

Rec'd 1/20/04

CHEYENNE RIVER SIOUX TRIBAL COURT  
CHEYENNE RIVER SIOUX TRIBE  
CHEYENNE RIVER INDIAN RESERVATION

Bank's First  
Appellate  
Brief

GENERAL SESSION  
CIVIL APPELLATE COURT

BANK OF HOVEN, NOW KNOWN AS  
PLAINS COMMERCE BANK,  
APPELLANT,

- ① jurisdiction discrimination
- ② breach of contract
- ③ bad faith
- ④ damages
- ⑤ eviction counterclaim
- ⑥ option to purchase

vs.

03-002-A  
R-120-99

LONG FAMILY LAND AND CATTLE  
COMPANY, INC., - RONNIE AND  
LILA LONG,

RESPONDENTS.

APPEAL FROM  
THE CHEYENNE RIVER SIOUX TRIBAL COURT  
CHEYENNE RIVER SIOUX TRIBE  
CHEYENNE RIVER INDIAN RESERVATION  
CIVIL COURT, GENERAL SESSION

\*\*\*\*\*

THE HONORABLE B.J. JONES  
SPECIAL JUDGE

\*\*\*\*\*

APPELLANT'S BRIEF

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The Notice of Appeal was filed by Appellant on March 19, 2003.  
The Notice of Appeal was filed by Respondents on March 27, 2003.

cc: clients 1/20/04

## TABLE OF CONTENTS

	Page
Statement of Issues	1
Statement of the Case	2
Argument	6
Summary	23

## TABLE OF AUTHORITIES

Restatement 2d of Contracts §205	14
SDCL 53-1-2	10
SDCL 53-11-2(4)	12
SDCL 53-11-2(5)	13
SDCL 21-1-11	21
42 U.S.C.S. §1981	6
42 U.S.C.S. §1983	7
CRST Law and Order Code Sec.10-2-1 et. seq.	19
Cases:	
<u>American State Vank v Cwach</u> 187 N.W. 2d 107 (S.D. 1971)	13
<u>Anderson v Kennedy</u> 264 N.W. 2d 714 (S.D. 1978)	20
<u>Bad Wound v Lakota Community Homes, Inc.</u> 603 N.W. 2d 723 (S.D. 2000)	17
<u>Beka v Lithium Corp. of America</u> 92 N.W. 2d 156 (S.D. 1958)	21
<u>Bienert v Yankton School Dist.</u> 507 N.W. 2d 88 (S.D. 1993)	20

<u>Chesapeake Industries v Togova Enterprises,</u> 149 Cal. App. 3d 901, (1983)	21
<u>First Bank of S.D. v Voneye,</u> 425 N.W. 2d 630 (S.D. 1988)	15
<u>Garrett v BankWest, Inc.,</u> 459 N.W. 2d 833 (S.D. 1990)	14, 15
<u>Gross v Conn. Mut. Life Ins. Co.,</u> 361 N.W. 2d 259 (S.D. 1985)	20
<u>Hageman v Vander Vorste,</u> 403 N.W. 2d 420, 422 (S.D. 1987)	21
<u>Hein v Marts,</u> 295 N.W. 2d 167 (S.D. 1980)	20
<u>Knowdel v Kassel Twp.,</u> 581 N.W. 2d 504 (S.D. 1998)	20
<u>Montana v U.S.,</u> 450 U.S. 544 (1981)	7
<u>Nevada v Hicks,</u> 533 U.S. 353 (2001)	6, 7, 8
<u>Rindal v Sohler,</u> 658 N.W. 2d 769 (S.D. 2003)	20
<u>Strate v A-1 Contractors,</u> 520 U.S. 438 (1997)	7
<u>Tafflin v Levitt,</u> 493 U.S. 455 (1990)	8

Appendix:

Bank letter to Long (exhibit A)  
 Loan agreement (exhibit B)  
 Lease With Option to Purchase (exhibit C)  
 Bank application to BIA (exhibit D)  
 BIA letter to Bank (exhibit E)  
 Ronnie Long letter to Bank (exhibit F)

## STATEMENT OF THE ISSUES

1. Does the Cheyenne River Sioux Tribal Court lack jurisdiction for a claim of discrimination against an off-reservation bank?
2. Did the trial court error in not granting Appellant's Motions for a Directed Verdict and Judgment N.O.V. on Plaintiff's breach of contract action, which was for an alleged breach of a loan agreement for which no consideration was given and no evidence that the Bank did not perform under the terms of the loan agreement?
3. Did the trial court error in not granting Appellant's Motion for a Directed Verdict and Judgment N.O.V. on a separate cause of action alleged by Plaintiff for bad faith?
4. Did the trial court error in not granting Appellant's Motion for Judgment N.O.V. in that damages awarded by the jury were excessive and controlled by passion or prejudice?
5. Did the trial court error in not granting Appellant's Cause of Action for Eviction of Long Family Land and Cattle Company, Inc., Ronnie Long and Lila Long from Appellant's land in Dewey County, South Dakota?
6. Did the trial court error in granting Respondent's Motion to Exercise Its Option to Purchase real estate that was sold to Edward and Mary Jo Maciejewski in 1999 under a Contract for Deed?
7. Did the trial court error in allowing interest on damages which were incalculable absent specific interrogatories to the jury?

STATEMENT OF THE CASE

Plains Commerce Bank, formerly Bank of Hoven, (hereinafter referred to as Bank) loaned money to Long Family Land and Cattle Company, Inc. (hereafter referred to as Long Company) and members of the Kenneth Long family since approximately 1989. Kenneth Long was a non-tribal member, however Maxine Long, his first wife, was a member of the CRST. Their son, Ronnie Long, and his wife, Lila Long, Plaintiffs herein, <sup>are</sup> were tribal members. The Bank is located in Hoven, South Dakota, outside the boundaries of the CRST reservation. Kenneth and Maxine Long owned approximately 2,230 acres of Dewey County real estate and a house in Timber Lake. They mortgaged all of the real estate to the Bank for the loans of the Long Company.

Maxine long died and her husband, Kenneth Long, then became the sole owner of all of the real estate. Upon Kenneth's death on July 17, 1995, the Bank filed a Creditor's Claim against decedent's estate, which was being probated in Circuit Court, Eighth Judicial Circuit, Dewey County, South Dakota. At the time the Long Company owed the Bank approximately \$750,000.00. Kenneth's second wife, Paulette Long, was personal representative of the estate. The estate deeded over the Dewey County real estate, as well as the house in Timber Lake, to the Bank in lieu of foreclosure. On December 5, 1996, the Long Company was given credit for \$478,000.00 on loans with the Bank or other expenditures which the Bank had extended for the payment of taxes and other miscellaneous expenses connected with the Long Company loan.

On the same date, December 5, 1996, the Bank entered into a Lease With Option to Purchase the farm real estate with the Long Company. It was a two-year lease wherein the annual CRP payments were to be assigned to the Bank and during the two-year lease term the Long Company could exercise its option to purchase for \$478,000.00. There was a second

*outside the  
probate  
trial court  
ruled not  
going into  
this.  
admits  
probate so if  
the see do.*

*credit on  
loans  
was  
\$131,000*

document signed that date entitled a Loan Agreement. That document showed listed what credits and payments the Bank made with the \$478,000.00. Additionally it stated that the Bank would apply for an increase in the guaranteed portion of the existing BIA guaranteed loans to 90% as well as an operating line of credit to be guaranteed by the BIA in the amount of \$70,000.00 for the Long Company. It would also ask that the delinquent BIA guaranteed loan be rescheduled. (If the BIA did increase the guaranteed percentage and authorize the guaranteed operating loan, the agreement stated the Bank would then make a loan for approximately \$37,500.00 for the purchase of calves.)

First Notice of default was 1 Nov. 1998.  
8120  
C. SIMON  
JES

On December 12, 1996, after receiving a cash flow from the Long Company, which was faxed from the CRST chairman's office on December 11, 1996, the Bank applied to the BIA for the increased guaranteed percentage, rescheduling of the old loan and a new operating line of credit. Rather than a \$70,000.00 loan however, the Long Company's cash flow indicated that an \$85,000.00 operating line would be necessary. The Bank applied for the \$85,000.00 for an operating line rather than \$70,000.00, mentioned in the loan agreement. The request to the BIA was not acted upon until February 14, 1997, more than two months after the application. By letter dated February 14, 1997, the BIA informed the Bank that the request was considered a modification and a more formal application was required.

CONFIDENTIAL  
BIA  
BK caused BIA delay.

The winter of 1996 and 1997 was one of the worst on record for South Dakota. Many farmers and ranchers lost substantial numbers of livestock during that winter. During the time from December 5, 1996 to January 29, 1997, all of the cows of the Long Company, except for 150 head, and all of the calves, except for 25 head, were killed by the winter blizzards. On February 13, 1997, Long advised the Bank by telephone of the cattle losses.

*foreclosure  
in  
Contract am.*

After the Bank was advised of the cattle losses, the original \$85,000.00 requested BIA guaranteed operating line was not pursued. The Long Company submitted a new cash flow through the CRST chairman's office. That cash flow showed that the Long Company would need an operating line of \$40,595.00. The Bank then made a second request to the BIA to have the guarantees increased, the BIA loan rescheduled and to approve an operating line of \$40,595.00. The BIA rescheduled the guaranteed loan, however did not increase the guarantee to 90%, and authorized an operating line for \$40,595.00, however did not guarantee that note.

The Bank made the \$40,595.00 operating loan to the Long Company. *4.1.97 Def Ex. 1* *to cover all lease \$*

From September through the winter of 1996 and 1997, the Bank continued to extend credit to the Long Company. Approximately \$30,000.00 of the proceeds from the sale of cattle, which was the Bank's collateral, was released to Long to pay operating expenses in late September 1996. The Long Company had in existence a \$50,000.00 operating line where

*Loan Agreement called for 70k 12.5.96*

*this was new note - not operating line* advances were made. A \$16,718.46 loan was made on December 10, 1996 for the payment of *itemized* tribal leases. On December 14, 1996 a loan for \$5,000.00 for operating *yes - but not 70k operating loan* and a loan for \$2,250.00 for the purchase of a used snowmobile were made. Ronnie Long needed the snowmobile so that he could get to the Long Company cattle which were in the breaks approximately 17 miles from his home near Timber Lake, S.D. Roads were not opened by the CRST Highway Department on a regular basis due to the severe blizzards during that winter.

*Road was open 12.5 12.6 12.7 9 7* *could have handled this by the cattle.*

The Long Company had possession of all 2,230 of the Bank's Dewey County real estate during the term of the lease. The option to purchase was never exercised by the Long Company. After the expiration of the lease on December 5, 1998, the Bank sold approximately 320 acres to Mr. and Mrs. Ralph Pesicka for cash. *3.22.99* It sold the remaining portion of the real estate to Mr. and Mrs. Edward Maciejewski under a Contract for Deed. *8.25.99* Since the Long Company continued to

*Ex. 13*  
*(X)*

Long had possession of both parcels.

occupy approximately 960 acres of the real estate after the lease had expired however, the Bank sold the real estate in two parcels. One parcel of the 960 acres on which the Long Company held over possession, and the other parcel, which was not occupied by the Long Company, were sold under the same Contract for Deed. Maciejewski paid for and received a deed for that portion not occupied by the Long Company. The remaining 960 acres has been possessed continuously since the expiration date of the lease by the Long Company. The Long Company has not paid the real estate taxes nor given any rent or other remuneration to the Bank during this entire time period.

CRA payments	*28,000	99	98
FSA payments	23,000	99	Ex. 23
	23,000	00	
	23,000	01	
	23,000	02	

(X)

The Bank attempted to start an action for forcible entry and detainer and served a Notice to Quit on the Long Company in June of 1999. The Long Company then commenced an action in tribal court for a temporary restraining order restraining the Bank from selling the real estate to Maciejewskis. A hearing was held on the temporary restraining order on July 30, 1999 before the Honorable Leisah Bluespruce, Tribal Court Judge. The Bank claimed that the tribal court lacked jurisdiction. The tribal court judge denied the restraining order but retained jurisdiction of the matter. On January 3, 2000, the Longs amended their complaint and filed a complaint alleging numerous causes of action. The Bank answered and counterclaimed on February 3, 2000. The counterclaim was for eviction of the Long Company from the real estate owned by the Bank and damages. Plaintiff requested a jury trial on its causes of action, however none was requested on the Bank's counterclaim by either Plaintiff or the Defendant.

Too late

Bluespruce  
p 65  
BK admits that  
Long in  
possession  
of both  
parcels 1 & 2.  
  
p 66  
motion to  
Quit was  
for both  
parcels.

A trial of the matter was held before a tribal court jury on December 6<sup>th</sup> and 11<sup>th</sup>, 2002. The Honorable B.J. Jones, Special Judge, presided. The jury returned a verdict against the Bank in the amount of \$750,000.00 and indicated that interest should also be awarded. Judge Jones calculated and ordered pre-judgment interest and costs, for a total judgment of \$875,982.46 by



Judgment dated February 18, 2003 and a Supplemental Judgment dated February 18, 2003 supplementing its Order of January 3, 2003 denying the Bank's Motions for Judgment N.O.V. and New Trial. The court also ordered that Plaintiff be given an option to purchase 960 acres of the real estate in the amount of \$201,600.00 and that said sum could be off-set against the Judgment against the Bank. Notice of Entry of the Final Judgment and Supplemental Judgment was served on February 25, 2003. The Bank served its Notice of Appeal on March 19, 2003. Long Company and Ronnie and Lila Long served its Notice of Appeal on March 27, 2003. <sup>210/acs.</sup>

#### ARGUMENT

**Issue 1. Does the Cheyenne River Sioux Tribal Court lack jurisdiction for a claim of discrimination against an off-reservation bank?**

Plaintiff alleged a claim for discrimination by the Bank because the Bank in a letter to Long indicated that it would not enter into a contract for the sale of its land or a lease because of possible jurisdiction problems. ( a copy which is attached as exhibit A ) The Bank's Motion to Dismiss prior to trial alleging the tribal court lacked jurisdiction was denied. The jury, by way of special interrogatory, found that the Bank discriminated against Plaintiffs. The Bank then moved for a new trial and for Judgment N.O.V., those motions were denied.

The tribal court lacked jurisdiction to decide an allegation of discrimination by a nonmember bank located off the reservation. Cases of alleged discrimination by non-governmental entities would be encompassed under 42 U.S.C.S. §1981. That statute prohibits discrimination by both non-governmental entities as well as state entities. The Cheyenne River Sioux Tribe Law and Order Code makes no provision for discrimination cases by private entities.

Most recently the Unites States Supreme Court in Nevada v Hicks 533 U.S. 353, was confronted with a similar case where a tribal court claimed jurisdiction for an alleged violation of

the civil rights of a tribal member for a claim brought under 42 U.S.C.S. §1983. In that case, Plaintiff alleged that his civil rights were violated by state wardens for illegally searching and seizing his property located on the reservation and for false arrest. The Supreme Court thoroughly discussed tribal court jurisdiction where allegations of tortious conduct and civil rights violations were involved.

The Nevada court stated at p. 359 "Both Montana and Strate rejected tribal authority to regulate nonmembers' activities on land on which the tribe could not 'assert a land owners' right to occupy and exclude" Strate, supra, at 456; The court continued at p. 360, "We have never upheld under Montana the extension of tribal civil authority over nonmembers on non-Indian land." In this case, the alleged discrimination was that the Bank would not sell its land on the reservation by a Contract for Deed to Long because he was a tribal member. The Bank, however, took absolutely no action to discriminate against the Long Company on the reservation. The fact that the Bank entered into a Lease With Option to Purchase at its office located off the reservation does not bring this action within the jurisdiction of the tribal court. The leased land was fee land owned by the Bank and the lease was entered into off the reservation. Long's allegations of discrimination by the Bank not entering into a Contract for Deed allege no actions which took place on the reservation. \*

The lack of jurisdiction of the tribal court in this case is based on a lack of subject matter jurisdiction over a nonmember. Plaintiff's cause of action for discrimination relates to alleged actions by the Bank outside of the boundaries of the Cheyenne River Sioux Tribal Reservation. Though a tribal court may gain personal jurisdiction over a party under the exceptions listed in Montana v U.S., 450 U.S. 544, it does not have subject matter jurisdiction over the Bank for discrimination. In Strate v A-1 Contractors, 520 U.S. 438 the Supreme Court thoroughly

discussed subject matter jurisdiction. The case concerned the adjudicatory authority of tribal courts over personal injury actions against defendants who were not tribal members. The action was brought pursuant to an accident which occurred on a stretch of state maintained highway within the reservation. The court at p. 442 held that the case fell within state or federal regulatory and adjudicatory governance and that tribal courts may not entertain claims against nonmembers arising out of accidents on state highways, absent a statute or treaty authorizing the tribe to govern the conduct of nonmembers on the highway in question. In this case, no statute or treaty authorizes a discrimination cause of action.

In Nevada, supra, the court stated at p. 366

It is certainly true that state courts of "general jurisdiction" can adjudicate cases invoking federal statutes, such as §1983, absent congressional specification to the contrary. 'Under our system of dual sovereignty, we have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims under the laws of the United States,' Taffin v Levitt, 493 U.S. 455, 458, 107 L. Ed. 2d 887, 110 S. Ct. 792 (1990). That this would be the case was assumed by the Framers, see The Federalist No. 82, pp. 492-493 (C. Rossiter ed. 1961) Indeed, that state courts could enforce federal law is presumed by Article III of the Constitution, which leaves to Congress the decision whether to create lower federal courts at all. This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts.

The Nevada Court continued at p. 367

Tribal courts, it should be clear, cannot be courts of general jurisdiction in this sense, for a tribe's inherent adjudicative jurisdiction over nonmembers is at most only as broad as its legislative jurisdiction. See supra, 3-4, n8. It is true that some statutes proclaim tribal court jurisdiction over certain questions of federal law. But no provisions in federal law provide for tribal court jurisdiction over §1983 actions.

Likewise there is no federal law which provides for tribal court jurisdiction over a nonmember for a 42 U.S.C.S. §1981 discrimination action.

Additionally, Plaintiff did not provide evidence of discrimination to sustain a jury verdict.

The Bank, after it had previously written a letter to Long indicating that it would not enter into a contract to sell the land or lease the land, actually did enter in with a contract to lease with an option to purchase.

The fact that the trial court erroneously allowed an action for discrimination completely tainted the whole trial process. The discrimination cause of action in this case undoubtedly inflamed the jury composed solely of tribal members against a nonmember off reservation bank.

**Issue 2. Did the trial court error in not granting Appellant's Motions for a Directed Verdict and Judgment N.O.V. on Plaintiff's breach of contract claim?**

Plaintiff alleged that the Bank breached a loan agreement. (a copy of which is attached as exhibit B ) The loan agreement was dated December 5, 1996. On the same date, the Bank and the Long Company entered into a Lease With Option to Purchase of approximately 2,230 acres of the Bank's real estate located on the CRST reservation. (a copy of which is attached as exhibit C ) The loan agreement, although entitled "Loan Agreement" was not actually an agreement whatsoever. The Long Company was not required to do anything whatsoever under the terms of the document. No consideration was required to be given by the Longs and none was given. It was an information document. The first portion of the document showed that the Long Company received \$478,000.00 credit on notes or payment of expenses relating to the Kenneth Long Estate real estate which had been deeded to the Bank in lieu of foreclosure.

The second part of the document sets forth how the Bank intended to proceed with the Long Company loan. It informed the Long Company that it would request an increased guaranteed percentage to 90% of the BIA guaranteed notes. It also informed that it would request the BIA to reschedule a delinquent note and that it would request a 90% BIA guarantee

on a \$70,000.00 annual operating loan to the Long Company. If the guarantees were approved, the Bank would then loan other funds.

In South Dakota there are four essential elements for a contract to be enforceable.

SDCL 53-1-2 states: "the essential elements to the existence of a contract are:

- (1) Parties capable of contracting,
- (2) Their consent,
- (3) A lawful object, and
- (4) Sufficient cause or consideration.

If sufficient cause or consideration is lacking, the contract is void." In this case, absolutely no consideration was given by the Long Company for the loan agreement therefore it is void.

The trial court, prior to trial, erroneously ruled as a matter of law that the loan agreement and Lease With Option to Purchase were integrated documents and were one agreement. The Lease With Option to Purchase was a separate document and separate agreement. It was unambiguous and no other parole evidence was needed to understand that document. That document stood on its own. The document entitled loan agreement was also unambiguous. Only by the trial court bootstrapping the loan agreement onto the Lease With Option to Purchase and calling them one agreement could any consideration for the loan agreement be shown. The loan agreement should not have been incorporated with the lease.

P131  
210-  
18.  
Simon  
depos.

Even if the court would find that the loan agreement did not lack consideration, there is absolutely no evidence in the record showing that the Bank breached the loan agreement. The evidence is uncontroverted that the Bank made an application to the BIA by a letter dated December 12, 1996 requesting everything that it said it would do in the loan agreement. ( a copy of which is attached as exhibit D ) In fact, rather than a \$70,000.00 operating line, the Bank requested an \$85,000.00 operating line. This increase was necessary because of the cash flow submitted by the Long Company through the CRST chairman's office on December 11, 1996.

The evidence is also undisputed that the Bank did not receive any response from the BIA until a letter dated February 14, 1997. ( a copy is attached as exhibit E ) By that date, the Long Company had lost all of its cows other than about 150 head and all of the calves except about 25 head. On February 13, 1997, Ronnie Long had called the Bank and informed them of the death of the livestock. Additionally, by a letter Long sent to the Bank dated February 18, 1997, he confirmed that most of the cattle died in the blizzard of January 15<sup>th</sup> and 16<sup>th</sup>, 1997. (a copy is attached as exhibit F)

In the February 14, 1997 letter from the BIA the Bank was informed that the original loan guarantee request they made on December 12, 1996 was viewed by the BIA as a modification and that a more complete application would be required. By that time the Bank already knew that there was a drastic change in the financial circumstances of the Long Company caused by the cattle deaths. The previous cash flow which was submitted by the Long Company supporting an \$85,000.00 line of credit was no longer applicable. Most of the Long Company cattle had died. The sale of cattle was instrumental in the success of their original cash flow that was now impossible.

Even with the drastic change in the financial condition of the Long Company, however, the Bank still continued to provide financing for the operation. The Bank applied to the BIA for and obtained approval of making a \$40,595.00 operating line of credit. The BIA would not guarantee that note however. The new cash flow, which was submitted by the Long Company through the CRST chairman's office, indicated that a \$40,595.00 operating line of credit was now needed. The BIA would not increase the guaranteed portion of the prior notes as requested, however they did approve a rescheduling of the previous guaranteed notes. The Bank made the operating note even without the BIA guarantee. The Bank continued to finance the Long

paid off notes, Long got 19K was of 40K

Company in spite of its drastic decrease in net worth caused by the cattle deaths and despite the fact that the BIA would not increase the guaranteed percentage of the previously guaranteed notes:

There is no requirement under the law for the Bank to continue to pursue neither the \$85,000.00 line of credit nor the \$70,000.00 operating line of credit the loan agreement called for under the circumstances. The Long Company's net worth, cash flow, and ability to repay, had changed radically from the time the loan agreement was signed. It is preposterous to think, as Plaintiff alleges, that the Bank should have continued to pursue a \$70,000.00 BIA guaranteed line of credit even after all of the major losses the Long Company sustained. Even if the Bank would have pursued the \$70,000.00 BIA guaranteed line, the BIA would not have guaranteed it. The BIA would not guarantee the \$40,595.00 note and there is no reason to believe they would guarantee a larger note.

Too late

If the loan agreement was a valid agreement, which is denied, the Bank was certainly entitled to rescind it after the cattle loss. Under SDCL 53-11-2(4) a contract may be rescinded by a party if the consideration before it is rendered to him fails in a material respect from any cause. In this case, the loan agreement stated that the \$70,000.00 operating line of credit was "to be secured by a second lien on calves and yearlings and a first lien on crops." Most of the Long Company's yearlings and calves had died. The security for the \$70,000.00 note was no longer available. The Long Company had previously pledged all of its livestock to the Bank as security for the loans. The consideration which could have been given by the Longs, had the cattle not died, failed in a material respect. If the loan agreement was a binding agreement, it was rescinded properly by the Bank once the cattle died.

Too late to rescind.

the consideration to make the loan because the cattle died. The cattle died because the bank failed to make the 70k loan to operate on.

*did not rescind*

An agreement can also be rescinded by mutual consent of the parties. SDCL 53-11-2(5) allows a contract to be mutually rescinded. In this case, both the Long Company and the Bank mutually rescinded the loan agreement. The Long Company applied for a lesser operating line of credit once the cattle had died. They submitted a new cash flow statement showing a need of only \$40,595.00 and the Bank agreed to pursue BIA approval. In essence, both parties mutually agreed that the original loan request for an \$85,000.00 loan was no longer applicable. Both parties agreed that a lesser amount was now needed. Although there may not have been any formal notice of rescission, none was required. In American State Bank v Cwach, 187 N.W. 2d 107, 110, (S.D. 1971) the court states "If there is a total failure or want of consideration, rescission is excused and a party may assert failure of consideration as a bar to the action." (citations omitted) The trial court should be reversed in that the loan agreement failed for lack of consideration. If it was an agreement, it was rescinded and not breached by the Bank.

land  
house  
CRP  
PSA

Bank  
rescinded

**Issue 3. Did the trial court error in not granting Appellant's Motion for a Directed Verdict and Judgment N.O.V. on a separate cause of action alleged by Plaintiff for bad faith?**

The Bank made a motion to dismiss the bad faith cause of action prior to trial and again when Plaintiff rested. The motions were denied and the matter was submitted to the jury as a separate cause of action. A bad faith claim, in this case, should not have been a separate cause of action whatsoever. A separate cause of action for bad faith would require fraud and deceit, which is a tort action. The Court dismissed Plaintiff's cause of action for fraud and deceit after Plaintiff rested, finding no evidence. Any allegations of bad faith should have been included in Plaintiff's cause of action for breach of contract. South Dakota has specifically found that bad



faith causes of action are not separate tort actions in breach of contract cases. Garrett v BankWest, Inc., 459 N.W. 2d 833, 841-844 (S.D. 1990).

Every contract requires an implied covenant good faith and fair dealing which prevents or prohibits either contracting party from preventing or injuring the other party's right to receive the agreed benefits of the contract. Restatement 2d of Contracts §205. Plaintiff has not produced any evidence that there was a lack of good faith on the Bank's part which would have limited or prevented Plaintiff from receiving the reasonable expected benefits of a contract. Plaintiff apparently alleges that by the Bank not continuing to pursue BIA approval of the \$70,000.00 guaranteed operating loan and by the Bank not making the \$37,500.00 loan for the purchase of calves, even after it had learned of the livestock deaths, there was bad faith. This allegation is completely specious. Under the loan agreement the \$37,500.00 loan was not even required to be made unless the other BIA guarantee requests were approved and they were not. After the catastrophic cattle losses, it would have been an act in futility to attempt to get a BIA guaranteed loan of \$85,000.00 where the cash flow showed that only \$40,595.00 was needed. Certainly the non-pursuit of the original loan requests to the BIA could not have been a lack of good faith on the Bank's part.

switching cash flows -  
Judge Jones on this point

↙ cattle died Jan 1997, operating loan was needed in December.

direct Bank loan not dependent on BIA approval

Plaintiff also alleged that the Bank did not loan the Long Company enough to operate and that was bad faith. The facts, however, are that the Bank did give Plaintiff sizeable amounts of money to be used for operating. In September of 1996, the Bank released approximately \$30,000.00 from the sale of cattle, which were the Bank's collateral, for the Long Company to use for payment of operating bills. The Long Company had an operating line of credit for \$50,000.00, part of which was still available in the fall and winter of 1996. Advances for operating funds were made in the months of October, November and December on the

\$50,000.00 operating line. In addition to that line of credit, the Bank loaned \$16,718.46 for a payment of the Long's tribal leases on December 10, 1996. This loan was for a pre-payment of tribal leases which the Long Company had for the 1997 operating year. A loan was made to the Long Company for \$2,250.00 on December 14, 1996 for Long to buy a used snowmobile so he could feed the cattle because the roads were closed due to the winter blizzards. On that same date the Bank gave the Long Company another line of credit for operating expenses for \$5,000.00. These loans were made while the Bank and Longs were awaiting a response from the BIA for the \$85,000.00 guaranteed operating line of credit. The Bank was obviously making a good faith attempt to loan funds to the Long Company to keep the operation going pending a response from the BIA.

Banks are not required to loan unlimited funds to a borrower. South Dakota law is clear that the fact that a bank would not loan all funds requested by a borrower does not constitute bad faith. Garrett, supra, First Bank of S.D. v Voneye, 425 N.W. 2d 630 (S.D. 1988). *no agreement in Garrett.*

Plaintiff has alleged that the Bank would not loan him operating money so that he could move the hay and that was the cause of his losses and bad faith. This contention is absurd and not backed by any credible evidence however. Ronnie Long testified that in September of 1996, prior to the disastrous winter storms of 1996 and 1997, he had approximately \$30,000.00 which was released by the Bank from the sale of cattle. He also testified that it was his normal practice to move the hay in September or October. He had the unused portion of a \$50,000.00 line of credit. He simply used all of these funds to pay other bills rather than for moving the hay to his cattle in preparation for the winter. *controlled account*

The Bank certainly had no obligation to make any loans to the Long Company prior to December 5, 1996, the date the Loan Agreement was signed. Even if that agreement did obligate

15 *Ronnie's testimony - all this money gone. controlled account.*

the Bank to make a BIA guaranteed operating loan of \$70,000.00 upon the approval of the BIA, by the time BIA would have approved it, it was too late to move the hay. The Bank applied for a BIA guaranteed operating line of credit of \$85,000.00 on December 12, 1996 upon receiving the necessary cash flow statement from Long. The BIA did not even respond to the application until February 14, 1997. From December 13, 1996, a day after the request was made, until well after the cattle died, the road to the Long Company cattle was never open wide enough for a semi-tractor trailer.

According to Ronnie Long's letter, the roads to the cattle would not have been opened wide enough for stack movers to move the hay. Incidentally, he had trucks lined up three times to move the cattle out and apparently he did this without the \$70,000.00 operating line of credit. The weather prevented him from doing so, just like the weather prevented stack movers from moving hay to the cattle, not the lack of a \$70,000.00 operating line. The bad faith cause of action should not have been allowed as a separate cause of action. If allowed at all, it should have been a part of the breach of contract action. By allowing this separate cause of action, the cumulative effect did nothing but confuse and mislead the jury and was highly prejudicial to the Bank's case.

**Issue 4. Did the trial court error in not granting Appellant's Motion for Judgment N.O.V. in that damages awarded by the jury were excessive and controlled by passion or prejudice?**

In this case, the jury awarded damages of \$750,000.00 to Plaintiff, plus interest. The jury's verdict regarding damages shows absolutely no relation whatsoever to the actual damage evidence which was presented by the Plaintiff at trial. Plaintiff's whole case as to damages related to the breach of contract action. No instructions whatsoever were given as to damages

relating to bad faith or discrimination. There was absolutely no evidence provided by Plaintiff at trial relating to damages for the bad faith claim or the claim for discrimination. Obviously those causes of action were alleged by Plaintiff simply to inflame the jury and it appears from the excessive verdict that is exactly what happened.

The Bank's breach of the loan agreement, which is denied, did not cause the death of Long's cattle. Damages from the death of the cattle, and subsequent loss of profits resulting from their loss, were not caused by the breach. An essential element of proving damages is that damages must be caused by the breach. Bad Wound v Lakota Community Homes, Inc., 603 N.W. 2d 723,725 (S.D. 2000) The Bank applied for the BIA guaranteed loan on December 5, 1996 and heard absolutely nothing back from the BIA until February 14, 1997. By February 14, 1997, Plaintiff had reported to the Bank that they had already sustained the loss of their cattle and calves. At trial Plaintiff claimed damages for the loss of the cattle and loss of profits for the years after they died. The operating loan was applied for on December 12, 1996 in the amount of \$85,000.00. Even if the BIA had immediately approved the operating line, the letter from Ronnie Long himself indicates it was too late to save the cattle. The roads were impassable. Ronnie Long, in his letter dated February 18, 1997 to the Bank, explained that on December 13, 1996 he had plowed the cattle out and had trucks lined up to haul them out. It started to blizzard that evening and lasted for five days. Everything that was opened on the 13<sup>th</sup> of December blew shut and country roads were completely blocked. He indicated in that same letter that he had minimal losses until January 15<sup>th</sup> and 16<sup>th</sup> when the wind chill was 50 to 80 degrees below zero and the cattle that drifted out of the draws are the ones that died. The roads were never opened wide enough for a semi tractor and trailer from December 13, 1996 to January 29, 1997. He could not have gotten hay to the cattle nor cattle to his headquarters, according to his letter, until

the roads were finally opened on January 29, 1997. By that time, the cattle were dead and the alleged lack of operating money could not have caused the damages. Any breach of the loan agreement by the Bank did not cause the death of the cattle. Damages resulting from the death of the cattle were not attributable to the Bank.

When one looks at Plaintiff's Exhibit 23, which was Plaintiff's Request for Damages, it lists the loss of all of the cattle and the profits from the sale of offspring that they would have had throughout the years. Those losses constitute the bulk of the damages Plaintiff claimed. There is no evidence to sustain a verdict that the Bank's breach caused any of those damages. Damages awarded, therefore, by the jury were excessive and apparently based on passion or prejudice.

**Issue 5. Did the trial court error in not granting Appellant's Cause of Action for Eviction of Long Family Land and Cattle Company, Inc., Ronnie Long and Lila Long from Appellant's land in Dewey County, South Dakota?**

In this case, the court found that it could not enter a decision in favor of the Bank on its counterclaim for an action for forcible entry and detainer against Long Family Land and Cattle Company, Inc. and Ronnie Long and Lila Long. The court based its decision on this issue on the jury finding that the Bank had breached the loan agreement and that breach caused the Long Company not to be able to exercise its option to purchase. The Court had erroneously ruled previously that as a matter of law that the loan agreement and Lease With Option to Purchase were one and the same agreement. The Bank's counterclaim should have been an issue to be decided by the trial court. Neither Plaintiff nor Defendant requested a jury trial on the counterclaim. Had the court properly considered the Lease With Option to Purchase as a separate agreement, the Bank's counterclaim would have been decided without any input from

the jury. The court should have decided this issue on its own merits and not based on what the jury decided on a completely separate loan agreement.

The jury found that the Bank did not use "self-help" which is not allowed by tribal law. Since the Bank did not use "self-help", the court found that it could not set aside the previous deeds to the Pesickas and the Maciejewskis of approximately one half of the Bank's Dewey County real estate. Basically, the court allowed the jury to decide the Bank's cause of action for forcible entry and detainer, even though neither party requested a jury trial on this issue. The court's action not allowing the eviction of Plaintiff based on a jury's finding was completely erroneous. The Bank's counterclaim for eviction should have been allowed and the Bank should have been awarded damages for the Long Company holding over after the term of the lease had expired. The provisions of the CRST Law and Order Code, Sec. 10-2-1, et seq. were clearly applicable and the court erred by not granting the Bank possession of the real estate and damages.

**Issue 6. Did the trial court error in granting Long Family Land and Cattle Company, Inc.'s Motion to Exercise Its Option to Purchase the real estate?**

Under the terms of the Lease With Option to Purchase, Long Family Land and Cattle Company, Inc.'s option to purchase the real estate expired December 5, 1998. Long's never tendered the down payment nor did they exercise the option to purchase. The trial court erroneously allowed them to exercise their option to purchase almost five years after the option had expired. In essence, the court ordered partial specific performance of the Lease With Option to Purchase. Specific performance was never pled by Plaintiffs however.

Plaintiff brought suit alleging a breach of contract action and presented evidence to the jury as to damages sustained from the loss of use of the real estate. The jury awarded Plaintiff

damages. Plaintiff cannot now request and be granted an equitable remedy for specific performance as well as money damages. An award of both compounds damages and places Plaintiff in a better position than he would have been in were there no breach of contract. An essential element to equitable relief, which was not pled by the Plaintiff, is the lack of adequate remedy at law. Rindal v Sohler, 658 N.W. 2d 769, 772 (S.D. 2003) see also Knowdel v Kassel Twp, 581 N.W. 2d 504, 507; Bienert v Yankton School Dist. 507 N.W. 2d 88, 90; Gross v Conn. Mut. Life Ins. Co. 361 N.W. 2d 259, 265; Hein v Marts, 295 N.W. 2d 167, 171; Anderson v Kennedy, 264 N.W. 2d 714, 717. In the present case, Plaintiff had an adequate remedy for money damages. They chose the breach of contract action and requested money damages due to the breach, not specific performances.

During the entire period of time from December 5, 1998 to date, the Bank has paid real estate taxes on that portion of their real estate being wrongfully occupied by Long Family Land and Cattle Company, Inc. and Ronnie and Lila Long. The Bank has received absolutely nothing from the Longs for the use of this real estate. The trial court granted the Longs an option to purchase the real estate for the same amount which the Bank sold the 960 acres to Maciejweski for back in 1999 under a Contract for Deed. Quite obviously, land prices have increased substantially since that time. Long Family Land and Cattle Company, Inc. has had the free use of the land for the entire time period. An option to purchase said real estate by the trial court at a price which was arrived at back in 1999 would unjustly enrich the Longs. Had the Long Company purchased the land in December of 1998, they would have paid real estate taxes and interest from that date to the present. The trial court is now putting them in a better position than they would have been had there been no breach.

← FSA  
= 23,000 / yr.  
23 a

← \$ from BIA

23. no evidence  
no L in 3

Long's  
got no title  
to  
772  
may bank  
claim  
in  
long  
walk  
cattle.

← 52 receiving  
250,000  
Pesticke  
and  
Mujirah  
since  
1999.

**Issue 7. Did the trial court error in allowing interest on damages which were incalculable absent specific interrogatories to the jury?**

There are no ordinances in the CRST Code providing for the calculation of pre-judgment interest. Under South Dakota law, however, pre-judgment interest is allowable under certain conditions. SDCL 21-1-11 states "If a person who is entitled to recover damages certain or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, he is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt."

The South Dakota Supreme Court in Hageman v Vander Vorste, 403 N.W. 2d 420, 422 (S.D. 1987) discussed the payment of pre-judgment interest. The court stated "During an earlier decision on the issue of pre-judgment interest, we said: "The reason for denying interest on a claim is that where the person liable does not know what sum he owes, he cannot be in default for not paying. When the exact sum of the indebtedness is known or can be readily ascertained, the reason for the denial of interest does not exist. Beka v Lithium Corp. of America, 92 N.W. 2d 156, 159-160 (S.D. 1958).

In applying a statute identical to SDCL 21-1-11, the California courts have recognized the Beka rationale for awarding pre-judgment interest and have formulated a useful test to decide the question. "The test we gleaned from prior decisions is: Did the Defendant actually know the amount owed or from reasonably available information could the Defendant have computed that amount? Only if one of those two conditions is met should the Court award pre-judgment interest." Chesapeake Industries v Togova Enterprises, 149 Cal. App. 3d 901, (1983)."

In the case at bar, Plaintiff alleged damages relating to the value of the cows



that died and the off-spring from those cows for future years. Plaintiff estimated an annual operating expense and deducted it from the hypothetical sale of calves. Plaintiff also alleged damages resulting from the loss of use of the real estate by lost profits, which he estimated for purposes of the trial. The problem is, however, in this case that Plaintiff's damages were not calculated nor calculable. The Bank did not know, nor could it have calculated, how much it owed Plaintiff prior to the jury verdict. The date the cattle would have been sold each year, the price that they would receive each year and the deduction for operating expenses were all speculative. Damages were not calculable.

Additionally, even if the damages were calculable, we have no idea what the jury found damages resulted from and on which day they resulted. Damages Plaintiff claimed occurred over a four-year period. Interest would not accrue on the entire Judgment for the entire four-year period. Plaintiff requested damages of approximately \$1.2 million and the jury came up with a figure that was rounded off at \$750,000.00. How the jury calculated those damages is not ascertainable at this point. Without being able to ascertain how the jury calculated damages, one can only speculate as to what they based their damage award on. In this case, damages may have been awarded on the basis of discrimination, bad faith, or breach of contract. We are simply unable to tell when it is that the jury thought Plaintiff sustained each separate damage and the amount on each date. Without that necessary information, it is impossible to calculate pre-judgment interest.

In this case, the amount of damage on specific dates was never calculated by Plaintiff nor calculable by the Bank. When the Bank could not ascertain how much it owed Plaintiff, it should not be held liable to pay pre-judgment interest.

SUMMARY

This case is a perfect example of the complete miscarriage of justice which can result from a number of erroneous decisions being made by the court. The trial court lacked jurisdiction of a claim for discrimination. Once a claim for discrimination was allowed to be tried to the jury, where no one but tribal members could serve, the Bank could no longer obtain a fair trial. Allegations of racial discrimination by a nonmember Bank located off the reservation completely inflamed the jury. They became incapable of rendering a fair and impartial verdict. The race card tainted the entire trial process.

Indian people cannot do justice.

It was Bk's letter, and Bk's decision based on this City's advice.

The trial court also erred by ruling that the lease and loan agreement were both part of one agreement as a matter of law prior to trial. Without that decision, the loan agreement was void for lack of consideration. Even if it were valid however, insufficient evidence was produced to sustain a breach of contract verdict.

The bad faith claim should have been dismissed as a separate cause of action when the fraud and deceit claim was dismissed. By allowing the bad faith claim the jury was improperly allowed to consider a claim which was highly prejudicial to the Bank. This claim further inflamed and confused the jury. Although there was no evidence of bad faith, if the claim was allowed at all, it should have been a part of the breach of contract claim.

✓ Bk sold land to M + P leaving R in possession was bad from the v/o c.t. order. → promised to take out 57500 pay off loan and buy 110 cows. ✓ emergency loan, automatic guarantee. ✓ smithed cash flows, made large operation look bad.

Damages regarding the death of cattle could not have been caused by any breach on the part of the Bank. The abnormal winter blizzards caused the losses through no fault of the Bank. Damages awarded by the jury were excessive and obviously did not relate to the evidence. Their verdict should be set aside.

✓ Bank argued to jury w/ jury distrust expense.

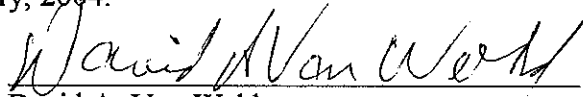
jury verdict set aside.

The court was also erroneous in allowing the Long Company to exercise an option to purchase a portion of the real estate at a price which the Bank sold it for approximately five years

earlier. Specific performance was not pled by the Longs and the allowance of both specific performance and damages compounded damages.

Interest was not calculated by Long prior to trial and was not calculable by the Bank. We have no idea how the jury calculated what damages occurred and on what date. The trial courts interest calculation should be reversed. *the Bank proposes so can't compound* The Bank should be allowed immediate possession of the 960 acres which Longs are wrongfully possessing and the matter remanded to the trial court to ascertain the amount of damages Long owes to the Bank.

Respectfully submitted this 15<sup>th</sup> day of January, 2004.



David A. Von Wald  
Attorney for Plains Commerce Bank  
P.O. Box 468  
Hoven, South Dakota 57450  
605-948-2550

Appellant hereby requests oral arguments.



David A. Von Wald



BANK OF HOVEN

EXHIBIT 5

April 26, 1996

Ronnie Long  
Box 272  
Timber Lake, S.D. 57656

Dear Ronnie,

This is an update to my letter written on April 17, 1996. I had previously talked to you about the bank foreclosing on the land base and the house in Timber Lake. The house would be sold with the sale proceeds applied to your BIA guaranteed debt, and the land base would be deeded to the bank and sold back to you on a contract.

There appears to be some difficulties in dealing with this situation in that manner. After talking to our legal counsel, David Von Wald, the only way the bank could sell this property back to you would be for you to secure financing through another financial institution or go through a government agency guaranteed loan such as FHA, BIA or SBA through our bank. This is because of possible jurisdictional problems if the bank ever had to foreclose on this land when it is contracted or leased to an Indian owned entity on the reservation.

Please call me at the bank if you have any questions on the above matter. We will try to proceed as soon as possible to secure financing through one of the above federal agencies or you can try to secure financing through another financial institution, as these appear to be the only ways we could sell the land base back to you. Thank You!

Sincerely,

*Charles Simon*

Charles Simon, VP  
Bank of Hoven  
P.O. Box 7  
Hoven, S.D. 57450

Exhibit A

L A N O 1 1

Loan agreement between Long Family Land and Cattle Co. Inc. and the Bank of Hoven.

The Bank of Hoven has received a deed to property described in exhibit A attached here to, through the estate of Kenneth Long. The Bank of Hoven will credit Long Family Land and Cattle Co. Inc. from the sale proceeds as follows:

Credit for land	\$468,000.00
Credit for house	<u>\$ 10,000.00</u>
	\$478,000.00
Less State Enhancement payoff	\$ 82,447.88
Less past due taxes	\$ 23,314.38
Less attorneys fees	\$ 9,540.10
Less title search	\$ 473.00
Less title ins	\$1,118.25
Less payment in full of note #98179 <i>RE note</i>	\$206,566.16
Less payment in full of note #2002 <i>BIA Subordinated</i>	\$ 50,301.51
Less payment in full of note 2470 <i>Emergency feed note</i>	\$ 5,312.69
Less payment in full of note #1866 (Ronnie & Lila Long)	\$ 3,928.56
Less payment in full of note #98262 <i>BIA Guaranteed Note 84%</i>	\$ 60,669.21
Less partial payment on note # 98809 <i>BIA Guaranteed Note 80%</i>	<u>\$ 34,328.26</u>
	\$478,000.00

The Bank of Hoven will request, from the BIA, to increase the guarantee to 90% and to reschedule note #98181 (prin, int. and late charges), over 20 years with an annual payment from crop and yearling sales. Primary security will be cows, bulls and machinery. The Bank of Hoven will also request a 90% BIA guarantee on a \$70,000.00 annual operating loan. This note will be secured by a 2nd lien on calves, yearlings, and a first lien on crops, and will be paid down to \$1.00 annually.

If the BIA guarantee requests are approved, then the Bank of Hoven will make a loan to Long Family Land and Cattle Co. Inc. for \$ 53,500.00 to pay off the balance of note # 98809 for approximately \$17,000.00, with \$37,500.00 to be used to purchase 110 calves to be feed and pastured with their own calves. The sale proceeds from wheat, millet, and 10hd of assorted yearlings will be applied to note #98809 first with any balance to be applied to the \$53,500.00 note. The Bank of Hoven will have a 1st security interest on all calves and yearlings

and will apply those sales to the \$53,500.00 note first.

The Bank of Hoven will enter into a lease/purchase option on the approximately 2230 acres of land only described in exhibit A, under a separate agreement attached hereto.

Dated this 5<sup>th</sup> day of Dec, 1996

Long Land and Cattle Co. Inc.

by Bonnie Long  
by Lila Long Sec. Treasure

Bank of Hoven

by James Melie AUP

Exh. 0.1

LEASE WITH OPTION TO PURCHASE

\* \* \* \* \*

This Indenture, made and entered into and executed in duplicate this 5th day of December, 1996, by and between Bank of Hoven, a South Dakota Banking Corporation, P.O. Box 7, Hoven, South Dakota 57450, P.O., lessor, and Long Family Land and Cattle Company, Inc., of P.O. Box 272, Timber Lake, South Dakota 57656, lessee, WITNESSETH:

That the Lessor in consideration of the rents and covenants hereinafter mentioned, does hereby demise, lease and let unto the said lessee, and the said lessee does hereby hire and take from the said lessor, the following described real estate situated in Dewey County, South Dakota:

The East Half (E½) of Section One (1), Township Fifteen (15) North, Range Twenty Four (24), East of the Black Hills Meridian;

The Northwest Quarter (NW¼) of Section Twenty Five (25), all of Section Twenty Eight (28), the East Half (E½) of Section Thirty Two (32), the Northeast Quarter (NE¼), the West Half of the Northeast Quarter of the Northwest Quarter (W½NE¼NW¼), the Southeast Quarter of the Northeast Quarter of the Northwest Quarter (SE¼NE¼NW¼), the West Half of the Northwest Quarter (W½NW¼) and the Southeast Quarter of the Northwest Quarter (SE¼NW¼) and the South Half (S½) of Section Thirty Three (33); and the Southwest Quarter (SW¼) of Section Thirty Four (34), all in Township Seventeen (17) North, Range Twenty Five (25), East of the Black Hills Meridian, subject to easements, reservations and conveyances, if any, existing and of record,

to have and to hold, the above leased premises unto the said lessee for the full term of two (2) years from and after December 5, 1996.

LEASE PAYMENTS:

The said lessee agrees to and with the said lessor to pay as rent for the above described real estate, the sum of Forty Four Thousand One Hundred Ninety Eight Dollars (\$44,198.00), per year, payable in approximately October or November of 1997 and 1998. Said payment is a CRP payment which will be payable from the United States Government to lessee, and lessee agrees to assign said payment to lessor so that lessor may receive said payment directly from the United States Government.

Exhibit C

Prepared by:  
David A. Von Wald  
Attorney-at-Law  
Box 468  
Hoven, So. Dak. 57450  
Tel. (605) 948-2550

(4)

NO ASSIGNMENT OR SUBLETTING:

It is understood that the lessee shall not have the right to sublet the above described real estate, or any part thereof, nor assign this lease without the prior written consent of the lessor.

REAL ESTATE TAXES:

The lessee shall pay the 1996 real estate taxes which become due and a lien on January 1, 1997, and the 1997 real estate taxes which become due and a lien on January 1, 1998, before the same shall become delinquent.

POSSESSION:

The lessee is currently in possession of the above described real estate and its possession shall terminate on December 5, 1998.

OPTION TO PURCHASE:

The lessee shall have an option to purchase the above described real estate during the term of this lease under the following terms and conditions:

A. The option purchase price for the above described real estate shall be the sum of Four Hundred Sixty Eight Thousand Dollars (\$468,000.00).

B. In the event lessee wishes to exercise its option to purchase, it must give notice to lessor in writing and pay five percent (5%) of the purchase price and furnish the remaining balance of purchase price within sixty (60) days of the date of any such notice.

C. Lessee shall pay all selling expenses, including attorney fees, transfer fees, title insurance and any other miscellaneous expenses, including real estate taxes.

D. Lessor agrees to provide a Quit Claim Deed only, quitclaiming its interest in the above described real estate to the lessee, upon receipt of the entire purchase price.

E. Lessor agrees that there is currently a mortgage under the State Enhancement Program which it shall forthwith pay off,



and additionally it shall satisfy any mortgages wherein the Bank of Hoven is presently the mortgagee.

F. Lessor now owns residential real estate in Timber Lake, formerly owned by Kenneth Long, and has credited lessee's notes for \$10,000.00. In the event, said residential property is sold for more than \$10,000.00, lessee agrees to reduce the selling price of the above described farm real estate any net amount, after expenses exceeding \$10,000.00. In the event said residential real estate is sold for less than \$10,000.00, the selling price of the above described farm real estate shall be increased by the net amount, after expenses of less than \$10,000.00. Lessor does not warrant that it will sell said residential real estate nor is it under any obligation to attempt to sell the same. In the event it is not sold at the time lessee exercises its option to purchase, the option price of the farm real estate shall not be affected. If lessor later sells said residential real estate, or if lessee does not exercise its option to purchase, any proceeds from the sale of said residential property will be the Bank of Hoven's.

G. In the event lessee exercises its option to purchase, all rent payments received prior to the purchase of said real estate will be credited against the purchase price of said real estate, minus an amount equal to interest at the rate of eight and one-half percent (8.5%) per annum on the unpaid balance of purchase price from and after December 5, 1996.

INSURANCE:

Lessor will purchase a policy of insurance insuring the buildings located on the above described real estate against loss by fire and extended coverage along with liability insurance, and it shall be the responsibility of the lessee to reimburse the lessor for the cost of all such insurance.

WASTE:

Lessee agrees that it shall not commit any waste on the above described real estate and shall farm or graze said real estate in a good and husbandlike manner and shall maintain the buildings and fences in a good state of repair, reasonable wear and tear by the elements alone excepted, at its expense.

DEFAULT:

That should the lessee fail to pay any of the rent aforesaid







BANK OF HOVEN

December 12, 1996

Russell McClure, Supt.  
Cheyenne River Sioux Tribe  
Box 590  
Eagle Butte, SD 57625

Re: Long Family Land and Cattle Co. Inc.

Dear Mr. McClure;

The Bank of Hoven is requesting to restructure its current BIA guarantee loan #98181 in the approximate amount of \$415,000.00 over 20 years @9.25% variable, payable in annual payments. We would also request an \$85,000.00 line of credit for operating expenses. The Bank would also make a direct loan on a LIFO basis of approximately \$41,000.00 to purchase 110 calves for \$37,500.00 and to refinance BIA guarantee note # 98809, after applying the proceeds from 10 hd of yearlings, wheat and millet sales.

This restructuring we feel is in the best interest of the borrower to allow them some time to work through this low cattle market and will lessen the chance for the U.S. Gov't of the Bank calling the guarantee. The Long's have deeded some real estate to the Bank for credit on their loans, and are leasing this real estate from the Bank, and with this reduction in debt and a restructuring of the existing debt we feel that the operation can cash flow even during this low cattle price cycle and begin to rebuild the financial structure of the ranching operation. We have enclosed the financial statements and cash flows to support this position.

We would request that the guarantee % be increased to 90% on note #98181 and that the line of credit be a 90% guarantee. We hope that you can look favorably on this request to allow the Long's to continue on in their life long ranching operation.

Thank you.

Sincerely yours,

James Nielsen, AVP

Exhibit D

00529

**FDIC**

Monthly Cash Flow (Agri-Business)

Year 1

Name: Ron Long  
Date: 11/96 to 10/97

Month	11	12	1	2	3	4	5	6	7	8	9	10	Total
Cash beginning:													\$0
Gain	\$12,125	96 wheat and millet							200 @ 25 @ \$3.50				\$7,500
Int subsidy and CRP	\$22,000												\$44,168
Calf sales 50% 135 @ \$350	\$4,800	10 @ \$480											\$47,250
Yearling sales	\$2,500									320 @ \$520			\$171,200
Cash available:	\$91,425	(\$28,227)	(\$31,777)	(\$35,327)	(\$42,877)	(\$46,427)	(\$50,777)	(\$69,827)	(\$77,377)	(\$80,927)	\$99,423	\$145,791	\$366,743

Operating Expenses:

Car & Truck													\$0
Chemicals								\$4,000					\$4,000
Conservation													\$0
Custom Hire (machine work)													\$0
Depreciation													\$0
Employee Benefits													\$0
Feed	\$19,800												\$19,800
Fertilizers							\$4,000						\$4,000
Freight & Trucking													\$0
Gasoline, Fuel & Oil	\$700	\$700	\$700	\$700	\$700	\$1,100	\$1,700	\$700	\$700	\$700	\$1,700	\$2,700	\$12,800
Insurance (other than health)	\$4,000												\$4,000
Interest - other													\$9,809
Labor hired	\$600	\$600	\$600	\$600	\$600	\$1,000	\$1,000	\$600	\$600	\$600	\$600	\$600	\$8,000
Lease & Profit-sharing													\$0
Rent or lease (Equip. etc.)													\$0
Rent or lease (Animals, Land)	\$16,702							\$7,000					\$23,702
Repairs & Maintenance	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$4,800
Seeds and plants							\$3,600						\$3,600
Storage and warehousing													\$0
Supplies	\$200	\$200	\$200	\$200	\$200	\$200	\$700	\$200	\$200	\$200	\$200	\$200	\$2,400
Taxes	\$3,500						\$3,500						\$7,000
Utilities	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$4,200
Veterinary, breeding, & medicine	\$6,600												\$6,600
Miscellaneous (specify)													\$0
Total Cash Expenses:	\$52,852	\$2,250	\$2,250	\$6,150	\$2,250	\$3,050	\$17,750	\$6,250	\$2,250	\$2,250	\$3,250	\$14,059	\$114,711

1) Advance on calves and purchase \$40,500 2) OILC  
3) BIA term note \$415,000 20yrs 9.25% \$46,246 4) Lease/purchase option w/bank \$44,168

OTHER DISBURSEMENTS:

Capital expenditures	\$12,000	20 cows @ \$600											\$12,000
Livestock purchases	\$53,500	Lvsck purchase and note 98809 payoff											\$53,500
Owner's withdrawal	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$15,600
Loan repayment													\$40,500
Total Other Disbursements:	\$66,800	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$130,914

Total Cash Disbursements:	\$119,652	\$3,550	\$3,550	\$7,550	\$3,550	\$4,350	\$19,050	\$7,550	\$3,550	\$3,550	\$3,550	\$3,550	\$338,725
TOTAL CASH, ENDING:	(\$28,227)	(\$31,777)	(\$35,327)	(\$42,877)	(\$46,427)	(\$50,777)	(\$69,827)	(\$77,377)	(\$80,927)	(\$84,477)	\$54,373	\$28,018	\$28,018

Monthly Cash Flow (Agri-Business)

Year 2

Name: Ron Long  
Date: 11/97 to 10/98

Month	11	12	1	2	3	4	5	6	7	8	9	10	Total
Cash beginning:	\$28,018	\$42,965	\$4,415	\$865	(\$6,685)	(\$10,235)	(\$14,585)	(\$33,635)	(\$41,185)	(\$44,735)	(\$48,285)	\$56,115	\$28,018
Grain									200 @ 25 @ \$3.50				\$17,500
Int subsidy and CRP	\$11,294												\$55,462
Calf sales 50% 144 @ \$375													\$54,000
Yearlings 235 @ \$350													\$129,250
135 @ \$280-20 mil @ \$400	\$45,800												\$45,800
Cash available:	\$85,112	\$42,965	\$4,415	\$865	(\$6,685)	(\$10,235)	(\$14,585)	(\$33,635)	(\$41,185)	(\$44,735)	\$98,465	\$154,283	\$330,030

Operating Expenses:

Car & Truck													\$0
Chemicals													\$4,000
Coarse ration													\$0
Custom Hire (machine work)													\$0
Deterochlorin													\$0
Employee Benefits													\$0
Feed	\$10,395												\$10,395
Fertilizers				\$4,000									\$4,000
Freight & Tractors													\$0
Gasoline, Fuel & Oil	\$700	\$700	\$700	\$700	\$700	\$1,100	\$1,700	\$700	\$700	\$700	\$700	\$1,700	\$2,700
Insurance (other than health)	\$4,000												\$4,000
Interest - other													\$929
Labor hired	\$600	\$600	\$600	\$600	\$600	\$1,000	\$1,000	\$600	\$600	\$600	\$600	\$600	\$8,000
Pension & Profit-sharing													\$0
Rent or lease (Equip. etc.)													\$0
Rent or lease (Agricult. Land)	\$16,702						\$7,000						\$23,702
Repairs & Maintenance	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$4,800
Seeds and plants							\$3,600						\$3,600
Storage and warehousing													\$0
Supplies	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$2,400
Taxes	\$3,500						\$3,500						\$7,000
Utilities	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$4,200
Veterinary, breeding, & medicine	\$4,000												\$4,000
Miscellaneous (specify)													\$0
Total Cash Expenses:	\$40,847	\$2,250	\$2,250	\$6,250	\$2,250	\$3,050	\$17,750	\$6,250	\$2,250	\$2,250	\$2,250	\$3,250	\$93,826

1) Advance on calves 135 @ \$280 \$37,800 2) OLC  
3) BIA term note \$415,000 20yrs 9.25% \$46,246 4) Lease/purchase option w/bank \$44,168

OTHER DISBURSEMENTS:

Capital expenditures													\$0
Livestock purchases			\$35,000	100 yr @ \$350									\$37,800
Owner's withdrawal	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$15,600
Loan repayment													\$90,414
Total Other Disbursements:	\$1,300	\$36,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$39,100	\$91,714

Total Cash Disbursements	\$42,147	\$38,550	\$3,550	\$7,550	\$3,550	\$4,350	\$19,050	\$7,550	\$3,550	\$3,550	\$42,350	\$96,893	\$272,640
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TOTAL CASH, ENDING:	\$42,965	\$4,415	\$865	(\$6,685)	(\$10,235)	(\$14,585)	(\$33,635)	(\$41,185)	(\$44,735)	(\$48,285)	\$56,115	\$57,390	\$57,390
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Monthly Cash Flow (Agri-Business)

Year 3

Date: 11/98 to 10/99

Name: Ron Long

	11	12	1	2	3	4	5	6	7	8	9	10	Total
Month													
Cash beginning:	\$57,390	(\$46,030)	(\$49,580)	(\$53,130)	(\$60,680)	(\$64,230)	(\$68,580)	(\$89,630)	(\$97,180)	(\$100,730)	(\$104,280)	(\$55,280)	\$57,390
Grain									200 @ 25 @ \$3.50			\$17,500	\$17,500
Interest subsidy		\$10,932										\$172,125	\$172,125
Calf sales 450@90¢ @ \$5425												\$84,500	\$84,500
Bred hit 130@3650												\$36,050	\$36,050
Hay sales 16300@27.50¢ less \$6070 @ \$33										1030 @ \$351	\$36,050		\$36,050
Cash available:	\$68,372	(\$46,030)	(\$49,580)	(\$53,130)	(\$60,680)	(\$64,230)	(\$68,580)	(\$89,630)	(\$97,180)	(\$100,730)	(\$50,730)	\$201,345	\$378,497

Operating Expenses:

Car & Truck													\$0
Chemicals													\$4,000
Cooperation													\$0
Custom Hire (machine work)													\$0
Depreciation													\$0
Employer Benefit													\$0
Feed	\$2,000												\$2,000
Fertilizers				\$4,000									\$4,000
Freight & Trucking													\$0
Gasoline, Fuel & Oil	\$700	\$700	\$700	\$700	\$700	\$1,100	\$1,700	\$700	\$700	\$700	\$1,700	\$2,700	\$12,800
Insurance (other than health)	\$4,000												\$4,000
Interest - other													\$8,050
Labor hired	\$600	\$600	\$600	\$600	\$600	\$1,000	\$1,000	\$600	\$600	\$600	\$600	\$600	\$8,000
Pension & Profit-sharing													\$0
Rent or lease (Barn, etc.)													\$0
Rent or lease (Animals, Land)	\$16,702												\$25,702
Repair & Maintenance	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$4,800
Seeds and plants													\$3,600
Storage and warehousing													\$0
Supplies	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$2,400
Taxes	\$3,500												\$7,000
Utilities	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$4,200
Veterinary, breeding, & medicine	\$6,600												\$6,600
Miscellaneous (specify)													\$0
Total Cash Expenses:	\$35,052	\$2,250	\$2,250	\$6,250	\$2,250	\$3,050	\$19,750	\$6,250	\$2,250	\$2,250	\$3,250	\$12,300	\$97,152

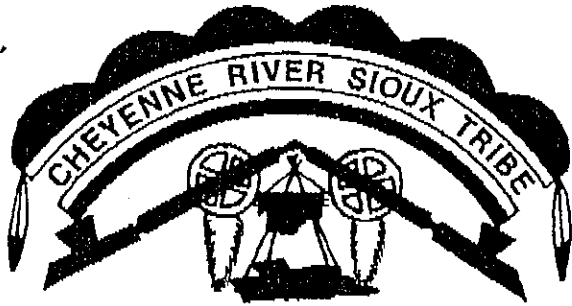
1) OLC 2) BIA term note \$415,000 20yrs 9.25% \$46,246  
 3) Land note \$478,000 20yrs 8.5% \$50,510

OTHER DISBURSEMENTS:

Capital expenditures													\$0
Livestock purchases	\$78,000	130 bred hits @ \$600											\$78,000
Owner's withdrawal	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$15,600
Loan repayment													\$96,756
Total Other Disbursements:	\$79,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$190,356
Total Cash Disbursements:	\$114,352	\$3,550	\$3,550	\$7,550	\$3,550	\$4,350	\$21,050	\$7,550	\$3,550	\$3,550	\$4,550	\$110,356	\$287,508

TOTAL CASH ENDING:

	(\$46,030)	(\$49,580)	(\$53,130)	(\$60,680)	(\$64,230)	(\$68,580)	(\$89,630)	(\$97,180)	(\$100,730)	(\$104,280)	(\$55,280)	\$90,989	\$90,989
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Cheyenne River Sioux Tribe

CREDIT OFFICE

P.O. Box 590

EAGLE BUTTE, SOUTH DAKOTA 57625

Telephone: 605-964-4000

FAX: 605-964-1180

WATS: 800-831-5975

December 10, 1996

Jim Nielsen, Asst Vice Pres  
Bank of Hoven  
P O Box 7  
Hoven, SD 57450

Jim,

This is the narrative on the notes to cash flow on Ronnie Long.

**YEAR 1)**

Existing wheat and millet are projected to bring \$12,125 and 97 wheat production to yield \$17,500. The interest subsidy is projected at \$22,000, the CRP at \$44,168. We project selling half of his 97 calf production in Oct 97 (300 at 90% for 270 calves total) with 135 at \$350 for \$47,250. Current yearlings of 10 head to be sold right away and 320 to be sold in Sep. The 320 in Sept comes from the advance on the 250 head he now owns plus the 110 head to be bought in the 98809 note payoff. He is projecting selling 40 culls at \$300 and taking the proceeds from this sale plus another \$300 to buy back 40 to keep his cattle numbers. The calves he retains will probably be the heifers and sell the steers so that he could run bulls with these and sell bred heifers instead of the 8 weight yearlings the following year.

**YEAR 2)**

Wheat sales are the same as year one with 200 Acres at 25 Bu/A and \$3.50 per bushel. The interest subsidy is projected at \$11,294 and the CRP at \$44,168. This is the last year for the CRP payment. The cow count is projected at 340 head this year, by keeping 20 head of the yearlings from the previous year (250 owned + the 110 bought less 320 sold), with half sold in the fall at 144 head (320 at 90% = 288). The proposal is to advance \$280 per head on the 97 calves and buy 100 head this year for 235 head to sell in Sep at \$550. He intends to sell 20 culls in Nov of 97. His cow count is now back to 300 head. The 144 to 150 head of heifers that are saved from this calf crop are to be added to the herd to make the cow count in 2000 at 450 head. Selling 20 culls reduces



the cows to 320 head.

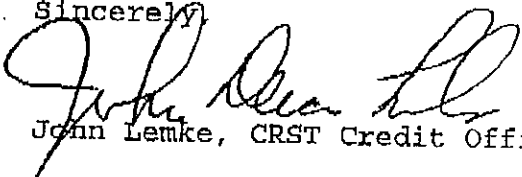
YEAR 3)

Grain sales are left the same at \$17,500. Interest subsidy at \$10,932. No CRP payment this year. The intent this year is to add 130 head of bred stock to the 320 for a total of 450 cows to calve this year with all of these calves sold in the fall for \$172,125. There would be an extensive culling in the fall of 99, with the bred stock on the place in Oct will be at 580 head (320 head of cows plus the 144 heifers from the 1997 calf crop plus the 130 head of bred heifers purchased this year). There is a sale of 130 head of bred stock projected to be culled that should leave a good young pregnancy tested herd of at least 450 head for 2000 and later years where cull sales should be about equal to the calf sales in revenue. With no more CRP, there will be those Acres that can be hayed plus the 320 Acres of Alfalfa for a total of about 1630 of hayland. Maciejewski's will hay this for 50% of the crop, which would leave Ronnie's share at 1,630 tons of hay. He will need about 600 tons for his own use, so he could sell the 1030 tons. We projected this at \$35/T.. The payment on the land acquisition would be \$478,000 over a 20 year period at 8.5% would have a payment of \$50,510.

This plan shows a positive cash flow of right at 8% all three years with a total positive cash margin of \$88,581. Another consideration is that the cattle numbers have increased to 450 head from the now 300 head.

Hope this explains what we tried to do. If you have any questions please call.

Sincerely,

  
John Lemke, CRST Credit Officer

# FINANCIAL STATEMENT

Name Ronnie I Long Family Address P O : 272, Timber Lake, SD 57656

To Bureau of Indian Affairs

For the purpose of obtaining loans and discounting paper with you, and otherwise procuring credit from time to time, I furnish the following true and accurate statement of my financial condition.

I agree to and will notify you immediately in writing of any materially unfavorable change in my financial condition, and in the absence of such notice or of a new and full written statement, this may be considered as a continuing statement and substantially correct; and it is hereby expressly agreed that upon application for further credit, this statement shall have the same force and effect as if delivered as an original statement of my financial condition at the time such further credit is requested.

Financial condition as of December 9, 1996

ASSETS			LIABILITIES			
			(Omit Cash)	Date Incurred	Date Due	(Omit Cash)
<b>CATTLE</b>						
<u>305</u> Cows 1-4	\$ 700	\$ 213,000	ENCUMBRANCE ON LIVESTOCK			
Cows over 4			To <u>BOH</u>			415,000
Cows Dairy			Security			
Heifers 1 1/2			To <u>BOH</u>			53,500
Heifers 1's			Security			
<u>250</u> Steers Yearlings	350	87,500	UNSECURED LOANS			
Steers 2's			To Bank			
<u>110</u> Calves	305	31,550	To			
Bulls			PURCHASE CONTRACTS			
<b>TOTAL CATTLE</b>		<b>334,550</b>	(payments due within 12 months)			
<b>HOGS</b>			To			
Sows			For			
Shoats			To			
Pigs			For			
Boars			To			
<b>TOTAL HOGS</b>			For			
<b>SHEEP</b>			ACCOUNTS PAYABLE			
Ewes 1-4			To			
Ewes over 4			For			
Lambs			To			
Bucks			For			
<b>TOTAL SHEEP</b>			To			
<b>OTHER</b>			OTHER CURRENT LIABILITIES			
<u>12</u> Horses	\$ 1,500	18,000	(e.g. RE taxes, cash rent, due relatives)			
<b>TOTAL OTHER</b>			To			
<b>TOTAL LIVESTOCK</b>		<b>352,550</b>	To			
<b>FEED &amp; GRAIN ON HAND</b>			On Real Estate			
Bu. Corn			On Income			
Bu. Oats			To			
Bu. Milo			To			
Bu.			To			
B-T Alfalfa			REAL ESTATE MORTGAGE DUE			
<u>1400</u> B-T Mixed Hay	40	56,000	WITHIN 12 MONTHS			
T Silage			To			
B-T			To			
<b>TOTAL FEED &amp; GRAIN</b>		<b>56,000</b>	<b>TOTAL CURRENT LIABILITIES</b>			<b>468,500</b>
<b>OTHER CURRENT ASSETS</b>			PURCHASE CONTRACTS LESS AMOUNT			
Cash in Bank		500	DUE WITHIN 12 MONTHS			
Accounts & Notes Receivable			To			
Government Bonds			Less amount due within 12 Mo.			
Cash Value Life Insurance			To			
Other Investments			Less amount due within 12 Mo.			
Other Current Assets			Net amount owing on contracts			
<b>TOTAL CURRENT ASSETS</b>		<b>409,050</b>	REAL ESTATE MORTGAGE:			
Machinery & Equipment (over)		116,700	To <u>HUD</u>			15,600
Automobiles			Less amount due within 12 Mo.			
Trucks			To			
<b>REAL ESTATE</b>			Less amount due within 12 Mo.			
<u>15</u> Acres in <u>Dewey</u> County <u>250</u>		3,750	To			
Acres in _____ County _____			Less amount due within 12 Mo.			
Household		20,000	Net amount owing on Real Estate			
House in country		90,000	<b>TOTAL LIABILITIES</b>			<b>484,100</b>
<b>TOTAL ASSETS</b>		<b>857,500</b>	NET WORTH	24%		<b>155,400</b>



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Aberdeen Area Office

115 Fourth Avenue S.E.

Aberdeen, South Dakota, 57401

IN REPLY REFER TO:

Community Services/Economic Development

MC-305

FEB 14 1997

James Nielsen  
Assistant Vice President  
Bank of Hoven  
P.O. Box 7  
Hoven, South Dakota 57625

Dear Mr. Nielsen:

This letter is to recap your conversation with Loan Specialist, Stacey Johnston on February 3, 1997 and respond to your December 12, 1997 submittal on the Long Family Land Cattle Co. Inc..

Your December 12, 1997<sup>6</sup> request involved a restructure of the term guaranty, a new \$85,000 line of credit, a LIFO on \$41,000 to purchase livestock, and an increase of the guaranty percentage. Loan Specialist, Stacey Johnston informed you that this kind of request would have to be viewed as a modification, which requires a more complete application. Modification criteria is clearly outlined in your Loan Guaranty Agreement and 25 CFR 103.21. This reference material is the basis for our programs and should be adhered to when requesting, modifying, servicing and collecting guaranteed loans.

We understand the emergency situation caused by the severe winter conditions. Therefore, we concur with a loan for emergency expenses. These expenses should be documented and readily available to the Agency Superintendent. This decision is made with the intention of preserving collateral. Refer to 25 CFR 103.22 for further direction and documentation.

We will not act on your December 12, 1997<sup>6</sup> requests until we receive a complete application. Under separate cover, we are again sending a copy of 25 CFR 103.


  
Area Director

Exhibit E

February 18th, 1997

Bank of Hoven  
PO Box 7  
Hoven, SD 57450

RE: Ronnie Long  
Box 272  
Timber Lake, SD 57656

Dear Jim,

December 5th, 1996 - I was in Hoven and discussed future plans about my cattle operation.

December 11th, 1996 - Jim Neilsen faxed papers to John Lemke's office. All that was needed is Stacey Johnston's and the Area Director's signatures.

After deciding that we were going to keep the calves and run for yearlings; I went down on 12-13-96 and plowed a road, cleaned and set up corrals. I called Tim Bollinger and lined up trucks for 12-15-96 to haul cattle out. 12-14-96 was planned to bunch the cattle.

December 13th, 1996 PM - it started to blizzard for five days through December 18th, 1996. Everything that was opened on the 13th of December blew shut and county roads were completely blocked.

From this point on when the county roads did get opened and it was possible to get in with a tractor (as I had left my tractor at Doc Pesicka's) we fed. When we couldn't get in with the tractor; we took snowmobiles in and caked the cows.

It was impossible to get the cattle out. If we could have gotten them out it was impossible to get them back to Headquarters due to the county roads not being wide enough for semitractor-trailers until January 29, 1997. This is when Mike Peterson widened our road with a CAT.

February 2nd, 1997 - Mike Peterson went down and plowed the cows out. Contrary to the malicious rumors that they were plowed out two or three times and not moved; this is the only time they were plowed out.

Exhibit F

Jim Nielsen (2)  
February 18th, 1997

Between 12-14-97 & 2-2-97 I had trucks lined up three separate times. The reason being is Tribal emergency snow plowing was to plow me out and never did because it would stonn and they would send their equipment elsewhere.

If there is any questions about plowing my cattle out contact the Dewey County Highway Superintendent, Gregg Bourland, Tim Bollinger (trucker) or Mike Peterson who plowed me out.

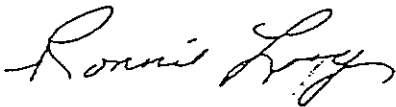
In the result of not having the Kenneth Long Estate settled and operating money NOT available they hay and cattle were never removed. Also, the cattle never got insured which the blanket insurance would have cost approximately \$2,000.00 covering the cattle plus. The insurance was brought to everyone's attention the first part of December.

The cattle were in the best location possible for most winters, but due to blocked roads and bad weather conditions it was impossible to get feed to them on a daily basis.

I had minimal losses until the blizzard of January 15th & 16th when the wind chill was 50 to 80 degrees below zero and the cattle that drifted out of the draws are the ones that died.

In light of all of this, the persons who start these vicious rumors must be trying to make themselves look better in the eyes of the bank. I feel bad enough losing these cattle let alone people starting false accusations.

Sincerely,



Ronnie Long

CC John Lemke, CRST Credit Officer  
Russell McClure, Cheyenne River Agency Superintendent  
Stacey Johnston, Area Loan Specialist  
Delbert Brewer, Area Director

Rec'd 1/20/04

CHEYENNE RIVER SIOUX TRIBAL COURT  
CHEYENNE RIVER SIOUX TRIBE  
CHEYENNE RIVER INDIAN RESERVATION

IN CIVIL COURT  
IN GENERAL SESSION  
APPELLATE COURT

BANK OF HOVEN, NOW KNOWN AS  
PLAINS COMMERCE BANK  
APPELLANT,

vs.

CERTIFICATE OF SERVICE

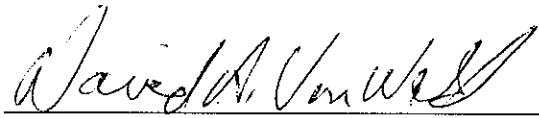
LONG FAMILY LAND AND CATTLE  
COMPANY, INC., - RONNIE AND  
LILA LONG  
RESPONDENTS.

R-120-99

Comes now, David A. Von Wald, Attorney for Appellant, Plains Commerce Bank, and hereby certifies that I served by first class mail, postage prepaid, a true and correct copy of the APPELLANT'S BRIEF ON the 15<sup>th</sup> day of January, 2004, addressed to the following:

James P. Hurley  
P.O. Box 2670  
Rapid City, South Dakota 57709-2670

Dated this 15<sup>th</sup> day of January, 2004.



David A. Von Wald  
Attorney for Plains Commerce Bank  
P.O. Box 468  
Hoven, South Dakota 57450  
605-948-2550

cc: 1/20/04