

1 CHEYENNE RIVER SIOUX TRIBAL COURT  
2 CHEYENNE RIVER SIOUX TRIBE  
3 CHEYENNE RIVER INDIAN RESERVATION

IN CIVIL COURT

4 \* \* \* \* \*

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

Plaintiffs,

JURY TRIAL  
R-120-99

-vs-

7 EDWARD AND MARY MACIEJEWSKI  
8 and RALPH H. AND NORMA J. PESICKA,  
9 and THE BANK OF HOVEN,

VOLUME II OF III  
PAGES 228 TO 430

Defendants.

10 \* \* \* \* \*

11 TIME AND PLACE: DECEMBER 11, 2002  
12 CHEYENNE RIVER SIOUX TRIBAL COURT  
13 EAGLE BUTTE, SD 57625

14 BEFORE: HON. B. J. JONES  
15 SISSETON-WAHPETON SIOUX TRIBAL COURT  
16 P.O. BOX 568  
17 AGENCY VILLAGE, SD 57262-0568

18 APPEARANCES: MR. JAMES P. HURLEY  
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MACIEJEWSKI AND RALPH AND NORMA PESICKA

23 ALSO PRESENT: MR. AND MRS. RONNIE LONG - PLAINTIFFS  
24 MR. CHUCK SIMON - EXECUTIVE VICE PRESIDENT  
25 OF DEFENDANT BANK OF HOVEN

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\* - RULING OF ADMISSIBILITY RESERVED BY THE COURT

N/O - NOT OFFERED

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1 (THE FOLLOWING PROCEEDINGS TOOK  
2 PLACE ON DECEMBER 11, 2002,  
3 DUPLICATE #5 TAPE #1:)

4 THE COURT: Welcome back, Jurors. It's been a while.  
5 Hopefully, you remembered everything from last Friday.  
6 Did everyone get their notes back?

7 THE JURY: Yeah.

8 THE COURT: Okay. We're going to start off where we left  
9 off, and I think that would mean, Ronnie, you were on the  
10 stand. And Mr. Von Wald is asking you some questions on  
11 cross-examination. So get yourself situated there.  
12 Again, Jurors, after all of the questioning of Ronnie by  
13 the attorneys, if you guys have any questions, we'll have  
14 you pass them up here, and we'll take a look at them and  
15 see if we should ask them, so . . .

16 MR. HURLEY: Your Honor, may I approach with the appropriate  
17 changes?

18 THE COURT: Sure. Yeah. Is that -- I think this is actually  
19 the Court's. Are you going to make the changes to these?

20 MR. HURLEY: Yes.

21 UNIDENTIFIED: Do we need to move the speakers over there?

22 THE COURT: What's that?

23 UNIDENTIFIED: Do we need to move the speakers over there?

24 THE COURT: Do we need to move that mike over there, Dale?

25 THE CLERK: (INAUDIBLE).

1 THE COURT: (INAUDIBLE). Can you move that over there, Dale?

2 UNIDENTIFIED: Which one?

3 THE COURT: Just take that mike over there.

4 MR. VON WALD: And then do you need one here, too?

5 THE COURT: Yeah. Just put that one over there. Yeah, that  
6 will . . .

7 MR. VON WALD: And do you have the exhibits that were  
8 defendant's exhibits (INAUDIBLE)?

9 THE COURT: Here is the Court file with all of the  
10 defendant's exhibits right there. Okay. Go ahead. This  
11 is the original file, so originals would go in there. I  
12 don't know if you -- are you going to just erase numbers  
13 or are we just going to redo the whole exhibit? Probably  
14 better to redo the whole one.

15 MR. HURLEY: (INAUDIBLE).

16 THE COURT: Okay. Go ahead.

17 CONTINUED CROSS-EXAMINATION

18 BY MR. VON WALD

19 Q Ronnie, let's get back to -- I think where we left off  
20 last Friday -- and I'm not sure about this -- but the last  
21 exhibit that we had was Defendant's Exhibit 6, and I was  
22 going to ask you one last question. And the Judge said,  
23 "One." Do you remember? And I said, well, I better quit  
24 because it was probably going to be more than one? At any  
25 rate, I hand you Defendant's Exhibit 6, and I ask you what

1           it -- what is on that exhibit, please?

2   A        It's a financial statement.

3   MR. VON WALD:    I think that was admitted into evidence, wasn't  
4           it, Judge?

5   THE COURT:       Yes.

6   MR. VON WALD:    Okay.

7   Q        (BY MR. VON WALD)  And it's the financial statement of  
8           Long Family Land and Cattle Company, Inc.?

9   A        It's Ronnie Long.

10  Q        Okay.  Would it include the assets of Long Family Land and  
11           Cattle Company, Inc., also?

12  A        Yeah.  It includes some pasture -- payment for pasture.

13  Q        Does it include livestock on there, Ronnie, like the  
14           livestock --

15  A        Let's see.  Okay.

16  Q        It includes basically the corporate assets and the  
17           corporate debt, right?

18  A        Yes.

19  Q        And it also includes your personal asset which you list as  
20           your home on the bottom there?

21  A        Yes.

22  Q        And about \$20,000 worth of household items that you've  
23           got?

24  A        Yes.

25  Q        And you've got your home listed for \$90,000 value?



1 A Yeah.

2 Q That's the home outside of Timber Lake?

3 A Yes. That's what it was valued when I -- in the lease  
4 purchase deal -- when it was sold to HUD or HUD sold it to  
5 the Tribe or however that works.

6 Q And you made payments on a \$90,000 home how much a month  
7 then?

8 A \$64 a month.

9 Q \$64 a month?

10 A Yes.

11 Q Okay. What kind of home is that?

12 A It's a four-bedroom.

13 Q And it was built when?

14 A Approximately ten years ago.

15 Q Ten years ago. Okay. And do you have a -- since that  
16 financial statement there, have you added anything else to  
17 that home out there, added around the home or anything,  
18 any buildings on it?

19 A No, I haven't. I haven't built any buildings.

20 Q Okay. And now, about this same time that that financial  
21 statement was done, that was after you had lost all of  
22 your cattle, right?

23 A It was in -- yeah, February or March. It was in March.

24 Q March of 1997?

25 A Yes.

1 Q And so what -- what was the purpose for making that  
2 financial statement out, Ronnie?

3 A I don't know.

4 Q Well, weren't you looking to get more operating money to  
5 operate?

6 A I -- I was, but I was -- I guess I was waiting for this  
7 loan agreement to come through.

8 Q Right. I understand that. But when the -- when you lost  
9 all the cattle, that \$85,000 line of credit, and the cash  
10 flow that went with that, wouldn't work, would it not?

11 A It wouldn't have worked to start with.

12 Q Well, who prepared it?

13 A I don't know. Either -- either John Lemke and Jim  
14 Nielsen. It isn't the ones we've prepared. Not only  
15 that, them were -- them were made up after our -- our  
16 contract -- loan contract and stuff was signed, the 5th of  
17 December. That was signed -- and then afterwards these  
18 other cash flows followed, and I never seen them until  
19 Friday, this last Friday.

20 Q Well, was John Lemke working with you?

21 A We had done our whole preliminary plan before it -- it was  
22 like the end of October.

23 Q Who did that plan?

24 A There was all of us. There was you, Chuck, Jim Nielsen.

25 Q I didn't help you work on any cash flow, right?

1 A Denny -- we was all in the -- in the board of director's  
2 room in the basement of the Bank of Hoven.

3 Q That's when you signed the lease with option to purchase,  
4 right?

5 A No, this was before. This was when the whole plan was  
6 made.

7 Q Okay. But I didn't help you make anything with the --

8 A You was present.

9 Q -- with the cash flows, Ronnie. I did not help you do  
10 that, right?

11 A No. No, I didn't say you did. I said you was present  
12 when -- when all of this was agreed upon --

13 Q Right.

14 A -- for our loan contract.

15 Q Right. Yeah. But my question is: Who prepared the cash  
16 flows?

17 A Denny Huber, myself worked on it. Everybody worked on it  
18 that was at that meeting on November -- well, it wasn't  
19 November 1<sup>st</sup>. It was like October 28<sup>th</sup>. And that was  
20 these here cash flows. The first ones we had on the  
21 board. And then after I signed the contract, then these  
22 other ones popped up, and I don't know where -- who made  
23 them or where they came from.

24 Q Well, if you look down here on these cash flows that the  
25 Bank had -- excuse me -- they are a part of the exhibit

1 under this Exhibit 1 -- that's 8A. This is confusing with  
2 an 8A in here now.

3 A The 8A's are the ones that went with the whole plan to --  
4 to do this contract.

5 Q (INAUDIBLE).

6 A On Exhibit 8.

7 THE COURT: The best way to figure these out, if you look at  
8 the date they were faxed. This is 8A. It's got an  
9 October date.

10 THE WITNESS: Right.

11 MR. VON WALD: Okay.

12 THE COURT: And the December date is 8.

13 Q (BY MR. VON WALD) This is October.

14 A We had a meeting --

15 Q Here's October. Here's October's -- four of them are  
16 October, and one of them is December according to this.

17 A There should be three of them marked December 11<sup>th</sup>, and  
18 two of them marked October 29<sup>th</sup>, the original ones.

19 Q Well, there's copies of --

20 MR. VON WALD: There's something wrong with the file here,  
21 Judge. There's -- these two are identical copies.

22 THE COURT: This is 8A. This is the October cash flows.

23 MR. VON WALD: These two are identical copies.

24 THE COURT: Are you saying --

25 MR. VON WALD: There's something wrong with this file here.

1 THE COURT: Okay. So this is October, too. Are you looking  
2 for the December ones?

3 MR. VON WALD: Here's, one, two, and three. So we've got two  
4 copies of 8A.

5 THE COURT: We'll just take one out.

6 MR. VON WALD: Okay. Now I understand it.

7 Q (BY MR. VON WALD) Okay. When you look at -- this set was  
8 faxed on 12-11 of '98, where was that faxed from?

9 A Cheyenne River Chairman's Office.

10 Q Who works over there?

11 A John Lemke.

12 Q Did you give him those figures to put in there?

13 A No, I didn't.

14 Q Do you know who did?

15 A No, I don't.

16 Q When I hand you 8A, which is marked as 8A, it's got in  
17 here 62,000 as an example. It's got in there on the top  
18 \$62,500, right?

19 A Yes.

20 Q Where was that come from -- coming from?

21 A There was two, 62,500s.

22 Q Where --

23 A One was coming from Herman Schumacher, and the other one  
24 was incorporated with this \$96,050, and that was coming  
25 from the -- our agreement we made on the -- on the -- in

1           that November 1<sup>st</sup> letter.

2   Q       Agreement with who?

3   A       That was the agreement we made -- all of us sitting over  
4           there at that meeting.

5   Q       Well, what do you mean? Where was the money going to come  
6           from?

7   A       It was going to come from a line of credit, and it was  
8           going to come from that contract.

9   Q       That 62,500 was coming from (INAUDIBLE)?

10  A       This was -- part of it was, went into that agreement.  
11           That's why these cash flows were made. It's all based on  
12           that November 1<sup>st</sup> letter.

13  Q       Was that into evidence?

14  A       I'll check. It's in here. I just seen it.

15  MR. VON WALD:     May I approach, Your Honor?

16  THE COURT:        Sure.

17  Q       (BY MR. VON WALD) Oh, it's not one that's in there,  
18           Ronnie. This is not into evidence. This is something  
19           else that your -- you and your counsel got together and  
20           put in this little booklet after your original testimony  
21           then. Is that what you are saying?

22  A       I believe that's what it probably is.

23  Q       Okay.

24  A       It's got to be in here. This is what that whole plan was  
25           built on. Like I testified Friday, them 8A all came off

1 of this.

2 Q Where is the second page of this letter?

3 A I don't know. Is there a second page?

4 Q Well, this letter isn't signed by anybody, and I'm sure  
5 that I've seen this letter before, and there is a second  
6 page to it. But what are you saying, Ronnie, that this --  
7 this loan agreement here on November 1<sup>st</sup> was current by  
8 the time that you entered into the agreement on  
9 December 5<sup>th</sup>?

10 A This is what everybody said in the basement at Bank of  
11 Hoven, and it was the basis for our cash flow and our loan  
12 on December 5<sup>th</sup>, our loan agreement. This was the whole  
13 basis of it.

14 Q It says, "Another loan will be made to Long Family Land  
15 and Cattle Company, Inc., for \$100,000 to give them credit  
16 for 250 calves at \$250 -- \$250 per head or 62,500"?

17 A Yes.

18 Q So are you saying that that loan agreement mentioned that  
19 on there at all?

20 A No, it don't. This was a plan, and the loan agreement  
21 when I got over there December 5<sup>th</sup> didn't have it on  
22 because I didn't make the loan agreement up, you people  
23 did.

24 Q Right.

25 A And see, this 100,000 wasn't on there. But it still cash

1 flowed with our cash flows that we had built. You had the  
2 deed to the land. And what was I to do? I needed the  
3 operating loan and, I needed the extra cattle, so I signed  
4 it because it still cash flowed and worked.

5 Q Let me ask you this. Weren't there a lot of negotiations  
6 that went on during the summer of 1996 between you and the  
7 Bank, a lot of proposals that went on?

8 A This was the final one --

9 Q Weren't there -- would you answer my question? Weren't  
10 there a lot of proposals that went on?

11 MR. HURLEY: Your Honor, I'm going to object. He is  
12 attempting to answer.

13 THE COURT: Well, it's a yes or no. So if you can answer yes  
14 or no, Ronnie, just answer yes or no.

15 Q (BY MR. VON WALD) Yes or no?

16 A Yeah, there was some.

17 THE COURT: Okay.

18 Q (BY MR. VON WALD) There were a lot of negotiations going  
19 on, weren't there?

20 A I wouldn't say a lot. There was some negotiations going  
21 on. There was planning going on.

22 Q At one time wasn't it even proposed to get a BIA  
23 guaranteed loan? I mean -- excuse me -- an SBA guaranteed  
24 loan?

25 A Yeah.



1 Q And did they talk about possibly an FHA guaranteed loan or  
2 getting money through FHA?

3 A That's what I said they --

4 Q A lot of things, right?

5 A These were -- these were options and plans, but this is  
6 what it turned out to be when we all met.

7 Q Well, if -- I see that the second page conveniently is not  
8 here, Ronnie. But I will bet you when I find the second  
9 page -- and I will -- I will bet it will say this is not a  
10 confirmed plan.

11 A I never did. I never --

12 THE COURT: That's not a question, so I will strike that.

13 You can ask him a question, but you can't testify.

14 Q (BY MR. VON WALD) Do you know if there was a second page  
15 to that?

16 A I don't know if there was or not. I suspect that it was a  
17 proposed plan, and that's why this \$100,000 wasn't on the  
18 loan agreement.

19 Q It wasn't agreed to by the Bank, was it?

20 A Not the 100,000. But if -- the 100,000 isn't on the cash  
21 flows, either.

22 Q That's right. That's my point. The 100,000 wasn't on the  
23 cash flows that are Exhibit 8A because that's what -- the  
24 Bank didn't agree to loan you the 100,000, did they?

25 A This was all agreed upon. That was a proposal and

1 everybody agreed that day. When we all got done with  
2 this, everybody agreed. We even had Stacey Johnston from  
3 the Area Credit on the speaker phone.

4 Q That it might work?

5 A Yeah.

6 Q We're going to try this?

7 A Yeah.

8 Q And then, of course, what has to happen is -- thanks for  
9 the loan committee -- has to either approve or disapprove  
10 that then, don't they?

11 A Well, I imagine, yes.

12 Q Yeah. And so when -- when it went to the Bank, that was  
13 not approved by the Bank, was it?

14 A I don't know, because I never made that contract up. That  
15 wasn't up to me.

16 Q Well -- well, what you did sign, was the loan agreement,  
17 Ronnie?

18 A Yeah.

19 Q Right?

20 A Yeah.

21 Q And the loan agreement, of course, does not mention  
22 anything at all about buying another -- about lending you  
23 another \$100,000, does it?

24 A It makes a reference of loaning me \$70,000.

25 Q Right. And instead --

1 A And 53,000.

2 Q Right. And instead 85,000 was asked for, wasn't it?

3 A That's because them cash flows that was submitted after I  
4 signed the contract, that's because they don't work very  
5 well. We didn't need that kind of credit on the cash  
6 flows we built on this program.

7 Q Well, if you didn't need that line of -- if you didn't  
8 need the 85,000, and you only needed 70,000, then these  
9 cash flows wouldn't have indicated that, would they have?

10 A Them cash flows indicate that I needed 85,000.

11 Q That's what I'm getting at. They indicated that you  
12 needed \$85,000, correct?

13 A But also on these cash flows there isn't a line of credit,  
14 and you can't operate a ranch or any other business  
15 without a line of credit.

16 Q The line of credit is right here. This is where it shows  
17 the amount of money that you need. On the bottom of the  
18 eighth month, it shows that you need a maximum of 85,000.

19 A Okay.

20 Q That's where the line of credit comes from.

21 A Okay. Then how does this work at the end of the first  
22 month? I'm in a deficit of \$28,000?

23 Q That's where they get the line of credit. So that --

24 A Don't you usually start a cash flow with your line of  
25 credit up here at the beginning cash?

1 Q Listen, I'm not expert at drawing line of credits or  
2 drawing cash flows out, but there was a number of them  
3 submitted. Do you see where this cash flow required  
4 \$85,000? Because at one time you would be short on  
5 85,000, right?

6 A I didn't ask for that cash flow. I signed the contract on  
7 the other cash flows in the agreement. This was made up  
8 six or seven days later after I signed the contract.

9 Q That's right.

10 A And not by me.

11 Q Did you give any of these figures to John Lemke?

12 A No.

13 Q Where did they come from?

14 A Our deal was already done. I already signed the contract.  
15 So why should I make up new cash flows? That's  
16 ridiculous.

17 Q Did you have anything to do with the cash flow that  
18 required \$40,595 worth of money to come in? Did you have  
19 anything to do with that cash flow?

20 A I can't remember.

21 Q Well, did you want some additional operating money after  
22 your cattle had died when the \$85,000 line of credit  
23 couldn't come in, wasn't going to come in any more?

24 A I -- I can't -- I don't know if I -- I don't know if I  
25 helped build any cash flows. I don't know. I can't tell

1           you.

2   Q       Well, where would John Lemke get a name like Retter,  
3           Retter?

4   A       Who's Retter?

5   Q       I don't know. It appears on one of the cash flows. Where  
6           did he get the idea? It says pasture yearlings, Retter.  
7           R-E-T-T-E-R it looks like or R-E-I-T-E-R. I'm not sure.  
8           Can you see that?

9   A       I was going to pasture some yearlings for Retter, Ray  
10          Retter.

11   Q       Well, you must have given him that information then,  
12          right?

13   A       I might have told him I was pasturing some cattle and  
14          stuff, but I don't know if I helped make any of those cash  
15          flows out.

16   Q       Well, didn't you tell him how many you were going to  
17          pasture?

18   A       I probably did.

19   Q       Were you going to pasture some?

20   A       But I didn't pasture this many from Retter, I don't think.

21   MR. HURLEY:       Your Honor, point of clarification? Are we  
22                  looking at cash flows in Exhibit 8 or 8A?

23   MR. VON WALD:     6.

24   THE COURT:        No. I think we're looking at Defendant's 6 for  
25                  the record.

1 Q (BY MR. VON WALD) So -- so you had a plan at that time  
2 to -- to change your operation around somewhat, right?

3 A Well, I probably had to change my operation after losing  
4 cattle.

5 Q Right. The cattle were gone.

6 A So I had to pasture some cattle.

7 Q Correct. And you still had the pasture, right?

8 A Correct.

9 Q So you are going to make use of it, right?

10 A Right.

11 Q And so you somewhat made up a cash flow that was faxed  
12 over to the Bank, right?

13 A Right. Evidently.

14 Q And on that cash flow it shows that you were going to  
15 pasture some cattle for Retter?

16 A Yes, it does.

17 Q How many head?

18 A 613 head.

19 Q What was the income going to be from that?

20 A 29,000.

21 Q Did you do that then or not?

22 A Yes, I did.

23 Q You received 29,000 from him?

24 A Like I said, I don't remember exactly what -- how many I  
25 did pasture, ended up.

1 Q Okay. And it said the pasture rent of 200 head at \$13.50  
2 times five and a half months. You were going to  
3 apparently pasture some more cattle out then?

4 A On -- where are you pointing to again? Sorry.

5 Q Right down here, pasture 200 head.

6 A Evidently.

7 Q Did you -- so did you pasture about 800 head of cattle?

8 A No. I couldn't pasture that many on my lease.

9 Q But that appears there, doesn't it, on the cash flow,  
10 right?

11 A It shows it on this cash flow.

12 Q And that was not prepared by the Bank, was it?

13 A This wasn't, no. I don't think this was. Can I see that  
14 a second, please? Okay.

15 MR. HURLEY: Do you have an extra copy of that, Counsel? I  
16 didn't get a copy. Were you through with it?

17 MR. VON WALD: Yes.

18 MR. HURLEY: Okay.

19 Q (BY MR. VON WALD) Now, when you finally got your \$40,595  
20 line -- operating line of credit approved, that was  
21 April 1st of 1997, we said before; isn't that right?

22 A Yes.

23 Q And that's what you signed the note for?

24 A Yes.

25 Q And you're in there again by that time in March of 1997,

1 you had entered into some cattle agreements, right, with  
2 some people, with somebody?

3 A I don't know what dates they were.

4 Q Well, did you enter into any written cattle agreements  
5 with anybody like Ray Retter?

6 A I don't know what the date was, but I entered into an  
7 agreement with him for some cattle.

8 Q A written agreement where you were going to take care of  
9 someone's cattle, right?

10 A Yeah. And I was giving the Bank half the pasture.

11 Q Half of the rent you mean?

12 A Yes.

13 Q You were giving that to them to pay off debt, you mean?

14 A Yes.

15 Q Okay. And all of that was in your cash flow, wasn't it,  
16 that -- the cash flow that was reflected on -- to the  
17 \$40,595 loan?

18 A It's in that cash flow, I think. But like I said, I don't  
19 know how many head we ended up with.

20 Q Right. Now, looking at that cash flow that you have right  
21 there --

22 THE COURT: Which exhibit is this?

23 MR. VON WALD: This is not marked as an exhibit yet, Your Honor.

24 THE COURT: Oh.

25 Q (BY MR. VON WALD) Looking at that cash flow, does that



1 cash flow that --

2 MR. VON WALD: Actually, my intent is to get that in under a  
3 different witness; but I can offer it right now, too, I  
4 guess, if Mr. Hurley has no objection.

5 MR. HURLEY: Do you have a copy? Let me take a look at it.

6 MR. VON WALD: Why don't you take a look at it, Jim.

7 A I don't know where this selling 400 ton of hay came from.

8 Q (BY MR. VON WALD) Did you have 400 ton of hay?

9 A I'm sure I did.

10 Q Okay. Let me show that to your counsel.

11 A What month is it showing that we sold?

12 Q This one won't be a part of the same exhibit.

13 (INAUDIBLE, WHISPERED DISCUSSION  
14 WAS HAD BETWEEN MR. VON WALD AND  
15 MR. HURLEY).

16 MR. HURLEY: No objection to the letter because that's to  
17 Ronnie. (INAUDIBLE). It depends on what he says.

18 MR. VON WALD: So this is the cash flow that you --

19 MR. HURLEY: I don't know if he got that or what.

20 THE COURT: This is Defendant's 7?

21 MR. VON WALD: I will mark this as exhibit --

22 THE COURT: Defendant's 7.

23 MR. VON WALD: Right.

24 Q (BY MR. VON WALD) I will hand you now what has been  
25 marked as Defendant's Exhibit 7, and ask you if you would

1 look at that if you would, Ronnie? Are these documents  
2 that went along with your \$40,595 operating line of credit  
3 that you received April 1<sup>st</sup> of 1997?

4 A I don't remember, but that's what this says.

5 Q Okay. Well, just look at the first document. It's a  
6 letter, right, to you? Isn't that right?

7 A Yes.

8 Q Okay. And look at the cash flow, which is what you were  
9 looking at before, Ronnie.

10 A Okay.

11 Q The cash flow there shows that at one point you needed  
12 \$40,595, right? You had a minus \$40,595?

13 A Yes.

14 Q And does that cash flow show anything at all about a LIP  
15 payment?

16 THE COURT: LIP?

17 MR. VON WALD: LIP payment, Livestock Indemnity Program payment.

18 A Not that I see.

19 Q (BY MR. VON WALD) Well, at the time this cash flow was  
20 entered into, of course, you didn't know that -- what you  
21 were going to receive because of the disaster and loss of  
22 your cattle, right?

23 A Yes.

24 Q You did know at that time?

25 A No.

1 Q No. And so that's probably why it wouldn't have been in  
2 that cash flow; isn't that correct?

3 A Probably.

4 Q And you received how much under your LIP, your Livestock  
5 Indemnity Program?

6 A 48.

7 Q \$48,870?

8 A It was 48 something.

9 Q Okay. And you received that when?

10 A I can't remember. I would have to look.

11 Q During the summer of 1997?

12 A It was the fall, I think, or something.

13 Q August or so?

14 A I can't remember for sure.

15 Q Okay. At any rate, this cash flow here lists a payment,  
16 doesn't it, on your -- your term note?

17 A 46 -- 46,200. Or is it the 44 --

18 Q Well, the 44,198 --

19 A Is the CRP payment.

20 Q -- is the CRP. And actually that year the Bank got that,  
21 didn't they?

22 A Yeah.

23 Q You show that in this cash flow here as you having  
24 received it, but -- but you really -- and then you show it  
25 paying out, right?

1 A Right.

2 Q But that really didn't happen, did it? The Bank received  
3 it. You never did receive it, right?

4 A I guess.

5 Q Okay. So basically, what the cash flow shows it's just  
6 one -- it shows the income and outcome and they equal,  
7 they zero out, right?

8 A Right.

9 Q But as far as the payments are concerned, it shows that  
10 with this cash flow you could still make a payment of  
11 \$46,000, couldn't you?

12 A Yes. Well, I'm still a deficit over here.

13 Q It's still a deficit of \$9,403 it says, right?

14 A Right.

15 Q However, it also says on the note on the bottom that  
16 this -- what does it say on the bottom there?

17 A It says this -- whatever it is -- there's holes punched in  
18 it -- does not include selling 400 ton of hay at \$50 a ton  
19 for \$20,000.

20 Q Okay. So if you would have sold that much hay, 400 ton,  
21 you would have received 20,000, then there would have been  
22 a positive balance, wouldn't there have been?

23 A How come this cash flow is made in November of '96?

24 Q Where does it say November of '96? It starts at --

25 A Cash flow 11-96 to 10-97.

1 Q It's 10-97. But the -- the lines that are filled in on  
2 it -- when was it faxed? Did you see when it was faxed to  
3 the Bank of Hoven? 2-27 of '97. Do you see that part  
4 there?

5 A February 27<sup>th</sup>?

6 Q February 27<sup>th</sup> of '97?

7 A I can't understand why this date up here is this date.

8 Q I don't know why those dates are like that. It's an  
9 operating program, and it shows that the -- if you  
10 received \$40,595, that that should be enough to pay it off  
11 if you sell some hay, doesn't it? That's what it shows?

12 A If I sold some hay. But it isn't in the cash flow.

13 Q I understand that. The cash flow you said is \$9,000  
14 short, right?

15 A Right.

16 Q Okay. And because of the fact that it's \$9,000 short,  
17 wouldn't be, if you sold \$20,000 worth of hay then, would  
18 it?

19 A Not -- not if there was \$20,000 worth of hay.

20 Q Yeah. And you said you had that hay, right?

21 A I suspect I had it. It depends on when this is made.

22 Q Well, it was made --

23 A Okay.

24 Q -- in the spring of '97. Did you have any hay left over?

25 A Yes.

1 Q You had a bunch, right?

2 A I had -- I had a lot of hay left over.

3 Q Okay. So that's what they're talking about there, right?

4 A Right. I would guess.

5 Q Okay. Did you make the payment that that note -- that  
6 that cash flow requires on the term note? You didn't, did  
7 you?

8 A Not on the term -- not on the -- I paid off the \$40,000.

9 Q The \$40,595, you paid that note off, right?

10 A Yes.

11 Q And -- and when was that paid off? November 12<sup>th</sup> of 1997?

12 A Well, there was part of it paid -- all during this pasture  
13 deal.

14 Q Okay. And it was finally paid off in full November 12<sup>th</sup>  
15 of '97?

16 A I don't know the date.

17 Q Well, did you have -- did you have any --

18 MR. VON WALD: By the way, I will offer this exhibit.

19 THE COURT: Any objection?

20 MR. VON WALD: Exhibit 7.

21 MR. HURLEY: No objection.

22 THE COURT: All right. That will be admitted. Again,  
23 Jurors, you will be able to look these over when you  
24 deliberate.

25 MR. VON WALD: Okay.

1 MR. HURLEY: I would request a copy at some point.

2 THE COURT: All right. We'll make you a copy. You got my 6,  
3 right?

4 MR. HURLEY: I do. I don't have a copy of that either.

5 MR. VON WALD: I thought I gave you 6 back to you, Your Honor.

6 THE COURT: I think Jim's got it.

7 MR. VON WALD: Oh.

8 THE COURT: I just want to make sure that I keep all of these  
9 ready for the jury to pour over.

10 MR. VON WALD: Okay.

11 Q (BY MR. VON WALD) No. 7 -- November 12<sup>th</sup> of 1997, did you  
12 have a meeting then with the Bank when you made the  
13 payment?

14 A I can't remember. November 12<sup>th</sup> of '97?

15 Q That's when you made your note payment. You paid it off  
16 in full.

17 A I would imagine I did. I paid it off that date.

18 Q Okay.

19 A I can't say for sure because I can't remember.

20 Q Okay. I hand you now what has been marked as Defendant's  
21 Exhibit 8, and I will show you a copy of that letter.  
22 What is that, please?

23 A It's dated December 8<sup>th</sup>, 1997, and it's addressed to  
24 Mr. McClure. That's stating that I was delinquent  
25 \$47,000. That must be the loan repayment to the BIA.

1 Q And who's the letter from?

2 A James Nielsen, Bank of Hoven.

3 Q Did you receive a copy of that letter?

4 A I probably did.

5 MR. VON WALD: I would offer the exhibit.

6 THE COURT: Any objection?

7 MR. HURLEY: No objection.

8 THE COURT: All right. That will be admitted into the record  
9 as Defendant's 8.

10 Q (BY MR. VON WALD) The letter actually says on the bottom  
11 carbon copy to the Long Family Land and Cattle Company,  
12 Inc., doesn't it?

13 A Yes, it does.

14 Q And there's actually a return receipt where apparently  
15 Lila had signed it that she received it, on the last page?

16 A Okay.

17 Q In that letter, Ronnie, it mentions that a number of  
18 things were going to be done, and it mentions a meeting on  
19 November 12<sup>th</sup> of 1997. Does that refresh your  
20 recollection?

21 A Yes, it does. I can't remember the day specifically.

22 Q Okay. Do you see in there where the -- you apparently  
23 presented some type of a budget, and it said that you had  
24 \$13,000 from the 1997 pasture rent in your possession?

25 A Yes.



1 Q Did you have that then?

2 A Yes, I did.

3 Q And it said that you had \$19,000 from the LIP or what  
4 we -- what I called the LIP program?

5 A Yes.

6 Q You still had 19,000 left, right?

7 A Right.

8 Q And it said that there was about \$20,801.46 -- .47 of  
9 interest subsidy that you were to receive. What was that?

10 A That's what was in all of these cash flows, and it was  
11 listed as \$22,000. The Bank hadn't applied for my  
12 interest subsidy, and --

13 Q Well, doesn't it say --

14 A I don't know if it went over or whatever, but to this day  
15 I still haven't got that interest subsidy.

16 Q So the interest subsidy was what? What is that?

17 A It's a -- part of the interest that's paid back on a BIA  
18 guaranteed loan.

19 Q So the government pays part of the interest on your loan  
20 then, right?

21 A Yup.

22 Q Okay. And do you see where the letter indicated that that  
23 letter subsidy was applied for on 4-2 of '97?

24 A Yeah.

25 Q And do you see where it says, "And even after repeated

1 calls to various BIA departments, it has never been paid"?

2 A Yup.

3 Q Okay.

4 A But that wasn't up to me.

5 Q I understand that, yeah. But the \$13,000 that you had and  
6 the 19,000, that would be about \$22,000 -- \$32,000 that  
7 you had, right?

8 MR. HURLEY: I'm going to object to that, Your Honor. It's a  
9 misstatement. It says the budget indicates cash on hand,  
10 not --

11 MR. VON WALD: Right. But he testified that he had that.

12 A I said I -- I probably had it. I don't know. The \$13,000  
13 from the pasture rent, you know, that got paid back on the  
14 loan. That was half of that pasture rent.

15 Q (BY MR. VON WALD) Well, did you have it or didn't you  
16 have it then?

17 A I don't think I did. I think what I had was the 19,000  
18 from the LIP program.

19 Q Okay. For sure you had --

20 A And I owed \$13,000 because this was discussed that if you  
21 would get my \$22,000 interest subsidy, that I would pay  
22 the 13,000, and it would be totally current. And that  
23 \$20,000 never did come in for interest subsidy, so I never  
24 paid the 13.

25 Q Well, do you see in the letter where it says, "As the

1 meeting concluded, it was agreed that Mr. Long would go to  
2 Timber Lake and pay the delinquent real estate taxes on  
3 the leased land"?

4 A Yeah. Yes.

5 Q "And remit to the Bank of Hoven a paid tax receipt"?

6 A Yes.

7 Q And then it says, "Mr. Long would also remit the \$13,000  
8 of pasture rent proceeds to the Bank of Hoven for payment  
9 towards the delinquent BIA loans, and he would check with  
10 Mr. Larsen on the yearling program to see if the -- if the  
11 paid leases could count towards the 35,000"? Do you see  
12 that?

13 A That 35,000 is what we was talking -- this was a plan,  
14 also. This wasn't a hard rock deal. This was a plan that  
15 I was going to pasture some cattle for Mr. Larsen.

16 Q Yeah.

17 A And -- and do a program with him for 35,000, and -- and  
18 that never did come through.

19 Q Okay. But do you see the portion where it says you are  
20 going to bring in the \$13,000?

21 A That I would remit the 13,000?

22 Q Yeah. That means to pay. "Remit" means to pay the  
23 \$13,000.

24 A Yeah.

25 Q Did you do that?

1 A I don't remember if I did or not.

2 Q Well, you didn't make any payment on that delinquent note,  
3 did you?

4 A I don't remember.

5 Q It says on the -- on page two there, it says, "As of this  
6 date, Mr. Long has not provided a paid real estate tax  
7 receipt, nor has he remitted the \$13,000." Does that  
8 refresh your memory?

9 A I ended -- I did pay the taxes.

10 Q You eventually did. That's right. But you never did pay  
11 the 13,000, right?

12 A I don't know.

13 Q Okay. The money that you got from the LIP program, the  
14 LIP, the 48,800--and--some bucks, did you buy any cattle  
15 with that?

16 A No, I didn't.

17 Q What did you do with that money?

18 A It was all used for operating.

19 Q Like buying a new four wheeler?

20 A No.

21 Q Did you get a four wheeler?

22 A In later years.

23 Q When?

24 A I don't remember the date. But I didn't buy a four  
25 wheeler with that. I financed a four wheeler.

1 Q Okay. And the \$48,000 then your cash flow showed you  
2 didn't need the 48,000 to operate, right?

3 A This was at the end of the year of 1997.

4 (END OF DUPLICATE #5 TAPE #1).

5 (THE FOLLOWING PROCEEDINGS

6 TOOK PLACE ON DUPLICATE #5 TAPE #2:)

7 Q August of 1997?

8 A That I last got that LIP money. It wasn't in the spring.

9 Q I understand that it was some time during 1997. But my  
10 point is that you used that \$48,000 during 1997,  
11 apparently all except for 19,000 by November, right, or by  
12 December, right?

13 A I don't know, but I do have it all documented.

14 Q But you used it?

15 A Yup.

16 Q But why did you need more than what your cash flow was?

17 A I don't know. Like I said, I don't know if I done the  
18 cash flow even.

19 Q I understand that. But on your -- and you don't know if  
20 you've gotten any of these cash flows, do you?

21 A I know I done my note with them 8A's. I know that.

22 Q Well, this cash flow that was presented there, doesn't it  
23 show some -- didn't that cash flow show that you were  
24 going to be leasing your land out?

25 A That's what it says.

1 Q Renting your land out?

2 A But I could have went to John Lemke and been talking about  
3 that, and then he wrote that up. I don't know. That's  
4 what I'm saying.

5 Q But he was writing that up --

6 A We discussed our plans like we're running pasture cattle  
7 and stuff.

8 Q Okay. And John Lemke worked for the -- who did he work  
9 for?

10 A The Planning Office.

11 Q For the Cheyenne River Sioux Tribe, right?

12 A Yes.

13 Q And so he didn't work for the Bank, did he?

14 A No.

15 Q So if the cash flows are wrong, it was either you or John  
16 Lemke that messed them up then, right?

17 A Not necessarily. The Bank worked with John sometimes to  
18 do -- to do cash flows.

19 Q All of the figures that were put in when they were faxed  
20 over from John Lemke were put in by him obviously?

21 A I don't know. I can't speak for him.

22 Q Okay. Now, you indicated that -- that had you gotten the  
23 loan for 110 head of cattle and had gotten the \$70,000  
24 line of credit from the Bank, which was a part of the loan  
25 agreement, that -- that you would have made all kinds of

1 money then, right?

2 A If I would have gotten it in a timely fashion.

3 Q You would have made all kinds of money?

4 A Yeah. I would have --

5 Q And didn't you -- didn't you try to show the jury that you  
6 lost over a million dollars because you didn't get that  
7 money?

8 A Right. That was discounting the losses over the lost  
9 cattle and the lost use of the land. I've lost \$23,000 a  
10 year for FSA payments that I haven't gotten, that the Bank  
11 and Maciejewskis have gotten.

12 Q And so basically what you're saying, Ronnie, is that you  
13 would have made over a million dollars from '97 to 2002.  
14 Isn't that what you are saying?

15 A Yeah.

16 Q And --

17 A Over losses, yeah.

18 Q Pardon me?

19 A Over losses.

20 Q You would have made \$1,200,000 or thereabouts, right?

21 A Yeah.

22 Q And that would be the operation -- what you're projecting  
23 on your damage schedule, the operation would have been  
24 pretty much the same as what it had been in the past,  
25 right?

1 A No. It was going to change drastically with running this  
2 yearling program.

3 Q Okay.

4 A It's --

5 Q Didn't you have a \$50,000 operating line before?

6 A Yeah, I did.

7 Q And didn't -- in this case it was going to be 70,000?

8 A Yeah.

9 Q And you were going to buy 110 head of calves then, right?

10 A Yes.

11 Q And it was going to switch to a yearling program you said,  
12 right?

13 A Yeah.

14 Q But in September of '96, by the time you entered into this  
15 agreement, you had already sold all of your calves, hadn't  
16 you --

17 A Oh, no.

18 Q -- all of your yearlings, hadn't you?

19 A The yearlings.

20 Q Yeah. The yearlings were gone.

21 A Not -- not the calves.

22 Q And when you sold those yearlings, did you sell them for  
23 anywhere near \$700 a head?

24 A I can't remember what the price was. And they wouldn't  
25 have been good yearlings either because they weren't on



1 good feed the winter of '95 and '96 because we also had  
2 this same problem, and I just scabbed them through the  
3 winter. They didn't get any grain. They got hay. That  
4 was it.

5 Q Okay.

6 A So --

7 Q So you didn't --

8 A That was kind of a -- that -- that wouldn't be much of a  
9 comparison as to -- if you had the operating to take good  
10 care of them than to scab a few. There's going to be a  
11 lot of difference in price in them cattle.

12 Q So what you're pretty much admitting to the jury is that  
13 the '95, '96 winter you didn't do a very good job with the  
14 cattle; is that right?

15 A Yes. Because I didn't have any operating money.

16 Q Well, you had a \$50,000 line of credit, didn't you?

17 A I didn't have -- no.

18 Q You did have --

19 A That was used.

20 Q Pardon me?

21 A That was for the whole year, and it was used.

22 Q So basically, Ronnie, whatever the line of credit was, you  
23 always needed more, didn't you?

24 A No. Not necessarily.

25 Q This \$40,595 line of credit, that wasn't enough for you,

1 was it?

2 A Well, that -- half of that went right away to pay off what  
3 money you would give me after December 5<sup>th</sup>, which amounted  
4 to -- you testified -- or had an exhibit for \$23,000.  
5 Half of that 40,000 -- or 23,000 of it went right back to  
6 pay them notes off.

7 Q Yeah. And that --

8 A So that left me 20,000 or 18,000.

9 Q And if you look at that exhibit where it showed -- if you  
10 look at this exhibit where you said half of it was paid  
11 off --

12 A Half of my pasture money was to pay the loan.

13 Q Exhibit 7 -- with that Exhibit 7, half of it was paid off.  
14 That was all in the cash flow, wasn't it? If you look  
15 down there for the month, there is 17,000 -- 16,702.74  
16 that's for the lease. So that was the part -- that's what  
17 you are saying was a part of the \$40,000, right?

18 A Right.

19 Q And that shows that in there as an expense, doesn't it?

20 A Yes.

21 Q And doesn't it also show in here when -- as far as the  
22 snowmobile is concerned, \$2300 right here, it says loan  
23 repayment?

24 A No.

25 Q Wouldn't that be the snowmobile, \$2250?

1 A I don't think so.

2 Q \$2250 with interest would be about 2300, so that was --

3 A Maybe.

4 Q That was figured in there, right?

5 A Okay.

6 Q Okay. So all of that is figured in --

7 A But it was still paid out of the 40,000.

8 Q That's right. And that's what it showed you needed  
9 \$40,595 to operate. And -- and you've already told us,  
10 the jury, that that wasn't enough, was it?

11 A I don't understand what you are saying.

12 Q You needed more than \$40,595, right?

13 A In -- after April 1<sup>st</sup> of '97?

14 Q Well, what I'm getting at -- and I'm not trying to make  
15 this complicated -- but what I'm getting at for the year  
16 1997, you have testified that you received \$48,000 from  
17 the LIP program?

18 A In the fall, yes.

19 Q Yeah.

20 A Not to -- not during the year.

21 Q Yeah. And at least all of that but 19,000 -- or 30,000 of  
22 it about, was used for operating, right? That's what you  
23 testified to?

24 A I guess I did. I don't know. Like I said, I got it  
25 documented.

1 Q Yeah. Well, I'm not trying to confuse you. All I'm  
2 trying to say is that whatever you've got for operating  
3 that year wasn't enough, was it?

4 A Evidently not.

5 Q Okay.

6 A What I really got was 20 -- 18,000.

7 Q Yeah. Plus 48,000 on that LIP program, right? Right?

8 A Yeah.

9 Q Okay.

10 A You could say that. I didn't need it all. I didn't use  
11 all of the 48,000.

12 Q So what you are trying to say for damages then is that,  
13 you know, you have made -- from 1997 to 2002, you have  
14 made over a million dollars, and basically it was the same  
15 operation, other than you are switching from selling  
16 yearlings rather than selling calves, right? Right?

17 A Yeah. That's -- that's five years.

18 Q Yeah. Yeah. So --

19 A Okay. That's 200 -- a little over \$200,000 a year.

20 Q That you would have made?

21 A Yeah.

22 Q Okay.

23 A And that's -- that's not hard to come up with. I mean off  
24 of them cash flows.

25 Q Um-hum. Let me show you these and ask you to identify

1 that, if you would, please?

2 A These are tax return records.

3 Q For who?

4 A Long Family Land and Cattle Company.

5 Q And when is the very first date there?

6 A 1996.

7 Q That's the last one. Look at the first one. Probably  
8 would be easier if we separated them. The first one was  
9 what date?

10 A 1990.

11 Q So these are tax records from 1990 through 1996; is that  
12 correct?

13 A That's correct.

14 MR. VON WALD: I will mark the exhibits.

15 THE COURT: That would be Defendant's 9. Just mark them all  
16 as one exhibit.

17 MR. VON WALD: Yes. That's what I'm going to do.

18 Q (BY MR. VON WALD) Okay. Now I want you to go through  
19 these and show the jury how much money you made, the Long  
20 Family Land and Cattle Company, Inc., starting in 1990?  
21 What does it show there in 1990 as far as an income?

22 MR. HURLEY: Do you have a copy, Counsel?

23 MR. VON WALD: I do not.

24 MR. HURLEY: May I approach, Your Honor?

25 A I tell you on farmer and ranchers' income tax reports --

1 Q (BY MR. VON WALD) What does it show?

2 A -- income tax returns, they never --

3 THE COURT: Mr. Long, just answer the question.

4 THE WITNESS: Okay.

5 THE COURT: Your attorney can ask you questions if you need  
6 to clarify.

7 THE WITNESS: Okay.

8 Q (BY MR. VON WALD) What does it show that that you had --

9 A For taxable income?

10 Q How much?

11 A Minus 32,000.

12 Q So you had a \$32,000 taxable loss, right?

13 A Yeah.

14 Q Okay. Let's look at 1991. What does it show?

15 A 55.

16 Q \$55,000 taxable loss, right?

17 A Yeah.

18 Q '92?

19 A The 172.

20 Q \$172,000 loss, right?

21 A Yeah.

22 Q '93?

23 A 14.

24 Q \$14,000 loss, right?

25 A Yup.

1 Q '94?

2 A Minus 35.

3 Q \$35,000 loss?

4 A Yeah.

5 Q '95?

6 A 104.

7 Q \$104,000 loss. And in '96?

8 A 66.

9 Q A \$66,000 loss. So there wasn't one year that the  
10 corporation made a profit from '90 to '96, was there?

11 A Not according to your income tax.

12 Q No. Those are not my income taxes.

13 A Okay.

14 Q Those are the Corporation's.

15 A Okay.

16 Q There wasn't one year --

17 A No.

18 Q -- that you made a loss -- a profit, right?

19 A No.

20 Q And so on this exhibit, remember, you had on damages?

21 A Yeah.

22 Q You said that your operating -- your operating costs were  
23 going to be 34 percent?

24 A Yeah.

25 Q Of what the income was, right?

1 A Yes.

2 Q On every one of these tax years there would have been more  
3 than a hundred percent of what the income would have been?

4 A I don't know. I would have to look them over.

5 Q Well, if it was a hundred percent, it would wipe it out,  
6 right? If your operating costs were 30 -- a hundred  
7 percent of what your income was, then that would just wipe  
8 it out, right?

9 A Probably.

10 Q Well, you had projected -- projected 34 percent, that was  
11 going to be your operating costs, right?

12 A Yeah.

13 Q But really your operating costs were soaring from '96  
14 to -- from '90 to '96 were way over 34 percent, weren't  
15 they?

16 A No, I wouldn't say that.

17 Q Your tax returns show that.

18 A That's what I started to explain, but I guess we'll have  
19 to wait --

20 Q Well, when your tax returns show that, did you give your  
21 accountant the figure -- the figures?

22 A My accountant had all of my figures.

23 Q And you signed them, right?

24 A Yup.

25 Q Okay.



1 THE COURT: Did you -- did you want to move the admission of  
2 9?

3 MR. VON WALD: Yes, Your Honor. I guess I would move the  
4 admission of the exhibit -- Defendant's Exhibit 9.

5 THE COURT: Jim, any response?

6 MR. HURLEY: No objection.

7 THE COURT: 9 will be admitted, Jurors.

8 Q (BY MR. VON WALD) Okay. The -- you also testified when  
9 you were here Friday on direct examination something to  
10 the effect that your loss of the use of the land. You  
11 have like one year. Now you're just talking the loss of  
12 the use of the land that Maciejewski, Pesicka had used.  
13 Is that what you are talking about?

14 A The use of all of the land.

15 Q Pardon me?

16 A The use of all of the land.

17 Q Well, you didn't lose the use of 960 acres of it, right?

18 A I -- I lost the use of it except for last year and this  
19 year. I did use some of it.

20 Q Well, you never gave up possession of the land, 960 acres,  
21 did you?

22 A No, I didn't. But I didn't -- I didn't use it.

23 Q You had it, but you didn't use it?

24 A Well, I was with the understanding that I wasn't supposed  
25 to. I couldn't farm it because the land was in either the

1 Bank of Hoven's name or Maciejewski's name. And how can  
2 you farm and report your crops to the ASC office when it's  
3 in somebody else's name? You can't do that.

4 Q Well, how did you stay on it then?

5 A I just stayed there. The cattle was --

6 Q The land --

7 A The cattle was drove off of Parcel 1 and a fence put in.

8 Q Well, didn't you use --

9 A Some of my machinery was pulled off of the Parcel 1. My  
10 hayers were run off that I had haying. They were run off  
11 of Parcel 1.

12 Q The what were?

13 A (INAUDIBLE). The people that I had haying it, and they  
14 were flat run off.

15 Q On Parcel 2, did you run cattle on Parcel 2?

16 A The last two years I did.

17 Q But you didn't for -- for '99 or 2000, then?

18 A I think in '99 I had some in the lots beside the barn for  
19 a while, and then I moved them out of there. I used some  
20 of the corrals and the -- and the lots by the barn.

21 Q So you could have used the land for '99, but the Bank  
22 couldn't use it, right, because you were claiming you had  
23 an interest in it?

24 A Well, I couldn't use it either, like for farming and  
25 stuff.

1 Q So when -- on your damages exhibit here, you show that  
2 about \$65,000 you -- you add in here, throw in there,  
3 \$65,000 for the use of the land, right?

4 A Yeah.

5 Q And that's all of the land then?

6 A Yes.

7 Q You didn't get to use all of the land?

8 A That's -- that's how I got it, yes.

9 Q Even though you stayed in possession -- you didn't  
10 surrender possession of the 960 acres, did you?

11 A No.

12 Q Okay. So even though you didn't surrender possession, you  
13 might not have used it, but the Bank didn't use it;  
14 Pesicka didn't use it; Maciejewski; nobody use it then.  
15 (INAUDIBLE).

16 A Pesicka used all of his.

17 Q Right. And Maciejewski used his, right?

18 A Maciejewski used Parcel 1.

19 Q Okay.

20 A And the Bank of Hoven and Maciejewskis got FSA payments of  
21 23,000 off of Parcel 1 and 2 every year.

22 Q 23,000 off of each parcel?

23 A No. Together.

24 Q How do you know that?

25 A Because it said so in the FSA office.

1 Q Did you look it up?

2 A Yes, I did.

3 Q The same payment every year?

4 A Well, that's what -- that's the payments I got.

5 Q Where did you get them from?

6 A I got them from the FSA office.

7 Q Do you have any written proof of that?

8 A Yeah. For -- for that -- what -- have you got that for  
9 that year?

10 Q For all four years, you've got on your exhibit --

11 A Well, that -- I have written proof of -- I can't remember  
12 which year I got this. I think it was in 2000 that I got  
13 this because --

14 Q The one year you had proof, right?

15 A Well, the other year -- that's right. But it was my  
16 understanding that this was a payment that stayed this  
17 amount until a new farm bill came.

18 MR. HURLEY: May I approach, Your Honor?

19 THE COURT: You may. We're going to break in five minutes,  
20 Jurors.

21 Q (BY MR. VON WALD) So the year 1999, you had -- your  
22 figures indicate that the Bank of Hoven received two  
23 payments of 8,767, and Maciejewski received two payments  
24 of 3,163. Is that where you got figures from then --

25 A Yes.

1 Q -- for damages? That's for 1999, right?

2 A Yeah.

3 Q How about for the year 2000?

4 A I believe they stayed the same.

5 Q Do you know that?

6 A Well, I guess it would have to be checked on, but I was --  
7 it's under the same farm bill and everything, and I'm sure  
8 the payment stayed the same.

9 Q But you don't know that, do you?

10 A Not for positive.

11 Q And for the year 2002, as an example, you've got that in  
12 your damages, plus in the year 2002, right?

13 A Yup.

14 Q It lists 23,000?

15 A Yup.

16 Q And you don't know if the Bank got anything for 2002, did  
17 you -- do you?

18 A Yeah, they did.

19 Q You know they did?

20 A Well, I'm sure they did. This payment deal don't change  
21 much.

22 Q And in your exhibit you show that the loss of the use of  
23 the land that you would have made 65,000, if you had that  
24 land to use, right?

25 A Yeah.

1 Q And not only would you have made 65,000 for using the  
2 land, you would have got 23,000 from the FSA. So that  
3 would have been 68,000 that you would have made from it,  
4 right?

5 A Yes.

6 Q And in addition to that, you would have made another  
7 156 grand in 2000 from the cattle that you ran, right?

8 A Yeah.

9 Q And so you're claiming that you would have made 244 grand  
10 in one year, right?

11 A That's -- yeah. That's --

12 Q And -- and --

13 A -- with the hay and everything (INAUDIBLE).

14 Q Yeah. And the problem is that on your tax returns, it  
15 doesn't show that you ever made 244,000. For six years,  
16 you lost money, right?

17 A Right.

18 Q Do you remember testifying -- how much does it cost to  
19 move hay?

20 A It just depends whether you get semis or stack movers or  
21 what. I don't know.

22 Q Well, let's say a stack mover.

23 A Well, like your stack movers in our country, most of them  
24 haul like 26 bales. They charge maybe \$4 a mile and  
25 probably \$30 a load to load it.

1 Q Okay. So if you were going to move your hay, that's what  
2 they would charge today?

3 A That's what they would have charged about then.

4 Q Okay. If you were --

5 A If you could have got them to move it after -- in the  
6 middle of the winter.

7 Q How about in September and October?

8 A Yes.

9 Q They would have moved it then?

10 A Sure.

11 Q All right. Do you -- did you normally have somebody  
12 moving -- moving your hay every year?

13 A We had never been into this yearling program before, and  
14 we always had some of our own hay hauled down there.

15 Q Okay. So you had --

16 A See, I had a field down there, one field.

17 Q You had a field of hay down there by the breaks?

18 A Like 150 bales is all.

19 Q Okay. And -- but you had a field of hay down there then?

20 A Yeah.

21 Q And in the past you had cattle down there, that's where  
22 you said you wintered them every year?

23 A Yeah.

24 Q And so would you have to have -- haul more hay down to the  
25 cattle then?

- 1 A Well, I intended on it, yes.
- 2 Q For other years, I mean? Did you haul down there?
- 3 A Not much, no.
- 4 Q So 150 --
- 5 A Wait. Well see, normally, I had more hay down there.
- 6 Normally, I fed the -- I had a lot of corn, ear corn. So
- 7 I fed a lot of ear corn.
- 8 Q Did you have ear corn that year?
- 9 A No, I didn't.
- 10 Q Why didn't you?
- 11 A Because I couldn't farm.
- 12 Q Why couldn't you farm?
- 13 A I didn't have any -- any operating money.
- 14 Q So did you -- you not plant anything then because you
- 15 didn't have any operating money?
- 16 A Right.
- 17 Q You had that in your cash flow as far as farming, right?
- 18 A After. In the year of '97, I had it in my cash flow.
- 19 Q I'm talking about for '96.
- 20 A The '96 cash flow.
- 21 Q Every year you had a \$50,000 operating line, right?
- 22 A Yeah.
- 23 Q And every year the Bank loaned you money based on that
- 24 \$50,000 operating line, right?
- 25 A Right.



1 Q And so that operating line of credit was what you were to  
2 use to farm with and ranch, right?

3 A I had a little bit of millet and a little bit of wheat.

4 Q Okay.

5 THE COURT: Now will be a good time for our first break of  
6 the morning, Jurors. Again, I tell you not to talk about  
7 the case or the testimony amongst yourselves or others. I  
8 will give you about a ten-minute break, and then we'll  
9 come back.

10 (RECESS TAKEN.)

11 You may be seated. The jurors have reported  
12 back. We're back. Ronnie Long still being  
13 cross-examined?

14 Q (BY MR. VON WALD) Now, where before you were testifying  
15 about a letter from Chuck Simon which was Exhibit 5A?

16 A Yeah.

17 Q And there was no second page, correct?

18 A Yeah.

19 Q Right?

20 A Correct.

21 Q I hand you now what has been marked as Defendant's Exhibit  
22 10 and ask you to look at that, Ronnie. Is that the same  
23 letter?

24 A I believe so, yes.

25 Q (INAUDIBLE).

1 A It's got two.

2 MR. VON WALD: I will offer the exhibit.

3 MR. HURLEY: No objection.

4 Q (BY MR. VON WALD) Read the second page.

5 A It says, "This proposed loan agreement is only a general  
6 guide in getting all of the -- all of lease, loan, and  
7 financial conditions worked out between Long Family Land  
8 and Cattle Company and the Bank of Hoven."

9 Q It says it's "only a general guide," right?

10 A Yeah.

11 Q Okay.

12 MR. VON WALD: I have no further questions.

13 THE COURT: All right. Give that to me. Thank you, Ronnie.  
14 All right. Chuck, did you have any questions of the  
15 witness?

16 MR. JASPER: Yes, I would, Your Honor.

17 THE COURT: Come forward and ask them, please.

18 MR. JASPER: Thank you.

19 THE COURT: Remember, Jurors, that Chuck is representing  
20 the -- Maciejewski and Pesicka.

21 MR. JASPER: Pesicka, yes.

22 THE COURT: Pesicka. Go ahead, Chuck.

23 CROSS-EXAMINATION

24 BY MR. JASPER

25 Q Ronnie, am I correct -- and you tell me if I'm wrong --

1 but if I'm understanding you correctly, this deal was  
2 discussed between you and the Bank and maybe some tribal  
3 people; but Doc Pesicka and Mr. Maciejewski were not  
4 involved in those discussions at all?

5 A No.

6 Q Okay. And if I also understand you correctly, when you  
7 had trouble the winter of '96 or early part of '97,  
8 Mr. Pesicka even let you use some of his hay to feed your  
9 cattle, correct?

10 A Correct. I testified to that Friday.

11 Q Okay. And so in essence, he was kind of helping you out  
12 as a neighbor more than anything; he wasn't trying to hurt  
13 you by that?

14 A No.

15 Q Okay. Now, the land that we're talking about, if I'm  
16 understanding correctly, you had never had title to it; is  
17 that correct?

18 A The only thing I had is my Dad willed it, just in the  
19 will.

20 Q Just in the will, okay. Now, at some point you became  
21 aware, did you not, that Pesicka had bought some of the  
22 property, and Maciejewski had also had a contract on some  
23 of the property, correct?

24 A Yes.

25 Q And that was, what, more than two years after you entered

1 into this agreement with the Bank?

2 A It was after the two years.

3 Q Right. Okay. So it was even more than two years,  
4 correct?

5 A Correct.

6 Q And what contact you had with Pesicka, how did he act  
7 towards you, let's say, once he had purchased the  
8 property, the part that he purchased, I should say?

9 A Well, he had came to me and asked me if -- if it -- if I  
10 lost the land, if it was all right if he bought it, if I  
11 would have hard feelings. And I said no, not if I lost  
12 it, but I -- this isn't over with yet. And he went ahead  
13 and bought it. He kind of give me the cold shoulder after  
14 that, but I mean it --

15 Q So -- and if I understand you, at that -- at some point  
16 then did he exclude you from the property in any way,  
17 Mr. Pesicka?

18 A He never ordered me from the property.

19 Q Okay.

20 A I didn't -- I didn't push the deal.

21 Q Okay. And how about Maciejewski, did he do anything,  
22 ordering you from the property, excluding you in any way?

23 A Yes.

24 Q What did he do specifically?

25 A I had people haying there. He ran the hayers off. He --

1 Q What he did was after he had entered into the contract  
2 with the Bank; is that correct?

3 A Yes. The way I understand it, yes.

4 Q Okay. So would it be fair to say that he was acting like  
5 a landowner, running a trespasser away?

6 A Yes.

7 Q Okay. And during this time period you had not paid  
8 anything to Mr. Pesicka; is that correct?

9 A No.

10 Q You hadn't paid anything to Maciejewskis either?

11 A No.

12 Q Okay. But it -- am I correct, you are using and had been  
13 using a portion of the land that Mr. Maciejewski had  
14 agreed to buy on a contract for deed?

15 A Yes.

16 Q Okay. And as far as the terms, you would agree with me,  
17 would you not, that in the two years from the time you  
18 entered into the agreement in December of 1995, until  
19 after that agreement expired in 1999 or 1998, the  
20 circumstances on the national economy had changed some,  
21 correct?

22 A From '95 -- or '97 to '98?

23 MR. VON WALD: '96.

24 Q (BY MR. JASPER) Not -- '96 to '98. I'm sorry. I'm  
25 sorry. Would you agree?

1 A The economy had changed? I guess I don't know how to  
2 answer that.

3 Q Well, let me ask you this here. Do you think the Bank  
4 charged you an exorbitant rate of interest in the  
5 agreement in 1996?

6 A I'll say they didn't charge me the same interest as they  
7 charged Maciejewskis.

8 Q I understand. My question was back in 1996, when you  
9 entered into this agreement, did that appear to be a fair  
10 rate of interest at that time?

11 A I would probably guess so.

12 Q Okay.

13 MR. JASPER: I have no further questions. Thank you, Your  
14 Honor.

15 THE COURT: Thank you, Chuck. All right. Jim, any redirect?

16 MR. HURLEY: Yes, Your Honor.

17 THE COURT: Go ahead.

18 REDIRECT EXAMINATION

19 BY MR. HURLEY

20 Q Ronnie, when counsel of the Bank was questioning you, he  
21 was asking about the time period of September 1996, and  
22 that was before the loan agreement, Exhibit 6, and the  
23 lease with option to purchase, Exhibit 7, were entered  
24 into, correct?

25 A Yes.

1 Q And he was talking about the comment sheets of the Bank,  
2 which is a defendant's exhibit, and it was concerning the  
3 sale of the yearlings that you purchased with 62,500 from  
4 Herman Schumacher. Do you have that in mind?

5 A Yes.

6 MR. VON WALD: I will object to that as being leading. I don't  
7 think that's the facts.

8 THE COURT: Just -- just answer the question what he is  
9 relying upon to testify.

10 Q (BY MR. HURLEY) Did you hear the Court's question?

11 THE COURT: Well, you can ask him more artfully.

12 MR. HURLEY: I didn't -- I didn't hear, Judge.

13 THE COURT: Well, he is objecting, leading. I will have to  
14 sustain that.

15 MR. HURLEY: Okay.

16 THE COURT: But you can rephrase it and ask him the same  
17 thing.

18 MR. HURLEY: I might have to do it this way, Your Honor. May  
19 I approach?

20 THE COURT: You may.

21 Q (BY MR. HURLEY) Counsel was asking you about Defendant's  
22 Exhibit 1, which is the Bank's comment sheets, and I hand  
23 those to you. Do you see the entry of June 18<sup>th</sup>?

24 A Yes, I do.

25 Q 1996? And what happened then?

1 A I had received a loan from Herman Schumacher for \$62,500,  
2 and it was a loan on some yearling cattle that I had, and  
3 it shows all of the payments going out to all the  
4 different notes and stuff to kind of get things current at  
5 the Bank. The whole thing was used for that except for I  
6 got \$750 for my personal account for family living.

7 Q Do I understand it correctly that the 62,5 then was income  
8 to you from Mr. Schumacher?

9 A Yes.

10 Q And all of it went to the Bank except \$750 for living  
11 expense?

12 A Yes.

13 Q Okay. And then you move on down to the point where those  
14 cattle were sold. Do you see that?

15 A Yes, I do.

16 Q And when those cattle were sold, was Mr. Schumacher paid  
17 back?

18 A Yes, he was paid back.

19 Q And counsel asked a question concerning 20,000 left over.  
20 Do you see that?

21 A Yes, I do.

22 Q With that 20,000 left over after the yearlings were sold  
23 and Herman Schumacher was paid back, why didn't you use  
24 that money to move the hay to the cattle which were in  
25 winter pasture?



1 A Because I had all of these past due bills. Some of the  
2 people was taking me to court. John Lemke even said that  
3 I had to -- I had to pay these bills, so he listed --  
4 would list it -- some of the larger bills that's on  
5 here --

6 Q And that's --

7 A -- and a few of the smaller ones that aren't listed.  
8 Those that are listed amount to just about \$20,000, and  
9 then there was some new smaller ones that aren't listed on  
10 here. So they took the whole \$21,900. And this is, like  
11 I said, is a controlled contract, so I had to get --  
12 whenever I wanted to pay a bill, I had to get a bill, take  
13 it down to Eagle Butte Planning Office. They faxed the  
14 Bank of Hoven. And if they okayed it, both of them, then  
15 I -- it was okay for me to write the check out. So I  
16 didn't have anything else that I could do because I was  
17 supposed to pay these bills with it, so I was tied up -- I  
18 couldn't haul the hay with this money.

19 Q I ask you to turn to Exhibit 11 in the book before you.  
20 And my question is: Was it the BIA's fault that the loan  
21 guarantees or the \$70,000 operating line of credit that  
22 was agreed to in your loan agreement were not approved?

23 A No. It wasn't the BIA's fault. They say right in this  
24 document here that the Bank had never submitted a complete  
25 application. It says that in -- in view of your

1 modification which requires a more complete application,  
2 and it sent them the criteria and stuff on making a  
3 correct and complete application, which was never done.

4 Q And in the loan agreement, Exhibit 6, whose obligation was  
5 it in your agreement to make application to the BIA?

6 A The Bank of Hoven.

7 Q And you're looking at Exhibit 11. Was -- did the BIA  
8 point out to the Bank that the application was not  
9 complete?

10 A Yes.

11 Q And to your knowledge --

12 A It says right in here, "We will not act on your  
13 December 12<sup>th</sup>, 1996 request, until we have received a  
14 complete application. Under separate cover we are again  
15 sending a copy of 25 CFR 103."

16 Q And to your information, has the Bank ever reapplied to  
17 the BIA with a complete application?

18 A No. Not for this program.

19 Q In this letter we are looking at, Exhibit 11, is there any  
20 mention of an emergency feed loan to you?

21 A Yes.

22 Q And is the BIA authorizing or approving that loan?

23 A Yes, they are. It says, "We understand the emergency  
24 situation caused by the severe winter conditions;  
25 therefore, we concur with a loan for emergency expenses.

1 These expenses should be documented and readily available  
2 to the agency superintendent. This decision is made with  
3 the intention of preserving collateral. Refer to 25 CFR  
4 103.22 for further direction and documentation."

5 Q And in this letter -- who's writing this letter?

6 A The Area Director.

7 Q Of?

8 A The United States Department of Interior, Bureau of Indian  
9 Affairs.

10 Q And who is he writing it to?

11 A He is writing it to Mr. Nielsen, the loan officer at the  
12 Bank.

13 Q And did the Bank make an emergency operating loan to you  
14 in response to this letter and authorization by the BIA?

15 A No.

16 Q Did you request that the Bank release money so you could  
17 move the hay to the cattle before the cattle died?

18 A Yes.

19 Q When was that?

20 A All through November and December and January, February.  
21 There was one time before Christmas. I don't know the  
22 exact day. I was sitting in John Lemke's office at the  
23 Planning Office in Eagle Butte here, and we was discussing  
24 this. And he -- and he said -- he brought up this -- this  
25 documentation or this CFR 25, 103.22.

1 Q What did that deal with?

2 A That dealt with the emergency feed deal to protect the  
3 collateral.

4 Q And the collateral was?

5 A The cattle.

6 Q What happened then?

7 A I said let's go for it. So he called the Bank up. I sat  
8 in his office and listened to him talk to the Bank, so  
9 they were informed about it.

10 Q And that was what point in time?

11 A Just before Christmas in 1996.

12 Q And did the Bank make any emergency loan to move the hay  
13 to the cattle at that point in time?

14 A No.

15 Q Did the severe winter weather kill the cattle or did the  
16 Bank's failure to make the loan -- the operating loan in  
17 your view kill the cattle?

18 A What killed the cattle was I -- they didn't have any feed,  
19 you know. If they would have had feed and if I could have  
20 moved the hay, if I would have had the operating money to  
21 move the hay, the cattle would have had no problems  
22 because they was in the -- some of the best winter country  
23 in -- around here.

24 Q On cross-examination I believe you -- correct me if I'm  
25 wrong -- you answered counsel that you had some hay in the

1 winter breaks on your -- on your Indian unit, correct?

2 A Correct.

3 Q And how many round bales did you have there?

4 A I believe there was something like 150-some bales or  
5 something like that.

6 Q Okay. And for the cattle that was there, you needed to  
7 have more hay at that location?

8 A Oh, yeah.

9 Q And the Bank knew that you needed to move the hay to your  
10 cattle so they would have feed?

11 A Yes.

12 Q And at some point then when you didn't have operating  
13 money, what happened?

14 A Well, I -- the cattle didn't have anything to eat, and  
15 they just froze out --

16 Q If you -- are you finished? If you had operating money  
17 under the -- for example, this \$70,000 operating loan in  
18 Exhibit 6, the loan agreement, and you were able to move  
19 more hay down to the winter quarters, how would that have  
20 changed the situation?

21 A It would have changed it completely. If the cattle would  
22 have had feed, they would have never drifted out of the  
23 good protection I had them in.

24 Q And when severe winter weather comes, is it important that  
25 the cattle have good nourishment, good feed every day?

1 A Yes.

2 Q And why is that?

3 A Well, they got to keep their energy up to stay warm.

4 Q And if they had hay every day through this period of time,  
5 December 5, 1996, through February 13<sup>th</sup>, 1997, based on  
6 your experience as a cattle man and a rancher, would you  
7 have experienced the death loss that you did in your  
8 cattle?

9 A No.

10 Q And how many years have you been ranching?

11 A Well, just about all of my life.

12 Q And your father was raised on -- your father operate that  
13 had ranch before you?

14 A Yes.

15 Q And you were raised on that ranch?

16 A Yes.

17 Q And you've seen a number of winters come and go?

18 A Yes.

19 Q Is the 2230 acres of land that was deeded to the Bank, is  
20 that located within the Cheyenne River Sioux Tribal  
21 Reservation?

22 A Yes, it is.

23 Q During any of these negotiations with the Bank in '96,  
24 which led up to the signing of the loan agreement and the  
25 lease with option to purchase, December 5, 1996, during

1 any of that period of time, were you represented by a ✓  
2 lawyer?

3 A No, I wasn't.

4 Q Did you have the money to hire a lawyer? ✓

5 A No.

6 Q During that period of time, was the Bank represented by a  
7 lawyer?

8 A Yes.

9 Q And who prepared Exhibit 6, the loan agreement; Exhibit 7,  
10 the lease with option to purchase?

11 A The Bank's attorney.

12 Q When you signed the loan agreement and the lease with  
13 option to purchase, December 5, 1996, did you have a  
14 lawyer representing you on that date?

15 A No.

16 Q Now, as I understand, you are not a college graduate, are  
17 you?

18 A No.

19 Q And your wife isn't?

20 A No.

21 Q And neither of you are law-trained, are you?

22 A No.

23 Q Did you understand all of the legal ramifications of the  
24 loan agreement and the lease with option to purchase  
25 before you signed it, December 5, 1996?

1 A No, I didn't. I thought maybe I did, but I guess I  
2 didn't.

3 Q Before you signed those agreements, December 5, 1996, did  
4 you feel you could negotiate or change any of the language  
5 to that -- in those documents that had been prepared by  
6 the Bank?

7 A I looked it over. Is that on -- is that Exhibit 6?

8 Q The loan agreement and the lease with option.

9 A I looked it over, the cash flows and everything. We  
10 needed to get money moving to get the hay moved and stuff.  
11 So I -- so Lila and I talked it over and I said, let's do  
12 it. It was a feasible plan.

13 Q Counsel asked you in cross-examination about your tax  
14 returns from 1990 to 1995. Do you recall that?

15 A Yes.

16 Q And in your operation, do you typically have sales of  
17 livestock raised?

18 A Yes, I do.

19 Q Which would be what class of livestock?

20 A Cattle.

21 Q And the livestock raised would be what? What you sell  
22 every year?

23 A Calves.

24 Q Okay. And on occasion, do you have livestock purchased?

25 A Yes, I have.



1 Q And the sale of livestock purchased?

2 A Yes.

3 Q Looking at these tax returns -- and there is a summary in  
4 Defendant's Exhibit 9 for 1990 through 1995 -- for none of  
5 those years is there any -- listed any sales of livestock  
6 bought or livestock raised?

7 A No.

8 Q Are you aware that the federal income tax exempts income  
9 from livestock grazing on trust property?

10 A Yes.

11 Q Do you know anything about tax returns?

12 A Not much.

13 Q These tax returns report only sales of feed and grain  
14 raised. Do you know why that is?

15 A Because the livestock didn't have to be reported. They  
16 were raised on the reservation.

17 Q And still with -- and I apologize I didn't get a copy of  
18 this document.

19 MR. HURLEY: May I approach, Your Honor?

20 THE COURT: You may.

21 Q (BY MR. HURLEY) Still with grain only, it reports income  
22 1990, 219,000; 1991, 130,000; 1992, 194,000; 1993,  
23 272,000; 1994, 172,000; 1995, 56,000. Would you consider  
24 with your operation, a family operation here in Dewey  
25 County, that that's a fairly respectable income?

1 A Yes, it is.

2 Q And then in these tax returns I also noticed have what I  
3 believe tax preparers might call non-cash deductions for  
4 example, depreciation?

5 A Right.

6 Q And so from that income and after your expenses are out,  
7 then again depreciation is deducted which is not --

8 A Not cash.

9 Q -- not out of the checkbook, correct?

10 A Right.

11 Q And the -- apparently, the accountant has lined that out  
12 here so that the net profit and loss that counsel was  
13 reading, you would have to add back in depreciation to get  
14 your operating profit, correct?

15 A Right.

16 Q And the accountant has apparently done that here in the  
17 exhibit?

18 A Yes, he has.

19 Q And if that is done, we're showing operating profits  
20 and -- for the six years, correct?

21 A Correct. Without cattle receipts.

22 Q And in the years we're talking about here, with the cash  
23 flows for this plan, the cash flow, for example, 8A, for  
24 1997 and 1998, is there cattle income in there?

25 A Yes, there is.

1 Q As well as grain income and other income?

2 A Yes.

3 Q So looking at these tax returns, Defendant's Exhibit 9,  
4 are these the same as the cash flow, cash on cash?

5 A No.

6 Q And are we looking at two different things when we're  
7 looking at tax returns and when we're looking at a cash  
8 flow?

9 A Yes, we are.

10 Q And I understand you're not an expert on tax returns, but  
11 is it unfair to compare the tax return numbers with the  
12 cash flow numbers?

13 MR. VON WALD: I'm going to object, Your Honor.

14 THE COURT: Yeah. That will be a jury question.

15 MR. VON WALD: Thank you.

16 THE COURT: Sustained.

17 UNIDENTIFIED: (INAUDIBLE).

18 MR. HURLEY: Not for the moment (INAUDIBLE).

19 Q (BY MR. HURLEY) Would you turn to Exhibit 22, please?

20 And you're -- the other reason turning to that, my  
21 notes --

22 THE COURT: I don't believe that was ever admitted.

23 MR. HURLEY: I believe I offered it, and it was put on hold  
24 for some foundation.

25 THE COURT: Yeah. Correct.

1 Q (BY MR. HURLEY) And what do you show on Plaintiff's  
2 Exhibit 22?

3 A These are the -- these are the notes that was made after  
4 December 5<sup>th</sup> on the contract, loan contract here.

5 Q And by "notes," what do you mean?

6 A They was new notes. It was for like past due leases for  
7 16,700.

8 Q These are bank notes, promissory notes?

9 A Yes, they are.

10 Q Okay.

11 A And then there was a new note for a used snowmobile of  
12 \$2,250. And then there was -- there was one for  
13 operating, and that was to pay old bills with again, and  
14 they're documented here. And that was for \$5,000, and the  
15 whole \$5,000 is documented here. And there is nine  
16 different entries that takes care of the \$5,000. So the  
17 whole deal was \$23,968 with the new notes, and earlier  
18 that's what I was talking about that \$40,000 note in  
19 April, all of this was paid off out of that \$40,000. So  
20 it only left me -- well, there's just about 24,000 here,  
21 so it left me like 16,000 to operate on the rest of the  
22 year.

23 Q And when counsel was questioning you that -- on that  
24 concerning the operating money available to you, was any  
25 of those notes that you detail there available to you to

1 move the hay to the cattle?

2 A No. This was to pay these bills with. Like I said, I got  
3 a controlled account. Everything had to come to Eagle  
4 Butte. If they approved, they faxed it to Hoven. If  
5 Hoven approved, then I got to go write the check out for  
6 the bill and that included everything.

7 MR. HURLEY: May I approach, Your Honor?

8 THE COURT: You may.

9 Q (BY MR. HURLEY) Defendant's Exhibit -- what has been  
10 called Bank comment sheets, and did you go through the  
11 Bank comment sheets and verify the information you have on  
12 Exhibit 22?

13 A Yes, I did.

14 MR. HURLEY: We would offer Exhibit 22.

15 THE COURT: Any objection?

16 MR. VON WALD: There is a new exhibit you said?

17 MR. HURLEY: No.

18 THE COURT: No. It was just not admitted. It was offered  
19 but not admitted.

20 MR. VON WALD: Okay. No objection.

21 THE COURT: All right. 22 will be admitted, Jurors.

22 Q (BY MR. HURLEY) Would you turn to Exhibit 23, please?  
23 Are the six pages which appear in Exhibit 23, are those  
24 the result of your work?

25 A Yes.

1 Q Okay. Start with page one of Exhibit 23. What  
2 information are you presenting there?

3 A This is a page of damages, and I used like the 230 cows  
4 that died in that winter. I had them priced at \$620 as  
5 bred cows. And I -- I priced them at \$620 which would  
6 have made \$142,600 damage that I had lost. There was 260  
7 mixed steers and heifers that died, and I priced them at  
8 \$700 what they would have brought me as yearlings. That  
9 would be \$182,000. And then there is ten yearling culls  
10 which would have come out of that 110 head of cattle that  
11 I could have bought for 53,000 -- or 37,5 loan agreement.  
12 I priced them at \$700 which would have been 7,000. CRP  
13 annual payment I got that at 4,000. That would have been  
14 a total of \$335,600. Still subtracted -- I subtracted the  
15 \$48,000 FEMA payment, which I thought was only fair  
16 because that was partial payment of the ones that were  
17 lost, and that brought that number down to \$287,600. I  
18 figured 34 percent operating costs. And that came to  
19 \$112,744. So that brought -- I subtracted that, and that  
20 brought the total down to \$174,856 for the year 1997.

21 Q Now, did you go through your operating --

22 (END OF DUPLICATE #5 TAPE #2).

23 (THE FOLLOWING PROCEEDINGS TOOK

24 PLACE ON DUPLICATE #6 TAPE #1:)

25 -- expenses, particularly cattle, with your Indian

1 range unit and the other costs that go into taking care  
2 of cattle and is 34 percent based on your experience over  
3 a number of years?

4 A It's pretty close.

5 Q Okay. Would you go to page two, please, of Exhibit 23?  
6 What information have you put down there?

7 A This is the damages for 1998, it says that the 230 cows  
8 that I would have lost in '97 would have -- they would  
9 have had a calf crop, and I figured 90 percent calf crop  
10 which would have been 207 calves. They would have been  
11 born in the spring of '98. I actually didn't charge any  
12 damages for them on this page.

13 Q Okay. Let me stop you there. These are the 230 bred cows  
14 that you lost in the winter storm?

15 A Yes.

16 Q January, February, 1997?

17 A Yes.

18 Q And what you're saying is that they would have raised a  
19 calf crop, of course, in 1998?

20 A Yes.

21 Q Okay. Go on, please.

22 A Okay. Then there would have been 207 yearlings that would  
23 have been born in '97. They would be yearlings now, and  
24 they were priced at \$600 which would have been \$124,200,  
25 and I deducted 34 percent operating expense. It would

1 have been \$42,228, and it left \$81,972. CRP payment we  
2 figured \$6,000, and my total damages for 1998 would have  
3 been \$87,972. And by the way, for pricing these  
4 yearlings, I used all documentation from the sale barn  
5 advertisements that were in the newspapers, and that's how  
6 I came up with this price.

7 Q Are those sale barn advertisements listing of actual  
8 sales?

9 A Yeah.

10 Q During that time period?

11 A Yes.

12 Q Okay.

13 A Well, year by year I had. Okay. In 1999, it shows 330  
14 head of bred cows. That's kicking in the 100 head that I  
15 would have gotten with the loan agreement. I considered  
16 them damages because I would have had them, and I don't  
17 have them now. A 90 percent calf crop on them, they would  
18 have calved because they were -- would have been two years  
19 old. They would have made 297 calves born in 1999, which  
20 no damages are charged for this year. This is 207  
21 yearlings would have been born in 1998 at \$700. That's  
22 \$144,900. Operating expense off of there is \$49,266,  
23 which leaves \$95,634. Okay. The next deal is a FSA  
24 payment. It's the \$23,000 that was testified to here  
25 before earlier today. I didn't get that so I added that



1 on. I didn't get the use of the land, so I added \$65,000  
2 onto that. That left \$183,634 for that year.

3 Q Okay. And would you move on?

4 A Year 2000, there is 330 cows that would have had a 90  
5 percent calf crop. It would have been 297 calves. They  
6 would have been born that year. Okay. This year I would  
7 have had 297 yearlings that had been born in 1999, and  
8 they were priced at \$800, which was \$237,600. The  
9 operating expense on them would have been \$80,786, which  
10 left a total of 156,814. FSA program payment that I  
11 didn't get was \$23,000, use of the land 65,000. So it  
12 left a total of \$244,814 loss for that year of 2000.

13 Q Would you go to 2001, please?

14 A 2001 there was 330 cows at 90 percent calf crop, which is  
15 297 calves that would have been born.

16 MR. VON WALD: Your Honor, I'm going to object. The witness has  
17 already testified to everything in 2001 in direct  
18 examination. He was not even crossed on 2001.

19 THE COURT: Okay. Well -- but I think I reserved him the  
20 right to offer this on redirect.

21 MR. VON WALD: Was it? Okay.

22 THE COURT: So I will overrule for that purpose. Go ahead,  
23 Ronnie.

24 A There would have been 297 yearlings that year at \$800,  
25 which would have been \$237,600. Operating expense of

1 34 percent would be \$80,784. That was a total of  
2 \$156,816. The FSA payment I didn't get again for 23,000.  
3 The use of the land was 55,000. I had used some -- part  
4 of it, so I thought it would be fair to knock some off on  
5 the land use. So it totaled up to \$234,816.

6 Q (BY MR. HURLEY) And 2002, please.

7 A Okay. There would have been 330 cows that calved this  
8 year at \$297 -- or calves. They would have been born this  
9 year. And they would have been worth about \$420. Now I'm  
10 adding the calves this year because this will be the last  
11 year we're doing this I hope. And the calves would have  
12 brought \$138,600. The yearlings there would have been 297  
13 of them at \$700 was \$207,900. Operating expenses on these  
14 would have been \$117,800. I deducted that, and I ended up  
15 with \$228,700. And then the FSA payment was 23,000 and  
16 the use of the land was -- I marked down to 50,000 because  
17 I did use some. Some fences had been torn out, and I  
18 priced to replace them it would cost me about \$9,000. So  
19 I added that in on the damages. That left \$310,700 for  
20 this year's damages. In the summary of this in 1997  
21 through 2002, the -- the total of this would end up  
22 \$1,236,792.

23 Q Now, if -- and, of course, you're requesting that interest  
24 be accrued on that?

25 A Yes. And then if -- if the jury awards damages --

1 MR. VON WALD: I will object, Your Honor, to the rest of the  
2 exhibit.

3 THE COURT: I think, in fact, we need to delete that last  
4 part of that exhibit. What he would do with any damages  
5 if the jury were to award him is irrelevant.

6 MR. VON WALD: Okay.

7 UNIDENTIFIED: (INAUDIBLE).

8 THE COURT: Go ahead. (RING SOUND). Hold on a minute.  
9 (PAUSE). (MUFFLED). (INAUDIBLE) what's marked Plaintiff's  
10 Exhibit 23A.

11 Q (BY MR. HURLEY) I will show you, Ronnie, what's been  
12 marked for identification as 23A. On cross-examination  
13 you and Bank counsel have already gone through this in  
14 detail.

15 MR. HURLEY: I would offer Exhibit 23A.

16 THE COURT: Any objection?

17 MR. VON WALD: No objection.

18 THE COURT: All right.

19 MR. VON WALD: With the changes, I'm assuming, right? Or what  
20 am I looking at here? 23 --

21 THE COURT: No. This is 20. It's the letter about the FSA  
22 payment.

23 MR. HURLEY: (INAUDIBLE).

24 MR. VON WALD: Okay.

25 THE COURT: All right. We will mark this as 23A and stick it

1 in right after plaintiffs' calculation of damages. That  
2 one doesn't have -- do we have a three-hole puncher, Dale?

3 THE CLERK: (INAUDIBLE).

4 THE COURT: We'll figure it out. Just so it's marked.

5 MR. HURLEY: We would offer Exhibit 23 on plaintiffs' damages.

6 THE COURT: Any objection?

7 MR. VON WALD: I have no objection with the changes.

8 THE COURT: All right. It will be admitted subject to the  
9 changes that the Court made and the motion in limine which  
10 are reflected. What we'll have to do is take the original  
11 here and retype it because I don't want stains or scratch  
12 marks going to the jury. So it will be admitted subject  
13 to the changes.

14 MR. HURLEY: And we're also offering Exhibit 26, Your Honor.

15 MR. VON WALD: Yeah.

16 THE COURT: 26. Okay. This is what I was going to take  
17 judicial -- I was going to -- the parties stipulated to  
18 this, right?

19 MR. VON WALD: Pardon me?

20 THE COURT: 26?

21 MR. VON WALD: Yeah. I think so. That was the letter stating  
22 that --

23 THE COURT: Yeah.

24 MR. VON WALD: What I would stipulate to is that the Pesickas or  
25 the Maciejewskis are not members of the Cheyenne River

1 Sioux Tribe.

2 THE COURT: All right. Jurors, you take judicial notice.  
3 That means you are to take notice of the fact that Edward  
4 and Mary Jo Maciejewski and Ralph and Norma Pesicka are  
5 not enrolled members of the Cheyenne River Sioux Tribe.

6 MR. JASPER: I would join in that stipulation, Your Honor.

7 THE COURT: All right. You join in that stipulation, Chuck.

8 MR. HURLEY: I have no further questions, Your Honor.

9 THE COURT: All right. We will have recross, and then we  
10 will see if the jurors have any questions.

11 RE-CROSS-EXAMINATION

12 BY MR. VON WALD

13 Q Okay. Ronnie, now these tax returns that were put into  
14 evidence before that was Defendant's Exhibit 9, are you  
15 trying to tell the jury that the sale of livestock is not  
16 on any of these tax returns?

17 A No, I'm not. I'm not.

18 Q Oh. What were you trying to tell the jury then?

19 A On -- there was several years there that they weren't on  
20 that I know.

21 Q But the sale of livestock are included on your tax  
22 returns, right, for the corporation?

23 A I don't know if they are or not.

24 Q Well --

25 A I know that on that one sheet we looked at they weren't on

1 for three or four years.

2 Q The one sheet that you looked at, the recapitulation  
3 sheet?

4 A I don't know what it is. I'm not a CPA.

5 Q You don't even know if the CPA prepared that sheet, right,  
6 that you are looking at?

7 A Well, I'm sure -- I'm sure I didn't.

8 Q That's right. But you don't know if the Bank didn't do  
9 that, did you?

10 A I don't know.

11 Q This was the sheet here? This is the sheet that you were  
12 looking at, Ronnie, here, right? That's the sheet?

13 A Yeah.

14 Q And -- and what you are saying is because everything is  
15 put in sale of feeds and grains raised, etcetera, because  
16 everything is put in one category there, you're saying  
17 that you didn't report any sale of livestock then?

18 A It says sales of feed and grain raised.

19 Q Yeah. It might be in the wrong place in there, right?

20 A I don't know.

21 Q Well, what I'm getting at, Ronnie, didn't you report the  
22 sale of livestock to your accountant?

23 A I'm sure he had it.

24 Q Um-hum. You don't think for a second that in -- well, let  
25 me -- let me just look ahead a year here. 1994, do you

1 think you sold \$150,000 worth of grain?

2 A Well, this is also payments and stuff.

3 Q No, no. No. The payments are in addition. There wasn't  
4 150,000 worth of grain, was there? It was mostly  
5 livestock, right?

6 A I can't answer you. I don't know nothing about these  
7 things.

8 Q Well, how many acres did you farm out there?

9 A In 1994, it was in CRP, most of it.

10 Q Right. Most of it was in CRP, so you didn't hardly farm  
11 anything, right?

12 A Yeah, we farmed.

13 Q Some. And most of what you farmed you used for -- used  
14 for feeding, right?

15 A Well, I wouldn't say most of it.

16 Q Did you sell \$150,000 worth of grain that year, do you  
17 think?

18 A I don't know. I would probably doubt it. I don't know.

19 Q That's right. So that figure, no doubt, includes  
20 livestock, doesn't it?

21 A It might.

22 Q It might or it does?

23 A It might. I don't know. I don't know nothing about  
24 income tax papers, so it don't do me much good to look  
25 around.

1 Q So -- but weren't you trying to tell the jury that none of  
2 the livestock that was raised had to be included on your  
3 tax return?

4 A They don't have to.

5 Q They don't have to?

6 A No.

7 Q Why did you include it then?

8 A They don't have to.

9 Q How do you know that? I thought you said you didn't know  
10 much about taxes.

11 A I don't. There's -- there is -- anything that's raised on  
12 trust land is nontaxable, the way I understand it.

13 Q But it's included in your tax return, right, all the  
14 cattle that you sold?

15 A I don't know if they are or not.

16 Q Okay.

17 A I know that --

18 Q Well --

19 A Well, the CPA gets my bank statements, and he does it from  
20 there.

21 Q Do you tell him what cattle were raised on the -- on the  
22 trust land and what land -- cattle were raised on your own  
23 land?

24 A No.

25 Q So he doesn't even know the difference, right?



1 A Well, most all of these cattle were raised on trust  
2 ground.

3 Q And for 1996, as an example --

4 A I don't know.

5 Q For 1996, do you remember when you took a loan for an  
6 advance from Herman Schumacher for 62,500 bucks?

7 A Yeah.

8 Q And was that listed on your tax return anyplace, do you  
9 know?

10 A I don't know.

11 Q Were those cattle raised on trust ground?

12 A No, they weren't.

13 Q Where were they raised?

14 A They were raised on that land Pesickas have.

15 Q So you had all of your --

16 A That's -- that's where they were pastured.

17 Q Those were yearlings, right?

18 A Yeah.

19 Q All of your yearlings then were raised on Pesickas' land  
20 and not the trust ground, right?

21 A That's right. Because they were never mixed with the  
22 cows.

23 Q All of your yearlings came from the 320 head of cows,  
24 right -- or 300-and-some head of cows? That was their  
25 calf crop, right?

1 A Right.

2 Q So weren't they calved out on trust ground?

3 A Yeah. But I say I -- okay. But I raised them as  
4 yearlings on a --

5 Q 250 --

6 A -- half section.

7 Q 250 head?

8 A Yes.

9 Q You had on a half section of grass?

10 A Yes.

11 Q 250 head on a half section of grass?

12 A Yup. I would guess probably Pesicka would even testify to  
13 that.

14 Q And that was enough grass for 250 head, 320 acres of  
15 grass?

16 A I'm sure Chuck came out and looked at them.

17 Q Was it enough grass?

18 A Yes, it was.

19 Q You had how many --

20 A It sustained them that year.

21 Q How many head did you have?

22 A 250-some head, wasn't there?

23 Q 250-some head. And they lived on 320 acres of grass?

24 A Yes, they did.

25 Q Okay. And does it show that you sold them then and list

1 that in your tax return as cattle raised?

2 A It shows the 62,5.

3 Q 62,500, right?

4 A Yeah.

5 Q Yeah. The cattle that were raised?

6 A Okay.

7 Q Okay. So those are reported on your tax return, right?

8 A Yeah.

9 Q And when you did yours -- you testified that when you did  
10 other years where you report like 148 or \$150,000 worth of  
11 something sold, that wasn't grain, was it?

12 A Like I said, I don't know anything about taxes.

13 Q Okay. So you don't even know whether or not your  
14 accountant included all of the sale of livestock then, do  
15 you?

16 A No.

17 Q He could have, right?

18 A I don't know.

19 Q He might have, right?

20 A Yeah.

21 Q Okay.

22 A It's very possible.

23 Q Now, you had some testimony today I noticed about you  
24 asked the Bank countless times for money to move the hay,  
25 right?

1 A Yeah.

2 Q Why did you testify last Friday when I asked you, did you  
3 even ask the Bank for money to move the hay? Why did you  
4 testify "no" at that time?

5 MR. HURLEY: Object, Your Honor, as a misstatement of the  
6 record. That isn't what I recall.

7 MR. VON WALD: Well, we don't --

8 THE COURT: Again, I don't have a record. It's not readily  
9 available. I imagine the jurors heard the testimony. I  
10 will overrule the objection. Do you recall what you said  
11 last Friday, Ronnie?

12 THE WITNESS: No, I don't.

13 A But I -- I've always said that through October and  
14 November and December and then up -- from then on I -- I  
15 always requested some money for operating.

16 Q (BY MR. VON WALD) Right. And I understand you probably  
17 requested money for operating, but you never specifically  
18 asked the Bank for money to move hay to your cattle or  
19 your cattle were going to die. You never told them that,  
20 did you?

21 A Yeah, I have -- I did.

22 Q You told them your cattle were going to die if you didn't  
23 get the hay there?

24 A I told them I needed to get the hay moved is what I said.

25 Q And they gave you a \$5,000 line of credit, right?

1 A That was for specific bills. It was a controlled account  
2 like I've been testifying to. I don't have nothing to say  
3 how I spended money.

4 Q You were given a \$5,000 line of credit, right?

5 A To pay them bills with.

6 Q No, no, no, no, no. You were given a \$5,000 line of  
7 credit, Ronnie. And when you requested an advance, they  
8 would make you the advance, wouldn't they?

9 A No. Not all the time.

10 Q Why didn't you request a \$5,000 line of credit to move  
11 hay, if the cattle were going to die?

12 A I asked. I should have put it in writing, I guess.

13 Q Right. You asked. And when you asked for \$16,000 to  
14 prepay the leases for 1997, they gave that money to you,  
15 didn't they?

16 A Yeah. And it was late.

17 Q Well -- but they gave it to you, didn't they?

18 A About -- yeah, they did.

19 Q Why would they give you that money for leases for the  
20 summer of 1997 and let your cattle die? Does that make  
21 any sense?

22 A It sure don't.

23 Q Back in September when you had the money, it wasn't  
24 20,000, was it, it was 30,000 that you had, right?

25 A No.

1 Q Look at the comment sheets. No. 1.

2 THE COURT: Defendant's 1?

3 MR. VON WALD: Yes, please.

4 Q (BY MR. VON WALD) On 9-20 of '96, that's September 20<sup>th</sup>  
5 of 1996?

6 A Yes, sir.

7 Q Is that right?

8 A Yup.

9 Q And it said that sold 190 head of yearlings for  
10 84,000-some-odd dollars?

11 A Yes.

12 Q Paid Herman Schumacher off for 62,500 plus interest?

13 A Yeah.

14 Q With Ronnie receiving \$9,000?

15 A It don't say that.

16 Q 9.0K, it doesn't say that?

17 A 9.0K, yeah.

18 Q What does that mean, 9.0K?

19 A I don't know. To me it's "\$9 okay" to pay miscellaneous  
20 expenses because I have never ever got that money. I can  
21 prove it in my checking account.

22 Q You mean to say that they put in there --

23 A Where is it?

24 Q Are you meaning to say that (INAUDIBLE) --

25 A I don't -- I don't know what it says because I never --

1 Q It says 9.0K, right?

2 A Right.

3 Q What does that mean to you?

4 A I don't know.

5 Q 9,000, right?

6 A I don't know. Because I never received any of that money.

7 I looked for it even.

8 Q What do you mean you never received it? You paid bills

9 with it, right?

10 A No, I didn't. I paid bills with this 21,000.

11 Q Right. This -- and then it says also larger bills

12 including 3484, 1,000, 847, 3,000, 3400, 7200, Potter

13 County Implement \$160.71, and so forth, right?

14 A Yup.

15 Q And when it said that you received 9.0K, you don't -- you

16 think that was "\$9 okay"?

17 A I don't know what it is.

18 Q See --

19 A I don't know where it is. I never received it.

20 Q Well, just assume for a second that 9.0K means 9,000.

21 A I don't know what it is, sir.

22 Q Well, just assume for a second that's what it means.

23 A Okay.

24 Q Doesn't that what it -- isn't that what it says that you

25 received 9,000?

1 A No. I don't know what it said -- what it means.

2 Q That's what it says, though, right?

3 A Well, I never got it.

4 MR. HURLEY: Objection. This is argumentative. Asked and  
5 answered.

6 THE COURT: Yeah. Just move on. The jurors can read the  
7 exhibit.

8 Q (BY MR. VON WALD) Okay. When you got the money, whatever  
9 it was, 9 -- 30,000 or 21,000 -- you only recall 21,000 --  
10 when you got that money, you could have asked for money at  
11 that time to move stacks, right?

12 A No.

13 Q You couldn't have asked for it?

14 A It was -- it was wrote over from John Lenke's office that  
15 I was to pay these bills. They were past due. I had  
16 people taking us to court.

17 Q How do you know it was wrote over from John Lenke's  
18 office?

19 A I have a letter.

20 Q You have a letter that was wrote over, written by --

21 A Well, faxed over or whatever -- written over. I don't  
22 know. I imagine faxed over from Lenke.

23 Q And --

24 A Because I had to do all of my business through Lenke and  
25 the Bank of Hoven.