred and reported to the Court.

16d-003358

7. Columbia also seeks the witness fee for Dr. Nabil Asterbadi. Dr. Asterbadi served as President of Columbia's Medical Staff during the time of the events in question, and was deposed by NCRIC in this case. Counsel for Columbia made a good-faith, reasonable determination that his testimony might be necessary to rebut NCRIC's case. Dr. Asterbadi was, therefore, present at trial, held in reserve as a rebuttal witness. Columbia ultimately decided that NCRIC had failed to present evidence warranting rebuttal. In the interest of the time and resources of the court, the jury, and the parties, Columbia therefore released Dr. Asterbadi without putting him on the stand.

8. I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day of April 2004, at Washington, D.C.

Eli C. Schulman

16d-003359

EXHIBIT C

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

April 19, 2004

VIA FACSIMILE AND U.S. MAIL

Rebecca Ford, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960

Re: *NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.*,
No. 00-0007308 (Blackburne-Rigsby)

Dear Ms. Ford:

Last week I asked whether there are any items enumerated in Columbia's fee request about which NCRIC thought an agreement might be possible, thus reducing the scope of the parties' outstanding dispute and avoiding needless litigation.

Instead of a response to this question, I received your letter of April 19, 2004. In that letter, you simply repeat NCRIC's argument, already made in court papers, about the parties' meet and confer obligations and then go on to demand that Columbia "reconsider its request." This does not advance what we had intended to be good faith discussions.

Columbia stands willing to discuss any and all items detailed on our fee request, and we do hope you will take advantage of this opportunity to narrow the gap between us. We do not, however, see any point to prolonging discussions if doing so will mean only rhetorical posturing repeating arguments made in court papers.

If there are any specific items, detailed in Columbia's fee request, on which you believe we might be able to reach agreement, I would appreciate hearing from you with a proposal responsive to our own, as outlined in our filing. So that we might know where we stand and whether additional motions practice may be required, I would appreciate hearing from you by close of business today.

Very truly yours,

Sharad S. Khandelwal

16d-003361

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

April 20, 2004

By Hand

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 3540
Washington, D.C. 20001

Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.*,**
Civil Action No. 0007308-00

Dear Judge Blackburne-Rigsby:

Enclosed is a copy of *Columbia's Reply in Support of Motion for Assessment of Costs*, filed today in the above-captioned matter. If you have any questions, please feel free to contact me at (202) 326-7952.

Respectfully submitted,

Sharad S. Khandelwal

Enclosures

cc: Rodney F. Page, Esq.
Scott M. Badami, Esq.

16d-003362

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

April 20, 2004

By Hand

Clerk of the Court
Civil Division Clerk's Office
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room JM170
Washington, D.C. 20001

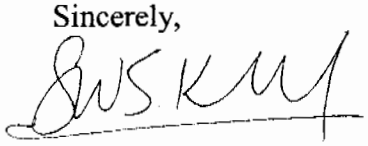
Re: ***NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.***
Civil Action No. 0007308-00

Dear Sir or Madam:

Enclosed for filing is the original and one copy of *Columbia's Reply in Support of Motion for Assessment of Costs*. Please date-stamp the copies and return them to the messenger. A courtesy copy will be delivered to Judge Blackburne-Rigsby under separate cover.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me at (202) 326-7952.

Sincerely,



Sharad S. Khandelwal

Enclosures

cc: Rodney F. Page, Esq.
Scott M. Badami, Esq.

16d-003363

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
	)	Next Event: Post-Trial Motions
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

COLUMBIA'S REPLY IN SUPPORT OF MOTION FOR ASSESSMENT OF COSTS

NCRIC's opposition offers the Court no reason to deny Columbia the costs it actually incurred in defeating NCRIC's meritless claim and succeeding on its counterclaims. NCRIC argues that Columbia should be denied *all* of its costs, because Columbia prevailed on some, but not all, of its counterclaims, even though the jury found for Columbia on NCRIC's claim and proceeded to award over $18 million in compensatory damages on Columbia's counterclaims. The D.C. Court of Appeals has already heard and rejected nearly identical efforts to deny parties who, like Columbia, have prevailed in substance, even if not on every single count.

NCRIC also argues that the specific costs Columbia incurred are excessive and seeks dramatically smaller awards (and sometimes none at all). But, again, NCRIC ignores binding precedent and its argument rests on self-serving speculation about what *it* considers to be reasonable costs, and does so without a shred of factual evidence to rebut Columbia's uncontested factual showings. Tellingly, too, NCRIC never remotely suggests that its own actual costs were less than Columbia's in any category covered by Columbia's motion for costs.

Columbia respectfully requests that the Court grant its motion and award the costs that Columbia has actually incurred in litigating this complex and hard-fought case for over three years.[1]

Discussion

I. THE COURT SHOULD REJECT NCRIC'S REQUEST THAT IT RECONSIDER ITS RULING THAT COLUMBIA IS ENTITLED TO AN AWARD OF COSTS

In entering judgment, the Court expressly ruled that Columbia is entitled to be awarded its costs. *See* Judgment (attached hereto as Ex. A) (ordering that "Counter-Claimant COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC. . . . recover . . . its costs of action"). NCRIC's opposition brief asks the Court to reconsider that ruling. *See* NCRIC Opp. at 2-4. NCRIC contends that Columbia should not be considered a "prevailing party" under Rule 54 because it did not win each and every one of its counterclaims and did not recover all of its damages. *See id.* at 3.

This argument has been heard and rejected by the Court of Appeals. Under D.C. law, a prevailing party is one that "succeed[s] on any significant issue in litigation which achieves some of the benefit the part[y] sought in bringing suit." *Knight v. Georgetown Univ.*, 725 A.2d 472, 486 (D.C. 1999) (alterations in original) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). In language that could not be plainer, the Court of Appeals has instructed that "[e]ven if a party prevails on only one out of several related claims, that party is deemed a 'prevailing party' eligible for costs under Rule 54." *Knight*, 725 A.2d at 486-87. Here, the jury awarded Columbia over $18.2 million on its contract and tort claims. Columbia also defeated NCRIC's

[1]NCRIC complains that Columbia failed to meet and confer before claiming to be the "prevailing party" and seeking costs. But the Court's Judgment expressly ruled that Columbia *is* the prevailing party and entitled to its costs of action. *See* Ex. A. Still, out of an abundance of caution, counsel for Columbia conferred with counsel for NCRIC on April 15-19, 2004 in a good faith effort to determine whether any common ground existed. *See* April 19, 2004 Letter (attached hereto as Ex. C). As it has argued in its opposition brief, however, NCRIC responded to Columbia's overture by insisting that Columbia is entitled to *no* costs of any kind, *id.*, leaving no role for the very discussions between the parties that NCRIC had seemed to invite.

contract claim, defeating NCRIC's demand for $2.67 million in damages. These victories plainly qualify Columbia as the prevailing party. *See also Hardi v. Mezzanotte*, 818 A.2d 974, 986-87 (D.C. 2003) (affirming $14,000 costs award to a party awarded less than a million dollars in damages).

NCRIC's argument for reconsideration relies exclusively on a Superior Court decision in a highly unusual case, *Sporicidin Co. v. Hauser*, 126 Daily Wash. L. Rptr. 1905 (D.C. Super. Ct. July 2, 1998). There, a plaintiff brought a legal malpractice claim and a breach of fiduciary duty claim against Baker & Hostetler, seeking $71 million. Plaintiff also sought the return of every dollar in legal fees it had spent with that firm, totaling approximately $800,000. *See id.* at 1905. The jury rejected the malpractice and breach of fiduciary duty claims entirely, providing plaintiff instead with only $250,000 for what the jury adjudged to be unreasonable legal fees. *Id.* In deciding that this plaintiff did not deserve costs, the court observed that Sporicidin's verdict represented only a meager 0.3% of the damages sought, while the defendant had "fended off" a major claim. *See id.* at 1906 (internal quotation marks omitted). The court also specifically found the plaintiff failed to comply with its ruling limiting the time period for the presentation of witnesses, *id.*, and the D.C. Court of Appeals has explained that a court's discretion to disallow costs in such cases stems in part from the inherent power of courts to respond to abusive litigation practices. *See Robinson v. Howard University*, 455 A.2d 1363, 1369 (D.C. 1983).

None of the factors that led the *Sporicidin* court to decline to award costs are present here. The jury expressly adopted Columbia's view that NCRIC was entitled to nothing under the parties' contract – so Columbia, not NCRIC, "fended off" a major claim. Columbia never abused the rules for trial. And while certain of Columbia's peripheral claims did not proceed to the jury, all of the counts that formed the core of its countersuit against NCRIC did, along with

all of Columbia's fact evidence, not a piece of which was stricken or limited solely to counts that failed to go to the jury. The jury then proceeded to award Columbia over $18.2 million in damages in contract and tort, vindicating Columbia's view that it was NCRIC, the author of this lawsuit, that had engaged in tortious wrongdoing and contributed to the closure of a community hospital. This case can in no way be likened to the dubious claims and practices at issue in *Sporacidin* and NCRIC offers absolutely no basis for reversing the Court's decision that Columbia *is* entitled to its costs.

II. NCRIC'S OBJECTIONS TO SPECIFIC COSTS ARE WITHOUT MERIT.

NCRIC's remaining subsidiary challenges to Columbia's motion for costs are likewise without merit.

A. Deposition Costs.

NCRIC does not challenge the costs associated with three depositions. *See* NCRIC Opp. at 5 (noting that its argument does not apply to the Pate, Hempelman, and Fargis depositions). As to the remaining depositions for which Columbia seeks costs, NCRIC vaguely and generally asserts (without evidentiary support) that none was necessary for the trial of this case.

But NCRIC is well aware of the need for each of these depositions. In its motion and supporting declaration, Columbia explained that these depositions were necessary to gather evidence of NCRIC's conduct – including the breach of contract and tortious interference that formed the basis of the jury's verdict. *See* Schulman Decl. ¶ 5. NCRIC does not contest this evidentiary showing. Moreover, and most tellingly, all but two of the depositions now challenged by NCRIC as purportedly "unnecessary" were noticed *by NCRIC*. *See id.* ¶ 4 (depositions of Rifka, Wilson, Gasser, Asterbadi, Beaulieu, Johnson, Gaffey, and Ben Ezra were noticed by NCRIC). NCRIC can hardly contest the need for these depositions now.

As for the two remaining depositions – those of Grant Sohm and William Burgess – both were plainly necessary to the preparation of this case for trial.

Sohm served as NCRIC's Director of Underwriting, and, among other things, signed the June 30, 2000 letter to Larry Wilson canceling Columbia's clinic policy. *See* Supplemental Decl. of Eli Schulman ¶ 5 (attached hereto as Ex. B); *see also* DX 62. As such, he was a key potential witness of a central aspect of this case. As it turned out, Sohm pointed the finger at his superiors, saying that they were responsible for the content of his letter, thus directing Columbia's attention to them, rather than Sohm, during trial. *Id.* Columbia, however, could not have credibly prepared for trial without deposing the author of such a key piece of evidence. NCRIC does not contest any this with facts of its own but instead *concedes* that deposition costs may be awarded even if the deposition is not introduced at trial. *See* NCRIC Opp. at 5.

Burgess, meanwhile, served as NCRIC's Senior Vice President of Claims and Risk Management, attended numerous meetings with Columbia representatives relating to the Retro Plan, and testified at trial as a witness for NCRIC. *See* Schulman Supp. Decl. ¶ 5. Taking Burgess's deposition therefore was absolutely essential to Columbia's ability to prepare for cross-examination. *Id.*

B. Photocopying Costs.

NCRIC asks the Court to reduce these costs to the "reasonable sum of $500." NCRIC Opp. at 6. But NCRIC never explains how it arrives at that sum. And NCRIC's own hypothetical math assumes that the six boxes of documents produced in discovery could have led to costs of $2,700. *Id.*

NCRIC's various arguments are not only contradictory, they lack any evidentiary support and ignore the real costs of contemporary commercial litigation. NCRIC's purported math

example leading to $2,700 in photocopying costs, for example, overlooks the copying costs associated with copying all documents that may be responsive to a document request, copying that set, carefully reviewing that set for responsiveness, and ultimately copying and producing a smaller subset of documents that are, in fact, responsive. *See* Schulman Supp. Decl. ¶ 6. NCRIC also overlooks the copying costs associated with copying documents, such as loose papers, bound papers, stapled papers, and tabbed papers, that are not easily fed through a copier and therefore are charged at rates almost double the general eight to ten cents copying charge. *See id.* NCRIC further overlooks the responsible practice of making a master copy set of documents before producing them. *See id.* All of these steps were reasonable, responsible, and led to the costs Columbia actually incurred and reported to the Court. *Id.*

Tellingly, NCRIC responds only with rhetoric and no facts – let alone any evidence suggesting that its *own* copying costs in this complex case were lower than Columbia's.

C. Delivery Costs.

NCRIC challenges any award of delivery costs by denigrating *Camper v. Stewart-Lange*, 782 A.2d 762, 762 (D.C. 2001) (per curiam) as a "single, one page decision relying on federal court precedent from other jurisdictions." NCRIC Opp. at 7. In *Camper*'s place, NCRIC asks the Court to follow *Burns v. Greater Southeast Community Hosp.*, 119 Daily Wash. L. Rptr. 1869, 1873 (D.C. Super. Ct. July 11, 1991). *Camper*, however, is controlling authority in this jurisdiction and, to the extent NCRIC asks the Court to rely on a contrary 1991 Superior Court decision instead, it improperly invites legal error.[2]

[2] NCRIC's argument that costs not specifically listed in Rule 54 are not recoverable is belied by the very case upon which it relies. *See Burns*, 119 Daily Wash. L. Rptr. at 1869 ("[I]t is clear that Rule 54-I does not appear to be intended to be a complete listing of the costs which are taxable in the District courts."); *see also Camper*, 782 A.2d at 762 ("'The authority of a court to assess a particular item as costs is partly a matter of statute (or court rule) and partly a matter of custom, practice and usage.'") (quoting *Robinson*, 455 A.2d at 1368-69).

D. Witness Fees.

NCRIC's challenge here is limited to a $40.00 in witness fees incurred for Nabil Asterbadi. *See* NCRIC Opp. at 7. Without evidentiary support, NCRIC speculates that, "to the best of [its] knowledge, Mr. Asterbadi was not even present at trial." NCRIC Opp. at 7.

NCRIC is incorrect. Dr. Asterbadi served as President of Columbia's Medical Staff during the time of the events in question, and was deposed by NCRIC in this case. *See* Schulman Supp. Decl. ¶ 7. Counsel for Columbia made a good-faith, reasonable determination that his testimony might be necessary to rebut NCRIC's case. *See id.* Dr. Asterbadi was, therefore, present on the final day of trial, held in reserve as a rebuttal witness. *See id.* Columbia ultimately decided that NCRIC had failed to present evidence warranting rebuttal. *See id.* In the interest of the time and resources of the court, the jury, and the parties, Columbia ultimately released Dr. Asterbadi without putting him on the stand. *See id.*

The Court should award Columbia Dr. Asterbadi's witness fee because counsel for Columbia made a good-faith, reasonable determination that his testimony might have been necessary to rebut NCRIC's case. *See, e.g., Quy v. Air America, Inc.*, 667 F.2d 1059, 1065 (D.C. Cir. 1981) (holding that costs for nontestifying witness were reimbursable) ("The issue is not whether Mr. Stanley was in fact called to testify, but whether appellee's counsel made a good faith and reasonable judgment about the need for Mr. Stanley at trial."); *see also Nissho-Iwai Co., Ltd. v. Occidental Crude Sales, Inc.*, 729 F.2d 1530, 1532-33 (5th Cir. 1984) (holding that costs should be reimbursed for rebuttal witness who appeared at trial and was held in reserve but was not called because rebuttal was deemed unnecessary).

E. Court Fees

NCRIC does not offer any specific challenge to the $400.00 in court fees sought by Columbia. *See* Mot. at 2. The Court should, therefore, consider those fees to be uncontested.

Conclusion

For the foregoing reasons, the Court should grant Columbia's motion.

DATED: April 20, 2004

Respectfully submitted,

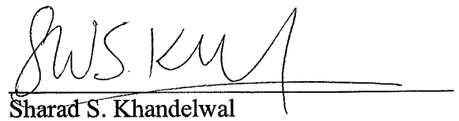
Neil M. Gorsuch, D.C. Bar # 456411
Eli C. Schulman, D.C. Bar # 472879
Priya R. Aiyar, admitted *pro hac vice*
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Attorneys for:
Columbia Hospital for Women Medical Center, Inc.

16d-003371

CERTIFICATE OF CONFERENCE

I, Sharad S. Khandelwal, hereby certify that, on April 15-19, 2004, I conferred with Rebecca Ford, counsel for NCRIC, Inc., in a good faith effort to resolve the issues presented in this motion. Despite our diligent efforts, resolution of these issues was not possible.



Sharad S. Khandelwal

CERTIFICATE OF SERVICE

I, Sharad S. Khandelwal, hereby certify that, on this 20th day of April 2004, a copy of the foregoing *Columbia's Reply in Support of Motion for Assessment of Costs* was served upon the following by hand delivery:

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

I further certify that, on this 20th day of April, a courtesy copy of the aforementioned papers was served upon the Chambers of Judge Anna Blackburne-Rigsby by hand delivery.

Sharad S. Khandelwal

16d-003374

EXHIBIT A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC,INC.,

Plaintiff/Counter-Defendant

versus

00ca7308
Calendar Number 03
Judge Blackburne-Rigsby

COLUMBIA HOSPITOL FOR WOMEN
MEDICAL CENTER,INC.,

Defendant/Counter-Plaintiff

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Anna Blackburne-Rigsby, Superior Court Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, it is this 13th day of February, 2004,

ORDERED

That judgment is hereby entered in favor of the defendant Columbia Hospital For Women Medical Center,Inc.,against the plaintiffs NCRIC,INC., and that the defendant recover of the plaintiffs its costs of action.

FURTHER ORDERED

That the Counter-Claimant COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER,INC.,recover of the counter Defendant NCRIC,INC., The sum of $18,220,002 with interest at the statutory rate and its costs of action.

DUANE B. DELANEY, ESQ.
Clerk of the Court

Jeffrey A. Woodson

Jeffrey A.Woodson,
Deputy Clerk

DOCKETED FEB 20 2004

MAILED FEB 20 2004

16d-003375

cc:

Rodney F.Page,Esq.
Scott M.Badami,Esq.
700 Thirteenth Street,N.W.
Suite 600
Washington,D.C. 20005-3960

Eli C.Schulman,Esq.
Kellogg,Huber,Hanson,Todd & Evans,PLLC
1615 M Street,N.W.,Suite 400
Washington,D.C. 20036

16d-003377

EXHIBIT B

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Civil Action No. 00-0007308
	)	Calendar 8 – Judge Blackburne-Rigsby
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Next Event: Post-Trial Motions
	)	
Defendant/Counter-Plaintiff.	)	
	)	

SUPPLEMENTAL DECLARATION OF ELI C. SCHULMAN IN SUPPORT OF COLUMBIA'S MOTION FOR ASSESSMENT OF COSTS

I, ELI C. SCHULMAN, declare as follows:

1. I am an attorney with the law firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., attorneys of record for Columbia Hospital for Women Medical Center, Inc. ("Columbia") in this action.

2. I am over 18 years of age. Unless otherwise stated, I have personal knowledge of the facts contained herein, and the facts contained herein are true to the best of my knowledge and belief.

3. This declaration supplements the declaration I executed on March 26, 2004 in support of Columbia's *Motion for Assessment of Costs*.

4. Columbia seeks costs for the depositions of Safa Rifka, Larry Wilson, Charles Gasser, Nabil Asterbadi, Gerald Beaulieu, Elnora Johnson, Ann Gaffey, and Peter Ben Ezra. Each of these depositions was noticed by NCRIC, Inc. ("NCRIC") and was therefore necessary for Columbia's trial preparation.

5. Columbia also seeks costs for the depositions of Grant Sohm and William Burgess. Sohm served as NCRIC's Director of Underwriting, and, among other things, signed the June 30, 2000 letter to Larry Wilson canceling Columbia's clinic policy. As such, he was a key potential witness of a central aspect of this case. As it turned out, Sohm pointed the finger at his superiors, saying that they were responsible for the content of his letter, thus directing Columbia's attention to them, rather than Sohm, during trial. Burgess, meanwhile, served as NCRIC's Senior Vice President of Claims and Risk Management, attended numerous meetings with Columbia representatives relating to the Retro Plan, and testified at trial as a witness for NCRIC. The Sohm and Burgess depositions were therefore necessary for Columbia's trial preparation.

6. Columbia seeks costs for copying documents produced in discovery to NCRIC. This includes the copying costs associated with copying all documents that may be responsive to a document request, copying that set, carefully reviewing that set for responsiveness, and ultimately copying and producing a smaller subset of documents that are, in fact, responsive. This also includes the copying costs associated with copying documents, such as loose papers, bound papers, stapled papers, and tabbed papers, that are not easily fed through a copier and therefore are charged at rates almost double the general eight to ten cents copying charge. This also includes the copying costs associated with the responsible practice of making a master copy set of documents before producing them. All of these steps were reasonable, responsible, and led to the costs Columbia actually incurred and reported to the Court.

7. Columbia also seeks the witness fee for Dr. Nabil Asterbadi. Dr. Asterbadi served as President of Columbia's Medical Staff during the time of the events in question, and was deposed by NCRIC in this case. Counsel for Columbia made a good-faith, reasonable determination that his testimony might be necessary to rebut NCRIC's case. Dr. Asterbadi was, therefore, present at trial, held in reserve as a rebuttal witness. Columbia ultimately decided that NCRIC had failed to present evidence warranting rebuttal. In the interest of the time and resources of the court, the jury, and the parties, Columbia therefore released Dr. Asterbadi without putting him on the stand.

8. I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day of April 2004, at Washington, D.C.

Eli C. Schulman

16d-003381

EXHIBIT C

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

April 19, 2004

VIA FACSIMILE AND U.S. MAIL

Rebecca Ford, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960

Re: *NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.*,
No. 00-0007308 (Blackburne-Rigsby)

Dear Ms. Ford:

Last week I asked whether there are any items enumerated in Columbia's fee request about which NCRIC thought an agreement might be possible, thus reducing the scope of the parties' outstanding dispute and avoiding needless litigation.

Instead of a response to this question, I received your letter of April 19, 2004. In that letter, you simply repeat NCRIC's argument, already made in court papers, about the parties' meet and confer obligations and then go on to demand that Columbia "reconsider its request." This does not advance what we had intended to be good faith discussions.

Columbia stands willing to discuss any and all items detailed on our fee request, and we do hope you will take advantage of this opportunity to narrow the gap between us. We do not, however, see any point to prolonging discussions if doing so will mean only rhetorical posturing repeating arguments made in court papers.

If there are any specific items, detailed in Columbia's fee request, on which you believe we might be able to reach agreement, I would appreciate hearing from you with a proposal responsive to our own, as outlined in our filing. So that we might know where we stand and whether additional motions practice may be required, I would appreciate hearing from you by close of business today.

Very truly yours,

Sharad S. Khandelwal

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC., Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar #8 Judge Blackburne-Rigsby

ORDER APPROVING SUPERSEDEAS BOND AND STAYING EXECUTION

On March 5, 2004, plaintiff NCRIC Inc. ("NCRIC") filed a timely motion to stay execution of the judgment docketed February 20, 2004 in the above-captioned action, along with a proposed supersedeas bond. It appears to the Court that the proposed supersedeas bond is in the correct form, in a sufficient amount to provide adequate security, and is backed by a duly qualified surety. Accordingly, it is therefore **ORDERED** this 20th day of APRIL, 2004 that:

1. The supersedeas bond in the form, amount, and with the surety as shown in Exhibit A to NCRIC's motion is approved by the Court.

2. The execution of the judgment docketed in this action on February 20, 2004, and any proceedings to enforce said judgment, are hereby stayed pending a determination of NCRIC's Motion for a New Trial and Renewed Motion for Judgment as a Matter of Law, and any appeal taken from the judgment.

A. Blackburne Rigsby 4/20/04

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

DOCKET APR. 21 2004
MAILED APR 21 2004

Copies to:

Rodney F. Page, Esq.
Scott M. Badami, Esq.
Bryan Cave LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

Counsel for Plaintiff NCRIC, Inc.

Neil M. Gorsuch, Esq.
Eli Schulman, Esq.
Kellogg Huber Hansen Todd & Evans
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for Defendant Columbia Hospital for Women Medical Center, Inc.

16d-003385

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, Inc.,	*	
	*	
Plaintiff,	*	
	*	Civil Action No.: 00-7308
v.	*	Judge Anna Blackburne-Rigsby
	*	Calendar 8
	*	
Columbia Hospital for Women Medical Center, Inc.,	*	
	*	
	*	
Defendant.	*	
	*	

ORDER DENYING NCRIC'S MOTION FOR A NEW TRIAL AND RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

This matter is before the Court on the Plaintiff, National Capital Reciprocal Insurance Company, Inc.'s (hereinafter "NCRIC") Motion for a New Trial and Renewed Motion for Judgment as a Matter of Law. For the reasons set forth below, the motion is **Denied**.

I. Introduction

This case involves a contract dispute between plaintiff, NCRIC, and defendant, Columbia Hospital for Women Medical Center (hereinafter "Columbia"). NCRIC is an insurance company that provides medical malpractice insurance to doctors. Columbia is now and was at the time of trial defunct, but was a non-profit hospital specializing in medical care for women and children in the District of Columbia. In October 1993, NCRIC and Columbia entered into an agreement called the Retrospective Rating Plan (hereinafter "Retro Plan"). The purpose of the plan was to establish a malpractice

Case: 2000 CA 007308 B
0001610803S
Dkt: CIVDDM

liability program for physicians at Columbia to help reduce the costs to physicians through a sharing of malpractice risk.

In October 2000 NCRIC initiated this action against Columbia contending that Columbia refused to pay the Additional Premium due under the Retro Plan when it expired on September 1, 2000. Columbia countersued in November 2000, contending that NCRIC breached the contract and owes Columbia money under the plan. In its eleven-count counterclaim Columbia alleged breach of contract (Count I), breach of implied covenant of good faith and fair dealing (Count II), breach of fiduciary duty (Count III), tortious interference with business relations (Count IV), tortious interference with prospective business advantage (Count V), negligence (Count VI)[1], fraud (Count VII), negligent misrepresentation (Count VIII), defamation (Count IX), injurious falsehood (Count X), and conversion (Count XI). The Court ultimately dismissed seven of the eleven counts as a matter of law, one before the trial began, one after Columbia concluded its case-in-chief, and five more after the close of all the evidence.

A two-week trial commenced on January 26, 2004 and the jury returned its verdict on February 13, 2004. The jury was instructed to deliberate on NCRIC's breach of contract claim and the four remaining counterclaims, which were: breach of contract (Count I), breach of implied covenant of good faith and fair dealing (Count II), tortious interference with business relations (Count IV), and tortious interference with prospective business advantage (Count V). The jury returned a verdict rejecting NCRIC's breach of contract claim against Columbia, and awarding an $18.2 million verdict on Columbia's counterclaims.

[1] The negligence claim was dismissed by Judge Diaz on July 3, 2001 prior to the undersigned judge's assignment to the civil division.

16d-003387

On March 5, 2004, NCRIC filed its Motion for a New Trial and Renewed Motion for Judgment as a Matter of Law pursuant to D.C. Super Ct. R. Civ. P. 50(b) and 59. Columbia filed its Opposition on March 26, 2004.

II. NCRIC is Not Entitled to a New Trial.

NCRIC alleges several reasons in support of the Motion for a New Trial and Renewed Motion for Judgment as a Matter of Law. NCRIC moves pursuant to D.C. Super Ct. R. Civ. 50(b) and 59 to renew its motion for judgment as a matter of law on defendant Columbia Hospital's tortious interference with business relations counterclaim. In the alternative, NCRIC moves for a new trial on Columbia's tortious interference with business relations and breach of contract counterclaims. NCRIC also seeks remittitur of Columbia's damage claims.

Pursuant to Superior Court Civil Rule 59, motions for a new trial are granted where there has been legal error in proceedings, where damages are excessive, where the trial court was unfair, or where the verdict was contrary to the weight of the evidence. *Baber v. Buckley,* 322 A.2d 265,267 (D.C. 1974). A party has a right to a new trial pursuant to R. 59 only if the purported trial error denied the party substantial justice. *Dada v. Children's Nat'l Medical Ctr.,* 715 A.2d 904 (D.C. 1998). Additionally, the trial court enjoys broad discretion when deciding whether to grant or deny a motion for new trial, and that decision will not be overturned on appeal absent an abuse of discretion. *Queen v. District of Columbia Transit Sys.,* 364 A.2d 145,148 (D.C. 1976); *Baber v. Buckley,* 322 A.2d 265,266 (D.C. 1974).

a. The Jury was Properly Instructed that "Egregious Conduct" is not Required for a Finding of Tortious Interference with Business Relations.

NCRIC claims that the Court erroneously instructed the jury by failing to include "egregious conduct" as an element of a tortious interference with business relations claim. As a general rule, "[a] trial court has broad discretion in fashioning appropriate jury instructions, and its refusal to grant a request for a particular instruction is not a ground for reversal if the court's charge, considered as a whole, fairly and accurately states the applicable law." *Washington Metro. Area Transit Auth. v. Cross,* 849 A.2d 1021 n. 3 (D.C. 2004) (quoting *Psychiatric Inst. of Wash v. Allen,* 509 A.2d 619, 625 (D.C. 1986)).

In relevant part, the court's instruction was as follows:

> In order for Columbia to succeed on its claim for tortious interference with business relations, Columbia must prove, by a preponderance of the evidence:
> (1) the existence of a valid business relationship;
> (2) NCRIC's knowledge of the relationship;
> (3) Intentional interference inducing or causing a breach or termination of the relationship; and
> (4) damages resulting from that breach.
> If you find that Columbia cannot prove any one of these elements, you must find for NCRIC on Columbia's claim for tortious interference with business relations.

It has been long held by the Court of Appeals that the elements required for a prima facie case of tortious interference with business advantage are: (1) the existence of a valid business relationship; (2) knowledge of that relationship; (3) intentional interference with that relationship; and (4) resulting damage. *Casco v. District of Columbia Dev., L.L.C.,* 834 A.2d 77, 83-84 (D.C. 2003).

This Court can find no controlling authority, which requires that "egregious conduct" be included as an essential element of a tortious interference with business relations claim.[2] Accordingly, when taking the instruction as a whole, and in the absence of any controlling precedent requiring that "egregious conduct" be included as an element of tortious interference with business relations, the court finds that the instruction given at trial fairly and accurately stated the applicable law. *See Hawthorne v. Canavan,* 756 A.2d 397, 402 n. 7 (D.C. 2000) ("[T]he instructions as a whole were fair and accurate, and the judge did not abuse his discretion by refusing to give the specific instruction requested by the plaintiff.")

b. The Jury had Ample Evidence to Support its Findings on Columbia's Tortious-Interference and Breach-of-Contract Claims.

When it is claimed that the verdict is against the weight of the evidence, the court must exercise its discretion in ruling on a motion for new trial. *Johnson v. Bernard*, 388 A.2d 490 (D.C. 1978). Great deference must be given to a jury verdict. "Courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable." *Baber v. Buckley,* 322 A.2d 265, 267 (D.C. 1974). Additionally, a party challenging the quantum of a jury award on appeal "must first obtain a ruling from the trial court on a motion challenging the verdict on that ground." *Keener v. Karr,* 528 A.2d 1236 (D.C. 1987).

[2] Notably, NCRIC cites no cases that stand for the proposition that a jury must find "egregious conduct" before finding a defendant liable for tortious interference with business relations.

i. Columbia's Tortious Interference Claim

At trial Columbia argued that NCRIC tortiously interfered with its relationship with the attending physicians by "luring" them to other hospitals and effectively "forcing" them to stop referring and admitting patients to Columbia. NCRIC Motn. at 8. The jury concluded that NCRIC caused physicians practicing at Columbia to stop admitting patients at Columbia, and in the instant motion NCRIC alleges that finding is "against the weight of substantial evidence" presented at the trial. NCRIC Motn. at 8.

Pursuant to *Civil Jury Instruction for D.C. § 5-12*, Columbia had the burden of proving that NCRIC's actions caused an "injury or damage" that "appears from the evidence...played a *substantial* part in bringing about the injury or damage." Additionally, § 5-12 requires that the "injury or damage was either a direct result *or* a *reasonably probable consequence* of the act or failure to act." [3] Contrary to NCRIC's assertions, the jury need not find NCRIC's actions were the sole cause of the injury, but rather that they "played a substantial part in bringing about the injury or damage." *See Civil Jury Instruction for D.C. § 5-12.*

Columbia's evidence at trial supports the jury's finding that NCRIC played a substantial part in luring Columbia's physicians away from the hospital and then effectively forcing them to cease from admitting patients to Columbia. Both Columbia and NCRIC offered witness testimony, as well as, substantive evidence for the jury to consider on this issue. Specifically, Columbia's witnesses Dr. Rifka and Dr. Wilson testified without objection "that one measure of damages suffered by Columbia from

[3] The committee notes offer alternative phrasing of this instruction, including that "[t]he acts or omissions of several persons might work together to cause injury. In such a case, each of the acts or omissions would be a proximate cause. For you to find that a particular act or omission is a proximate cause, however, you must find that the act or omission was more likely than not a substantial factor in causing the injury."

16d-003391

NCRIC's tortious actions was the difference in revenue between the years before and after NCRIC's conduct." Col. Opp. at 20 (citing 2/2 Tr. 165-66 (Rifka); 2/4 Tr. 505-506 (Wilson); 2/10 Tr. 132-35 (closing)). Additionally, NCRIC's own expert witness, Moore, testified that Columbia's revenue for the year before NCRIC cancelled the Retro Plan and clinic policy was approximately $10 million more than its revenue for the year after. Col. Opp. at 20 (citing 2/6 Tr. 929-30).

Columbia also offered witnesses who repeatedly testified that based on their personal observations and knowledge, doctors covered by NCRIC ceased practicing at Columbia because of NCRIC's attempts to lure them to other hospitals. Dr. Dukes testified on behalf of NCRIC that he left Columbia due to insurance coverage concerns, and similarly, Dr. Johnson testified that she stopped working at the clinic run by Columbia only because NCRIC terminated insurance coverage of clinic doctors. Col. Opp. at 19 (citing 2/10 Tr. 108; 2/4 Tr. 632 (Dukes); 2/4 Tr. 594 (Johnson); DX 41).

This evidence is sufficient to support the jury's findings, and this court is not "free to reweigh" the evidence. Therefore, the court finds that Columbia offered sufficient direct evidence to support the jury's findings, and that the jury's findings were not against the "great weight" of the evidence nor a "miscarriage of justice" sufficient to warrant a new trial.

ii. Columbia's Breach of Contract Claim

NCRIC alleges in its motion that Columbia did not offer sufficient evidence to support breach of contract claim, and that there was "[n]o possible combination or permutation of the evidence in the record" which "could result in the inexplicable $220,002 figure the jury selected." NCRIC Motn. at 12. NCRIC further alleges in this

16d-003392

motion that the jury's award on the breach of contract claim must have been due to juror confusion resulting from Columbia's "badly misstated evidence" during closing arguments. *Id.*

The Court of Appeals has held that where the evidence at trial fails to support a jury's damages award, that award should be vacated and a new trial ordered. *Allstate Ins. Co. v. Ramos,* 782 A.2d 280, 284 (D.C. 2001) (case was reversed and remanded where there was "no evidence in the record to support an award of damages" that exceeded the cap on an insurance policy). However, a jury's verdict is considered "excessive" only when "it is so inordinately large as obviously to exceed the maximum limit of a reasonable range...or when it is beyond all reason, or is so great as to shock the conscience." *Knight v. Georgetown Univ.,* 725 A.2d 472, 486 (D.C. 1999).

The evidence presented at trial provides support for the jury's award of $220,002 on Columbia's breach of contract claim. For example, Columbia's exhibit 85, which identifies sums for each year, indicates that there was over $500,000 due to Columbia for 1994-1995 alone. And, NCRIC's exhibit 178, which is NCRIC's own document concedes that Columbia was owed nearly $200,000 for 1994-1995. Additionally, several witnesses testified that $1 million was given to NCRIC by Columbia in 1997 as a security deposit under the contract, which was never returned.

Accordingly, the testimony and evidence at trial offered a wide range of possible damages values on Columbia's breach of contract claim that the jury was free to weigh and consider. The jury's decision was not outside of a "reasonable range," based on the evidence presented at trial.

16d-003393

III. Columbia's Expert Witness Peter Ben Ezra was Properly Allowed to Testify.

Columbia identified Peter Ben Ezra as an expert witness early in this litigation. Mr. Ezra has practiced accounting for more than twenty years, taught discounted cash flow and accounting techniques, and contributed to authoritative textbooks in the accounting field. Col. Opp. at n. 12 (citing 2/3 Tr. 272-74) Additionally, Mr. Ezra served as Chairman of the Columbia Board of Directors. In that capacity, he signed papers putting Columbia into bankruptcy in 1998. He was later appointed by the Columbia Board to oversee this litigation. NCRIC Motn. at 14(citing 2/3 Tr.) NCRIC argues that by allowing Mr. Ezra to be qualified as an independent expert on cash-flow analysis this court "created a significant risk of impermissibly prejudicing NCRIC." NCRIC Motn. at 14. At trial Mr. Ezra's connections to Columbia were fully disclosed to the jury, thus allowing the jury to include that fact when weighing and assessing his credibility.

In the instant motion, NCRIC argues that Mr. Ezra, should have been excluded from testifying at trial for two reasons: "(1) his [testimony] was based on wholly speculative factual assumptions not supported by the record; and (2) his analysis failed to apply a generally-accepted methodology."[4] NCRIC Motn. at 13. As a general rule, the trial court enjoys broad discretion to decide on the admission of expert testimony, "and a ruling either admitting or excluding such evidence will not be disturbed unless 'manifestly erroneous.'" *Dyas v. United States,* 376 A.2d 827, 831 (D.C. 1977) (citing *Salem v. United States Lines Co.*, 370 U.S. 31,35 (1962)). The testimony of expert witnesses is admissible if it is "likely to aid the trier in the search for truth." *Id.* (internal

[4] NCRIC previously moved to preclude the testimony of Peter Ben Ezra in its Motion for Summary Judgment (pp. 41-44), Motion In Limine (pp. 2-13), and upon oral motion at trial. *See* Order Denying

16d-003394

quotations omitted)(citing *Jenkins v. United States*, 307 F.2d 637 (D.D.C. 1962); 7 WIGMORE ON EVIDENCE § 1923 (3d ed., 1940)).

When determining whether or not to allow Mr. Ezra to be qualified as an expert, the court applied the three-part test applied by the Court of Appeals in *Dyas*. Specifically, the court analyzed whether:

> (1) the subject matter [was] distinctively related to some science, profession, business or occupation as to be beyond the ken of the average [juror], (2) [Mr. Ezra] has sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the [jury] in [its] search for truth, and (3) [the purported testimony] is inadmissible [when] the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert[5].

Nixon v. United States, 728 A.2d 582 (D.C. 1999)(quoting *Dyas v. United States,* 376 A.2d 832).

In applying these three factors the Court found: (1) that the subject matter of accounting and cash flow analysis was beyond the kin of the average layperson; (2) that Mr. Ezra's background, education and experience gave him sufficient expertise such that his testimony would aid the jury in the search for the truth; and (3) the field of accounting and cash flow analysis is one which does permit reasonable opinions to be asserted by experts in the field.[6] Therefore, the Court allowed Mr. Ezra to testify.

NCRIC asserts that Mr. Ezra's testimony should have been excluded because "there was not factual support for two of his key assumptions." (NCRIC Motn. at 16)

Motion *In Limine* Of Defendant To Exclude Testimony Of NCRIC's Purported Expert Witnesses, October 6, 2003.

[5] "Satisfaction of the third *Dyas* criterion begins and ends with a determination of whether there is general acceptance of a particular scientific methodology, not an acceptance, beyond that, of particular study results based on that methodology." *Ibn-Tamas v. United States,* 407 A.2d 626, 638 (D.C. 1979)(reversing trial court's exclusion of testimony and following *Frye v. United States,* 293 F. 1013 (D.C. Cir. 1923)).

16d-003395

Specifically, NCRIC alleges that Mr. Ben Ezra's calculation of estimated cash-flow loss to Columbia erroneously assumed that physicians on the list given to him by Columbia's counsel either stopped admitting patients to Columbia or reduced their admission to Columbia based on NCRIC's conduct, and that Columbia's marginal costs totaled 30 percent of its gross revenue. (NCRIC Motn. at 16) Additionally, NCRIC claims that Mr. Ben Ezra failed to utilize generally accepted accounting methods "of a type reasonably relied upon by experts" in his field. *See Ibn-Tamas v. United States*, 407 A.2d 626, 638 (D.C. 1979).

The evidence at trial indicated that Mr. Ben Ezra personally tested the list of doctors supplied to him by Columbia's lawyers. For example, on February 3, 2004, Mr. Ben Ezra testified that he narrowed down the list of doctors from 37 to 24, and that it was that list of 24 doctors, which served as the basis of his findings. (Col. Motn. at 28) Mr. Ben Ezra's testimony, which was supported by the information provided to him by Columbia's lawyers, indicated that those 24 doctors left Columbia in the last half of 2000, which was the period of time that Columbia alleged NCRIC tortiously interfered. The parties stipulated that the 24 doctors left Columbia in the last half of 2000. Whether Mr. Ben Ezra sufficiently tied their exodus to the alleged tortious interference of NCRIC was appropriately to be determined by the jury.

There is nothing in the record to suggest that Mr. Ben Ezra did not rely on the accounting methods "of a type reasonably relied upon by experts" in his field. NCRIC claims that Mr. Ben Ezra's 30% marginal cost figure was unsupported by evidence and that his use of data from fiscal years 2000 and 2001 was unrepresentative. However,

---

[6] See *Order Denying NCRIC's Motion for Summary Judgment,* April 10, 2003; *Order Denying NCRIC's Motion to Exclude Certain Documents and Calculation,* October 6, 2003; *Order Denying NCRIC's Motion*

16d-003396

NCRIC did not offer competing evidence at trial to refute or challenge the validity of the 30% marginal rate that Mr. Ezra utilized in his calculations. Nor did NCRIC offer evidence or testimony to challenge Mr. Ben Ezra's reliance on data from fiscal years 2000 and 2001 as unrepresentative. The data from the fiscal years 2000 and 2001 represents data immediately before and after NCRIC's alleged tortious conduct.

Mr. Ben Ezra's methodology represented one way for the jury to measure lost physician-generated revenue, and NCRIC was free to cross-examine Mr. Ben Ezra regarding his methodology or alternatively to produce their own expert to rebut Mr. Ezra's methodology and testimony. The jury is free to assign more or less weight to a particular witnesses' testimony. In this case the jury was given the following instructions: "You may consider the reasonableness or unreasonableness, and the probability or improbability, of the testimony of a witness in determining whether to accept it as true and accurate."[7] Additionally the jury was instructed: "Expert testimony should be judged just as any other evidence. You may accept it or reject it, or give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, the expert's credibility and all the other evidence in the case."[8]

The Court cannot substitute its judgment for that of the jury's to discredit Mr. Ben Ezra's professional practices and methodology. *See Ibn-Thomas,* 407 A.2d at 638. While it is true that a trial court has broad discretion to exclude expert testimony "that is founded on incompetent evidence," NCRIC failed to produce any evidence in support of its allegation that Mr. Ben Ezra's methodology and findings were founded on

---

to Exclude The Opinions and Testimony of Columbia's Designated Damages Expert, October 6, 2003.
[7] *Civil Jury Instructions for the District of Columbia* (2004 revised edition) §3.01.

16d-003397

incompetent evidence. *See In re Tommie Lee Melton,* 597 A.2d 892, 905 (D.C. 1991). NCRIC had the opportunity to "cross-examine on the underlying data and introduce contrary evidence", which it did not. *Id.* Ultimately, it is the jury's job, as the triers of fact, to "determine the reliability and weight" to be given to Mr. Ben Ezra's testimony, and absent a clear showing by NCRIC that the Court should have excluded such testimony, the jury's findings should stand. *Id.*

IV. There is no Basis for NCRIC's Request that the Court Recuse Itself.

There is no basis for NCRIC's mid-trial motion for recusal of the undersigned judge. NCRIC made the motion after it was discovered during the middle of the testimony of Columbia's corporate representative, Dr. Rifka that at one point in time Dr. Rifka was in a partnership with Dr. Maurice Butler, the undersigned judge's physician. The Court denied the motion for recusal determining (among other things) that since Dr. Butler was not and had not been identified as an interested party to the litigation and was not one of the doctors claimed to be affected by the litigation, which involved a contract claim, as opposed to doctor-patient issues, the circumstances did not warrant recusal.

The particular circumstances are as follows. During the second week of trial Dr.Rifka, the corporate representative of Columbia was on the witness stand undergoing cross-examination. In a response to a question from NCRIC's counsel, Dr. Rifka stated that at one point in time he was in a partnership with Dr. Maurice Butler. Dr. Rifka had previously testified on direct examination for two days and had responded to questions relating to his knowledge of Columbia's relationship with NCRIC. The focus of Dr. Rifka's testimony on direct examination was his understanding of a memorandum summarizing the state of the health care system in the District of Columbia and the nature

[8] *Id.* at § 3.03

16d-003398

of Georgetown University's clinical services. On the beginning of the fifth day of the trial, counsel for NCRIC continued his cross-examination by asking Dr. Rifka a somewhat unrelated question about his personal medical practice. Dr. Rifka had some trouble answering Mr. Page's question. The trial transcript, albeit long, best illustrates the line of questioning.

> Q: I have a few questions and I'm going to try real hard to get finished today. We talked a little bit the other day, it was only yesterday, about your practice at Columbia. You were there as part of a partnership; am I correct?
> A: Which year and when? I was there part of a partnership.
> Q: Yes.
> A: No.
> Q: Let me ask the question this way. In your medical practice, you practice alone or do you practice with partners?
> A: Which year?
> Q: Well, let's say currently?
> A: Currently, yes, I do.
> Q: And while you were working at Columbia Hospital, did you practice with partners?
> A: No.
> Q: And when you testified as to the arrangement that you had at the hospital in terms of offices and staff, did any of that apply to partners that you had?
> A: There were partners. We were two people in the Division of Reproductive Endocrinology, Richard Faulk and myself at Georgetown and we got recruited from Georgetown to Columbia in 1996 until 1999. And then in 1999 totally in private practice.
> Q: And you're now in a partnership; am I correct?
> A: Yes. Currently I have two partners. Preston Sachs and Maurice Butler.
> Q: And what is Maurice Butler's first name?
> A: Maurice Butler, B-u-t-l-e-r.
> Q: Is it Jerome Maurice Butler, if you know?
> A: I don't know.
> (2/3 Tr. 441-442)

At this point, having heard the name Maurice Butler for the first time during the litigation, the undersigned judge excused the jury and disclosed to the parties that Dr. Butler had been her doctor on and off for several years. The colloquy was as follows:

> THE COURT: Counsel, you may be seated. When Dr. Rifka returned to the stand in response to one of his questions from Mr. Page, he responded that one of

16d-003399

the partners was Dr. Maurice Butler who was my doctor formerly. And I wanted to disclose that to the parties. I was not aware of these relationships until I heard his testimony today. And I wanted to bring that to the parties' attention at this time.
MR. PAGE: Your Honor, may I ask a question?
THE COURT: Yes.
MR. PAGE: And I'm sorry to do it. You say you're a former patient?
THE COURT: Yes.
MR. PAGE: The question I'm getting to is this. Is there any history that you have had being a patient of a practice in which Dr. Rifka is a partner or principal?
THE COURT: I don't know the answer to that. I know that Dr. Maurice Butler has been my doctor off and on, I guess maybe the last time I saw him was about a year ago. And so I don't know at what point in time he was with or practicing with other doctors because he's the only doctor that I saw.
MR. PAGE: I appreciate the Court's disclosure. I would like the opportunity to at least discuss it with my client.
THE COURT: All right.
MR. GORSUCH: Your Honor, there is no issue on this side.
THE COURT: All right. Okay. We will resume at 9:30 then.
(2/3 Tr. At 451-453)

At trial the following day Mr. Page again brought up the issue of the undersigned judge's relationship with Dr. Butler.

MR. PAGE: Your Honor, I would with some reluctance request you if we could, address the same issue that we addressed at the end of the day yesterday. And I don't know if you want to do that now or not.
THE COURT: Yes, I would appreciate it if only the attorneys would remain.
(Thereupon, the courtroom was cleared.)
MR. PAGE: Your Honor, it is with some reluctance that I bring this up, but after we had the colloquy last night with you at the end of the day, I want to go back over the situation and just make the following comments and perhaps, if you're willing, ask you for a further explanation on your part.
THE COURT: With respect to Dr. Maurice Butler?
MR. PAGE: Correct. And when I had a chance at the end of the day to check and find out what it was that we could do about the situation, our understanding is that Dr. Butler has been a colleague of Dr. Rifka's for a minimum of ten years. **And that although the testimony indicated they were only recently partners, but prior to that time they may have been in a different arrangement other than a partnership. But essentially Dr. Butler works for Dr. Rifka.**

It's also my understanding, and I would proffer this just as information, that we asked [sic] doctors who are working with us in the case that Dr. Rifka and his colleagues were known to cover for each other, see each other's patients. My concern is that we clarify whether you have been a patient that might have seen Dr. Rifka or knew about his affiliation with Dr. Rifka. And I mention this

because just for the record, we had during voir dire been **very interested in knowing whether the jurors were patients of doctors who were going to testify.** We used preemptories on jurors who so indicated. **We actually moved to strike for cause with respect to at least one who was a patient of a doctor identified by Columbia.** And so with that background and with all due respect to the Court, the issue for us is simply to clarify if it were the case that you had any **prior relationship with Dr. Rifka in a patient-doctor relationship**, that would be a concern to us and is something that had we known it earlier, we might have said something about it. And so with great respect and deference to the court, but feeling I have an obligation given that history to at least clarify it so my client knows. And then as they ask me what the story is, I will at least be able to state with complete accuracy what the situation is.
THE COURT: That's fine.
MR. PAGE: I'm asking for a clarification.
THE COURT: I have never been a patient of Dr. Rifka's. I have never seen Dr. Rifka. I don't know Dr. Rifka. I have been a patient of Dr. Butler's and as I stated yesterday, off an on for about ten years. And the last time I saw him was about a year ago.

Dr. Butler's name has never come up in this trial and it had never come up in any of the pre-trial matters. There have been a number of doctors listed by name. His name has never come up until the first time yesterday late in the afternoon. And as soon as I heard the name, I felt it was important to disclose the relationship. And so I don't know Dr. Rifka. I have not had contact with Dr. Riftka. He has never, as far as I know, had any role in my care in terms of seeing Dr. Butler. I don't know what Dr. Butler's arrangement is or has been with Dr. Rifka. And I don't know what else to say. Dr. Rifka, I don't know.
MR. PAGE: Okay.
THE COURT: And I mean, as far as you can certainly discuss it some more because I don't want this to become an issue in this case. This is a jury trial, of course, and so I don't have any role in terms of assessing the credibility of any of the witnesses or making any determinations ultimately about the verdict or the damages. It's not a patient care case. It's a case involving a contract between Columbia Hospital for Women and NCRIC.
MR. PAGE: Just a final point. May I assume from your statement that you were a patient at Columbia?
THE COURT: Yes. Well, I think that's a fair statement. Dr. Butler's offices are in the Physicians Office Building at Columbia on the grounds of Columbia.
MR. PAGE: All right.
MR. GORSUCH: For the record, Your Honor, the office building is not owned by the hospital and is a separate facility.
THE COURT: Well, I don't know. It says Columbia. I think the name of his practice group is Columbia Fertility Association. And so you go into the door of Columbia Hospital.
(2/4 Tr. 457-461)(emphasis added)

Immediately following that conversation, Mr. Page requested that the court recess so that he could step outside of the courtroom to speak with NCRIC's corporate representative, Dr. Stark. The Court responded:

> I mean, obviously my relationship with my doctor was about my own personal care and treatment and not about his affiliation or connection or business setup or insurance arrangements. And I don't know any of that information. I only know what we talk about with respect to my patient care. And this case is not about patient care issues. But we can take a short recess and then we will reconvene after you have had a moment to speak with your client.

Mr. Page entered the courtroom after his discussions with Dr. Stark and alleged that Dr. Stark requested that he make a motion for recusal based on the Court's doctor-patient relationship with Dr. Butler. Mr. Gorsuch, Columbia's counsel, then made the following oral objections:

> Thank you, Your Honor. Very briefly. Yesterday afternoon, after 4 p.m. for the first time, a seemingly innocuous question was asked. Dr. Rifka, who is your partner? There was no follow-up. It had no linkage to any issue in the case and we all know why that question was asked and we all know why it was asked when it was asked. And I think that's very---
> THE COURT: Well, what do you mean by that when you say we all know why it was asked?
> MR. GORSUCH: Your Honor, it was a very curious question at a very curious time to come in. And I think it's very clear that somebody had some information that they shouldn't have had about your care. And I think Dr. Dukes is personal friends with Dr. Butler and that's a fact, Your Honor, and everyone in this room knows that's a fact. And Dr. Dukes has been sitting at this witness table all week. He could have raised this ages ago and we all know that. And they waited until four o'clock yesterday afternoon. That is inappropriate. That's No. 1. No. 2, let's talk about the law. You're under a strong obligation not to recuse yourself. That is the District of Columbia's standard as Your Honor knows better than I do. I can cite you a case, although a Judge has a strong obligation not to recuse if the situation does not require. Finally, Your Honor, let's talk about voir dire with the jurors. There was no motion to strike for cause several of the jurors, the fact finders in this case who had connections to Columbia – in fact, there were two former patients of Columbia who made it on the pass voir dire panel and were not dismissed. And, Your Honor, you're not, as I pointed out, and I can cite you literally a gazillion cases, Your Honor. I would be happy to give it to you if you really want to see them, but I don't think it's necessary. A gazillion cases in

16d-003402

which jurors, the fact finders who had former relationships with doctors are allowed to sit on juries even when the case involved – doctors' malpractice.

The Fourth Circuit has so held. The Alabama Court held – has so held. Georgia Courts, Kentucky, Louisiana, Pennsylvania, these are all situations where jurors are patients of doctors who are accused. This is so far removed from the facts of this case and the behavior of NCRIC in this case, Your Honor. Thank you.

MR. PAGE: Just briefly, if I may, Your Honor.

THE COURT: Actually, I would like to say a few things on the record at this time. Since I have given both counsel an opportunity to be heard, this case has been pending for some time now and the issues in the initial suit involved a contract between NCRIC and Columbia for medical malpractice insurance. It has been briefed on a number of issues related to the counterclaims as well as the initial claim. **This case does not involve patient care. It involves the contract dispute and the counterclaims of Columbia alleging certain business practices on the part of NCRIC. There are numerous, literally pages of witnesses that have been identified by both sides prior to the actual trial and throughout all of the pre-trial proceedings. Never before has Dr. Maurice Butler's name or any hint of his name or his involvement come up. He's not a witness in this trial. My patient care with him is personal and a private matter. It does not relate to any of his practices at Columbia. I have no idea, no knowledge of what his insurance or business arrangement is at Columbia Hospital in any way. That's simply not an issue in this trial.**

I have been more than candid and forthright with the parties in this case throughout the trial from the day we walked into this court which is the first time I saw Dr. Dukes. And I immediately indicated that he's someone that I know and that I know him through his sister, Dr. Floretta Dukes McKinsey. And so as soon as Dr. Rifka gave any indication of his connection or business relationship, which he even had difficulty explaining when he was asked the question, out of an abundance of caution, I disclosed the fact that I do know Dr. Butler because he was my doctor. I indicated that I have seen him off and on for the past ten years and that the last time I saw him was approximately a year ago. I don't feel that that's an issue that impacts directly on this case.

We voir dired a number of jurors as Mr. Page said, some of whom identified connections or knowledge of Columbia Hospital for Women are still on the jury. Some were struck as preemptory challenges and some were struck for cause because of other reasons and so at this point in the trial which is not a medical malpractice trial related to patient care, it's not a trial where the doctor who was my personal doctor is going to appear or was ever even mentioned as being involved in this trial. And so at this point in time I decline to recuse myself and will note for the record the concerns raised by NCRIC.

I think I have a duty, given the time that the jury has invested in this trial at this point, to go further and we have spent so far five trial days or more. And I think it's my responsibility to continue on in this case at this point...

(2/4 Tr. 462-467)(emphasis added)

The District of Columbia Courts Code of Judicial Conduct (1995)[9] Canon 3(E)(1) requires that:

> A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
> (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;
> (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such associations as a lawyer concerning the matter or the judge or such lawyer has been a material witness concerning it;
> (c) the judge knows that he or she, individually or as a fiduciary or the judge's spouse, parent, or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than a de minimus interest that could be substantially affected by the proceedings;
> (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
>
> (i) is a party to the proceeding, or an officer, director or trustee of a party;
> (ii) is acting as a lawyer in the proceeding;
> (iii) is known by the judge to have a more than de minimus interest that could be substantially affected by the proceedings.

The Court must carefully consider competing duties when evaluating a request for recusal. While Canon 3(E)(1) of the District of Columbia Code of Judicial Conduct (1995) requires a judge to recuse herself in a proceeding in which the judge's "impartiality might reasonably be questioned," Canon 3(B) imposes on the judge a somewhat competing duty "to hear and decide matters assigned to the judge except those in which disqualification is required." *Id.* Accordingly, the judge has a duty to "hear and decide matters assigned to the judge" and that responsibility must be considered in the

16d-003404

face of a situation that may require recusal. Canon 3(E) requires the Court to ultimately determine whether an average citizen, fully informed of the relevant facts, "might reasonably question whether the judge could decide the case with the requisite aloofness and disinterest"[10].

The two preeminent cases that offer guidance on the issue of recusal include facts, which vastly differ from the instant case. In *Scott v. United States*, 559 A.2d 745 (D.C. 1989) a criminal case, the trial judge presided at a trial prosecuted by an Assistant United States Attorney for the District of Columbia, a division of the United States Department of Justice, while the judge was negotiating for employment with the Executive Office for United States Attorneys in the Department of Justice. *Scott,* 559 A.2d at 745. Ultimately, the jury found the defendant guilty and the judge presided over his sentencing. It was not until after the defendant had been sentenced that he learned of the judge's employment negotiations with the United State's Attorney's Office. On appeal, the Court of Appeals reversed the jury's verdict and ordered a new trial finding that a new trial was warranted because the trial judge had not disclosed to the parties that during the trial and sentencing he was either actively seeking or had accepted employment in the executive office for all federal prosecutors while one of those prosecutors was prosecuting the case before him.

In the second case, *Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847 (1988), a Federal District Court Judge sitting *without a jury*, tried a case involving the

---

[9] The Joint Committee on Judicial Administration adopted the 1990 ABA Model Code of Judicial Conduct as amended. The Code of Judicial Conduct for the District of Columbia Courts took effect on June 1, 1995.
[10] *Scott,* 559 A.2d at 750 (quoting *Pepsico, Inc. v. McMillen,* 764 F.2d 458, 461 (7th Cir. 1985)). There must be "an appearance of bias or prejudice sufficient to permit the average citizen reasonably to question [the] judge's impartiality." *Scott,* 559 A.2d at 749 (quoting *United States v. Heldt,* 668 F.2d 1238, 1271 (D.C. Cir. 1981), *cert denied,* 456 U.S. 926(1982).

he was either actively seeking or had accepted employment in the executive office for all federal prosecutors while one of those prosecutors was prosecuting the case before him.

In the second case, *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847 (1988), a Federal District Court Judge sitting *without a jury*, tried a case involving the potential pecuniary gain for Loyala University while, he was a member of the Board of Trustees for Loyola University. The Judge never disclosed his membership on the board to the parties. At the conclusion of the bench trial he entered judgment in favor of Liljeberg, which meant that Loyola University stood to gain financially. The proposed benefits to the University included not only the proceeds of the real estate itself, amounting to several million dollars, but also a substantial increase in value to the University of the re-zoned adjoining property. The progress of these negotiations was regularly reported to the University's Board of Trustees by its Real Estate Committee and discussed at Board meetings. *Liljeberg,* 486 U.S. at 853. The judgment following the bench trial required the Judge to credit Liljeberg's version of "crucial, disputed conversations." *Liljeberg,* 486 U.S. at 847. The Supreme Court found impropriety on the part of the Judge in *Liljeberg*, because "[t]he conflict arose not simply from the judge's service on the Board of Trustees, but from his service on the Board while the University was involved in its dealings with Liljeberg." *Liljeberg,* 486 U.S. at 864 n. 11.

The circumstances in *Scott* and *Liljeberg* differ vastly from the circumstances before this Court, such that a reasonable person fully informed of the facts of this case could not reasonably question the undersigned judge's impartiality. Here, as distinguished from the *Scott* case, Dr. Butler had not treated the undersigned judge for about one year (at the time of trial). In *Scott* the judge was involved in a series of discrete

and ongoing negotiations with the executive office "for all federal prosecutors while one of those prosecutors was prosecuting Scott". *Scott,* 559 A.2d at 756. The undersigned judge was *not* a patient of Dr. Rifka, who testified at trial. This case involves a contract dispute between two business entities, NCRIC and Columbia Hospital for Women. The case does not involve patient care. Numerous doctors were identified pre-trial and during trial as witnesses or as doctors who were impacted by the contractual dispute between NCRIC and Columbia. Dr. Butler was never identified as a potential witness in this case, nor was he identified as an effected party. His name did not arise in the litigation until Dr. Rifka was asked on cross-examination, during the second week of trial about his business relationship with Dr. Butler. The instant case was a *jury* trial in which the jury determined the credibility of witnesses and the facts of the case.[11] As such, it was not the role of the undersigned judge to assess the credibility of Dr. Rifka's testimony or Dr. Butler's testimony since he did not testify at trial.

Additionally, as distinguished from *Liljeberg*, the undersigned judge was not aware of Dr. Butler's medical malpractice insurance arrangement or his business or financial arrangement with Dr. Rifka. Dr. Rifka, as the transcript indicates, even had difficulty explaining his financial and business arrangements with Dr. Butler at various points in time.[12] Unlike *Scott* and *Liljeberg,* there is no evidence in this case that Dr. Butler had any pecuniary interest (or any other interest) in this case.

---

[11] A trial judge is accorded more leeway regarding [her] participation in the trial when he or she sits with a jury. *In re J.A. & L.A.*, 601 A.2d 69,78 (D.C. 1991)

[12] After describing several different types of working arrangements he had with various doctors, Dr. Rifka indicated that he *currently* has two partners, one of whom is Dr. Butler. *See* Transcript p. 442. He never testified about how long he has had a business partnership with Dr. Butler. Dr. Rifka was not asked nor did he testify that he had any involvement in the undersigned judge's medical case and treatment at any time during his partnership with Dr. Butler. Indeed, the undersigned judge stated to the parties that Dr. Rifka, to her knowledge, had never had a role in her care and treatment. (2/4 Tr. 452).

Ultimately, the Supreme Court in *Liljeberg* held that when determining whether disqualification is appropriate, the judge must consider three factors: (1) the risk of injustice to the parties in the particular case, (2) the risk that denial of relief will produce injustice in other cases, and (3) the risk of undermining the public's confidence in the judicial process. *Liljeberg,* 486 U.S. at 864.

The first prong of the *Liljeberg* test requires the judge who is contemplating recusal to consider the risk of injustice to the parties. In support of their oral motion for recusal at trial, plaintiffs' argued that during voir dire they were "very interested in knowing whether jurors were patients of doctors *who were going to testify.*" (2/4 Tr. 457-461). Plaintiffs' further argued that they used preemptory challenges on jurors who so indicated and that they "moved to strike for cause...one who was a patient of a *doctor identified by Columbia.*" *Id.* Dr. Butler did not testify, nor was he identified as a potential witness by either party. Finally, plaintiffs argued that they were concerned whether the undersigned judge "had any prior relationship with Dr. Rifka in a patient-doctor relationship." *Id.* The undersigned judge did not have a doctor-patient relationship with Dr. Rifka. Dr. Rifka testified in his capacity as the corporate representative of Columbia Hospital. This was not a medical negligence case, and therefore neither Dr. Rifka's personal business or clinical practices were at issue. The allegations of financial injury claimed by the defendants Columbia, pertain to the corporate entity, Columbia Hospital only.

The Supreme Court in *Liljeberg,* stated that "the statute does not call upon judges to perform the impossible – to disqualify themselves based on facts they do not know." *Liljeberg,* 486 U.S. at 861. A reasonable person viewing the proceedings could not

16d-003408

question a judge's partiality about facts unknown to the judge. *Id.* The facts of this case taken in their totality, and taken in the light most favorable to the plaintiff, in no way prejudice the plaintiff. To the contrary, the risk of prejudice to defendants was great had the undersigned judge recused herself in the second week of the trial, since both parties had invested a great deal of time and resources into the trial. Additionally, plaintiff did not assert this alleged bias until well into the trial, which prejudiced defendant. *Liljeberg*, 486 U.S. at 864. Plaintiff's motion fails the first prong of the *Liljeberg* test.

The second prong of the *Liljeberg* test requires the undersigned judge to evaluate whether denial of recusal will cause injustice in other cases. Here, it is evident that the undersigned judge's decision declining to recuse herself will not cause harm in other cases. Crucial facts are absent here, that led the Court of Appeals in *Scott* to conclude that recusal was warranted to avoid causing injustice in other cases. In *Scott*, the Court of Appeals reasoned, "Had the connection between the prosecutor and the employment sought by the trial judge been more remote, our conclusion of the need for vacation of a conviction might well be different." *Id.* Dr. Butler's connection to this case is remote at best, and under the reasoning employed in *Scott*, the circumstances in this case suggest exactly the tenuous connections, likely to have led the *Scott* court to a different conclusion. A greater injustice would result if the undersigned judge recused, because it could lead to the misconception that mid-trial litigation tactics could derail a case for remote tangential reasons that do not rise to a level sufficient to give the appearance of partiality.

The third prong of the *Liljeberg* test is closely connected to the second prong. The court is required under the third prong, to evaluate the risk of undermining confidence in

judicial process is undermined by attempts such as this. Perhaps the Court of Appeals has summed the instant situation up best when it wrote, "the court's intent has always been to remove this kind of question from the easy reach of frivolity or trial tactics and yet maintain the necessary core of judicial neutrality." *In re: J.A. & L.A.,* 601 A.2d 69, 76 (D.C. 1991). The facts that NCRIC attempts to link in support of their argument that the undersigned judge's impartiality might reasonably be questioned are too remote from the issues in this case. A reasonable person, fully informed of the facts, could not reasonably conclude that the undersigned judge's doctor-patient relationship with a doctor who was not a party or a witness in the trial, and who was not shown to be impacted by this litigation, could call into question the judge's impartiality.

V. NCRIC Is Not Entitled to Remittitur

NCRIC alleges that it is entitled to remittitur due to the jury's award of $18 million in damages. In this jurisdiction a trial judge has broad discretion to order a new trial subject to remittitur if it determines that a jury's damage award "is so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate." *Capitol Hill Hosp. v. Jones,* 532 A.2d 89, 93 n. 13 (D.C.1987) (citations omitted); *See also Knight v. Georgetown Univ.,* 725 A.2d 472, 486 (D.C. 1999)(Remittitur is appropriate only where the verdict is so inordinately large as to shock the conscience.) Once a party has proven that damages are appropriate, the proof necessary to establish an amount for damages need only be a "reasonable estimate." *Affordable Elegance Travel, Inc. v. Worldspan, L.P.,* 774 A.2d 320, 329 (D.C. 2001). A party should not "be deprived of compensatory damages merely because they cannot be computed with exactitude." *Spar v. Obwoya,* 369 A.2d 173, 180 (D.C. 1977).

necessary to establish an amount for damages need only be a "reasonable estimate." *Affordable Elegance Travel, Inc. v. Worldspan, L.P.*, 774 A.2d 320, 329 (D.C. 2001). A party should not "be deprived of compensatory damages merely because they cannot be computed with exactitude." *Spar v. Obwoya*, 369 A.2d 173, 180 (D.C. 1977).

In its motion, NCRIC claims that remittitur would be appropriate for three reasons: (1) the award of $13 million in pre-closing damages cannot be supported by Mr. Ben Ezra's testimony; (2) at trial Columbia grossly misstated NCRIC's annual earnings; and (3) the $5 million in post-closing damages was only first asserted at trial by Columbia and it represents gross revenue, not the actual net revenue lost by the hospital due to its failure to receive a congressional appropriation.

At trial Mr. Ben Ezra presented testimony using two damages models, which were based on multiple inputs that were sufficient to support the damages awarded by the jury. Additionally, there was testimony from Drs. Rifka, Wilson and Moore regarding the decline of Columbia's revenues by nearly $10 million in the year following NCRIC's tortious activity. Col. Opp. at 35; 2/3 Tr. 165-66(Rifka); 2/4 Tr. 504-05 (Wilson); 2/6 Tr. 928-30(Moore). There is nothing in the record to suggest that Columbia misstated NCRIC's annual earnings. In its closing argument, Columbia represented that NCRIC's sales totaled $59 million, not that its annual earnings were that sum. Col. Opp. at 38; 2/10 Tr. 137. NCRIC could have objected to Columbia's representation of their sales figure, but did not. Additionally, NCRIC offered no evidence at trial to disprove that their sales were $59 million.

NCRIC claims that evidence at trial suggested that Congress had only appropriated $4 million for Columbia, and that the award of $5 million of post-closing

16d-003411

damages is excessive by $1 million dollars. In its request for the $1 million remittitur on post-closing damages, NCRIC asks the court to take judicial notice of facts outside the evidentiary trial record, but cites no authority which would allow the court to do so. At trial, Dr. Rifka testified at length about the lost congressional funding, and he testified that Columbia was going to receive $5million for the years 2001 and 2002. Col. Opp. at 40 n.20. At the time of Dr. Rifka's testimony, NCRIC did not object to the $5 million figure, but instead now objects and asks the court to effectively stand in the place of the jury, after the evidentiary record has been closed and to place less weight on the testimony of Dr. Rifka. *Railan v. Katyal*, 766 A.2d 998 (D.C. 2001).

In sum, there is nothing in the record, which would allow the court to order remittitur for the reasons proffered by NCRIC. The evidence presented at trial, and often not contested by NCRIC, could have reasonably permitted the jury to award $18 million, under the particular facts of this case.

VI. NCRIC Is Not Entitled to Judgment as a Matter of Law.

NCRIC renews its motions for judgment as a matter of law pursuant to D.C. Super. Ct. R. Civ. 50(b) and alleges that it is entitled to judgment because: (1) the evidence did not satisfy the legal elements of tortious interference with business relations; (2) the evidence failed to establish "egregious" or otherwise wrongful conduct that would qualify as tortious interference; (3) the evidence failed to establish a legally protected business relationship; (4) Columbia failed to prove non-speculative damages resulting from the alleged tortious interference; and (5) the $5 million post-closing damages were not pleaded in Columbia's Counterclaim.

16d-003412

Judgment notwithstanding the verdict (JNOV) is proper only in extreme cases. It is the responsibility of the jury (and not the judge) to weigh the evidence and to pass upon the credibility of the witnesses. If impartial triers of fact could reasonably find the plaintiff's evidence sufficient, the case may not be taken from the jury. *Etheredge v. District of Columbia,* 635 A.2d 908, 915 (D.C. 1993). The court "must take care to avoid weighing the evidence, passing on the credibility of witnesses, or substituting [their] judgment for that of the jury." *Bragg v. Owens-Corning Fiberglass Corp.,* 734 A.2d 643, 648 (D.C. 1999).

As discussed more fully above, the court finds that there was evidence to support the jury's verdict, and NCRIC's arguments for JNOV simply repeat their arguments for Motion for A New Trial. However, the court does note NCRIC's allegation that since the $5 million post-closing damages were not included in Columbia's Counterclaim they should have been excluded from reaching the jury. This issue is easily settled by longstanding case law, which instructs that damages which "accrue after the institution of the suit...may be recovered, provided they are the natural and proximate consequences of the act complained of, and do not themselves constitute a new cause of action." *Norwest Bank Minnesota Nat'l Ass'n v. FDIC,* 312 F.3d 447, 452 (D.C. Cir. 2002)("'it is perfectly clear, that the proof of actual damage may extend to facts that occur and grow out of the injury, even up to the day of the verdict.") Therefore, the jury's post-closing damages award is clearly permitted.

VII. Conclusion

Accordingly, for the foregoing reasons, and upon consideration of NCRIC's Motion for a New Trial and Renewed Motion for Judgment as a Matter of Law,

VII. Conclusion

Accordingly, for the foregoing reasons, and upon consideration of NCRIC's Motion for a New Trial and Renewed Motion for Judgment as a Matter of Law, Columbia's opposition thereto, and the entire record herein, it is this 30th day of September, 2005, hereby,

ORDERED that NCRIC's Motion for a New Trial and Renewed Motion for Judgment as a Matter of Law is **DENIED.**

September 30, 2005
Date

A. Blackburne-Rigsby
Judge A. Blackburne-Rigsby

Copies to:
Kellogg, Huber, Hanson, Todd & Evans, PLLC
Neil M. Gorsuch
Eli C. Schulman
1615 M Street, NW
Suite 400
Washington D.C. 20036

Bryan Cave, LLP
Rodney F. Page
Scott M. Badami
700 Thirteenth St., NW
Washington D.C. 20005-3960

Roy I. Niedermayer
3 Bethesda Metro Center
Suite 430
Bethesda, MD 20814

MAILED From Chambers SEP 30 2005

DOCKETED In Chambers SEP 30 2005

16d-003414

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC.	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 00-0007308
v.	)	Calendar #8
	)	
COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,	)	Judge Blackburne-Rigsby
	)	
Defendant.	)	

PLAINTIFF'S NOTICE OF APPEAL

COMES NOW, Plaintiff NICRIC, Inc., by and through undersigned counsel, and hereby gives notice, pursuant to D.C. App. R. 3, of Plaintiff's Appeal of (1) the Judgment entered on February 20, 2004, and (2) the Order Denying NCRIC's Motion for a New Trial and Renewed Motion for Judgment as a Matter of Law entered on September 30, 2005, from the Civil Division of the D.C. Superior Court.

Dated: October 26, 2005

RESPECTFULLY SUBMITTED,

Elliot E. Polebaum, #358748
Douglas W. Baruch, #414354
Stephen D. Robinson, #492090
FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004
(202) 639-7000

Counsel for Plaintiff

Certificate of Service

I hereby certify that on October 26, 2005, I caused a true and exact copy of the foregoing *Plaintiff's Notice of Appeal* to be sent first-class mail, postage prepaid to:

Neil M. Gorsuch, Esq.
Eli C. Schulman, Esq.
Priya R. Aiyar, Esq.
Kellog, Huber, Hansen,
Todd & Evans, PLLC
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

Counsel for Defendant

Rodney F. Page
Scott M. Badami
Bryan Cave, LLP
700 Thirteenth Street, NW
Washington, D.C. 20005-3960

Roy I. Niedermayer
3 Bethesda Metro Center
Suite 430
Bethesda, MD 20814

Counsel for Plaintiff

Stephen D. Robinson

C[redacted] Number	Status	Judge
2000 CA 007308 B	Closed	BLACKBURNE-RIGSBY, ANNA

In The Matter Of	Action
NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN	Complaint for Breach of Contract Filed

Party		Attorneys
NCRIC INC 1115 30th St NW Washington, DC 20007	PLNTF	BADAMI, Mr SCOTT M BRYAN CAVE 700 13TH ST NW Washington, DC 20005 NIEDERMAYER, Mr ROY I LAW OFFICES OF ROY NIEDERMAYER 3 BETHESDA METRO CENTER SUITE 430 Bethesda, MD 20814 PAGE, Mr RODNEY F BRYAN CAVE LLP 700 13TH ST NW Washington, DC 20005
COLUMBIA HOSPITAL FOR WOMEN Medical Ctr Inc 2425 L St NW Wa[redacted]ington, DC 20008	DFNDT	GORSUCH, Mr NEIL M KELLOGG HUBER HANSEN TODD & EVANS 1615 M STREET NW SUITE 400 Washington, DC 20036 HANSEN, Mr MARK C KELLOGG, HUBER, HANSEN, TODD & EVANS 1615 M STREET NW SUITE 400 Washington, DC 20036 SCHULMAN, Mr ELI C KELLOGG, HUBER, HANSEN, TODD & EVANS 1615 M STREET, NW SUITE 400 Washington, DC 20036
AIYAR, PRIYA R , /9 99999-0000	CNVPTY	PRO SE

Opened	Disposed	Case Type
10/03/2000	Judgment from Jury Trial Entered on Docket	Civil II

Comments: Converted Comments from TDMS Parties:
PARTY 0001: Priya R Aiyar
ADDRESS:
, /9 99999-0000

N[redacted]	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
1	09/30/05	Order Denying Motion fora new trial and renewed motion for judgment as a matter of law Entered on the Docket Order docketed and mailed from chambers on 9/30/05 - Judge Blackburne-Rigsby	0.00	0.00
2	04/20/05	STAY TDMS TYPE: JSD TDMS EVENT: 1442sta TDMS FLAG: sp CREATED BY/ON: #485 Cox, Kin 04-21-2004 LAST MODIFIED BY/ON: #485 Cox, Kin 04-21-2004	0.00	0.00
3	02/03/05	Praecipe changing the firm name of deft's counsel to Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #486 Colaire, 02-04-2005 LAST MODIFIED BY/ON: #486 Colaire, 02-04-2005	0.00	0.00
4	04/20/04	STAY ENTRY BY: J/Blackburne-Rig TDMS TYPE: JSD TDMS EVENT: 1442sta CREATED BY/ON: #485 Cox, Kin 04-21-2004 LAST MODIFIED BY/ON: #485 Cox, Kin 04-21-2004	0.00	0.00
5	04/20/04	Coluumbia 's reply in support of motion for assessment of cost ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000col CREATED BY/ON: #469 Wilson, 04-21-2004 LAST MODIFIED BY/ON: #469 Wilson, 04-21-2004	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
6	04/20/04	ORDER GRANTING mot for approval of a supersedeas bond & to stay execution pending decision,see lg,fld 4-20-04,mld 4-21-04 on rule 50 & 59 mtns & any appeal, ORDERED that the supersedeas bondin the form, amt and with the surety as shown in exhibit A to ncric's mtn is approved by the court & that the execution of the judgment docketed in this action on 2-2 0-04 and any proceedings to enforce said judgment are hereby stayed pending a de termination of ncrics mtn for a new trial & renewed mtn for judgment as a matter of law & any appeal taken from the judgmentt ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #47E Smith, N 03-08-2004 LAST MODIFIED BY/ON: #485 Cox, Kin 04-21-2004	0.00	0.00
7	04/07/04	NCRIC's opposition to Columbia's motion for assessment of costs ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000ncr* CREATED BY/ON: #486 Colaire, 04-08-2004 LAST MODIFIED BY/ON: #486 Colaire, 04-08-2004	0.00	0.00
8	04/06/04	(opp) Motion for a new trial and renewed motion for jdgmt as a matter of law ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 1040mop CREATED BY/ON: #445 Terry, P 04-09-2004 LAST MODIFIED BY/ON: #445 Terry, P 04-09-2004	0.00	0.00
9	04/05/04	Reply memo in support of NCRIC'S mot for a new trial and renewed mot for jurdgment as a matter of Law ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000rep CREATED BY/ON: #469 Wilson, 04-08-2004 LAST MODIFIED BY/ON: #469 Wilson, 04-08-2004	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
10	03/26/04	(opp) Motion for a new trial and renewed motion for jdgmt as a matter of law TDMS TYPE: MOT TDMS EVENT: 1040mop TDMS FLAG: m* CREATED BY/ON: #465 Jones, G 03-08-2004 LAST MODIFIED BY/ON: #445 Terry, P 04-09-2004	0.00	0.00
11	03/25/04	Reply in support of its notice to amend the certificate of witnesses ENTRY BY: NCRIC,Inc TDMS TYPE: DOC TDMS EVENT: 9107rep* CREATED BY/ON: #2DE Vosh, Ja 03-26-2004 LAST MODIFIED BY/ON: #2DE Vosh, Ja 03-26-2004	0.00	0.00
12	03/19/04	response to NCRIC's notice to amend the certificate of witnesses ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9107res* CREATED BY/ON: #47E Smith, N 03-22-2004 LAST MODIFIED BY/ON: #47E Smith, N 03-22-2004	0.00	0.00
13	03/18/04	ORDER GRANTING Motion to EXTEND time (Consent), See Lg., Fld 040318, Mld 040322 ORDERED, that the Motion is GRANTED, FURTHER ORDERED, that Columbia's opposition to NCRIC's Motion for a New Tri al & Renewed Motion for Judgment as a Matter of Law shall be due March 26, 2004 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9203mot+ CREATED BY/ON: #465 Jones, G 03-18-2004 LAST MODIFIED BY/ON: #486 Colaire, 03-22-2004	0.00	0.00
14	03/17/04	Motion to EXTEND time (Consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #465 Jones, G 03-18-2004 LAST MODIFIED BY/ON: #465 Jones, G 03-18-2004	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
15	03/05/04	Notice to amend the certificate of witnesses ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9107not* CREATED BY/ON: #465 Jones, G 03-10-2004 LAST MODIFIED BY/ON: #465 Jones, G 03-10-2004	0.00	0.00
16	03/05/04	Motion for a new trial and renewed motion for jdgmt as a matter of law ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1040mot CREATED BY/ON: #465 Jones, G 03-08-2004 LAST MODIFIED BY/ON: #465 Jones, G 03-08-2004	0.00	0.00
17	03/05/04	mot for approval of a supersedeas bond & to stay execution pending decision on its rules 50 & 59 mots and any appeal ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47E Smith, N 03-08-2004 LAST MODIFIED BY/ON: #47E Smith, N 03-08-2004	0.00	0.00
18	02/24/04	Witness list RECEIVED ENTRY BY: CHFWMC,Inc TDMS TYPE: DOC TDMS EVENT: 1457wit* CREATED BY/ON: #2DE Vosh, Ja 02-25-2004 LAST MODIFIED BY/ON: #2DE Vosh, Ja 02-25-2004	0.00	0.00
19	02/24/04	(mot) mot to quash columbia's SUBPOENA duces tecum TDMS TYPE: MOT TDMS EVENT: 1048mot CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
20	02/19/04	ORDER DENYING IN PART Columbia's Motion for Add'l Sanctions w/Respect to NCRIC's Late Produced Expert Docs., fld 040219/mld 040220 ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 1132ord CREATED BY/ON: #465 Jones, G 02-20-2004 LAST MODIFIED BY/ON: #465 Jones, G 02-20-2004	0.00	0.00
21	02/17/04	(ORDER GRANTING/DENYING IN PRT) Mot to add'l sanctions w/respect to NCRIC's late prod. expert docs. & slides, fld 040217/mld 040218 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9202mot* CREATED BY/ON: #47E Smith, N 02-03-2004 LAST MODIFIED BY/ON: #465 Jones, G 02-18-2004	0.00	0.00
22	02/13/04	(fin) JUDGMENT from JURY TRIAL for Deft against Pltf. In The Amount Of $18,220,002, See Lg., Fld 2-20-04, Mld. 2-20-04 FOR: Deft INTRATE J$AMT: 18,220.002 ?: (fin) JUDGMENT from JURY TRIAL for Deft against Pltf., ORDERED that judgment is entered in favor of the deft CHFWMC, Inc. agst the plaintiffs NCRIC, Inc, and that the deft recover of the plaintiffs its costs of action. FURTHER ORDERED th at the Counter-Claimant Columbia Hosp For Women Medical Ctr, Inc., recover of th e counter deft NCRIC, Inc, the sum of $18,220,002 with interest at the statutory rate and its costs of action ENTRY BY: J/Blackburne-Rig TDMS TYPE: JSD TDMS EVENT: 1306fin+ TDMS FLAG: fj CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
23	02/13/04	case called for jury trial. all present. jury reached a verdict @ for the deft/counter-pltf for the amount of $18,220,002.00 (Jkt E ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00
24	02/12/04	case called for jury trial. trial respited until 2-13-04 @ 9:30am. no verdict. (Jkt Entry) ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas* CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00
25	02/11/04	case called for jury trial con't. no verdict trial respited until 2-12-04 @ 9:30am (Jkt Entry) ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas* CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00
26	02/10/04	case called for jury trial con't. oral exam of...con't & completed NCRICs Mot For Summ Judg Denied, See Lg (Jkt Entry) Pltf Mot as a matter of law Denied. trial respited until 2-11-04 @ 9:30am NCRIC's mot for judg on counterclaim denied. Mot granted on fraud claim. Plt f's mot as to punitive damages denied & pltf mot as to compensatory damages also denied ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
27	02/09/04	case called for jury trial cont. All parties present. Oral exam of William Henderson con't & heard in full, See Lg (Jkt Entry) Oral exam of Mr...heard in part. Trial respited until 2-10-04 @ 9:30a m... ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00
28	02/06/04	case called for jury trial cont. All parties present. Oral exam of Steven Moore heard in full, See Lg (Jkt Entry) Oral Exa, of William Henderson heard in part. Trial respited util 2-9-04 @ 9:30am ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00
29	02/05/04	case called for jury trial cont. All parties present. mot for judg for fudiciary duties granted, See Lg (Jkt Entry) deft's counterclaim for mot for judg denied w/o prej. Oral exam of Steve Fa rus heard in full. Trial respited until 2-6-04 @ 2:30pm ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
30	02/04/04	case called for jury trial cont. All parties present. Oral exam of Dr. Larry Wilson heard in full, See Lg (Jkt Entry) deft's judgment as a matter of law heard and denied w/o prej. Deft's mo t to recuse judge Blackburne-Rigsby is Denied. Pltfs opposition to Columbia's mo t for sanctions with respect to certain NCRIC's Expert documents and slides in o pen court. Oral exam of Der. Dukes heard in full. Trial respited until 2-5-04 @ 9:30am ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00
31	02/03/04	mot to quash columbia's SUBPOENA duces tecum ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1048mot CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00
32	02/03/04	case called for jury trial cont. oral exam of Dr. Ben Ezra heard in full. NCRIC's Mot to quash Columbia's, See Lg. (Jkt Entry) subpoena duces tecum filed in open court. Oral exam of Dr Rifka Sifka c on't and completed case respited until 2-4-04 @ 9:30am ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
33	02/03/04	ORDER DENYING mot to excude evidence based on documents produced 3e business days,see lg,fld 2-3-04,mld 2-5-04 before trial & demonstratives produced after the ct ordered deadline, ORDERED that the record shall reflect that the mtn was denied in open court on 1 -28-04 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #47E Smith, N 01-28-2004 LAST MODIFIED BY/ON: #485 Cox, Kin 02-05-2004	0.00	0.00
34	02/03/04	(ORDER DENYING W/O PREJUDICE) Motion to voir dire Peter Ben Ezra prior to impaneling the jury, seelg, fld 040203, mld 040204 ORDERED that the record shall reflect that the motion was denied in open court on Jan. 28, 2004 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #468 Vaughn, 01-12-2004 LAST MODIFIED BY/ON: #465 Jones, G 02-04-2004	0.00	0.00
35	02/02/04	Motion to additional sanctions with respect to NCRIC's late produced expert documents and slides ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9202mot* CREATED BY/ON: #47E Smith, N 02-03-2004 LAST MODIFIED BY/ON: #47E Smith, N 02-03-2004	0.00	0.00
36	01/30/04	case called for jury trial. all present. oral exam of Dr Wayne Cooper heard in part Case respited until 2-2-04 @ 9:30 (Jkt Entry) ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
37	01/29/04	case called for jury trial con't. All Parties Present. Trial Respited Until 1-30-04 @ 2:30pm (Jkt Entry) ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas* CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00
38	01/28/04	case called for jury trial con't. All Parties Present. deft's mot to exclude Dr. Ben, Ezra testimony denied, See Lg (Jkt Entry) Pltf's mot to voire dire Dr. Ben Ezra prior to impaneling jury is deni ed. Deft's mot to exclude evidence is denied. Jury selection began @ 3pm. Trial respited until 1-29-04 @ 9:30am ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000cas+ CREATED BY/ON: #4AU Russell, 02-20-2004 LAST MODIFIED BY/ON: #4AU Russell, 02-20-2004	0.00	0.00
39	01/28/04	mot to excude evidence based on documents produced three business days before trial and demonstratives produced after the see lg ct ordered deadline ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #47E Smith, N 01-28-2004 LAST MODIFIED BY/ON: #47E Smith, N 01-28-2004	0.00	0.00
40	01/28/04	Praecipe re: deposition designations ripe for decision ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #47E Smith, N 01-28-2004 LAST MODIFIED BY/ON: #47E Smith, N 01-28-2004	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
41	01/26/04	(jsd) TRIAL @ 9:30am TDMS TYPE: EVT TDMS EVENT: 0102b2H CREATED BY/ON: #T99 Young, C 09-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 09-11-2003	0.00	0.00
42	01/26/04	(rst) PRE-TRIAL conference @ 9:30am NSDATE: 20031015pt cnt LSDATE: 20031015pt cnx TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #437 Young, V 08-18-2003 LAST MODIFIED BY/ON: #T99 Young, C 09-11-2003	0.00	0.00
43	01/09/04	Motion to voir dire Peter Ben Ezra prior to impaneling the jury ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 01-12-2004 LAST MODIFIED BY/ON: #468 Vaughn, 01-12-2004	0.00	0.00
44	12/19/03	Status held. Parties present. Representations made + indicated on the record. Case ready for trial. Trial, SEE LG. (Jkt Entry) date previously set to remain in effect ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 0000sta+ CREATED BY/ON: #47F Newell, 12-23-2003 LAST MODIFIED BY/ON: #47F Newell, 12-23-2003	0.00	0.00
45	12/19/03	ORDERED That The Use Of Such Equipment Shall Be Permitted @ Trial, See Lg., Fld. 12-19-03 & It Is FURTHER ORDERED that the Parties Shall Be Permitted To Bring Su ch Items Into The Courthouse. 1. laptop computers 2. LCD projectors and tripod 3 . Cabling 4. Theater screen (80" measured diagonally) 5. flat-screen monitors, i f needed 6. other equipment, as necessary to facilitate use of this technology. SEE ORIGINAL ORDER IN COURT JKT ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC	0.00	0.00

TDMS EVENT: 1133ord+

CREATED BY/ON: #4AU Russell, 12-23-2003
LAST MODIFIED BY/ON: #4AU Russell,
12-23-2003

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
46	12/18/03	Response to NCRIC's attempt to introduce incomplete docs. as trial exhibits ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000res* CREATED BY/ON: #465 Jones, G 12-24-2003 LAST MODIFIED BY/ON: #465 Jones, G 12-24-2003	0.00	0.00
47	12/12/03	ORDER GRANTING Motion for admission Pro Hac Vice of Priya A Aiyar (consent),fld 12-12-03,mld 12-12-03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9202mot* CREATED BY/ON: #47F Newell, 12-12-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 12-12-2003	0.00	0.00
48	12/10/03	Motion for admission Pro Hac Vice of Priya A Aiyar (consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9202mot* CREATED BY/ON: #47F Newell, 12-12-2003 LAST MODIFIED BY/ON: #47F Newell, 12-12-2003	0.00	0.00
49	12/01/03	columbia's response to ncric's objections re: columbia proposed trial exhibits ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 0000col* CREATED BY/ON: #485 Cox, Kin 12-02-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 12-02-2003	0.00	0.00

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
50	11/26/03	Notice regarding Columbia's purported withdrawal of trial exhibits ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9107not* CREATED BY/ON: #47F Newell, 12-02-2003 LAST MODIFIED BY/ON: #47F Newell, 12-02-2003	0.00	0.00
51	11/26/03	Memorandum in opposition to Columbia's objections to NCRIC's proposed trial exhibits ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000mem* CREATED BY/ON: #486 Colaire, 11-28-2003 LAST MODIFIED BY/ON: #486 Colaire, 11-28-2003	0.00	0.00
52	11/14/03	Memorandum in support of objections to NCRIC's proposed trial exhibits ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000mem* CREATED BY/ON: #4BZ Barnett, 11-17-2003 LAST MODIFIED BY/ON: #4BZ Barnett, 11-17-2003	0.00	0.00
53	11/14/03	Supplemental objections to Columbia's trial exhibits ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000sup* CREATED BY/ON: #4BZ Barnett, 11-17-2003 LAST MODIFIED BY/ON: #4BZ Barnett, 11-17-2003	0.00	0.00
54	11/14/03	NCRIC's revised exhibit list ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000ncr* CREATED BY/ON: #468 Vaughn, 11-17-2003 LAST MODIFIED BY/ON: #468 Vaughn, 11-17-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
55	10/15/03	PRETRIAL held. on 10-15-03 trial schedul for 1-26-04 at 9:30am transmittal forward to Civil A/O Copies of Pretrial Order SeeLg Given to parties following hearing ENTRY BY: (clerk) TDMS TYPE: MSC TDMS EVENT: 1168pre+ CREATED BY/ON: #477 Hartfiel 10-22-2003 LAST MODIFIED BY/ON: #477 Hartfiel 10-22-2003	0.00	0.00
56	10/15/03	(jsd) PRE-TRIAL conference @ 4:00pm LSDATE: 20040126pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 09-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 09-11-2003	0.00	0.00
57	10/15/03	(rst) PRE-TRIAL conference @ 4:00pm NSDATE: 20040126pt cnx LSDATE: 20030731pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 08-13-2003 LAST MODIFIED BY/ON: #437 Young, V 08-18-2003	0.00	0.00
58	10/08/03	Witness list RECEIVED ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1457wit* CREATED BY/ON: #445 Terry, P 10-09-2003 LAST MODIFIED BY/ON: #445 Terry, P 10-09-2003	0.00	0.00
59	10/08/03	Witness list RECEIVED Amended ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1457ame* CREATED BY/ON: #4CM Haggins, 10-09-2003 LAST MODIFIED BY/ON: #4CM Haggins, 10-09-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
60	10/08/03	(ORDER DENYING) Mot for leave to AMEND the complaint, fld 031008, mld 031008 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9201mot* CREATED BY/ON: #477 Hartfiel 06-06-2003 LAST MODIFIED BY/ON: #465 Jones, G 10-08-2003	0.00	0.00
61	10/06/03	(ORDER DENYING) Motion to join parties as defendants/counter-plaintiffs, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #468 Vaughn, 08-21-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003	0.00	0.00
62	10/06/03	(ORDER DENYING) Motion for reference to a special master, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #485 Cox, Kin 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003	0.00	0.00
63	10/06/03	(ORDER DENYING) Motion to exclude the opinions & testimony of deft Columbia's designated damages expert, fld 10/6/03, mld 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003	0.00	0.00
64	10/06/03	(ORDER DENYING) Motion to exclude certain documents and calculations, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
65	10/06/03	(RODER GRANTING) Motion in limine, seelg, fld 10/6/03, mailed 10/7/03 FURTHER ORDERED, that (1) the presentation of proof at trial shall conform to the evidence, such tht at trial Columbia shall present evidence on its ten cl aims, and it opening and closing statement, first; and (2) a pre-trial hearing t o address the admissibility of documentary exhibits at trial is set for October 15, 2003 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003	0.00	0.00
66	10/06/03	ORDER granting Motion to Exclude the testimony of Columbia's newly named witnesses See Lg fld 10-8-0,mld 10-8-03 ORDERED:That NCRICS Mot to Exclude the Testimony of Columbia newly named witness is granted The names ofthe following persons are stricken from th e witness list of columbia:Elizabeth Jackson,Francis Renee Perkins,Gideon kioko, Jerome O'Connell ,David Young ENTRY BY: J/Blackburne -Ri TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #47F Newell, 06-06-2003 LAST MODIFIED BY/ON: #477 Hartfiel 10-08-2003	0.00	0.00
67	10/06/03	(ORDER DENYING) Motion to exclude evidence of certain counterclaim damages, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #468 Vaughn, 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
68	10/06/03	(ORDER DENYING) Motion to compel and for sanctions, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9205mop* CREATED BY/ON: #468 Vaughn, 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003	0.00	0.00
69	10/06/03	(ORDER DENYING) Motion to require defendant to provide security for costs, fld 10/6/03, mailed 10/7/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #465 Jones, G 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003	0.00	0.00
70	10/06/03	(ORDER DENYING) Motion in limine to exclude testimony of NCRIC's purported expert witnesses, seelg, fld 10/6/03, mailed 10/7/03 ORDERED, that plaintiff's R. 26(b)(4) statements were timely submitted on A ugust 9, 2001 and supplemented on February 2, 2002. Defendant's did not object to the inclusion of the experts in question until nearly two years after the R. 26(b)(4) statements were filed; and it is FURTHER ORDERED, that Mary A. Woodford meets the standards for expert witne sses pursuant to the controlling law in this jurisdiction ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop+ CREATED BY/ON: #465 Jones, G 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 10-07-2003	0.00	0.00
71	09/11/03	Continued to 20031015pt @ 4:00pm from 20040126pt - Per transmittal form LSDATE: 20040126pt cnt TDMS TYPE: SCX TDMS EVENT: 0218cnt CREATED BY/ON: #T99 Young, C 09-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 09-11-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
72	09/11/03	Set case for trial on 20040126tr @ 9:30am (per tm form) TDMS TYPE: SCH TDMS EVENT: 0102b2H CREATED BY/ON: #T99 Young, C 09-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 09-11-2003	0.00	0.00
73	09/04/03	(opp) Motion to join parties as defendants/counter-plaintiffs ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #477 Hartfiel 09-09-2003 LAST MODIFIED BY/ON: #477 Hartfiel 09-09-2003	0.00	0.00
74	08/20/03	Motion to join parties as defendants/counter-plaintiffs ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 08-21-2003 LAST MODIFIED BY/ON: #468 Vaughn, 08-21-2003	0.00	0.00
75	08/18/03	Continued to 20040126pt @ 9:30am from 20031015pt (PER T.M. FORM) LSDATE: 20031015pt cnx TDMS TYPE: SCX TDMS EVENT: 0200cnx CREATED BY/ON: #437 Young, V 08-18-2003 LAST MODIFIED BY/ON: #437 Young, V 08-18-2003	0.00	0.00
76	08/13/03	Continued to 20031015pt @ 4:00pm from 20030731pt - Per transmittal form LSDATE: 20030731pt cnt TDMS TYPE: SCX TDMS EVENT: 0218cnt CREATED BY/ON: #T99 Young, C 08-13-2003 LAST MODIFIED BY/ON: #T99 Young, C 08-13-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
77	07/31/03	(rst)PRE-TRIAL conference @ 4:30pm NSDATE: 20031015pt cnt LSDATE: 20030619pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 06-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 08-13-2003	0.00	0.00
78	07/24/03	Defts Opp to NCRIC'S mot for leave to amend the complaint ENTRY BY: NCRIC,Inc TDMS TYPE: DOC TDMS EVENT: 0000def* CREATED BY/ON: #477 Hartfiel 07-29-2003 LAST MODIFIED BY/ON: #477 Hartfiel 07-29-2003	0.00	0.00
79	07/24/03	(opp) motion for reference to a special master ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #468 Vaughn, 07-28-2003 LAST MODIFIED BY/ON: #468 Vaughn, 07-28-2003	0.00	0.00
80	07/24/03	(opp) Motion to exclude evidence of certain counterclaim damages ENTRY BY: columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #485 Cox, Kin 07-28-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 07-28-2003	0.00	0.00
81	07/24/03	(opp) mot to exclude the opinions & testimony of deft Columbia's designated damages expert ENTRY BY: columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #485 Cox, Kin 07-28-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 07-28-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
82	07/24/03	(opp) Motion to require deft to provide security for costs ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #465 Jones, G 07-28-2003 LAST MODIFIED BY/ON: #465 Jones, G 07-28-2003	0.00	0.00
83	07/24/03	(opp) mot to exclude certain documents and calculations ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #47E Smith, N 07-28-2003 LAST MODIFIED BY/ON: #47E Smith, N 07-28-2003	0.00	0.00
84	07/24/03	Opposition to Pltfs Motion to exclude certain corroborating fact witnesses ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000opp* CREATED BY/ON: #47F Newell, 07-28-2003 LAST MODIFIED BY/ON: #47F Newell, 07-28-2003	0.00	0.00
85	07/24/03	(opp) Motion in limine to exclude testimony of NCRIC's purported expert witnesses ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #47F Newell, 07-25-2003 LAST MODIFIED BY/ON: #47F Newell, 07-25-2003	0.00	0.00
86	07/24/03	ncric's opposition to defts mtn to change the order of the proof of trial ENTRY BY: ncric TDMS TYPE: DOC TDMS EVENT: 0000to * CREATED BY/ON: #485 Cox, Kin 07-25-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 07-25-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
87	07/24/03	PRETRIAL statement (Joint) ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1134pre CREATED BY/ON: #4AU Russell, 07-24-2003 LAST MODIFIED BY/ON: #4AU Russell, 07-24-2003	0.00	0.00
88	07/08/03	PRAECIPE to enter appearance Neil M Gorsuch for Deft ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1120nei CREATED BY/ON: #445 Terry, P 07-09-2003 LAST MODIFIED BY/ON: #445 Terry, P 07-09-2003	0.00	0.00
89	06/19/03	(opp) Motion to COMPEL and for sanctions ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9205mop* CREATED BY/ON: #465 Jones, G 06-23-2003 LAST MODIFIED BY/ON: #465 Jones, G 06-23-2003	0.00	0.00
90	06/19/03	(rst) PRE-TRIAL conference @ 4:30pm NSDATE: 20030731pt cnt LSDATE: 20030321pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 05-08-2003 LAST MODIFIED BY/ON: #T99 Young, C 06-11-2003	0.00	0.00
91	06/11/03	Continued to 20030731pt @ 4:30pm from 20030619pt - Per transmittal form LSDATE: 20030619pt cnt TDMS TYPE: SCX TDMS EVENT: 0218cnt CREATED BY/ON: #T99 Young, C 06-11-2003 LAST MODIFIED BY/ON: #T99 Young, C 06-11-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
92	06/05/03	Mot for leave to AMEND the complaint ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9201mot* CREATED BY/ON: #477 Hartfiel 06-06-2003 LAST MODIFIED BY/ON: #477 Hartfiel 06-10-2003	0.00	0.00
93	06/05/03	Motion to COMPEL and for sanctions ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9205mot* CREATED BY/ON: #468 Vaughn, 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 06-06-2003	0.00	0.00
94	06/05/03	motion for reference to a special master ENTRY BY: ncric,inc TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #485 Cox, Kin 06-06-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 06-06-2003	0.00	0.00
95	06/05/03	mot to exclude the opinions & testimony of deft Columbia's designated damages expert ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #47E Smith, N 06-06-2003	0.00	0.00
96	06/05/03	mot to exclude certain documents and calculations ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #47E Smith, N 06-06-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
97	06/05/03	mot in limine of deft ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47E Smith, N 06-06-2003 LAST MODIFIED BY/ON: #47E Smith, N 06-06-2003	0.00	0.00
98	06/05/03	Motion to Exclude the testimony of Columbia's newly named witnesses ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47F Newell, 06-06-2003 LAST MODIFIED BY/ON: #47F Newell, 06-06-2003	0.00	0.00
99	06/05/03	Motion to exclude evidence of certain counterclaim damages ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 06-06-2003 LAST MODIFIED BY/ON: #468 Vaughn, 06-06-2003	0.00	0.00
100	06/05/03	Motion to require deft to provide security for costs ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #465 Jones, G 06-06-2003 LAST MODIFIED BY/ON: #465 Jones, G 06-06-2003	0.00	0.00
101	06/05/03	Motion in limine to exclude testimony of NCRIC's purported expert witnesses ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #465 Jones, G 06-06-2003 LAST MODIFIED BY/ON: #465 Jones, G 06-06-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
102	05/19/03	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #486 Colaire, 05-20-2003 LAST MODIFIED BY/ON: #486 Colaire, 05-20-2003	0.00	0.00
103	05/08/03	Continued to 20030619pt @ 4:30pm from 20030321pt - Per transmittal form LSDATE: 20030321pt cnt TDMS TYPE: SCX TDMS EVENT: 0218cnt CREATED BY/ON: #T99 Young, C 05-08-2003 LAST MODIFIED BY/ON: #T99 Young, C 05-08-2003	0.00	0.00
104	05/06/03	(rst) PRE-TRIAL conference @ 4:30pm NSDATE: 20030731pt cnt LSDATE: 20030307pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 02-25-2003 LAST MODIFIED BY/ON: #T99 Young, C 06-11-2003	0.00	0.00
105	05/02/03	ORDER GRANTING Motion to reschedule pretrial hearing, See Lg., Fld 030505, Mld 030506 ORDERED, that the pretrial conference is rescheduled for a date within 30 d ays from the date of this order. The clerk's office shall issue notice ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #468 Vaughn, 05-05-2003 LAST MODIFIED BY/ON: #486 Colaire, 05-06-2003	0.00	0.00
106	05/02/03	Motion to reschedule pretrial hearing ENTRY BY: NCRIC, Inc TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 05-05-2003 LAST MODIFIED BY/ON: #468 Vaughn, 05-05-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
107	04/14/03	ORDER DENYING Motion to continue pretrial hearing (consent),see lg,fld 4-15-03,mld 4-15-03 Because all outstanding mtns have been ruled on as of 4-10-03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #468 Vaughn, 04-15-2003 LAST MODIFIED BY/ON: #485 Cox, Kin 04-15-2003	0.00	0.00
108	04/11/03	Motion to continue pretrial hearing (consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 04-15-2003 LAST MODIFIED BY/ON: #468 Vaughn, 04-15-2003	0.00	0.00
109	04/10/03	(ORDER DENYING) MOTION for summary judgment. FLD 4/11/03 MLD 4/11/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 1075mop CREATED BY/ON: #47F Newell, 02-08-2002 LAST MODIFIED BY/ON: #47F Newell, 04-11-2003	0.00	0.00
110	04/03/03	ORDER GRANTING IN PART AND DENYING MOT to compel discovery by designation under SCR 30(b)(6) & See Lg FLD 4-4-03,mld 4-7-03 And appearance at deposition ENTRY BY: J/Blackburne -Ri TDMS TYPE: MOT TDMS EVENT: 1189mop+ CREATED BY/ON: #468 Vaughn, 08-13-2001 LAST MODIFIED BY/ON: #477 Hartfiel 04-07-2003	0.00	0.00
111	04/02/03	(ORDER DENYING) Motion to EXTEND time for discovery. FLD 4/4/03 MLD 4/8/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9203mop* CREATED BY/ON: #47F Newell, 10-10-2002 LAST MODIFIED BY/ON: #47F Newell, 04-08-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
112	04/02/03	(ORDER DENYING) MOTION for summary judgment. FLD 4/3/03 MLD 4/3/03 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 1075mot CREATED BY/ON: #477 Hartfiel 02-11-2002 LAST MODIFIED BY/ON: #47F Newell, 04-03-2003	0.00	0.00
113	04/02/03	(ORDER GRANTING) Motion for protective order barring inquiry into subject matter areas, SEE LG. FLD 4/4/03 MLD 4/8/03 for 30(b)(6) deposition of pltf ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mop+ CREATED BY/ON: #485 Cox, Kin 08-22-2001 LAST MODIFIED BY/ON: #47F Newell, 04-08-2003	0.00	0.00
11	03/21/03	* (rst) *DELETED* NSDATE: 20030619pt cnt TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 12-19-2002 LAST MODIFIED BY/ON: #T99 Young, C 05-08-2003	0.00	0.00
115	03/07/03	(rst) PRE-TRIAL conference @ 3:00pm NSDATE: 20030506pt cnt LSDATE: 20030321pt cnx TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #T99 Young, C 02-25-2003 LAST MODIFIED BY/ON: #T99 Young, C 02-25-2003	0.00	0.00
116	02/25/03	Continued to 20030506pt @ 4:30pm from 20030307pt - Per transmittal form LSDATE: 20030307pt cnt TDMS TYPE: SCX TDMS EVENT: 0218cnt CREATED BY/ON: #T99 Young, C 02-25-2003 LAST MODIFIED BY/ON: #T99 Young, C 02-25-2003	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
117	02/06/03	ORDER GRANTING Motion to reschedule the pretrial conference, See Lg., Fld 030306, Mld 030307 ORDERED, that the Pretrial Conference is rescheduled for a date after May 5 , 2003. The clerk's office shall issue notice of the new date ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #486 Colaire, 03-07-2003 LAST MODIFIED BY/ON: #486 Colaire, 03-07-2003	0.00	0.00
118	01/21/03	(rst) PRE-TRIAL conference @ 4:00pm NSDATE: 20030321pt cnx TDMS TYPE: EVT TDMS EVENT: 0103b2H CREATED BY/ON: #521 Randall, 10-31-2002 LAST MODIFIED BY/ON: #T99 Young, C 12-19-2002	0.00	0.00
119	12/19/02	Continued to 20030321pt @ 3:00pm from 20030121pt (per tm form) LSDATE: 20030121pt cnx TDMS TYPE: SCX TDMS EVENT: 0200cnx CREATED BY/ON: #T99 Young, C 12-19-2002 LAST MODIFIED BY/ON: #T99 Young, C 12-19-2002	0.00	0.00
120	12/12/02	(jsd) MOTION hearing @11:00am TDMS TYPE: EVT TDMS EVENT: 0111b2H CREATED BY/ON: #T99 Young, C 11-12-2002 LAST MODIFIED BY/ON: #T99 Young, C 11-12-2002	0.00	0.00
121	11/12/02	Set motion hearing for 20021212mh @11:00am (per tm form) TDMS TYPE: SCH TDMS EVENT: 0111b2H CREATED BY/ON: #T99 Young, C 11-12-2002 LAST MODIFIED BY/ON: #T99 Young, C 11-12-2002	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
122	11/08/02	ORDER RE: Scheduling hearing on Summ judg., see lg., fld 11/8/02, mld 11/12/02 ORDERED, that the parties shall appear for a heraring on the outstanding su mmary jdugment motions. Pursuant to SUperior COurt Civil Procedure Rule 12-I(f) , "if the jduge assigned to the case determines to hold a hearing on the motion, that judge shall give to all parties appropriate notice of the hearing... and t he amount of time afforded to each party." Each party will have (10) ten minute s to present its argument. The opposition will also have (10) ten minutes to pr esent its argument. Further, the moving party shall be given an additional (5)f ive minutes for rebuttal, if necessary. Therfore, since each party has filed mo tions for summary jdugment , the oral arguments in this hearing will last (50) f ifty minutes. Therefore, it is hereby ORDERED that the parties shall appear on 12/12/02, at 11:00 am. for a hearing on the outstanding motins for summary jdugm ent and the other outstanding motinos listed above ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 1133ord+ CREATED BY/ON: #47E Smith, N 11-12-2002 LAST MODIFIED BY/ON: #47E Smith, N 11-12-2002	0.00	0.00
123	10/31/02	Set hearing on pre-trial calendar for 20030121pt @ 4:00pm after mediation TDMS TYPE: SCH TDMS EVENT: 0103b2H CREATED BY/ON: #521 Randall, 10-31-2002 LAST MODIFIED BY/ON: #521 Randall, 10-31-2002	0.00	0.00
124	10/31/02	(jsd) MEDIATION conference @11:00am LSDATE: 20020228sw cnx CSSDUE: 20020920 TDMS TYPE: EVT TDMS EVENT: 0118bswl CREATED BY/ON: #437 Young, V 09-23-2002 LAST MODIFIED BY/ON: #437 Young, V 09-23-2002	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
125	10/24/02	(opp) Motion to EXTEND time for discovery ENTRY BY: columbia TDMS TYPE: MOT TDMS EVENT: 9203mop* CREATED BY/ON: #485 Cox, Kin 10-25-2002 LAST MODIFIED BY/ON: #485 Cox, Kin 10-25-2002	0.00	0.00
126	10/09/02	Motion to EXTEND time for discovery ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #47F Newell, 10-10-2002 LAST MODIFIED BY/ON: #47F Newell, 10-10-2002	0.00	0.00
127	09/23/02	Continued to 021031sw @11:00am from 020228sw PER ORDER & TRANSMITTAL DATED 9/20/02 LSDATE: 20020228sw cnx TDMS TYPE: SCX TDMS EVENT: 0200cnx CREATED BY/ON: #437 Young, V 09-23-2002 LAST MODIFIED BY/ON: #437 Young, V 09-23-2002	0.00	0.00
128	09/20/02	ORDER GRANTING Consent Motion to Clarify that mediation has been postponed, See Lg., Fld 020920, Mld 020923 The parties Consent Motion to Clarify that Mediation has be Postponed is GR ANTED. The scheduling order dated December 20, 2001, postponed the due date for the parties' Confidential Settlement Statements to May 19, 2002. The Mediation i n the above-captioned matter, which was previously scheduled for February 28, 20 02, at 11:00 a.m., is therefore continued. The Clerk's Office shall reschedule M ediation within 30 days & send notices to the parties ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #486 Colaire, 09-23-2002 LAST MODIFIED BY/ON: #486 Colaire, 09-23-2002	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
129	09/20/02	ORDER GRANTING Motion to clarify that mediation has been postponed (consent) see lg., fld 9/20/02, mld 9/23/02 ENTRY BY: J/Blackburne-Rig TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #477 Hartfiel 03-04-2002 LAST MODIFIED BY/ON: #47E Smith, N 09-23-2002	0.00	0.00
130	05/20/02	PRAECIPE to enter appearance of Eli C. Schulman as attorney for the defendant ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1120app CREATED BY/ON: #468 Vaughn, 05-21-2002 LAST MODIFIED BY/ON: #468 Vaughn, 05-21-2002	0.00	0.00
131	03/28/02	Reply in support of deft's motion for summary judgment ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000rep* CREATED BY/ON: #486 Colaire, 04-01-2002 LAST MODIFIED BY/ON: #486 Colaire, 04-01-2002	0.00	0.00
132	03/28/02	Pltf's reply in support of its motion for summary jdgmt ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000plt* CREATED BY/ON: #465 Jones, G 04-01-2002 LAST MODIFIED BY/ON: #465 Jones, G 04-01-2002	0.00	0.00
133	03/28/02	Opposition to Deft Columbia's statement of material facts not in dispute ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000opp* CREATED BY/ON: #47F Newell, 03-29-2002 LAST MODIFIED BY/ON: #47F Newell, 03-29-2002	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
134	03/07/02	(opp) MOTION for summary judgment ENTRY BY: CHFW TDMS TYPE: MOT TDMS EVENT: 1075mop CREATED BY/ON: #4AU Russell, 03-08-2002 LAST MODIFIED BY/ON: #4AU Russell, 03-08-2002	0.00	0.00
135	03/04/02	ORDER GRANTING Motion to EXTEND time for filing summary jdgmt papers,SEE LG,FLD 3-6-02,MLD 3-7-02 Further Ordered that the time for each party to file and serve its o pposition to the opposing party's mtn for summary judgment is hereby extended up through and including 3-07-02 & that the time for each party to file and serve its reply to the opposing party's summary judgment opposition is hereby extended up through & including 3-28-02 ENTRY BY: J/Blackburne TDMS TYPE: MOT TDMS EVENT: 9203mot+ CREATED BY/ON: #465 Jones, G 03-05-2002 LAST MODIFIED BY/ON: #485 Cox, Kin 03-07-2002	0.00	0.00
136	03/04/02	Motion to EXTEND time for filing summary jdgmt papers ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #465 Jones, G 03-05-2002 LAST MODIFIED BY/ON: #465 Jones, G 03-05-2002	0.00	0.00
137	02/28/02	ORDERED, that pursuant to the scheduling order dated December 20, 2001, which, See Lg., Fld 020304, Mld 020305 postponed the due date for the parties' Confidential Settlement Statement t o May 19, 2002, the ADR session in the above-captioned matter, which was previou sly scheduled for February 28, 2002 at 11:00 a.m. is POSTPONED until a to-be-det ermined date sufficiently after May 19, 2002 ENTRY BY: J/Blackburne-Rig TDMS TYPE: DOC TDMS EVENT: 1133ord+ CREATED BY/ON: #486 Colaire, 03-05-2002 LAST MODIFIED BY/ON: #486 Colaire, 03-05-2002	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
138	02/28/02	(rst) MEDIATION conference @11:00am NSDATE: 20021031sw cnx CSSDUE: 20020118 TDMS TYPE: EVT TDMS EVENT: 0118bsw1 CREATED BY/ON: #2CJ Wilson, 11-27-2001 LAST MODIFIED BY/ON: #437 Young, V 09-23-2002	0.00	0.00
139	02/27/02	Motion to clarify that mediation has been postponed (consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #477 Hartfiel 03-01-2002 LAST MODIFIED BY/ON: #477 Hartfiel 03-06-2002	0.00	0.00
140	02/26/02	Praecipe noting that pltf has consented to extend the following deadlines in the current sched. order: seelg, DEADLINE IN CURRENT SCHED. ORDER ORDER DATE NEW DATE Oppositions to dispositive motions filed 02/28/02 03/04/02 Replies to opps. to dispositive motions filed 03/18/02 03/25/02 ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9104pra+ CREATED BY/ON: #465 Jones, G 03-04-2002 LAST MODIFIED BY/ON: #465 Jones, G 03-04-2002	0.00	0.00
141	02/21/02	Praecipe noting the enclosed errata pgs. 6-9 & 14 to Statement of Material Facts Not In Dispute ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #465 Jones, G 03-04-2002 LAST MODIFIED BY/ON: #465 Jones, G 03-04-2002	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
142	02/14/02	Rule 26(b)(4) statement RECEIVED (supplemental) ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1458rul* CREATED BY/ON: #485 Cox, Kin 02-15-2002 LAST MODIFIED BY/ON: #485 Cox, Kin 02-15-2002	0.00	0.00
143	02/12/02	PRAECIPE to withdraw Exhibit 20 to deft's stmts of material facts not in dispute...& submits the attached copy of the, seelg, same exhibit ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1121pra+ CREATED BY/ON: #465 Jones, G 02-13-2002 LAST MODIFIED BY/ON: #465 Jones, G 02-13-2002	0.00	0.00
14	02/11/02	Praecipe noting that deft hereby submits errata pages 6-9 & 14 of its statement of material facts not in dispute ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104???* CREATED BY/ON: #485 Cox, Kin 02-13-2002 LAST MODIFIED BY/ON: #485 Cox, Kin 02-13-2002	0.00	0.00
145	02/08/02	Defendant's statement of material facts not in dispute ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000???* CREATED BY/ON: #468 Vaughn, 02-12-2002 LAST MODIFIED BY/ON: #468 Vaughn, 02-12-2002	0.00	0.00
146	02/07/02	MOTION for summary judgment ENTRY BY: columbia TDMS TYPE: MOT TDMS EVENT: 1075mot CREATED BY/ON: #477 Hartfiel 02-11-2002 LAST MODIFIED BY/ON: #477 Hartfiel 02-11-2002	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
147	02/07/02	MOTION for summary judgment ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1075mot CREATED BY/ON: #47F Newell, 02-08-2002 LAST MODIFIED BY/ON: #47F Newell, 02-08-2002	0.00	0.00
148	01/22/02	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 01-24-2002 LAST MODIFIED BY/ON: #477 Hartfiel 01-24-2002	0.00	0.00
149	01/22/02	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 01-23-2002 LAST MODIFIED BY/ON: #477 Hartfiel 01-23-2002	0.00	0.00
150	01/15/02	Praecipe extending deadlines in the current scheduling order by one week ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #486 Colaire, 01-17-2002 LAST MODIFIED BY/ON: #486 Colaire, 01-17-2002	0.00	0.00
151	01/14/02	(jsd) MEDIATION within 30 days following(Amended Per T.F. Date 8/31/01) TDMS TYPE: EVT TDMS EVENT: 0325med CREATED BY/ON: #DM1 DP (batc 01-18-2001 LAST MODIFIED BY/ON: #2CJ Wilson, 09-05-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
152	01/11/02	CERTIFICATE regarding discovery filed ENTRY BY: COLUMBIA TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 01-14-2002 LAST MODIFIED BY/ON: #477 Hartfiel 01-14-2002	0.00	0.00
153	01/10/02	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 01-14-2002 LAST MODIFIED BY/ON: #477 Hartfiel 01-14-2002	0.00	0.00
154	12/21/01	NCRIC's reply in support of its motions to compel designations & deposition testimony ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000ncr* CREATED BY/ON: #486 Colaire, 12-26-2001 LAST MODIFIED BY/ON: #486 Colaire, 12-26-2001	0.00	0.00
155	12/21/01	Reply in support of its motion for a protective order ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000rep* CREATED BY/ON: #465 Jones, G 12-26-2001 LAST MODIFIED BY/ON: #465 Jones, G 12-26-2001	0.00	0.00
156	12/21/01	ORDER GRANTING Motion to AMEND scheduling order (consent), See Lg., Fld 011227 The current scheduling order shall be amended as follows: Deadline Current As Amended Non-expert, non-party depositions first noticed prior to 8/13/01 discovery deadline shall be completed: 12/13/01 1/17/02 Rule 30(b)(6) depositions first noticed prior to 8/13/01 discovery deadline shall be completed 12/13/01 1/17/02 Expert depositions completed; 12/20/01 1/17/02 All discovery closes 12/20/01 1/17/02	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

Dispositive Motions filed
1/3/02 1/31/02
Oppositions to dispositive motions filed
1/31/02 2/28/02
Replies to oppositions to dispositive
motins filed 2/18/02 3/18/02
Dispositive motions decided
4/11/02 5/9/02
Confidential Settlement due
4/22/02 5/19/02
. . . (SEE ORIGINAL ORDER)

ENTRY BY: J/Davis
TDMS TYPE: MOT
TDMS EVENT: 9201mot+

CREATED BY/ON: #47E Smith, N 12-14-2001
LAST MODIFIED BY/ON: #486 Colaire,
12-28-2001

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
157	12/13/01	Motion to AMEND scheduling order (consent) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9201mot* CREATED BY/ON: #47E Smith, N 12-14-2001 LAST MODIFIED BY/ON: #47E Smith, N 12-14-2001	0.00	0.00
158	12/11/01	PRAECIPE to enter appearance of Scott Badami as co-counsel for pltf ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1120pra CREATED BY/ON: #485 Cox, Kin 12-14-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 12-14-2001	0.00	0.00
159	12/04/01	ORDER GRANTING mot to stay proceedings to finalize settlement agreement (consent),see lg,fld 12-7-01 Ordered that discovery and other proceedings in this action shall be stayed until and up through 12-7-01 & that once the day ends on 12-7-01 the cur rent scheduling order shall be amended by extending all deadlines stated therein as follows: (see original order) Deadline in current scheduling order current As amende d Non-expert, non-party depositions first noticed prior 12-6-01 12-13-0 1 to 8-13-01 discovery deadline shall be completed: R. 30(b)(6)depositions 1st noticed prior to 8-3 1-01 discovery deadline shall be	0.00	0.00

16d-003453

completed: 12-6-01 12-13-01
Dam
ages discovery closes:
12-6-01 12-13-01

ENTRY BY: J/Davis
TDMS TYPE: MOT
TDMS EVENT: 9103mot+

CREATED BY/ON: #47E Smith, N 12-04-2001
LAST MODIFIED BY/ON: #485 Cox, Kin
12-10-2001

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
160	12/03/01	mot to stay proceedings to finalize settlement agreement (consent) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47E Smith, N 12-04-2001 LAST MODIFIED BY/ON: #47E Smith, N 12-04-2001	0.00	0.00
1	11/27/01	Set mediation conference for 20020228sw @11:00am PER. SR LIST TDMS TYPE: SCH TDMS EVENT: 0118bsw1 CREATED BY/ON: #2CJ Wilson, 11-27-2001 LAST MODIFIED BY/ON: #2CJ Wilson, 11-27-2001	0.00	0.00
162	11/20/01	(opp) Motion for protective order barring inquiry into subject matter areas for 30(b)(6) deposition of pltf ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #486 Colaire, 11-28-2001 LAST MODIFIED BY/ON: #486 Colaire, 11-28-2001	0.00	0.00
163	11/19/01	(opp) MOTION to compel discovery by designation under SCR 30(b)(6) & appearance at deposition ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 1189mop CREATED BY/ON: #485 Cox, Kin 11-21-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 11-21-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
164	11/15/01	Praecipe noting that parties has consented to extend by 2 business days, the following deadlines in the current sched. order ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #485 Cox, Kin 11-21-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 11-21-2001	0.00	0.00
165	11/08/01	STAY TDMS TYPE: JSD TDMS EVENT: 1442sta TDMS FLAG: sp CREATED BY/ON: #465 Jones, G 10-03-2001 LAST MODIFIED BY/ON: #465 Jones, G 10-03-2001	0.00	0.00
166	11/06/01	(can) MEDIATION conference @ 9:00am CSSDUE: 20010926 TDMS TYPE: EVT TDMS EVENT: 0118bsw1 CREATED BY/ON: #T99 Young, C 08-13-2001 LAST MODIFIED BY/ON: #2CJ Wilson, 09-05-2001	0.00	0.00
167	10/04/01	(mot) Motion to EXTEND time to FOR COLUMBIA TO OPPOSE NCRIC'S PENDING MOTIONS.TO COMPEL (Consent) TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #477 Hartfiel 09-14-2001 LAST MODIFIED BY/ON: #465 Jones, G 09-20-2001	0.00	0.00
168	09/28/01	STAY ENTRY BY: J/Davis TDMS TYPE: JSD TDMS EVENT: 1442sta CREATED BY/ON: #465 Jones, G 10-03-2001 LAST MODIFIED BY/ON: #465 Jones, G 10-03-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
169	09/28/01	(ORDER GRANTING) Motion to temporarily stay proceedings & amend scheduling order (consent), seelg, fld 011002 ORDERED that all discovery & other proceedings in this action (including but not limited to all deadlines for opps. to NCRIC's pending mtns) shall be sta yed until & up through 11/8/01; & FURTHER, the stay shall be lifted w/o further order of the Ct. if, prior to 11/1/01, either pty certifies in a Praecipe, filed with the Ct., that the settlement discussions are at an impasse; & FURTHER, if the stay is lifted by the filing of a Praecipe with the Ct., the stay shall end effective five business days after said Praecipe is served on the opposing pty; & FURTHER, if the stay ends as sched. on 11/8/01, the most recent Consent Order shall be amended by ext. the deadlines stated therein by 52 days as follows:...& , FURTHER, if the stay ends as sched. on 11/8/01, the current Sched. Order shall be amended by ext. all deadlines stated therein by 62 days as follows:...&, FUR THER, is the stay is lifted by the filing of a Praecipe with this Ct., the 2nd A mended Sched. Order shall be amended by ext. all deadlines set forth therein by the no. of cal. days from 9/24/01 up to (& including) the effective date on whic h the stay was lifted (including the 5-day notice period & any time added for se rvice by mail) plus 17 cal. days;...(see orig.) ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #47F Newell, 09-27-2001 LAST MODIFIED BY/ON: #465 Jones, G 10-03-2001	0.00	0.00
170	09/26/01	Motion to temporarily stay proceedings & amend scheduling order (consent) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #47F Newell, 09-27-2001 LAST MODIFIED BY/ON: #47F Newell, 09-27-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
171	09/13/01	Motion to EXTEND time to FOR COLUMBIA TO OPPOSE NCRIC'S PENDING MOTIONS...(Consent) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #477 Hartfiel 09-14-2001 LAST MODIFIED BY/ON: #477 Hartfiel 09-14-2001	0.00	0.00
172	09/10/01	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #47E Smith, N 09-12-2001 LAST MODIFIED BY/ON: #47E Smith, N 09-12-2001	0.00	0.00
173	09/10/01	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #47E Smith, N 09-12-2001 LAST MODIFIED BY/ON: #47E Smith, N 09-12-2001	0.00	0.00
174	09/10/01	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #47E Smith, N 09-12-2001 LAST MODIFIED BY/ON: #47E Smith, N 09-12-2001	0.00	0.00
175	09/06/01	(ORDER GRANTING) Motion to EXTEND time to FOR COLUMBIA TO OPPOSE NCRIC'S PENDING MOTIONS TO COMPEL (Consent), seelg, fld 010918 ORDERED that the time for Columbia to file and serve its opps. to NCRIC's Motion to Compel Discovery By Designation Under SCR 30(b)(6) And Appearance at Deposition and Motion to Compel Deft's Designated Witnesses to Answer Questions Properly Posed at Deposition is hereby extended up through and including Sept. 13, 2001 ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9203mot+ CREATED BY/ON: #477 Hartfiel 09-07-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

LAST MODIFIED BY/ON: #465 Jones, G
09-20-2001

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
176	09/06/01	Motion to EXTEND time to FOR COLUMBIA TO OPPOSE NCRIC'S PENDING MOTIONS TO ENTRY BY: NCRIC,INC TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #477 Hartfiel 09-07-2001 LAST MODIFIED BY/ON: #477 Hartfiel 09-07-2001	0.00	0.00
177	09/06/01	(WITHDRAWN 8-22-01) Motion to COMPEL DEFT TO PRODUCE PRIVILEGE LOG TDMS TYPE: MOT TDMS EVENT: 9205mot* CREATED BY/ON: #477 Hartfiel 08-17-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 02-21-2002	0.00	0.00
178	08/31/01	(ORDER GRANTING) Motion to AMEND Scheduling Order (Consent), seelg, fld 010904 ORDERED: the deadlines for this case are hereby amended, as follows: DEADLINE CURRENT PROPOSED NON-expert, non-pty depos. lst noticed prior t o 8/13/01 discovery deadline shall be cmpltd: 9/14/01 10/5/01 R ULE 30(b)(6) depos. first noticed prior to 8 /31/01 discovery deadline shall be cmpltd: 9/14/01 10/5/01 D AMAGES discovery closes: 9/21/01 10/5/01 E XPERT depos. cmpltd: 10/5/01 10/12/01 D ISPOSITIVE motions filed: 9/10/01 10/19/01 O PPS. to dispositive motions filed: 10 days 10/19/01 R EPLIES to opps. to dispositive motions filed: -- 12/3/01 D ISPOSITIVE motions decided: 10/11/01 1/25/02 C ONFIDENTIAL Settlement Statement due: 9/26/01 2/1/02 A DR: 11/6/01 to be sched by AO P retrial: -- to be sched by AO S O ORDERED ENTRY BY: J/Davis TDMS TYPE: MOT	0.00	0.00

TDMS EVENT: 9201mot+

CREATED BY/ON: #477 Hartfiel 08-30-2001
LAST MODIFIED BY/ON: #465 Jones, G
09-05-2001

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
179	08/28/01	Motion to AMEND Scheduling Order (Consent) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9201mot* CREATED BY/ON: #477 Hartfiel 08-30-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-30-2001	0.00	0.00
180	08/28/01	(mot) Motion to COMPEL dfts designated witnesses to answer questions properly posed at deposition TDMS TYPE: MOT TDMS EVENT: 9205mot* CREATED BY/ON: #485 Cox, Kin 08-13-2001 LAST MODIFIED BY/ON: #4AU Russell, 04-16-2003	0.00	0.00
181	08/23/01	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-28-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-28-2001	0.00	0.00
182	08/23/01	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-28-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-28-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
183	08/22/01	PRAECIPE to withdraw w/o prej. its Mot to compel deft to produce Privelege Log, Filed on 8/13/01 ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1121pra CREATED BY/ON: #486 Colaire, 08-29-2001 LAST MODIFIED BY/ON: #486 Colaire, 08-29-2001	0.00	0.00
184	08/22/01	PRAECIPE to extend time for serving &/or filing papers by 14 calendar days ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1178pra CREATED BY/ON: #486 Colaire, 08-29-2001 LAST MODIFIED BY/ON: #486 Colaire, 08-29-2001	0.00	0.00
185	08/22/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC,INC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-23-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-23-2001	0.00	0.00
186	08/22/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC,INC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-23-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-23-2001	0.00	0.00
187	08/20/01	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-22-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-22-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
188	08/17/01	Praecipe noting that dft by counsel hereby stipulate & agree that the following deadlines set forth in the sched order,see lg dated 5-16-01 & the order dated 7-20-01 shall be extended by 14 cale ndars days ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9104pra+ CREATED BY/ON: #485 Cox, Kin 08-29-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 08-29-2001	0.00	0.00
189	08/15/01	Motion for protective order barring inquiry into subject matter areas for 30(b)(6) deposition of pltf ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #485 Cox, Kin 08-22-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 08-22-2001	0.00	0.00
190	08/15/01	Motion to COMPEL DEFT TO PRODUCE PRIVILEGE LOG ENTRY BY: NCRIC INC TDMS TYPE: MOT TDMS EVENT: 9205mot* CREATED BY/ON: #477 Hartfiel 08-17-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-17-2001	0.00	0.00
191	08/13/01	Set mediation conference for 20011106sw @ 9:00am SR LIST TDMS TYPE: SCH TDMS EVENT: 0118bsw1 CREATED BY/ON: #T99 Young, C 08-13-2001 LAST MODIFIED BY/ON: #T99 Young, C 08-13-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
192	08/09/01	Rule 26(b)(4) statement as opponent of a claim ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1458rul* CREATED BY/ON: #465 Jones, G 08-23-2001 LAST MODIFIED BY/ON: #465 Jones, G 08-23-2001	0.00	0.00
193	08/09/01	(can) MEDIATION conference @11:00am FSDATE: 20010809sw CSSDUE: 20010629 TDMS TYPE: EVT TDMS EVENT: 0118bsw1 CREATED BY/ON: #2CJ Wilson, 05-11-2001 LAST MODIFIED BY/ON: #2CJ Wilson, 05-23-2001	0.00	0.00
194	08/08/01	CERTIFICATE regarding discovery filed ENTRY BY: COLUMBIA TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-10-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-10-2001	0.00	0.00
195	08/07/01	Motion to COMPEL dfts designated witnesses to answer questions properly posed at deposition ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9205mot* CREATED BY/ON: #485 Cox, Kin 08-13-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 08-13-2001	0.00	0.00
196	08/07/01	MOTION to compel discovery by designation under SCR 30(b)(6) & appearance at deposition ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1189mot CREATED BY/ON: #468 Vaughn, 08-13-2001 LAST MODIFIED BY/ON: #468 Vaughn, 08-13-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
197	07/27/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-02-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-02-2001	0.00	0.00
198	07/27/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-02-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-02-2001	0.00	0.00
199	07/23/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-06-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-06-2001	0.00	0.00
200	07/20/01	ORDER GRANTING Pltf's Alternative Motion for additional time to file opponent's Rule 26(b)(4), See Lg statement ORDERED, that pltf's Alternative Motion for Additional Time to file Opponen t's Rule 26(b)(4) Statement be, & hereby is, granted with a new deadline of 8/9/ 01 FURTHER ORDERED, that pltf's Alternative Motion for leave to complete disco very on damages after the discovery deadline be, & hereby is granted with a dead line of 9/7/01 FURTHER ORDERED, that pltf's Alternative Motion for leave to depose deft's experts be, & hereby is, granted with a deadline of 9/21/01 ENTRY BY: J/Davis TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #486 Colaire, 07-26-2001 LAST MODIFIED BY/ON: #486 Colaire, 07-26-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
201	07/20/01	ORDER GRANTING Motion in limine to preclude defendant's expert testimony (renewed), Fld 010723 ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 07-16-2001 LAST MODIFIED BY/ON: #486 Colaire, 07-26-2001	0.00	0.00
202	07/20/01	ORDER GRANTING Motion to EXTEND deadline for proponent's Rule 26(b)(4) Statement, Fld 010723 ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9203mop* CREATED BY/ON: #468 Vaughn, 07-02-2001 LAST MODIFIED BY/ON: #486 Colaire, 07-26-2001	0.00	0.00
20	07/18/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-31-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-31-2001	0.00	0.00
204	07/17/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-01-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-01-2001	0.00	0.00
205	07/17/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-01-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-01-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
206	07/17/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-01-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-01-2001	0.00	0.00
207	07/17/01	ANSWER to amended counter claim ENTRY BY: NCRIC TDMS TYPE: CAC TDMS EVENT: 1156atc CREATED BY/ON: #465 Jones, G 07-25-2001 LAST MODIFIED BY/ON: #465 Jones, G 07-25-2001	0.00	0.00
208	07/16/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 08-01-2001 LAST MODIFIED BY/ON: #477 Hartfiel 08-01-2001	0.00	0.00
209	07/16/01	PRAECIPE to withdraw ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1121pra CREATED BY/ON: #477 Hartfiel 07-31-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-31-2001	0.00	0.00
210	07/12/01	Rule 26(b)(4) statement RECEIVED ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1458rul* CREATED BY/ON: #477 Hartfiel 07-31-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-31-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
211	07/12/01	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-30-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-30-2001	0.00	0.00
212	07/11/01	(opp) Motion to EXTEND deadline for proponent's Rule 26(b)(4) Statement ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9203mop* CREATED BY/ON: #468 Vaughn, 07-16-2001 LAST MODIFIED BY/ON: #468 Vaughn, 07-16-2001	0.00	0.00
213	07/11/01	Motion in limine to preclude defendant's expert testimony (renewed) ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #468 Vaughn, 07-16-2001 LAST MODIFIED BY/ON: #468 Vaughn, 07-16-2001	0.00	0.00
214	07/09/01	PRAECIPE to withdraw ENTRY BY: NCRIC INC TDMS TYPE: DOC TDMS EVENT: 1121pra CREATED BY/ON: #477 Hartfiel 07-27-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-27-2001	0.00	0.00
215	07/03/01	ORDER GRANTING & DENYING IN PART Motion to dismiss counterclaims, See Lg., Fld 010706 ORDERED, that pltf's motion is GRANTED IN PART & DENIED IN PART, as seth fo rth with particularity above ENTRY BY: J/Davis TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #486 Colaire, 07-10-2001 LAST MODIFIED BY/ON: #486 Colaire, 07-10-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
216	07/02/01	CERTIFICATE regarding discovery filed ENTRY BY: ncric TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-09-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-09-2001	0.00	0.00
217	07/02/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC INC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-03-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-03-2001	0.00	0.00
218	07/02/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC INC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-03-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-03-2001	0.00	0.00
219	07/02/01	Motion to EXTEND deadline for proponent's Rule 26(b)(4) Statement ENTRY BY: (clerk) TDMS TYPE: MOT TDMS EVENT: 9203mot* CREATED BY/ON: #468 Vaughn, 07-02-2001 LAST MODIFIED BY/ON: #468 Vaughn, 07-02-2001	0.00	0.00
220	06/27/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-02-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-02-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
221	06/27/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 07-02-2001 LAST MODIFIED BY/ON: #477 Hartfiel 07-02-2001	0.00	0.00
222	06/27/01	Deadline for ruling on DISPOSITIVE motions..... TDMS TYPE: EVS TDMS EVENT: 0332rul CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988	0.00	0.00
223	06/22/01	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 06-27-2001 LAST MODIFIED BY/ON: #477 Hartfiel 06-27-2001	0.00	0.00
224	06/18/01	Witness list RECEIVED ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1457wit* CREATED BY/ON: #477 Hartfiel 06-21-2001 LAST MODIFIED BY/ON: #477 Hartfiel 06-21-2001	0.00	0.00
225	06/18/01	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 06-20-2001 LAST MODIFIED BY/ON: #477 Hartfiel 06-20-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
226	05/27/01	Deadline for filing MOTIONS..... TDMS TYPE: EVS TDMS EVENT: 0323mot CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988	0.00	0.00
227	05/23/01	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 05-24-2001 LAST MODIFIED BY/ON: #477 Hartfiel 05-24-2001	0.00	0.00
228	05/23/01	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 05-24-2001 LAST MODIFIED BY/ON: #477 Hartfiel 05-24-2001	0.00	0.00
229	05/18/01	ANSWER to amended complaint ENTRY BY: NCRIC TDMS TYPE: CAC TDMS EVENT: 1152aac CREATED BY/ON: #465 Jones, G 05-24-2001 LAST MODIFIED BY/ON: #465 Jones, G 05-24-2001	0.00	0.00
230	05/16/01	Mots hrg held. Deft Columbia Hospital for Women Medical Center Inc's mot to amend sched order granted &, See Lg the scheduling order dated January 12, 2001 is amended to Track IV. Order f ld (Jkt Entry) ENTRY BY: J/Davis TDMS TYPE: DOC TDMS EVENT: 0000hrg+ CREATED BY/ON: #486 Colaire, 05-24-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-24-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
231	05/16/01	ORDER GRANTING Motion to AMEND Scheduling Order, See Lg., Fld 010522 ORDER GRANTING Motion to Amend Scheduling Order is hereby GRANTED, & the sc heduling Order dated January 12, 2001 is amended as follows: 1. This case is transferred to Track 4 2. the deadlines for this case are amended to state as follows: Deadline for discovery requests 6/12/01 Exchange Witness Lists: 6/12/01 Proponent's Rule 26(b): 6/26/01 Opponent's Rule 26(b): 7/12/01 for deft/counter pltf 7/26/01 for pltf/couter deft Discovery Closes: 8/12/01 Deadline for filing motons: 8/27/01 Dispositive motions decided: 9/27/01 ADR: 10/12/01- 11/12/01 Pretrial: 30 days ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9201mot+ CREATED BY/ON: #4AU Russell, 03-14-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-24-2001	0.00	0.00
232	05/12/01	All DISCOVERY CLOSED..... ... TDMS TYPE: EVS TDMS EVENT: 0322dis CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
233	05/11/01	ORDER GRANTING & DENYING IN PART Motion for More Definite Statement of allegations of fraud, See Lg., Fld 010515 & misrepresentation & motion to strike insufficient defense ENTRY BY: J/Davis TDMS TYPE: DOC TDMS EVENT: 1131ord+ CREATED BY/ON: #486 Colaire, 05-18-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-18-2001	0.00	0.00
234	05/11/01	Set mediation conference for 20010809sw @11:00am TDMS TYPE: SCH TDMS EVENT: 0118bsw1 CREATED BY/ON: #2CJ Wilson, 05-11-2001 LAST MODIFIED BY/ON: #2CJ Wilson, 05-11-2001	0.00	0.00
235	05/11/01	ORDER DENYING Motion in limine to exclude experts of deft or, in the altern., to compel deft, See Lg., Fld 010515 to provide the answer to interrogatory or supplement its r. 26(b)(4) statem ent & for leave to take depositions of deft's experts ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9103mop+ CREATED BY/ON: #465 Jones, G 04-24-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-18-2001	0.00	0.00
236	05/11/01	ORDER GRANTING Motion for protective order regarding confidentiality of documents &, See Lg., Fld 010515 other materials The Protective Order as amended by the Court is attached hereto ENTRY BY: J/Davis TDMS TYPE: MOT TDMS EVENT: 9103mop+ CREATED BY/ON: #486 Colaire, 04-06-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-18-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
237	05/07/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC, IN TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 05-10-2001 LAST MODIFIED BY/ON: #477 Hartfiel 05-10-2001	0.00	0.00
238	05/07/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC, IN TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 05-10-2001 LAST MODIFIED BY/ON: #477 Hartfiel 05-10-2001	0.00	0.00
239	05/01/01	(opp) Motion in limine to exclude experts of deft or, in the altern., to compel deft to provide the answer to, seelg, ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop+ CREATED BY/ON: #486 Colaire, 05-03-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-03-2001	0.00	0.00
240	05/01/01	Reply memorandum in support of motion to amend scheduling order ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000rep* CREATED BY/ON: #486 Colaire, 05-02-2001 LAST MODIFIED BY/ON: #486 Colaire, 05-02-2001	0.00	0.00
241	04/30/01	PRAECIPE to change address of Roy Niedermayer counsel for the plaintiff ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1177pra CREATED BY/ON: #468 Vaughn, 05-07-2001 LAST MODIFIED BY/ON: #468 Vaughn, 05-07-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
242	04/23/01	sur-reply to deft ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000fin* CREATED BY/ON: #485 Cox, Kin 04-24-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 04-24-2001	0.00	0.00
243	04/16/01	Motion in limine to exclude experts of deft or, in the altern., to compel deft to provide the answer to interrogatory, seelg, or supplement its r. 26(b)(4) statement & for leave to take depositions o f deft's experts ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #465 Jones, G 04-24-2001 LAST MODIFIED BY/ON: #465 Jones, G 04-24-2001	0.00	0.00
244	04/12/01	(opp) Motion for protective order regarding confidentiality of documents & other materials ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mop* CREATED BY/ON: #465 Jones, G 04-20-2001 LAST MODIFIED BY/ON: #465 Jones, G 04-20-2001	0.00	0.00
245	04/12/01	OPPONENT'S Rule 26(b) (4) statements due..... TDMS TYPE: EVS TDMS EVENT: 0320opp CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988	0.00	0.00
246	04/09/01	Reply memorandum in support of motion to compel ENTRY BY: NCRIC Inc TDMS TYPE: DOC TDMS EVENT: 0000rep* CREATED BY/ON: #468 Vaughn, 04-12-2001 LAST MODIFIED BY/ON: #468 Vaughn, 04-12-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
247	04/05/01	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 04-06-2001 LAST MODIFIED BY/ON: #477 Hartfiel 04-06-2001	0.00	0.00
248	04/03/01	Motion for protective order regarding confendiality of documents & other materials ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #486 Colaire, 04-06-2001 LAST MODIFIED BY/ON: #486 Colaire, 04-06-2001	0.00	0.00
249	04/03/01	(opp) MOTION to compel discovery by production of documents from defendants TDMS TYPE: MOT TDMS EVENT: 1189mop CREATED BY/ON: #468 Vaughn, 03-13-2001 LAST MODIFIED BY/ON: #4AU Russell, 11-30-2001	0.00	0.00
250	03/29/01	(opp) MOTION to compel discovery by production of documents from defendants ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 1189mop CREATED BY/ON: #468 Vaughn, 04-03-2001 LAST MODIFIED BY/ON: #468 Vaughn, 04-03-2001	0.00	0.00
251	03/16/01	PRAECIPE to withdraw ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1121pra CREATED BY/ON: #477 Hartfiel 03-22-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-22-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
252	03/15/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 03-20-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-20-2001	0.00	0.00
253	03/12/01	Motion to AMEND Scheduling Order ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9201mot* CREATED BY/ON: #4AU Russell, 03-14-2001 LAST MODIFIED BY/ON: #4AU Russell, 03-14-2001	0.00	0.00
254	03/12/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC,INC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 03-14-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-14-2001	0.00	0.00
255	03/12/01	Witness list RECEIVED ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1457wit* CREATED BY/ON: #477 Hartfiel 03-14-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-14-2001	0.00	0.00
256	03/12/01	Rule 26(b)(4) statement RECEIVED ENTRY BY: NCRIC Inc TDMS TYPE: DOC TDMS EVENT: 1458rul* CREATED BY/ON: #477 Hartfiel 03-14-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-14-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
257	03/12/01	Rule 26(b)(4) statement RECEIVED ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1458rul* CREATED BY/ON: #477 Hartfiel 03-14-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-14-2001	0.00	0.00
258	03/12/01	MOTION to compel discovery by production of documents from defendants ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1189mot CREATED BY/ON: #468 Vaughn, 03-13-2001 LAST MODIFIED BY/ON: #468 Vaughn, 03-13-2001	0.00	0.00
259	03/12/01	Deadline for DISCOVERY REQUESTS..... TDMS TYPE: EVS TDMS EVENT: 0301dis CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988	0.00	0.00
260	03/12/01	EXCHANGE lists of fact WITNESSES..... TDMS TYPE: EVS TDMS EVENT: 0318exc CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988	0.00	0.00
261	03/12/01	PROPONENT'S Rule 26(b) (4) statements due..... TDMS TYPE: EVS TDMS EVENT: 0319pro CREATED BY/ON: #G22 Bynum, F 01-12-2001 LAST MODIFIED BY/ON: #EDD Hariss, 05-02-1988	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
262	03/06/01	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 03-09-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-09-2001	0.00	0.00
263	03/06/01	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 03-09-2001 LAST MODIFIED BY/ON: #477 Hartfiel 03-09-2001	0.00	0.00
264	02/22/01	(WITHDRAWN 010209) Motion for strike defense & supporting memorandum of points & authorities TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #432 Rogers, 02-05-2001 LAST MODIFIED BY/ON: #486 Colaire, 02-12-2001	0.00	0.00
265	02/16/01	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 02-22-2001 LAST MODIFIED BY/ON: #477 Hartfiel 02-22-2001	0.00	0.00
266	02/16/01	CERTIFICATE regarding discovery filed ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 02-22-2001 LAST MODIFIED BY/ON: #477 Hartfiel 02-22-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
267	02/09/01	Joint praecipe stating that (1) The Deft will withdraw its pending Motion to strike Defense & (2) Pltf, See Lg will withdraw the Sixth Defense in its Reply of Pltf to Amended Counterclai ms 1 & 2 of Deft. These actions shall both be effective upon the filing of this Joint Praecipe ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 9104joi+ CREATED BY/ON: #486 Colaire, 02-12-2001 LAST MODIFIED BY/ON: #486 Colaire, 02-12-2001	0.00	0.00
268	02/07/01	reply memorandum in support of motion of dismiss ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000rep* CREATED BY/ON: #485 Cox, Kin 02-09-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 02-09-2001	0.00	0.00
269	02/01/01	Motion for strike defense & supporting memorandum of points & authorities ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #432 Rogers, 02-05-2001 LAST MODIFIED BY/ON: #432 Rogers, 02-05-2001	0.00	0.00
270	01/27/01	Memorandum of points & authorities in opposition to NCRIC's motion for more definite statement & motion to strike ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000mem* CREATED BY/ON: #486 Colaire, 01-30-2001 LAST MODIFIED BY/ON: #486 Colaire, 01-30-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
271	01/26/01	Supplemental memorandum of pts. & auths. in opp. to pltf's motion to dismiss counterclaims ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000sup* CREATED BY/ON: #465 Jones, G 01-31-2001 LAST MODIFIED BY/ON: #465 Jones, G 01-31-2001	0.00	0.00
272	01/26/01	Memorandum of Points & Authorities in opposition to NCRIC's motion for more definite statement & motion to strike ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000mem* CREATED BY/ON: #432 Rogers, 01-30-2001 LAST MODIFIED BY/ON: #432 Rogers, 01-30-2001	0.00	0.00
27	01/19/01	Supplemental Memorandum in support of motion to dismiss counterclaim counts 4 & 5 ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000sup* CREATED BY/ON: #486 Colaire, 01-24-2001 LAST MODIFIED BY/ON: #486 Colaire, 01-24-2001	0.00	0.00
274	01/16/01	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC INC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 01-18-2001 LAST MODIFIED BY/ON: #477 Hartfiel 01-18-2001	0.00	0.00
275	01/12/01	present as indicated on the order. sched. conf. held. T-2 (med). columbia hosp. has until 1-26-00 to respond to pltfs,See lg mtn to dismiss counter claims (jkt entry) ENTRY BY: J/Davis TDMS TYPE: DOC TDMS EVENT: 0000pre+ CREATED BY/ON: #485 Cox, Kin 01-25-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 01-25-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
276	01/12/01	(jsd) Initial SCHEDULING conference @ 9:15am FSDATE: 20010112ss TDMS TYPE: EVT TDMS EVENT: 0296b2H- CREATED BY/ON: #469 Wilson, 10-03-2000 LAST MODIFIED BY/ON: #G22 Bynum, F 01-17-2001	0.00	0.00
277	01/09/01	(mot) Motion for enlargement of time to respond to counter-deft's motions (Consent) TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #465 Jones, G 12-19-2000 LAST MODIFIED BY/ON: #4AU Russell, 04-06-2001	0.00	0.00
278	01/08/01	Memorandum of pts. & auths. in opp. to counter-deft's motion to dismiss counterclaims, motion for a more definite, seelg, statement, & motion to strike ENTRY BY: Columbia TDMS TYPE: DOC TDMS EVENT: 0000mem+ CREATED BY/ON: #465 Jones, G 01-29-2001 LAST MODIFIED BY/ON: #465 Jones, G 01-29-2001	0.00	0.00
279	01/05/01	AMENDED complaint for damages, chaning the pray amount ENTRY BY: NCRIC TDMS TYPE: CAC TDMS EVENT: 1142nac CREATED BY/ON: #468 Vaughn, 01-17-2001 LAST MODIFIED BY/ON: #468 Vaughn, 01-17-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
280	01/05/01	Praecipe noting that the parties consent to the filing by pltf of an Amended Complaint (tab 1) & by deft of an, seelg, Amended Answer & Counterclaims (tab 2) in the forms attached hereto pursu ant to SCR 15(a), which pleadings shall be deemed filed & served upon the filing of this Praecipe. This agreement shall not be construed as a waiver by either party of any defense to procedural defects in the opposing party's orig. pleadin g or response ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9104pra+ CREATED BY/ON: #465 Jones, G 01-16-2001 LAST MODIFIED BY/ON: #465 Jones, G 01-16-2001	0.00	0.00
281	01/05/01	ANSWER and counterclaim (amended) ENTRY BY: Columbia TDMS TYPE: CAC TDMS EVENT: 1148awc CREATED BY/ON: #409 Dew, Dor 01-09-2001 LAST MODIFIED BY/ON: #409 Dew, Dor 01-09-2001	0.00	0.00
282	01/03/01	Praecipe noting that both pltf & deft by counsel consent to the filing by pltf of an amended complaint ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #485 Cox, Kin 01-09-2001 LAST MODIFIED BY/ON: #485 Cox, Kin 01-09-2001	0.00	0.00
283	12/23/00	(ORDER GRANTING) Motion to dismiss counterclaims, fld 1/3/01, mailed 1/12/01 ENTRY BY: J/Diaz TDMS TYPE: MOT TDMS EVENT: 1076mot CREATED BY/ON: #486 Colaire, 12-12-2000 LAST MODIFIED BY/ON: #468 Vaughn, 01-12-2001	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
284	12/23/00	(ORDER GRANTING) Motion for more definite statement of allegations of fraud & misrepresentation &, seelg, fld 1/3/01, mld 1/12/01 motion to strike insufficient defense ENTRY BY: J/Diaz TDMS TYPE: MOT TDMS EVENT: 9103mot+ CREATED BY/ON: #432 Rogers, 12-12-2000 LAST MODIFIED BY/ON: #468 Vaughn, 01-12-2001	0.00	0.00
285	12/18/00	Motion for enlargement of time to respond to counter-deft's motions (Consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #465 Jones, G 12-19-2000 LAST MODIFIED BY/ON: #465 Jones, G 12-19-2000	0.00	0.00
286	12/11/00	MOTION to dismiss counterclaims ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 1076mot CREATED BY/ON: #486 Colaire, 12-12-2000 LAST MODIFIED BY/ON: #486 Colaire, 12-12-2000	0.00	0.00
287	12/11/00	Motion for more definite statement of allegations of fraud & misrepresentation & motion to strike insufficient defense ENTRY BY: NCRIC TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #432 Rogers, 12-12-2000 LAST MODIFIED BY/ON: #432 Rogers, 12-12-2000	0.00	0.00
288	12/11/00	CERTIFICATE regarding discovery filed ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 12-12-2000 LAST MODIFIED BY/ON: #477 Hartfiel 12-12-2000	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
289	12/11/00	Reply of Pltf to counterclaims 1 & 2 of deft ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000rep* CREATED BY/ON: #486 Colaire, 12-12-2000 LAST MODIFIED BY/ON: #486 Colaire, 12-12-2000	0.00	0.00
290	12/01/00	CERTIFICATE regarding discovery filed ENTRY BY: columbia TDMS TYPE: DOC TDMS EVENT: 1440cer CREATED BY/ON: #477 Hartfiel 12-04-2000 LAST MODIFIED BY/ON: #477 Hartfiel 12-04-2000	0.00	0.00
291	11/29/00	Stipulation for Enlargement of Time for pltf to file motion or responsive pleading to counterclaims of deft, seelg, Pltf shall have up to and including Dec. 11, 2000 within which to file it s responses to deft's Counterclaims ENTRY BY: NCRIC TDMS TYPE: DOC TDMS EVENT: 0000sti+ CREATED BY/ON: #465 Jones, G 12-06-2000 LAST MODIFIED BY/ON: #465 Jones, G 12-06-2000	0.00	0.00
292	11/06/00	ANSWER and counterclaim ENTRY BY: Columbia TDMS TYPE: CAC TDMS EVENT: 1148awc CREATED BY/ON: #468 Vaughn, 11-08-2000 LAST MODIFIED BY/ON: #468 Vaughn, 11-08-2000	0.00	0.00
293	10/30/00	ORDER GRANTING Motion for enlargement of time to answer and file counterclaims (consent), FLD 11-1-00, MLD 11-6-00 ENTRY BY: J/Diaz TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #485 Cox, Kin 10-25-2000 LAST MODIFIED BY/ON: #485 Cox, Kin 11-06-2000	0.00	0.00

2000 CA 007308 B NCRIC INC Vs. COLUMBIA HOSPITAL FOR WOMEN

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
294	10/24/00	Motion for enlargement of time to answer and file counterclaims (consent) ENTRY BY: Columbia TDMS TYPE: MOT TDMS EVENT: 9103mot* CREATED BY/ON: #485 Cox, Kin 10-25-2000 LAST MODIFIED BY/ON: #485 Cox, Kin 10-25-2000	0.00	0.00
295	10/23/00	Praecipe of Service of Summons By Process Server ENTRY BY: NCRIC, Inc TDMS TYPE: DOC TDMS EVENT: 9104pra* CREATED BY/ON: #456 Frye, Ka 10-26-2000 LAST MODIFIED BY/ON: #456 Frye, Ka 10-26-2000	0.00	0.00
296	10/23/00	AFFIDAVIT of service of summons and complaint by special process server on Columbia Hospital for Women on 10/5/00 ENTRY BY: (clerk) TDMS TYPE: DOC TDMS EVENT: 1180sps CREATED BY/ON: #468 Vaughn, 10-26-2000 LAST MODIFIED BY/ON: #468 Vaughn, 10-26-2000	0.00	0.00
297	10/03/00	ALIAS summons Issued on Nabil Asterbadi, Registered Agent ENTRY BY: (clerk) TDMS TYPE: DOC TDMS EVENT: 1162ali CREATED BY/ON: #456 Frye, Ka 10-04-2000 LAST MODIFIED BY/ON: #456 Frye, Ka 10-04-2000	0.00	0.00
298	10/03/00	Complaint TDMS TYPE: CAC TDMS EVENT: 9101A01 CREATED BY/ON: #469 Wilson, 10-03-2000 LAST MODIFIED BY/ON: #485 Cox, Kin 12-12-2003	0.00	0.00
		Totals By: Cost	0.00	0.00
		Information	0.00	0.00

*** End of Report ***

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

NCRIC,INC.,

Plaintiff/Counter-Defendant

versus

FILED
CIVIL ACTIONS BRANCH
FEB 20 2004
Superior Court
of the District of Columbia
Washington, D.C.

00ca7308
Calendar Number 03
Judge Blackburne-Rigsby

COLUMBIA HOSPITOL FOR WOMEN MEDICAL CENTER,INC.,

Defendant/Counter-Plaintiff

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Anna Blackburne-Rigsby, Superior Court Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, it is this 13th day of February, 2004,

ORDERED

That judgment is hereby entered in favor of the defendant Columbia Hospital For Women Medical Center,Inc.,against the plaintiffs NCRIC,INC., and that the defendant recover of the plaintiffs its costs of action.

FURTHER ORDERED

That the Counter-Claimant COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER,INC.,recover of the counter Defendant NCRIC,INC., The sum of $18,220,002 with interest at the statutory rate and its costs of action.

DUANE E. DELANEY, ESQ.
Clerk of the Court

Jeffrey A. Woodson

Jeffrey A.Woodson,
Deputy Clerk

MAILED FEB 20 2004

cc:

Rodney F.Page,Esq.
Scott M.Badami,Esq.
700 Thirteenth Street,N.W.
Suite 600
Washington,D.C. 20005-3960

Eli C.Schulman,Esq.
Kellogg,Huber,Hanson,Todd & Evans,PLLC
1615 M Street,N.W.,Suite 400
Washington,D.C. 20036

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RECEIVED
CIVIL CLERK'S OFFICE
FEB 10 2006
SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
WASHINGTON, DC

NCRIC, INC.

Plaintiff,

v.

COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC.,

Defendant.

Civil Action No. 00-0007308
Calendar #8

Judge Blackburne-Rigsby

NCRIC'S CONSENT MOTION FOR APPROVAL OF REPLACEMENT SUPERSEDEAS BOND

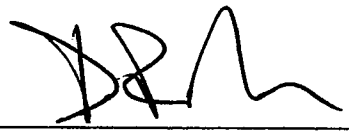
Plaintiff and Appellant NCRIC, Inc. ("NCRIC"), pursuant to Rules 62 and 62-I of the Superior Court Rules of Civil Procedure, respectfully moves this Court for an order (1) approving a replacement Supersedeas Bond to secure the judgment pending appeal in this action, and (2) directing the Clerk of the Court to release the existing Supersedeas Bond previously approved. Pursuant to Superior Court Civil Rule 12-I, NCRIC has conferred with counsel for Defendant and Appellee Columbia Hospital for Women Medical Center, Inc. ("CHW") regarding this Motion, and undersigned counsel is authorized to represent that CHW does not oppose this Motion.

As more fully set forth in the accompanying Memorandum of Points and Authorities, NCRIC seeks this Order because (a) the existing Supersedeas Bond is in the amount of $19,500,000; (b) NCRIC's annual renewal of the existing bond, along with premium and associated costs, would be due on March 4, 2006; and (c) NCRIC has

secured a replacement bond from another authorized surety in the amount of $20,500,000. Because no party opposes the Motion, and for good cause shown, NCRIC requests that its Motion be granted.

Dated: February 10, 2006

Respectfully submitted,



Elliot E. Polebaum (D.C. Bar. No. 358748)
Douglas W. Baruch (D.C. Bar. No. 414354)
Stephen D. Robinson (D.C. Bar No. 492090)
FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 639-7000

Counsel for NCRIC, Inc.

16d-003488

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar #8 Judge Blackburne-Rigsby

ORDER REPLACING SUPERSEDEAS BOND

Upon consideration of Plaintiff and Appellant NCRIC, Inc.'s Consent Motion to Replace Supersedeas Bond in this action, and for good cause shown, the Court orders as follows:

WHEREAS, following a trial by jury, this Court entered Judgment in favor of Columbia Hospital for Women Medical Center, Inc. on February 20, 2004; and

WHEREAS, on April 20, 2004, this Court stayed execution of the Judgment pending appeal and approved a Supersedeas Bond in the amount of $19,500,000, issued by an approved surety, Liberty Mutual, to secure the Judgment; and

WHEREAS, on September 30, 2005, this Court denied NCRIC, Inc.'s post-trial motions; and

WHEREAS, on October 26, 2005, NCRIC, Inc. filed a timely Notice of Appeal to the District of Columbia Court of Appeals; and

WHEREAS, NCRIC, Inc.'s appeal is pending review in the Court of Appeals, and

Case: 2000 CA 007308 B
00024202880
DRT: CIVSUA

WHEREAS, NCRIC, Inc. has filed a Motion seeking to replace the Supersedeas Bond issued by Liberty Mutual with a bond in the amount of $20,500,000 issued by The Medical Assurance Company, Inc. (the "Medical Assurance Bond"); and

WHEREAS, the Court is satisfied that the Medical Assurance Bond is issued by an approved surety and is in the correct form and amount; and

WHEREAS, no party will be prejudiced by the issuance of the Replacement Bond; it is hereby

ORDERED, that, upon entry of this Order, the Medical Assurance Bond (as referenced in Exhibit B to NCRIC's Motion) is hereby accepted and approved as the Supersedeas Bond in this action pending appeal; and it is

FURTHER ORDERED, that upon entry of this Order, and submission of the original Medical Assurance Bond to the Clerk of the Court, the Liberty Mutual Bond is released: and it is

FURTHER ORDERED, that upon submission of the original Medical Assurance Bond, the Clerk of the Court shall return the Liberty Mutual Bond to Plaintiff's counsel.

SO ORDERED this 21st day of February 2006

A. Blackburne-Rigsby

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

16d-003490

Copies to:

Elliot E. Polebaum, Esq.
Douglas W. Baruch, Esq.
Stephen D. Robinson, Esq.
FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Mark C. Hansen, Esq.
Priya R. Aiyar, Esq.
KELLOG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

MAILED From Chambers FEB 2 4 2005

DOCKETED In Chambers FEB 2 4 2005

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

NCRIC, INC. Plaintiff, v. COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., Defendant.	Civil Action No. 00-0007308 Calendar #8 Judge Blackburne-Rigsby

ORDER REPLACING SUPERSEDEAS BOND

Upon consideration of Plaintiff and Appellant NCRIC, Inc.'s Consent Motion to Replace Supersedeas Bond in this action, and for good cause shown, the Court orders as follows:

WHEREAS, following a trial by jury, this Court entered Judgment in favor of Columbia Hospital for Women Medical Center, Inc. on February 20, 2004; and

WHEREAS, on April 20, 2004, this Court stayed execution of the Judgment pending appeal and approved a Supersedeas Bond in the amount of $19,500,000, issued by an approved surety, Liberty Mutual, to secure the Judgment; and

WHEREAS, on September 30, 2005, this Court denied NCRIC, Inc.'s post-trial motions; and

WHEREAS, on October 26, 2005, NCRIC, Inc. filed a timely Notice of Appeal to the District of Columbia Court of Appeals; and

WHEREAS, NCRIC, Inc.'s appeal is pending review in the Court of Appeals, and

Case: 2000 CA 007308 B
00024202880
DRT: CIVSUA

WHEREAS, NCRIC, Inc. has filed a Motion seeking to replace the Supersedeas Bond issued by Liberty Mutual with a bond in the amount of $20,500,000 issued by The Medical Assurance Company, Inc. (the "Medical Assurance Bond"); and

WHEREAS, the Court is satisfied that the Medical Assurance Bond is issued by an approved surety and is in the correct form and amount; and

WHEREAS, no party will be prejudiced by the issuance of the Replacement Bond; it is hereby

ORDERED, that, upon entry of this Order, the Medical Assurance Bond (as referenced in Exhibit B to NCRIC's Motion) is hereby accepted and approved as the Supersedeas Bond in this action pending appeal; and it is

FURTHER ORDERED, that upon entry of this Order, and submission of the original Medical Assurance Bond to the Clerk of the Court, the Liberty Mutual Bond is released: and it is

FURTHER ORDERED, that upon submission of the original Medical Assurance Bond, the Clerk of the Court shall return the Liberty Mutual Bond to Plaintiff's counsel.

SO ORDERED this 21st day of February 2006

A. Blackburne-Rigsby

The Honorable Anna Blackburne-Rigsby
Superior Court of the District of Columbia

16d-003493

Copies to:

Elliot E. Polebaum, Esq.
Douglas W. Baruch, Esq.
Stephen D. Robinson, Esq.
FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Mark C. Hansen, Esq.
Priya R. Aiyar, Esq.
KELLOG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

MAILED From Chambers FEB 2 4 2005

DOCKETED In Chambers FEB 2 4 2005

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

LABORATORY CORPORATION OF AMERICA **Plaintiff,** **v.** **COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, INC., et al.** **Defendants.**	**Case No. 2002 CA 004230 C**

NOTICE OF BANKRUPTCY FILING

PLEASE TAKE NOTICE that on January 6, 2009 (the "Petition Date"), Columbia Hospital for Women Medical Center, Inc. ("Columbia Hospital"), defendant in the above-captioned case and the prevailing party in the case styled *NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc.* (D.C. Super., Case No. 2000-CA-007308-B) (the "NCRIC Litigation"), filed its voluntary petition for relief under title 11 of chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Columbia (the "Bankruptcy Court"). Columbia Hospital continues in control and possession of its property as debtor and as debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that pursuant to 11 U.S.C. §§ 362 and 541 and 28 U.S.C. § 1334(e)(1), all proceedings against, or with respect to, the judgment in favor of Columbia Hospital in the NCRIC Litigation, as well as any proceeds therefrom or related thereto, are stayed from and after the Petition Date and no such proceedings, including, without limitation, any interpleader, garnishment, attachment, execution or condemnation proceedings, may be commenced or continued unless an order is entered by the Bankruptcy Court amending or terminating such stay to permit the commencement or continuation of such proceeding(s).

Dated: January 13, 2009

/s/ Mary Kim

George R. Pitts (DC Bar No. 417666)
Mary Kim (D.C. Bar. No. 488446)
DICKSTEIN SHAPIRO LLP
1825 Eye Street, N.W.
Washington, DC 20006-5403
Tel: (202) 420-2200
Fax: (202) 420-2201
E-mail: pittsg@dicksteinshapiro.com
E-mail: kimm@dicksteinshapiro.com

Counsel for Columbia Hospital for Women Medical Center, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January 2009, a true and correct copy of the foregoing Notice of Bankruptcy Filing was served by first-class mail, postage prepaid or the Court's e-service system upon the following:

Dennis J. Early, Esq.
Assistant United States Trustee
Office of the United States Trustee
115 South Union St., Plaza Level
Suite 210
Alexandria, VA 22314

Mark Hansen, Esq.
Steven Benz, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, NW
Suite 400
Washington, DC 20036

Anton M. Weiss, Esq.
Pascal & Weiss PC
1008 Pennsylvania Ave SE
Washington, DC 20003-2142

Douglas W. Baruch, Esq.
Eugene N. Hansen, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP
1001 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20004-2505

Edward J. Krill, Esq.
Carr Maloney P.C.
1615 L Street, NW
Suite 500
Washington, DC 20036

/s/ Mary Kim
Mary Kim

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

NCRIC, Inc., **Plaintiff and Counterclaim Defendant,** **v.** **Columbia Hospital for Women Medical Center, Inc.,** **Defendant and Counterclaim Plaintiff.**	**Case No. 2000-CA-007308-B**

NOTICE OF ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

PLEASE TAKE NOTICE that on January 28, 2009, the United States Bankruptcy Court for the District of Columbia (the "Bankruptcy Court") issued its Order Granting Relief from the Automatic Stay To Allow Debtor's Continued Prosecution of Debtor's Litigation with NCRIC, Inc., Including Appellate and Collections Proceedings Related Thereto, in Case No. 09-0010 (Teel, J.) (attached as Exh. A) ("Lift-Stay Order"). In the Lift-Stay Order, the Bankruptcy Court

> ORDERED, that . . . the automatic stay is hereby MODIFIED to permit Columbia Hospital for Women Medical Center, Inc. ("Columbia Hospital") to continue prosecution of its litigation against NCRIC, Inc. (the "NCRIC Litigation") and all proceedings, including appellate and any collection proceedings by Columbia Hospital relating to the NCRIC Litigation or the judgment entered in favor of Columbia Hospital in the NCRIC Litigation by the Superior Court of the District of Columbia in February 2004 (the "NCRIC Judgment") . . . .

Exh. A at 3.

PLEASE TAKE FURTHER NOTICE that, to the best of Defendant/Counterplaintiff's knowledge, the following proceeding "by Columbia Hospital relating to the NCRIC Litigation or

the judgment entered in favor of Columbia Hospital in the NCRIC Litigation"[1] remains pending before this Court:

Motion for Assessment of Costs (filed March 26, 2004).[2]

Dated: February 27, 2009

Respectfully submitted,

/s/ Priya R. Aiyar
Steven F. Benz (D.C. Bar No. 428026)
Priya R. Aiyar (D.C. Bar No. 486248)
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, DC 20036
Tel: 202-326-7900
Fax: 202-326-7999

Counsel for Columbia Hospital for Women Medical Center, Inc.

[1] "NCRIC Litigation" refers to the above-captioned matter, NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc., Case No. 2000-CA-007308.

[2] The responsive briefs are NCRIC's Opposition to Columbia's Motion for Assessment of Costs (April 7, 2004); and Columbia's Reply in Support of Motion for Assessment of Costs (April 20, 2004).

16d-003499

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February 2009, a true and correct copy of the foregoing Notice of Order Granting Relief from the Automatic Stay was served by first-class mail, postage prepaid and by the Court's Electronic Filing System upon the following:

Martha L. Davis, Esq.
Assistant United States Trustee
Office of the United States Trustee
115 South Union St., Plaza Level
Suite 210
Alexandria, Virginia 22314

NCRIC, Inc.
c/o Daniel E. Loeb
Douglas W. Baruch
Eugene Hansen
Fried, Frank, Harris, Shriver & Jacobson LLP
1001 Pennsylvania Ave., NW, Suite 800
Washington, D.C. 20004

/s/ Ashley M. Japngie
Ashley M. Japngie

Exhibit A

The order below is signed with the words "All parties on the Courts ECF service list" stricken from the list of entities to receive the order. Dated: January 28, 2009.

S. Martin Teel, Jr.
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re:	)	
Columbia Hospital for Women Medical Center, Inc.,	)	**Case No. 09-0010 (Teel, J.)**
	)	**Chapter 11**
Debtor and Debtor in Possession.	)	

ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO ALLOW DEBTOR'S CONTINUED PROSECUTION OF DEBTOR'S LITIGATION WITH NCRIC, INC., INCLUDING APPELLATE AND COLLECTIONS PROCEEDINGS RELATED THERETO

UPON consideration of Debtor Columbia Hospital for Women Medical Center, Inc.'s Motion for Relief from the Automatic Stay to Allow Continued Prosecution of Debtor's Litigation With NCRIC, Inc., Including Appellate and Collections Proceedings Relating Thereto (the "Motion"), the opposition thereto filed by GFS Holdings, Inc. fka Heller Healthcare Finance, Inc. ("GE") and the responses thereto filed by Scott D. Field, Chapter 7 Trustee for the Estate of Cynthia D. Sadler, M.D. and Watkins & Assmann Consulting LLC, and the joinder in open court, to the Opposition of GE, by Laboratory Corporation of America, and Karin M.

Barnes, individually and as next friend of Kobe Williams, a minor (collectively, "Barnes"), Artulies K. Smith, individually and as mother and next friend of Marcel D.L. Broadie, a minor (collectively, "Smith") and Michelle and Bryan Hutchinson, individually, and as parents and next friends of Kiernan Hutchinson (collectively, "Hutchinson"), and having heard the arguments of counsel at a hearing convened on January 14, 2009, including the argument of GE, joined by Laboratory Corporation of America, Barnes, Smith and Hutchinson, that the Court should defer ruling on this matter until it rules on GE's pending motion to dismiss or, alternatively, grant relief from stay, and good cause having been shown, it is hereby

ORDERED, that the various Objections of GE, Laboratory Corporation of America, and the aforesaid Barnes, Smith and Hutchinson are all OVERRULED, and it is further,

ORDERED, that the Motion be, and the same hereby is, GRANTED; and it is further

ORDERED, that, subject to the requirements set forth in the decretal paragraphs below, the automatic stay is hereby MODIFIED to permit Columbia Hospital for Women Medical Center, Inc. ("Columbia Hospital") to continue prosecution of its litigation against NCRIC, Inc. (the "NCRIC Litigation") and all proceedings, including appellate and any collection proceedings by Columbia Hospital relating to the NCRIC Litigation or the judgment entered in favor of Columbia Hospital in the NCRIC Litigation by the Superior Court of the District of Columbia in February 2004 (the "NCRIC Judgment"); and it is further

ORDERED, that, except as expressly provided in the foregoing decretal paragraph, the automatic stay shall remain in full force and effect as to all proceedings with respect to the NCRIC Judgment, including without limitation, any execution, collection, condemnation, or garnishment proceedings relating to the NCRIC Litigation or the NCRIC Judgment by any creditor of Columbia Hospital or party-in-interest in this bankruptcy case as well as that certain interpleader action filed by NCRIC in the United States District Court for the District of Columbia, Civil Action No. 09-cv-00016; and it is further

ORDERED, that the relief granted herein is not intended to prejudice, and shall be without prejudice to, any valid prepetition lien or other rights in the proceeds of the NCRIC Judgment; and it is further

ORDERED, that the relief ordered herein is not intended as, and shall not be deemed, a substitute for a turnover proceeding initiated by Columbia Hospital and Columbia Hospital shall not accept any proceeds of the NCRIC Judgment except after notice and an opportunity to be heard afforded to all creditors and parties in interest in this bankruptcy case and upon terms and conditions approved by further order of the Court; and it is further

ORDERED, that this Order shall be effective immediately upon entry and the ten day stay of the effectiveness of this Order provided by Federal Rule of Bankruptcy Procedure 4001(a)(1) is hereby terminated.

Copies to:

Dennis J. Early, Esq.
Assistant United States Trustee
Office of the United States Trustee
115 South Union St., Plaza Level
Suite 210
Alexandria, Virginia 22314

George R. Pitts, Esq.
Dickstein Shapiro LLP
1825 Eye Street, N.W.
Washington, D.C. 20006

Michael M. Barch, Liquidating Trustee of
Columbia Hospital for Women Medical Center, Inc.
8101 Glenbrook Road
Bethesda, Maryland 20814

NCRIC, Inc.
c/o Douglas W. Baruch, Esq.
Daniel E. Loeb, Esq.
Eugene N. Hansen, Esq.
Fried, Frank, Harris, Shriver & Jacobson
1001 Pennsylvania Ave., NW, Suite 800
Washington, DC 20004

All parties on the Court's ECF service list

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NCRIC, INC.,

v. 2000 CA 7308

COLOMBIA HOSPITAL FOR WOMEN
MEDICAL CENTER, INC.

ORDER GRANTING DEFENDANT'S MOTION FOR ASSESSMENT OF COSTS

The purpose of this order is to adjudicate the defendant's Motion for Assessment of Costs, filed on April 5, 2004. The plaintiff filed an Opposition, and the defendant filed a Reply. This motion has been pending for a significant period of time because of an appeal and because of an automatic bankruptcy stay. The record now reflects that on February 27, 2009 defendant filed a Notice of Order Granting Relief from the Automatic Stay. This motion is now in a posture for resolution.

Background of the Litigation. The history of the present litigation is set forth in great detail in the appellate decision published as *NCRIC, Inc. v. Columbia Hospital for Women Medical Center, Inc*., 957 A.2d 890 (D.C. 2008).

In a nutshell, the case is summarized as follows. NCRIC, Inc. was at all times relevant a provider of medical malpractice insurance for District of Columbia physicians.

In October 2000, it sued the Columbia Hospital for Women Medical Center, Inc. ("Columbia") for breach of their insurance contract.

> Columbia counterclaimed, alleged, inter alia, that NCRIC breached the contract and also tortiously interfered with Columbia's business relations with its physicians. After a two-week trial, a jury rejected NCRIC's claim and found in favor of Columbia on its counterclaims. The jury awarded Columbia damages of $220,002 on its breach of contract claims and $18 million on its tortious interference claim.

Id. at 890.

In the original judgment, the Hon. Anna Blackburne-Rigsby stated that Columbia is to be awarded its costs. At this juncture, this Court's role is to determine the dollar amount of those costs so as to fashion a final award.

Relief Sought in the Motion. Defendant seeks an award of $35,896.83 in litigation costs. Those costs fall into the following categories: (1) witness fees and witness-travel expenses ($533.50); (2) court fees ($400.00); (3) deposition costs ($10,886.45); (4) photocopying costs ($20,859.35); and (5) delivery costs inclusive of service of process expenses ($3,217.53).

In support of its motion, defendant attached to the motion an affidavit executed by Eli C. Schulman, an attorney with the firm of Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. This firm represented the defendant in the litigation. The affidavit contains an important Attachment, which is a detailed Statement of Costs broken into multiple categories and subcategories.

Legal Principles Regarding Award of Costs. As a foundation for exercising its discretion, the Court has considered helpful case law on the subject of how costs should

be assessed in favor of a prevailing party. That case law, though not exhaustive, includes the following principles.

The District of Columbia Court of Appeals has stated, "The award of costs to the prevailing party under Super.Ct.Civ. R.54 (d) is 'within the trial court's discretion and may only be overturned upon our finding that the exercise of such discretion was an abuse.'" *Kleiman v. Aetna Cas. & Sur. Co.*, 581 A.2d 1263, 1267 (D.C. 1990) (quoting *Ingber v. Ross*, 479 A.2d 1256, 1265 (D.C. 1984)).

Further, the trial court's discretion "lies in whether or not to award as costs items specifically authorized by 28 U.S.C. 1920 (1994) or by other statutes (or court rule). *Talley v. Varma*, 689 A.2d 547, 555 (D.C. 1997); *see Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 442-45 (1987) (interpreting Fed.R.Civ.P. 54(d), the federal counterpart to Super.Ct.Civ.R.54 (d).

Although the Superior Court Civil Rules do not elaborate explicitly on what constitutes "costs," the Court of Appeals has summarized the defining principles, saying

> Costs [are understood in the law] . . . to mean something less than a litigant's total expenses in connection with the suit. Court fees and witness fees ordinarily are recoverable but, absent unusual circumstances, the parties must bear their personal expenses . . . . The authority of a court to assess a particular item as costs is partly a matter of statute (or court rule), and partly a matter of custom, practice, and usage.

Robinson v. Howard University, 455 A.2d 1363, 1368-69 (D.C. 1983) (citations omitted). "Costs which have been paid to the Clerk and entered on the docket are ordinarily allowed as a matter of course, but other costs, such as witness fees and costs of depositions must be taxed specially by the court." *Talley v. Varma, supra*, at 555; *Panos v. Nefflen*, 205 A.2d 600, 601-02 (D.C. 1964).

The categories of costs that tend to fuel disputes are (1) duplication and copying, (2) depositions, and (3) witness fees (both experts and others). It is useful to recapitulate the applicable law in each category, so as to apply the law to a particular demand for costs.

Duplication and Copying. On this subject, the District of Columbia Court of Appeals has approved and adopted the analytical approach of a trial judge who considered this subject in detail, in a published opinion. The trial court opinion is *Burns v. Greater Southeast Community Hosp.*, 119 Daily Wash.L. Rptr. 1869 (D.C. Super.Ct. July 11, 1991) (Levie, J.). The Court of Appeals has endorsed and adopted the substance of that decision. *Talley v. Varma, supra,* at 555. In a nutshell, the Court of Appeals has determined that "the prevailing party may recover the costs of obtaining and copying records and other material necessary for case preparation and presentation. *Id*. at 555.

In *Talley,* the Court of Appeals affirmed the trial court's decision to deny most of the requests for copying expenses, because Varma failed to establish that all of the copies were necessary. In doing so, the appellate court examined the particular discretionary disposition of this issue. It affirmed the trial judge's decision to award only the lump sum of $500.00 for duplication and copying, where the judge found that "some copying was obviously necessary to provide courtesy copies to the court," even where the party had otherwise failed to demonstrate the need for such copies in preparing its own case. *Id*. at 556. Thus, the trial court has broad discretion to figure out whether the explanation of necessity is convincing, and whether to award a nominal sum as a method of adjudicating this particular kind of request.

Deposition Costs. Generally, the taxing of the expenses of depositions may be done as a discretionary matter, if the deposition was necessary for case preparation. *See Kleiman, supra,* at 1267. However, the Court of Appeals has reiterated that the trial court may award such expenses as costs only after making its own, independent assessment of whether the depositions were necessary for that party's own case preparation. *Talley v. Varma, supra,* at 556. "[T]he test is whether the deposition was necessary, not whether the requesting party alleges it was necessary." *Id.* To the extent that the discretion of the trial court must be based upon the quality of the record, it is clear that a party's failure to provide any explanatory detail as to the necessity for a deposition may well leave the trial judge no choice but to deny such costs, rather than relying on guesswork.

Witness Fees. "The awarding of witness fees is controlled by Super.Ct.Civ.R. 54-I (a), which requires proof of the attendance of witnesses by certificate of the attorney of record." *Talley v. Varma, supra,* at 556.

Where non-expert witness fees are concerned, they are certainly compensable. In fact, the party claiming such reimbursement need not even prove that the witness actually testified as long as securing the appearance of the witness was reasonably necessary. The United States Court of Appeals for the District of Columbia Circuit has held, "The issue is not whether [the witness] was in fact called to testify, but whether [claimant's] counsel made a good faith and reasonable judgment about the need for [the witness] at trial." *Quy v. Air America, Inc.*, 215 U.S.App.D.C. 181, 187, 667 F.2d 1059, 1065 (1981); *see also Nissho-Iwai Co., Ltd. v. Occidental Crude Sales, Inc.*, 729 F.2d 1530, 1552-53 (5th Cir. 1984) (holding that costs should be reimbursed for a rebuttal witness held in reserve, whose testimony ultimately was not necessary).

Delivery and Service of Process Expenses. Such costs are compensable. *Camper v. Stewart-Lange*, 782 A.2d 762, 763 (D.C. 2001). *See* further discussion, *infra*.

Analysis of the Motion. As a threshold matter, the Court has looked closely at the plaintiff's suggestion that this Court should reconsider the trial court's original decision to award costs. This suggestion appears in the first footnote of the Opposition. The request appears to be founded upon the broader argument that the defendant was not actually a prevailing party at all. In its Opposition, the plaintiff posits that the defendant does not deserve to be treated as a prevailing party because portions of its 11-count Counterclaim were unsuccessful. The law does not specify how much of a Counterclaim must survive a trial before a defendant is considered to have "prevailed." However, this Court sees no room for quibbling on the unique facts of this case. First, the plaintiff's claim was defeated altogether. Second, the jury awarded money damages to the defendant in two distinct respects, one of which merited damages of $18 million. Any claimant who achieves a jury verdict of this magnitude cannot be dismissed as not "prevailing." Plaintiff's suggestion to the contrary is frivolous.

The points raised in the Opposition in some respects raise worthwhile questions. On the whole, however, the responses found in the Reply weigh against a large-scale denial of relief. The Court has made its own independent review of the motion, in any event. The Court makes the following dispositions of each category in which costs are sought.

Witness Fees. In the instant case, the plaintiff challenges only the fees for one witness. That individual was a classic rebuttal witness whose testimony was eventually not needed. In light of his role in the case, the Court is satisfied that expending a witness

fee to secure his appearance was reasonable. The fact that he literally did not testify at trial should not preclude the reimbursement.

Court Fees. The plaintiff does not tender any reason why the Court should not grant relief as to ordinary court filings fees, and the Court will approve payment for such costs.

Deposition Costs. The deposition costs can be separated into three groups: (1) deposition costs for which there is no opposition, per plaintiff's filing; (2) depositions noticed by NCRIC and which obviously required the participation of defense counsel; and (3) two depositions of necessary witnesses.

While the plaintiff does not address this point, the Court is impressed with defendant's observation that many of the depositions that spawned compensable costs were actually depositions that were not discretionary for the defendant. This was due to the fact that the plaintiff noticed the depositions. In those circumstances, the Court cannot logically deny an award of costs against the plaintiff.

In its Reply, the defendant makes a specific explanation as to why it was necessary to depose the two remaining individuals: Grant Sohm and William Burgess. For the sake of brevity, the Court will not repeat those explanations. It suffices to say that they were most certainly necessary to investigating the case and preparing an effective defense.

For all of these reasons, the entire amount sought for the costs of depositions will be awarded.

Photocopying costs. The Court pays particular attention to the large sum of money attributable to copying costs. The approach of the plaintiff is to urge the Court to

use one of two arbitrary means of adjudicating this issue: either award only a nominal sum of $500.00 (five hundred dollars) or reduce this particular claim by two-thirds, based solely on the fact that most parts of the Counterclaim were not successful. The Court cannot responsibly rely on either suggestion, for several reasons. One, given the complexity of this litigation, it would be capricious for the Court to award only $500.00 for copying many thousands of pages of discovery materials, not even counting court filings and service copies of such. Two, the Court rejects the notion that some numerical total of claims is a fair barometer of how much copying is compensable. The law does not prescribe any such formula, and using one would be too arbitrary to be a sound exercise of discretion. Instead, the Court looks to the overall reasonableness of the copying burden on this defendant in the practical context of the case itself.

In this case, it is no surprise that copying costs are substantial. The defendant not only had to prepare documents as responses to discovery requests, the defendant also had to prepare trial exhibits, books of exhibits for the jurors and the trial judge, in addition to copying material used by the opposing party. Obviously, the costs associated with those functions were necessary.

In its Reply, the defendant elaborates on why the copying charges are so high. One of the most useful points, according to the defendant's affiant, is that defendant was required to copy materials "such as loose papers, bound papers, stapled papers, and tabbed papers, that are not easily fed through a copier and therefore are charged at rates almost double the general eight to ten cents copying charge." Reply at 6. In fact, the Court is constrained to observe that with the advent of electronic filing in the Civil Division of the Superior Court, many parties are hobbled by not being able to file certain

documents with the Court through any Internet provider, for the same reasons identified by the defendant, *i.e*. having to submit for hand-scanning items that are bound, tabbed, and otherwise unwieldy. For this reason, the Court should be fair to litigants who confront these challenges, whether they arise in the Court filing process or in discovery.

Ironically, since this case involved a malpractice insurer, counsel for the defendant chose to be careful in representing its own client by being sure to copy a "master copy set of documents before producing them" Reply at 6. This was truly a wise approach, and the defendant should not be punished for being appropriately careful.

The Court concludes that the entire sum claimed for copying costs is reasonable under the particular circumstances of this case, and such costs shall be compensable.

Delivery and Service of Process Costs. The costs in this category are a blend of the expenses incurred in service of process and expenses of delivering papers to the Court and opposing counsel.

The plaintiff asks the Court to deny this entire claim altogether, simply because delivery costs are not specifically cited as compensable costs in Rule 54. Strangely, the plaintiff suggests that this Court should ignore the appellate ruling on this subject in *Camper v. Stewart-Lange*, *supra*. The plaintiff does not realistically explain why this decision should be ignored except for the fact that it is only "one page" in length. Opposition at 7.

The length of a published appellate decision is certainly not a measure of how important it is. It would be disrespectful to the Court of Appeals for this Court to use that concept as its own basis for exercising discretion. Indeed, as short as it is, this particular appellate decision is utterly focused on the very issue at hand. The District of

Columbia Court of Appeals specifically confronted the question whether a prevailing party is entitled to an award of costs for delivery and service of process expenses. Having determined that the litigant was entitled to an award of costs for photocopying (a separate issue in the case), the Court of Appeals stated the following:

> [S]ince this court has never addressed whether delivery and service costs are recoverable, we turn to that question now.
>
> 'The authority of a court to assess a particular item as costs is partly a matter of statute (or court rule), and partly a matter of custom, practice, and usage.' We are aware of no statute or rule that disallows these costs, and while mindful of the Supreme Court's admonition to tax costs sparingly in the absence of a statutory authorization, we also note that a majority of the United States Courts of Appeals allow recovery for such expenses. We join them, and hold that respondents may recover their delivery and service costs of $40.13 and direct applicant to pay respondents a total of $109.53 in costs.

Camper v. Stewart-Lange, supra, at 763 (citations and quotation omitted) (emphasis added).

Without question, the defendant herein is entitled to an award of costs for the expenses incurred for service of process and delivery of papers and filings.

WHEREFORE, it is by the Court this 17th day of March 2009

ORDERED that defendant's Motion for Assessment of Costs is granted; and it is

FURTHER ORDERED that the sum of **$35,896.83** is awarded to defendant as costs and shall be added to the money judgment already docketed.

Cheryl M. Long
Judge

Copies sent to:

Eli C. Shulman, Esq. [counsel for defendant]
Scott M. Badami, Esq. [counsel for plaintiff]