

1 Q So was it Lenke that authorized the bills then?

2 A They transferred them -- they faxed them over to the Bank
3 of Hoven.

4 Q So you went to them to get permission to pay bills?

5 A I had to go -- I went down there. They looked at them,
6 and they faxed them to Bank of Hoven, and Bank of Hoven
7 okayed them.

8 Q So the way --

9 A (INAUDIBLE).

10 Q So the way it worked then, is you got permission from the
11 Tribe -- the Credit Office over here in Eagle Butte before
12 you could pay any bills, right?

13 A No.

14 Q Well, I thought that's what you were saying.

15 A I said I brought them down here, and they looked them
16 over, and they faxed them to the Bank of Hoven.

17 Q They --

18 A Because on every check I wrote out, I had to have a
19 voucher.

20 Q Okay. So they had to be approved by the BIA office over
21 here then?

22 A No. They kept track of them. They kept a record of them.

23 Q What did they have to do with the bills then?

24 A I got them down here, and they kept a record of them, and
25 they faxed the bills to the Bank of Hoven.

1 Q So you brought your vouchers and everything into the
2 Planning Office, right?

3 A I brought my bills in there.

4 Q And John is the one that --

5 A I had -- I had to have my bill. And then when the Bank
6 okayed -- finally okayed it, then I could pay it.

7 Q But the request would come from the Planning Office in
8 here?

9 A The (INAUDIBLE) request would come from the Planning
10 Office probably. I don't know.

11 Q Did you ever ask the Planning Office for hay, money to
12 move the hay?

13 A Yeah. They knew I needed it.

14 Q Did they ever make a request to the Bank for that, do you
15 know, faxed something like that over?

16 A Well, they telephone called before Christmas informing the
17 Bank that they could make that advance guarantee to save
18 the collateral.

19 Q Well, what advance guarantee are you talking about?

20 A CFR 25 103.22.

21 Q What was that again?

22 THE COURT: Isn't that Exhibit 11?

23 MR. HURLEY: 11.

24 MR. VON WALD: Okay.

25 Q (BY MR. VON WALD) Exhibit 11, John said that they could

1 make advances?

2 A He called the Bank of Hoven and informed them of that.

3 Q The day before Christmas?

4 A Yes.

5 Q And they already had made some protective advances, hadn't
6 they?

7 A No.

8 Q Well, didn't they make you an advance of 16,000 on the
9 land, Ronnie, on the leases?

10 A This wasn't -- this was for the protected cattle, the
11 livestock.

12 Q The \$16,000 that they paid -- that they prepaid on leases,
13 that was a protective advance?

14 A I wouldn't call that a protective advance.

15 Q The \$5,000 was a protective advance, right?

16 A No.

17 Q The \$2,250 they loaned you for a snowmobile, that was a
18 protective advance, right?

19 A I -- that one would be questionable.

20 Q Okay. And -- now, you had mentioned that at one time that
21 you wanted to move all of your hay down there? Is that --

22 A I mentioned that we wanted to move some of the hay down,
23 yeah.

24 Q Okay. Did you plan on keeping all of the cattle down
25 there, the cows and the yearlings?

1 A Well, no. The yearlings had to be weaned and brought
2 home.

3 Q So the -- so the calves weren't even weaned yet, right?

4 A Right. Because we just decided on that loan agreement
5 what we were going to do.

6 Q Okay. So you wouldn't have moved enough hay down there
7 for the -- for the yearlings, because you didn't plan on
8 keeping them down there anyway, did you?

9 A Right.

10 Q And instead you would have hauled those back to your home
11 place?

12 A Yeah.

13 Q Okay. So the fact that there wasn't hay down there didn't
14 have anything to do with you losing those yearlings then,
15 did it?

16 A Well, yeah. They would have been alive.

17 Q Well, I thought you planned on moving them back, right?

18 A Well, they would have been alive if I would have had the
19 hay down there or I could have had them moved home. You
20 know, the winter started right after this loan agreement
21 deal.

22 Q Yeah.

23 A It started like the 13th of December.

24 Q Yeah. So my point is you didn't lose the cattle because
25 the Bank didn't agree --

1 A Well --

2 Q -- to give you the hay, right?

3 A Well, I didn't -- if I would have had operating money and
4 stuff, I would have had everything all straightened out.
5 Everything would have been in its place.

6 Q You said you had in a letter that you wrote to the Bank
7 on -- on February 18, you said you had trucks all lined up
8 to move the cattle, to move the yearlings out of there,
9 right?

10 A Yeah.

11 Q Okay. So you had the trucks lined up then to do it. Did
12 you have operating money then?

13 A No.

14 Q Well, how did you get that done?

15 A Because -- because a trucker hauling the cattle was a
16 pretty good friend of mine.

17 Q Okay.

18 A And we made arrangements --

19 Q How many trucks did he have?

20 A He had two semis.

21 Q Okay. So you had the trucks lined up on three different
22 occasions you said, right?

23 A Right. But it kept blowing in on us.

24 Q Okay. So you had money for that then, right?

25 A Well, no, I didn't have the money.

1 Q But you could have gotten somebody to do it?

2 A At that time.

3 Q Okay. Okay. And basically, all of these damages that
4 you've testified to again today, basically all of those
5 damages you claim are the result of the -- it's being the
6 Bank's fault that you lost your cattle, right?

7 A Yes.

8 Q And if it wasn't the Bank's fault that you lost your
9 cattle, would any of those damages -- would you be
10 entitled to any of those damages?

11 A If it wasn't the Bank's --

12 Q If it wasn't the Bank's fault that you lost your cattle,
13 would you be entitled to any of those damages?

14 A I wouldn't have lost the cattle.

15 Q My question is --

16 A No.

17 Q If it was not -- you wouldn't --

18 A Ask the question again, please.

19 Q If it was not the Bank's fault that you lost your cattle,
20 would you be entitled to any of the damages that you
21 testified here today?

22 A If it was not the Bank's fault? I don't know how to
23 answer that because who knows what would have happened.

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

25 THE COURT: No more questions? Chuck, any recross?

1 MR. JASPER: Not at this time.

2 THE COURT: I promised, Jurors -- what?

3 MR. JASPER: Not at this time.

4 THE COURT: I promised, Jurors, if you had any real pressing
5 questions, you could pass them to the end here. Do we
6 have any? If not, we can move on.

7 A JUROR: Will we have a chance later to ask?

8 THE COURT: No. This -- because this witness is going to
9 step off the stand. So if you had written anything down,
10 you can pass it to the end juror, and I will have Dale
11 pick them up. None -- none for any? Okay. You can step
12 down, Ronnie.

13 THE WITNESS: Thank you, Your Honor.

14 (WITNESS EXCUSED).

15 THE COURT: Next witness.

16 MR. HURLEY: Yes. Plaintiff calls Charles Simon to the stand.

17 THE COURT: Charles, come forward, please, to be sworn.

18 Would you raise your right hand, please? Do you swear to
19 tell the truth, the whole truth, and nothing but the
20 truth?

21 THE WITNESS: I do.

22 MR. CHARLES "CHUCK" SIMON,
23 called as a witness on behalf of the plaintiffs, being first
24 duly sworn upon his oath, testified as follows:

25 THE COURT: Have a seat, please. Is that spelled the way it

1 sounds? S-I-M-O-N?

2 THE WITNESS: M-O-N, yeah.

3 THE COURT: Okay. Go ahead.

4 DIRECT EXAMINATION

5 BY MR. HURLEY

6 Q Good morning.

7 A Good morning.

8 Q Do you normally go by Chuck?

9 A That's fine.

10 Q Is that comfortable for you?

11 A Yes.

12 Q What was your job at Bank of Hoven during this time period
13 we're talking about here which would be basically 1996,
14 '97?

15 A It would have been vice president of loans.

16 Q Okay. And would you look at Exhibit 4 in the evidence
17 book there before you? Do you see a letter there
18 marked -- dated April 26th, 1996?

19 A Yes.

20 Q And do you see your signature there?

21 A Yes.

22 Q And in this letter you are writing to Ronnie Long?

23 A Yes.

24 Q And in the first paragraph you talk about -- that you had
25 previously talked to Ronnie Long about the Bank

1 foreclosing on the land and the house in Timber Lake. Do
2 you see that?

3 A Yes.

4 Q And you state then that the house would be sold and the
5 sale proceeds applied to the BIA guaranteed debt and the
6 land base would be deeded back and sold to you on a
7 contract, correct?

8 A Yes.

9 Q And by "contract" there, did you mean contract for deed?

10 A This would be a contract for deed or a lease purchase
11 agreement.

12 Q And the second paragraph you state that some difficulties
13 exist in dealing with that situation?

14 A Yes.

15 Q And you talked with legal counsel, David Von Wald?

16 A Yes.

17 Q And the only way the Bank could sell this property would
18 be to secure financing through another financial
19 institution or go through a government agency guaranteed
20 loan, such as FHA, BIA, or SBA through our Bank?

21 A Yes.

22 Q All right. And would you read the last sentence of the
23 second paragraph?

24 A "This is because of possible jurisdictional problems if
25 the Bank ever had to foreclose on this land when it is

1 contracted or leased to an Indian-owned entity on the
2 reservation."

3 Q And as you were being advised then, Chuck, did you mean
4 that the Bank would not sell the Long land back to the ✓
5 Longs on a contract for deed?

6 A Yes.

7 UNIDENTIFIED: (INAUDIBLE).

8 THE COURT: Okay. We're bringing you lunch, Jurors, so we'll
9 probably break at 12, although -- is that clock still
10 fast?

11 UNIDENTIFIED: Yes.

12 THE COURT: All right. The jury is now being shown a blowup
13 of Exhibit No. --

14 MR. HURLEY: 4.

15 THE COURT: -- 4.

16 Q (BY MR. HURLEY) Would you turn to Exhibit 5A, please?
17 And this shows that it's from Charles Simon, yourself, to
18 John Lemke at the CRST Credit Office, correct, dated
19 November 1st, 1996. It's your Deposition Exhibit 18
20 marked in the upper right corner?

21 A Yes.

22 Q Okay. Can you recall we talked about this at your
23 deposition?

24 A Yes.

25 Q And this is -- this is a document or a report that you

1 wrote; isn't that correct?

2 MR. VON WALD: Your Honor --

3 THE COURT: We should have added the second page.

4 MR. VON WALD: Yeah. For clarification, that document is not a
5 complete document.

6 THE COURT: Well, where is the second page? Why don't we
7 just add it.

8 MR. HURLEY: I think -- I think it was marked as defendant's
9 exhibit something or another.

10 MR. VON WALD: I marked that as a defendant's exhibit.

11 THE COURT: All right. (INAUDIBLE) In fairness to the
12 witness, we should show him that total document.

13 MR. HURLEY: And that was not in his Deposition Exhibit 18, so
14 therefore it only has the one page here marked as
15 Deposition Exhibit 18.

16 THE COURT: Okay. Here is the complete document. Does
17 anybody have any problem with me substituting this for 5A
18 as it was originally admitted?

19 MR. VON WALD: I don't object.

20 MR. HURLEY: I don't object.

21 THE COURT: We're going to mark this as -- was Defendant's
22 10. It's now become Plaintiff's 5A, and we will have the
23 witness look at this document. The question again was
24 what?

25 Q (BY MR. HURLEY) Is this a -- is this a document that you

1 prepared, Mr. Simon?

2 A Yes.

3 Q Pardon?

4 A Yes.

5 Q Okay. And do you recall a meeting at the Bank in the
6 conference room downstairs in late October of 1996?

7 A Yes.

8 Q And there were a number of people present?

9 A Yes.

10 Q And you were present?

11 A I believe so.

12 Q Okay. And was Ronnie and Lila Long present?

13 A I -- I believe they were.

14 Q Okay. And it's been mentioned that John Lemke and
15 Mr. Henderson were present from the CRST Planning Office?

16 A Yes.

17 Q And Monica Lind from CRST Planning Office?

18 A Yes.

19 Q Dennis Huber and Brett Maxon were there as well?

20 A Yes.

21 Q From Bismarck, North Dakota?

22 A Yes.

23 Q Bank of Hoven, President Dennis Jensen, was there?

24 A Yes.

25 Q Bank of Hoven, Officer Jim Nielsen, was there?

1 A Yes.

2 Q And Stacey Johnston of the BIA was on the speaker phone?

3 A Yes.

4 Q And this proposed loan agreement that we see a two-page
5 exhibit as Exhibit 5A that the Court has handed you there,
6 is that basically what was discussed?

7 A Yes.

8 Q And did Mr. Maxon put it on the blackboard as it was being
9 discussed so all could discuss the terms of it?

10 A I don't know who would put it on the board.

11 Q Did -- did anybody put it up on the board for all to see?

12 A It doesn't say it in the letter.

13 Q I was asking if you recall?

14 A I would say there would be -- there would have been
15 something put up on the wall or the board.

16 Q Okay.

17 A As we discussed the situation.

18 Q Do you recall Dennis Huber being there and Brett Maxon
19 from Bismarck, North Dakota?

20 A Yes.

21 Q And I would ask you to look at Exhibit 8A there in your
22 book, which I've put the blowup, up for the jury. It
23 should be that one, I believe. That's the cash flow there
24 dated fax date 10-29 of '96?

25 A Yes.

1 Q And do you recall that cash flow as being the one prepared
2 by Dennis Huber and Brett Maxon, Bismarck, North Dakota?

3 A It says on CRST Chairman's Office as far as the fax.

4 Q I'm asking if you recall that from the meeting late
5 October, 1996, at the Bank where all of those people were
6 present, was this cash flow presented; do you recall?

7 A No.

8 Q Okay. And you've looked over this cash flow, have you
9 not?

10 A Yes.

11 Q And doesn't this cash flow fit with your report of
12 November 1 that we were looking at a minute ago?

13 A I think there is some differences, Jim.

14 Q Okay. Did all parties who were present at that meeting at
15 the Bank late October, 1996, did they agree that the
16 proposed loan agreement which you have dated November 1,
17 1996, as you've outlined as a tentative agreement, and the
18 cash flow which is Exhibit 8A, that that was a plan that
19 all parties should go forward with?

20 A It was only a proposed loan agreement.

21 Q Yes. And my question is: Did all of the parties agree to
22 go forward with that or was there any objection,
23 dissension, or was it the consensus of the group that what
24 you had here as a proposed loan agreement was good and
25 let's go forward?

1 A If the loan committee from the Bank would approve it, I
2 would say yes.

3 Q Okay. If you would, turn to Exhibit 6. And I will put
4 the blowup here for the jury to look at. And did the work
5 there by the group late November, 1996, and you set out
6 the proposed loan agreement in Exhibit 5A that we just
7 looked at, November 1st, 1996, did that then become
8 Plaintiff's Exhibit 6 and 7, the loan agreement and lease
9 with option to purchase?

10 A There are some differences, Jim, on --

11 Q But -- but weren't those --

12 A -- on the proposed loan agreement, compared to the loan
13 agreement on Exhibit 6.

14 Q Okay. I understand. But what I'm just asking is in the
15 progression of things, was the November 1st, proposal and
16 agreement, did that then develop into Exhibit 6 and 7, the
17 loan agreement and the lease with option to purchase?

18 A Some of the points would have, yes.

19 Q Okay. And the Bank agreed to those two documents, Exhibit
20 6 and 7, it appears dated the same day, December 5th,
21 1996, correct?

22 A Yes.

23 Q And you recognize the signature there of James Nielsen
24 signing for the Bank?

25 A Yes.

1 Q And in the loan agreement as well as in the proposed
2 agreement, we're talking about the deed from the Long land
3 being transferred to the Bank and the Bank giving credit
4 for that transfer, reducing the obligation of the Longs to
5 the Bank, correct?

6 A Yes.

7 Q And we see that in the first half of the page on
8 Plaintiff's Exhibit 6, correct?

9 A Yes.

10 Q And in addition, there was a house to be deeded to the
11 Bank, and there was an initial credit of 10,000 for the
12 house, correct?

13 A Yes.

14 Q And so in exchange for those deeds, the Bank gets a credit
15 back reducing the obligation of the Longs, \$478,000,
16 correct?

17 A Yes.

18 Q Now, in terms of this -- what was trying to be
19 accomplished here, could we call it the restructure plan
20 for the Longs, restructuring their financial situation?

21 A Yes.

22 Q And that first provision would be a benefit to them
23 because in the next couple of years, two years, they would
24 not have that debt to worry about. It would be -- it
25 would was satisfied, correct?

1 A Yes.

2 Q Okay. And on the first page of Exhibit 6 then, the debt
3 remaining, which was the BIA guaranteed debt, it states,
4 "The Bank of Hoven will request from the BIA to increase
5 the guarantee to 90 percent." What was it at the time
6 that the agreement was entered into, December 5 of '96?

7 A What was the amount? Is that what you are asking?

8 Q No, no. The -- because you are asking to increase the
9 percentage of guarantee by the BIA, correct?

10 A Yes.

11 Q Was that the 84 percent guarantee?

12 A It was either the 84 or the 80 percent.

13 Q Okay. Would you take a quick look at Exhibit 16 to
14 refresh your memory there? Was that 428,930 at
15 84 percent?

16 A In that paragraph one?

17 Q In paragraph one, yes. And then to the second page 60,000
18 at 80 percent, does that clarify it for you?

19 A Yes.

20 Q Okay. Back to where --

21 A 84 percent then.

22 Q Okay. So back to where we're working here on Plaintiff's
23 Exhibit 6, what's being agreed to then is that the note
24 98181, that was the debt remaining guaranteed by BIA,
25 after the credit was given for the transfer of the deed on

1 the land and the house, right?

2 A Yes.

3 Q Okay. And that was going to be termed over 20 years,
4 correct?

5 A Yes.

6 Q And then if you go to the second sentence, second
7 paragraph, Plaintiff's Exhibit 6, the Bank of Hoven will
8 also request a 90 percent BIA guarantee on a \$70,000
9 operating loan. Do you see that?

10 A Yes.

11 THE COURT: Okay. Hold that thought until after lunch, Jim.

12 MR. HURLEY: Yes.

13 THE COURT: I think it's lunchtime. And I believe lunch is
14 here for the jurors. So we're only going to be able to
15 take an hour for lunch today, Jurors. We've got a lot of
16 work ahead of us. So 1 o'clock -- we will call this fast
17 time -- 1 o'clock fast time.

18 (RECESS TAKEN.)

19 All right. Back on the record. Matter of Long
20 Family Land and Cattle Company versus Bank of Hoven and
21 others. The jurors have reported back from their lunch.
22 And I believe Mr. Simon is on the stand being questioned
23 by counsel for plaintiffs. So we'll get back into it,
24 Jurors. Go ahead, Jim.

25 MR. HURLEY: Thank you.

1 Q (BY MR. HURLEY) Would you turn to Exhibit 6, please,
2 Chuck?

3 A Okay.

4 Q And in the paragraph it begins, "The Bank of Hoven will
5 request from the BIA to increase the guarantee to
6 90 percent," and we just established that was now
7 84 percent, so you were going to try to increase the
8 percentage of guarantee some 6 percent, correct?

9 A Yes.

10 Q And then you were going to reschedule note 98181, correct?

11 A Yes.

12 Q The next line. And that was the amount of money remaining
13 to be paid that was guaranteed by the BIA after the
14 credits for the land and the house is shown in the first
15 part of the loan agreement, right?

16 A There was no money applied to that, Jim. It was other
17 notes that -- were -- they were either reduced or paid
18 off.

19 Q But I mean after that 478 was applied and reduced --

20 A The balance would be refinanced.

21 Q -- the balance would be refinanced. And that balance was
22 guaranteed by the BIA?

23 A Yes.

24 Q Okay. And that was going to be over 20 years?

25 A Yes.

1 Q And annual payment from crop and yearling sales?

2 A Yes.

3 Q Okay. And the primary security would be cows, bulls, and
4 machinery?

5 A Yes.

6 Q Okay. And the next sentence the Bank of Hoven will also
7 request a 90 percent BIA guarantee on a 70 percent annual
8 operating loan. Now that was a new loan, was it not?

9 A It was 70,000, not 70 percent.

10 Q Oh, excuse me.

11 A You said 70 percent I think.

12 Q Well, I misspoke. It's a -- the Bank is going to make a
13 70 --

14 A A new loan, yes.

15 Q -- a \$70,000 annual operating loan?

16 A Yes.

17 Q And it wasn't guaranteed or -- by 84 percent. There was
18 no increase involved; it was a new loan?

19 A Yes.

20 Q And at the end of the next sentence, it says it will be
21 paid down to \$1.00 annually. What does that mean?

22 A Every year they have to pay it down to \$1.00, and then you
23 come with your new program for the next year.

24 Q And so if they paid it down to \$1.00, then they could have
25 70,000 operating line for year two, for example?

1 A Yes. They'd normally have to present a new cash flow
2 financial statement and get approval before they advance
3 back.

4 Q But at least that's the idea that's presented here?

5 A Yes.

6 Q And the operating loan for this particular situation was
7 for the purpose of allowing them --

8 (END OF DUPLICATE #6 TAPE #1).

9 (THE FOLLOWING PROCEEDINGS TOOK

10 PLACE ON DUPLICATE #6 TAPE #2:)

11 -- to pay operating expenses?

12 A Yes.

13 Q And typically, you would have operating farm and ranch
14 operating expenses to get the crop in and take care of it?

15 A Yes.

16 Q Take it all the way down until it's harvested and sold?

17 A Yes.

18 Q And then there would be some cash coming in, correct?

19 A Yes.

20 Q And that -- and that cash event then would pay down the
21 operating line again?

22 A Yes.

23 Q And the same would be true of cattle, you would typically
24 loan the Longs some money, and they would take care of the
25 cattle. And then when the calves are sold, it's an income

1 event, right?

2 A Yes.

3 Q And that's what they could pay the operating loan back
4 down to --

5 A Yes.

6 Q -- \$1.00 again?

7 A Yes.

8 Q And that was the idea there?

9 A Yes.

10 Q And in the next paragraph, we have a \$53,500 loan. Now
11 that was not to be guaranteed by BIA; isn't that right?

12 A Right.

13 Q In other words, this would be a direct -- a direct loan?

14 A Yes. So if the other requests were approved, then we
15 would make this loan.

16 Q Okay. But this one was not to be guaranteed?

17 A That's right.

18 Q This would be what you would call a direct loan?

19 A Yes.

20 Q And the Longs would have 37,500 from that particular loan
21 to be used to purchase 110 calves to be fed and pastured
22 with their own calves, correct?

23 A Yes.

24 Q And is the purpose of that to give them some more calves
25 to increase their cattle income?

1 A Yes.

2 Q Okay. And the operating loan in this situation was
3 necessary for the success of the overall plan, wouldn't
4 you think?

5 A Yes.

6 Q And also the purchase of the additional 110 calves would
7 be necessary for the success of the overall plan?

8 A It could be.

9 Q Well, it would certainly help?

10 A Yes.

11 Q It could help?

12 A Yes.

13 Q It would give you another 110 calves to feed and grow up
14 and hopefully sell in a good market and make some money?

15 A Yes.

16 Q I believe --

17 A You are never -- I guess the point here is you're never
18 guaranteed that you're -- that the plan is going to
19 succeed, you know. It's going to depend on the weather;
20 it's going to depend on prices, death loss of cattle. So,
21 yeah, the intent is to try to increase the repayment
22 ability of the operation.

23 Q And in your experience as a lender, if you can buy some of
24 those light calves and then if you have feed on hand,
25 grass on hand, grow them up over time, it's a pretty --

1 it's a -- it's a good piece of business, usually?

2 A Normally, yes.

3 Q Okay. And then if you go to the last paragraph, which is
4 the last sentence of Exhibit 6, "The Bank of Hoven will
5 enter into a lease/purchase option on the approximately
6 2230 acres of land only described in Exhibit A, under a
7 separate agreement attached hereto." And that -- that is
8 the Longs' land that was deeded to the Bank?

9 A Yes.

10 Q And the lease with option to purchase is part of this loan
11 agreement, Exhibit 6, correct? In other words, the two go
12 together?

13 A Two separate agreements.

14 Q Well, I understand that, but what I'm saying is Exhibit 6
15 refers to it in the last sentence; isn't that correct?

16 A Yes. ✓

17 Q And if you take a look at Exhibit 7, this is the lease
18 with option to purchase that is referred to in the last
19 sentence of Exhibit 6, correct?

20 A Yes.

21 MR. HURLEY: (INAUDIBLE).

22 MR. VON WALD: Yes.

23 Q (BY MR. HURLEY) And the Bank caused both Exhibits 6 and 7
24 to be prepared; isn't that correct?

25 A Yes.

1 Q And both Exhibit 5 and 6 were signed by the Bank and the
2 Longs on the same day, December 5, 1996, correct?

3 A I thought you said 5 and 6 or --

4 Q December 5, 1996?

5 A Yes.

6 Q Okay. And the land described on the first page of the
7 lease with option to purchase, that is the 2230 acres that
8 was owned by Kenneth Long and deeded to the Bank, correct?

9 A Yes.

10 Q And the sense of this lease with option to purchase is
11 that the Longs would lease it for a period of two years?

12 A Yes.

13 Q December 5, 1996, to December 5, 1998?

14 A Yes.

15 Q And there was a parcel of CRP, Conservation Reserve
16 Program, land on this piece of land?

17 A Yes.

18 Q And that was paying out an annual payment of \$44,198 a
19 year?

20 A Yes.

21 Q And under this agreement last paragraph, page one, the
22 Longs would have signed that to the Bank, correct?

23 A Yes.

24 Q And then under this agreement, that payment would be
25 counted as rent?

1 A Yes.

2 Q And if you go to page two? And under the paragraph headed
3 option to the purchase, the Bank agreed the Longs would
4 have an option to purchase this real estate back any time
5 during the two-year period, correct?

6 A Yes.

7 Q And the price was \$468,000?

8 A Yes.

9 Q And Exhibit B under option to purchase, the Longs had to
10 pay a 5 percent of the purchase price and furnish the
11 remaining balance of the purchase price within 60 days of
12 the date of the notice, correct?

13 A Yes.

14 Q And they would receive a quit claim deed if they did that?

15 A Yes.

16 Q Go to page three if you would? In paragraph F on page
17 three, the house of Kenneth Long is mentioned?

18 A Yes.

19 Q And that house was deeded to the Bank?

20 A Yes.

21 Q And the Bank gave the Longs a \$10,000 credit, which is
22 reflected back on the first page of Exhibit 6, correct,
23 which is the loan agreement?

24 A Yes.

25 Q In the first paragraph of the loan agreement, the 10,000

1 credit for the little house is shown there?

2 A Yes.

3 Q And that's referred to in paragraph F of page three of the
4 lease with option to purchase agreement?

5 A Yes.

6 Q And it provides that if the little house is sold for more
7 than \$10,000, then the Bank will reduce the selling price
8 of the land by that amount, correct?

9 A Yes.

10 Q I would like you to take a look at Exhibit 15, and you see
11 there the settlement statement from the sale of the house?

12 A Yes.

13 Q And apparently from the note there the house closed
14 October 2nd, 1997, the bottom entry?

15 A It's hard to read, but it looks -- it looks right, Jim.

16 Q Okay. And it appears that there was an additional \$16,478
17 from the little house?

18 A Yes.

19 Q And that would be over and above the 10,000 credit?

20 A Yes.

21 Q So then in paragraph F that would reduce the purchase
22 price for the Longs by that amount, correct?

23 A If he exercised the option to purchase, yes.

24 Q Yes. And that's what F is dealing with there?

25 A Yes.

1 Q And that 16,478 would be a credit reducing the selling
2 price, right?

3 A Yes.

4 Q And that would be the payment as a payment, reducing the
5 selling price? Correct?

6 A The same as a payment?

7 Q It would be the same as if they paid 16,478?

8 A It would reduce the selling price, correct.

9 Q And then in G on page three, take a look at that. And
10 then there is another credit that the Bank agreed to,
11 correct, in paragraph G?

12 A The interest --

13 Q Pardon?

14 A The interest -- the interest charge on the -- the balance.

15 Q Okay. But first let's -- first, let's go to the credit in
16 the second line, "All rent payments received prior to
17 purchase of said real estate will be credited against the
18 purchase price." Do you follow it that far?

19 A Yes.

20 Q Okay. And that would be the two CRP payments that were
21 taken in as rent. But if they exercised the option, then
22 this paragraph G would kick in, correct?

23 A Yes.

24 Q And the credit starts out to be then that 88,400 and then
25 you get down to the fourth line, minus amount equal to the

1 interest at the rate of eight and a half percent per annum
2 on the unpaid balance of the purchase price from and after
3 December 5, 1996, correct?

4 A Yes.

5 Q So when you get out to two years out and the Longs do
6 exercise, then the interest on the 468,000 is paid by that
7 credit in effect, right?

8 A Yes.

9 Q Okay. And there might be, you know, not even numbers but
10 at least the interest is paid, right?

11 A There would have been a -- I think approximately an 8,
12 \$9,000 difference there.

13 Q Okay.

14 A Actual reduction from the lease payments coming in, and
15 then figuring the interest off.

16 Q Okay. And by the signature of James Nielsen on both
17 Exhibit 6 and 7, would be -- would it be correct to say
18 that the Bank had approved of this agreement?

19 A Yes.

20 Q And the Bank had approved to undertake any obligations
21 that the Bank of Hoven assumed in this agreement? In
22 other words, all parts of it were approved?

23 A Yes.

24 Q By the Bank?

25 A Yes.

1 Q Would you turn to Exhibit 10, please? And that's a letter
2 that you wrote?

3 A Yes.

4 Q And you see your signature there?

5 A Yes.

6 Q And it's dated January 16th, 1997?

7 A Yes.

8 Q And who are you writing to?

9 A Dennis Huber from the North Dakota, South Dakota Indian
10 Business Bureau Center from Bismarck, North Dakota.

11 Q And is he one of those people that we named off at the
12 first part of this conversation, where he was present at
13 that meeting at the Bank the end of October?

14 A Yes.

15 Q And you go through a general outline of -- of the
16 situation there in the first paragraph, where the Bank of
17 Hoven has received a deed to the property previously owned
18 by Kenneth Long worth 468,000, farm and ranch real estate,
19 correct?

20 A Yes.

21 Q And 10,000 on the house in Timber Lake. This value of
22 478,000 has been used to pay off prior real estate debt,
23 taxes, and other obligations owed by the Longs, right?

24 A Yes.

25 Q And then you state in paragraph two, the Longs are also in

1 the process of receiving a rescheduling of the remaining
2 present BIA guaranteed debt of \$343,874 over a 20-year
3 term. And that would be the debt remaining after the
4 credit for the land and the house, right, that was
5 guaranteed by BIA?

6 A Yes.

7 Q And I think we saw in Exhibit 8 that that was going to
8 carry interest at 9.25 percent?

9 A Yes.

10 Q And then you state, "They will also be receiving a BIA
11 guaranteed operating loan for \$70,000 for annual operating
12 expenses." And that's what you spoke to in Exhibit 6,
13 concerning the \$70,000 operating loan, correct?

14 A Yes.

15 Q And you state, upon receiving the BIA guarantee shortly,
16 they will also receive a direct bank loan for 53,300 to be
17 used to finance bank debt and purchase feeder cattle?

18 A 53,500.

19 Q 53,500?

20 A You said 300.

21 Q Oh, excuse me. 53,500.

22 A Yes.

23 Q And that's -- and that's the other loan that you talked
24 about in Exhibit 6, which would provide \$37,500 for the
25 Longs to purchase 110 cattle to go along with their

1 calves, correct?

2 A Yes.

3 Q So this letter pretty much tracks the loan agreement,
4 Exhibit 6, correct, in that regard?

5 A Yes.

6 Q And you say upon receiving the BIA guarantee shortly, how
7 did you know that that was going to happen shortly? Had
8 you talked to someone or had any indication?

9 A No. We wouldn't know until we get official word from BIA.

10 Q And you say to Dennis Huber, "These credits and loans
11 would not have been possible without your expertise and
12 assistance." What did Dennis Huber do in terms of putting
13 together the loan agreement and lease with option to
14 purchase?

15 A I'm not sure what he had -- I mean, I don't think he had
16 any part in that as far as these two agreements.

17 Q What were you --

18 A He wanted this letter wrote basically to -- he needed
19 something up there I think basically to help his program
20 as far as what he was doing with helping people and
21 assisting people to put loan packages together.

22 Q And did his expertise and assistance help put this loan
23 package together here?

24 A Yes.

25 Q Okay. And that's basically what you are saying there in

1 the last paragraph?

2 A Yes.

3 Q And you say, "We appreciate your efforts in helping the
4 Bank secure this loan package and reduction of Bank debt
5 for the Longs," correct?

6 A Yes.

7 Q Would you go to Exhibit 11, please? And you are familiar
8 with this letter, are you not?

9 A Yes.

10 Q And here the BIA is responding to the Bank's request
11 concerning increase in the BIA guarantee set out in the
12 loan agreement, correct?

13 A Yes. The only thing I disagree with, Jim, there is the
14 date is wrong on the 1997. It should be 1996.

15 Q Okay.

16 A There is a couple cross-outs on it, so just to make it
17 clear to the jury that that is the case.

18 Q Okay. So where it reads February 14th, 1997, it should be
19 February 14th, 1996?

20 A No. No. The December 12th should be a 1996. I think the
21 February 3rd is right of 1997.

22 Q Oh, I see. Second paragraph?

23 A Yes. Where it says from to year December 12th, 1997, it
24 should be 1996.

25 Q Okay. Gotcha. Okay. And this letter, apparently, the

1 BIA is telling the Bank of Hoven that a more complete
2 application is required?

3 A Yes.

4 Q And they cite CFR 25, 103.21. Do you see that?

5 A Yes.

6 Q And the next paragraph they go into emergency situation
7 caused by the severe winter conditions. Do you see that?

8 A Yes.

9 Q And it states, "Therefore, we concur with a loan for
10 emergency expenses." And doesn't it appear that BIA's
11 authorizing an emergency loan by Bank of Hoven to the
12 Longs in the situation that we're in here?

13 A Yes.

14 Q And states that -- the citation regulation is 25 CFR
15 103.22 referred to for further direction and
16 documentation; is that right?

17 A Yes.

18 Q And under that CFR that's referred to generally as the
19 protective advancement CFR?

20 A Yes.

21 Q And under that CFR, the Bank could loan to the Longs in an
22 emergency situation up to 10 percent of the guaranteed
23 amount originally?

24 A Yes.

25 Q And I think we saw when we looked back earlier, we had a

1 guaranteed amount of \$428,930 at 84 percent, correct?

2 That's 16.

3 A Exhibit 16?

4 Q Yes, please.

5 MR. VON WALD: That, Your Honor, I don't believe is in evidence
6 yet.

7 THE COURT: I've got 16 was never offered. So do you want to
8 offer it now?

9 MR. HURLEY: Yes, please. Given for quick reference here.

10 THE COURT: All right.

11 Q (BY MR. HURLEY) So it would be 10 percent of that or
12 approximately \$42,800?

13 A Yes.

14 Q And under the CFR, that would be for the preservation,
15 maintenance, or maintenance to the property?

16 A Yes.

17 Q Or the collateral?

18 A Yes.

19 Q It would be for the protection of the interest of the
20 lender or the borrower?

21 A Yes.

22 Q To take care of the collateral? And the repayment of the
23 protective advance would be automatically guaranteed at
24 the same percentage rate as applied to the original amount
25 of the loan, correct?

1 A Yes.

2 Q Which would be that 84 percent?

3 A And we did that, too. We give them lease money for
4 16,000. It would be under the emergency operating loan
5 for 5,000 and the money to buy the snowmobile. So all of
6 those loans could be construed to be under this
7 regulation.

8 Q And would you look at Exhibit 22, please? And you are
9 referring to the -- in there in the comment sheets as
10 well, but the new note dated December 10th of '96, and
11 that was for leases for 19 -- grass leases for 1997?

12 A Yes.

13 Q Okay. And that would be useful in the -- for summer
14 grazing come green grass in April, May of 1997?

15 A Yes.

16 Q Okay. Why was that new note due January 15th, 1997? Was
17 that in anticipation that the -- the BIA approval would be
18 granted, and it would be taken out by the 70,000 operating
19 loan?

20 A You said January, Jim, am I getting something wrong here?

21 Q Well, I picked that up from the (INAUDIBLE) --

22 A It says here due October 31st, 1996.

23 THE COURT: That's the lease. You're asking when this loan
24 was due.

25 MR. HURLEY: For the note, yeah.

1 A Oh, I see what you're saying. The lease was due at that
2 time.

3 Q (BY MR. HURLEY) I'm going to show you the --

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

5 THE COURT: You may.

6 Q (BY MR. HURLEY) This is the comment sheets of the Bank,
7 which is a defendant's exhibit. And I'm showing you here
8 12-10 of '96, new note interim operating for leases due
9 January 15th of '97. Why that short due date, one month?

10 A I would say that would be right. It would have been
11 refinanced into the --

12 Q New operating loan?

13 A -- new operating loan.

14 Q And was 70,000 taken out then?

15 A Yes.

16 Q I'm still looking at Exhibit 22, the loan 12-14-96. You
17 were present when Ronnie Long was present testifying?

18 A Yes.

19 Q And you would agree that was for the used snowmobile?

20 A Yes.

21 Q And that was to help him get over to the cattle?

22 A Yes.

23 Q The notes of 12-14 of '96, that was one new note for
24 5,000, correct?

25 A Yes.

1 Q And you would agree that what he has down there was the
2 reason why that note was made and how that money was
3 spent?

4 A Yes.

5 Q Okay. And the total there is 23,968, and that's what you
6 were referring to just a minute ago in your comments?

7 A Yes.

8 Q Okay. In your letter to Mr. Lemke, Exhibit 6, which is
9 the loan agreement, and isn't it true that the \$70,000
10 operating loan was never made to the Longs?

11 A Yes.

12 Q And it's also true that the \$53,300 loan was never made?

13 A There was revisions to that, Jim, so eventually there is
14 something made to them but -- but in those amounts, no.

15 Q Okay. And it's true that the funds to purchase the 110
16 calves in the amount of 37,500 to be fed and pastured with
17 the Long calves, that loan was not made?

18 A That's right.

19 Q And therefore, the Longs were unable to buy the 110
20 calves, correct?

21 A Yes.

22 Q And it's true that the Bank was aware of the situation in
23 December of '96, January of '97, where the Longs had a
24 problem, and they couldn't get their hay moved over to
25 their cattle?

1 A No, we weren't aware of that.

2 Q Do you recall when I took your deposition August 4th of
3 2000?

4 A Yes.

5 Q And I asked you this question --

6 MR. VON WALD: What page are you referring to, Jim?

7 MR. HURLEY: This is 81.

8 Q (BY MR. HURLEY) Right after the questions that I just
9 asked you, "The Bank was aware of that situation where the
10 Longs had a problem they couldn't get their hay moved to
11 their cattle?" And your answer was "yes." Do you see
12 that?

13 A Yes.

14 Q So was your -- does that refresh your recollection?

15 A Yes.

16 Q Then the Bank was aware that the Longs had that problem,
17 and they needed to get some money to get that hay moved
18 over to the cattle, correct?

19 A Yes.

20 Q And other than the loans which you just referred to in
21 Exhibit 23 -- excuse me -- 22, and we just went through
22 those for the grass lease for the coming year, the used
23 snowmobile, payment of the old bills in the amount of
24 23,968, the Bank did not make any other emergency loan to
25 the Longs in December, January -- December 1996,

1 January 1997; isn't that right?

2 A Yes.

3 Q And would you turn to Exhibit 17, please? And this is the
4 letter of Ronnie Long to the Bank. Do you see that?

5 A Yes.

6 Q And it's dated December 1, 1998?

7 A Yes.

8 Q So he wrote the letter some three or four days before the
9 two years was up under the lease with option to purchase?

10 A Yes.

11 Q And you knew that the Longs wanted to buy their land back,
12 correct?

13 A Yes.

14 Q And we saw in the lease where if the Longs had paid their
15 5 percent down payment, then they would have a 60-day
16 extension, correct?

17 A Yes.

18 Q And Ronnie Long states in the letter that -- states in the
19 letter that "I have four possibilities for refinancing and
20 paying the debt off against the land that the Bank holds
21 the deed on." Do you see that?

22 A Yes.

23 Q And, "This will allow me the necessary time to try to
24 secure the financing for this endeavor. I have a bank
25 interested and will be looking at the land in the next day

1 or two. I also have been working on investors and have a
2 individual out of Nebraska that is interested and this
3 will allow me time to work out necessary details to make
4 this a reality." Do you see that?

5 A Yes.

6 Q And would you look at Exhibit 18? It appears to be a
7 letter over your signature?

8 A Yes.

9 Q And would you read what you wrote there?

10 A "This letter will notify you and Ronnie Long that there
11 will be no extension of time from the December 5, 1998,
12 deadline for option to purchase. Possession of this
13 property by lessee, Long Family Land and Cattle Company,
14 Inc., will terminate on December 5th, 1998."

15 Q And what was your primary reason for writing that letter?

16 A He never exercised the option to purchase.

17 Q In what respect?

18 A Never made 5 percent down payment.

19 Q And in the lease with option to purchase where we see the
20 credit for the CRP which was used as rent and then if the
21 option to purchase is exercised, then it's a credit of
22 88,000 reducing the purchase price, correct?

23 A Yes.

24 Q And also the 16,400 from the little house was a credit on
25 the purchase price?

1 A Yes.

2 Q But those two amounts in your view did not constitute a
3 5 percent down payment?

4 A That's right.

5 Q And, therefore, his request was denied?

6 A That's right.

7 Q Would you look at Exhibit 19, please? And what do we see
8 here?

9 A A quit claim deed.

10 Q From? Issued by?

11 A Bank of Hoven to Ralph Pesicka and Norma Pesicka.

12 Q Okay. And it appears that 328 acres give or take are
13 described there?

14 A Yes.

15 Q And was this land formally owned by the Longs?

16 A Yes.

17 Q That had been deeded to the Bank?

18 A Yes.

19 Q And now the Bank was selling it to the Pesickas?

20 A Yes.

21 Q And the sale price of that land was just under 50,000?

22 A Yes.

23 Q Which would be \$155 an acre?

24 A Sounds right.

25 Q Okay. And that happened March 17th, 1999, correct?

1 A Yes.

2 Q Okay. And up to that point in time, March 17, 1999, the
3 Bank had not run into the Cheyenne River Sioux Tribe Court
4 and obtained an order evicting the Longs off of their
5 2230 acres, correct?

6 A Do you want to say that again, Jim?

7 Q Up to that point, March 17th, 1999, the Bank hadn't gone
8 into court and got a court order evicting the Longs off of
9 the land, correct?

10 A Had not?

11 Q Had not?

12 A Had not.

13 Q That's correct?

14 A Yes.

15 Q And look at Exhibit 20. And that was a notice to quit
16 issued by the Bank of Hoven, correct?

17 A Yes.

18 Q And it's dated May 19th, 1999, just above the signature,
19 Bank of Hoven?

20 THE COURT: On the bottom. Oh, you're looking at the wrong
21 exhibit.

22 Q (BY MR. HURLEY) Turn to page one. There you go.

23 A May 19th, 1999.

24 Q Okay.

25 A Yes.

1 Q And that would be after, as you said, the deed to the
2 Pesickas, March 17th, 1999, right?

3 A Yes.

4 Q Some two months later?

5 A Yes.

6 Q And in the next page there it appears that the Cheyenne
7 River Sioux Tribe certificate of service shows that that
8 was served on the Longs, June 16th, 1999, correct?

9 A It was '98.

10 Q But look at the judge's signature below June 15th of '99,
11 so that signature must be --

12 A It's kind of hard to read there.

13 Q It's hard to read.

14 A June 15th, '99?

15 Q June 15th, 1999, the judge authorized it in this Court --

16 A That's right, yes.

17 Q -- and it was served on the Longs June 16th, 1999,
18 correct?

19 A One place in here the top says 1998 and the bottom says
20 '99.

21 Q I think the way you have to read that top paragraph is it
22 was served on the Longs the 16th day of June, 1999, at
23 Timber Lake, South Dakota?

24 THE COURT: This is the day it was served on the Longs. This
25 is the day that the judge approved that it be served.

1 THE WITNESS: It says '98.

2 THE COURT: It does say '98.

3 Q (BY MR. HURLEY) I think you have to read that '99 because
4 the judge authorized it June 15th of '99.

5 A Let's -- let's let (INAUDIBLE).

6 Q Okay. Because it certainly wasn't served a year earlier.
7 In any event, it was after the Bank sold the Bank to the
8 Pesickas?

9 A Yes.

10 Q And the Bank understood that the Longs wanted to continue
11 in possession of their land, correct?

12 A Yes.

13 Q And would you look at Exhibit 21? And that's the contract
14 for deed between the Bank of Hoven and Edward and Mary Jo
15 Maciejewski, correct?

16 A Yes.

17 Q And that's dated June 25, 1999, correct?

18 A Yes.

19 Q And that was the day that the Bank sold the piece of land
20 described therein to the Maciejewskis?

21 A Yes.

22 Q And a contract for deed means the seller financing,
23 correct?

24 A Yes.

25 Q And the Bank is the seller, and they're financing the

1 purchase by the Maciejewskis of this piece of land?

2 A Yes.

3 Q And there is roughly 1905 acres described here?

4 A I would say that's close, Jim. It's in the ball park. It
5 doesn't say that here. I think it's just got a land
6 description, but it should be right at that.

7 Q Because 320 sold to Pesickas, 1905 sold to Maciejewskis
8 would give you 1225. So if it was 1910, that would be
9 1230 -- it would have been give or take a few, correct?

10 A Yes.

11 Q And under the lease with option to purchase, we see there
12 that the Bank did not sell the land to the Longs on a
13 contract for deed, correct?

14 A Right.

15 Q And, in fact, if they paid the -- if they paid the
16 5 percent down then they had 60 days to come up with the
17 entire balance lump sum cash?

18 A Yes.

19 Q And if you go to page two of Exhibit 21, we see there that
20 the terms of the contract for deed give the Maciejewskis
21 ten years to pay for that land, correct?

22 A Yes.

23 Q And the interest rate is 7.75 percent interest per annum?

24 A Yes.

25 Q And the annual payment is \$23,229, correct?

1 A That's on Parcel 1, right?

2 Q Parcel 1.

3 A Yes.

4 Q Okay. And you heard Ronnie Long testify that the annual
5 FSA farm program payments on the land described in the
6 contract is \$23,000? You were present when --

7 A Yes.

8 Q Okay. And you have no reason to dispute that?

9 A You are saying the annual amount for every year or is
10 there going to be a difference?

11 Q Well --

12 A I'm saying there could be a difference from one year to
13 the next.

14 Q Right. Right. And I believe he agreed with you but at
15 least for 1999 he verified and you were here for that
16 testimony, correct?

17 A Yes.

18 Q You have no reason to dispute that his research on that
19 point wasn't correct, right?

20 A No.

21 Q It would be approximately \$23,000?

22 A Yes.

23 Q And so the FSA payment would in effect approximately make
24 the payment for the Maciejewskis under the Bank's contract
25 for deed, correct?

1 A Yes.

2 MR. VON WALD: That may be --

3 THE COURT: Do you have an objection?

4 MR. VON WALD: Objection, yeah. That's a misstatement of the
5 record. I believe the FSA payment was for all of the
6 land. We're talking about Parcel 1 here.

7 THE COURT: Why don't you ask him if his understanding was
8 that that payment was only on Parcel 1 or all the land.

9 MR. HURLEY: Okay.

10 Q (BY MR. HURLEY) To clarify here for counsel, what you and
11 I are talking about is that on all of the 1905 acres the
12 FSA payment annually at least for 1999 was about 25,000 --
13 22,000?

14 A Yes.

15 Q And then the contract payment on Parcel 1 was 23,229?

16 A Yes.

17 Q So that the FSA payment would approximately make the
18 contract payment on Parcel 1, correct?

19 A Yes. On 1, not 2.

20 Q Okay. And as it turned out, that's all that the
21 Maciejewskis undertook at that time; isn't that right?

22 A They also made a 20 percent down payment, too.

23 Q But I mean Parcel 1 is what they undertook?

24 A Yes.

25 Q But, yes, after the down payment and then given 10 years

1 7.75 percent, the annual payment was 23,229, correct?

2 A Yes.

3 Q Okay. On Parcel 1?

4 A Yes.

5 Q Okay. And go to page three of Exhibit 21, and it's stated
6 there that -- that the Maciejewskis shall be entitled to
7 possession of Parcel 1 upon payment of the down payment,
8 and shall be entitled to possession of Parcel 2 when the
9 current lessee quits possession of the real estate. And
10 the current lessee would be the Longs, right?

11 A Yes.

12 Q "Either voluntarily or involuntary. It is specifically
13 understood that the Long Land and Cattle Company, Inc., is
14 currently grazing cattle on Parcel 2, and Rhonda Long is
15 living in a house located on Parcel 2 and that the Bank of
16 Hoven is in the process of evicting the lessee -- "which
17 would be the Longs, right?

18 A Yes.

19 Q " -- and Rhonda Long from said real estate. Due to the
20 uncertainties of litigation, it is impossible to
21 accurately predict when the lessee shall be evicted from
22 the real estate, but that upon either eviction or
23 voluntary surrender of the real estate, by the past
24 lessee, buyers should be entitled at that time to
25 possession of the real estate or if eviction is not

1 accomplished prior to June 1st of any year, then buyers
2 will be entitled to possession by June 1st of the year
3 following eviction." And we're talking there about Parcel
4 2, right?

5 A Yes.

6 Q So at least initially the Maciejewskis undertook the
7 purchase of Parcel 1, right?

8 A Yes.

9 Q And of the date the Maciejewski contract for deed was
10 entered into 25, June, 1999, the Bank still had not
11 obtained a hearing date or an order on its notice to quit
12 or effort to evict the Longs off the land, correct?

13 A Yes.

14 Q And under that provision that we just read in the
15 contract, the buyers, the Maciejewskis, were made aware
16 that the Longs were still in possession of Parcel 2; isn't
17 that right?

18 A Yes.

19 Q And it's true that Ronnie Long always did tell you that he
20 wanted to buy the land back; isn't that right?

21 A Yes.

22 Q And further, that the Longs wanted to keep possession of
23 the land and didn't want to give up possession; isn't that
24 right?

25 A Yes.

1 Q And after the Bank denied Ronnie Long's request for an
2 extension of time, December 5th, 1998, the Longs continued
3 to run cattle on some of the 1905 or 10 acres; isn't that
4 right?

5 A Yes.

6 Q And the Bank of Hoven was aware in June of 1999, that
7 Ronnie and Lila Long and the Long Family Land and Cattle
8 Company, Inc., were still in possession of the
9 2,225 acres, correct?

10 A What date again, Jim?

11 Q That was June of 1999.

12 A Well, some of the land was sold to the Pesickas then
13 (INAUDIBLE)?

14 Q Yes, in March. Other than -- other than that, yes.

15 A Yes.

16 Q Okay. And that's the reason that the Bank had its counsel
17 send out the notice to quit May 19th of 1999, correct?

18 A Yes.

19 Q And that notice to quit which is Exhibit 20, contains a
20 description of all of the land, isn't that right, Parcel 1
21 and Parcel 2?

22 A Yes.

23 Q And do you recall that Mr. Maciejewski had created a fence
24 between Parcel 1 and Parcel 2; isn't that right?

25 A Yes.

1 Q And that he had driven the cattle, Long's' cattle, off of
2 Parcel 1 in about that same time frame?

3 A That's what Ronnie said.

4 Q Okay. And you were aware of that, too, that
5 Mr. Maciejewski said that?

6 A I don't know.

7 Q I further asked you this question: "Do you further recall
8 him saying that Mr. Maciejewski had created a fence --
9 built a fence and had driven the cattle off of Parcel 1
10 about that same time frame?"

11 "Yes."

12 "And were you aware of that fact June 25, 1999?"

13 Answer -- your answer, "I believe I had a
14 conversation with Ed --"

15 That would be Ed Maciejewski, right?

16 A Yes.

17 Q -- "and he said he was going to build a fence, and I
18 didn't know if he built the fence I guess at that time
19 that he said he was thinking of doing that." Do you
20 recall that?

21 A Yes.

22 Q And then I said, "And did he share with you that the
23 cattle of the Long Corporation was removed from Parcel 1
24 in connection with building a fence?"

25 And your answer is, "Yes." Do you recall those

1 questions and answers?

2 A Yes.

3 Q Does that refresh your recollection?

4 A Yes.

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

6 THE COURT: All right. Examination, Dave? Go ahead.

7 MR. VON WALD: Okay. Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. VON WALD

10 Q The first thing I would like to bring up is in winter of
11 19 --

12 MR. HURLEY: If I might interrupt just a moment. For
13 housekeeping, Your Honor, through this witness, I would
14 offer Exhibit 21, the Maciejewski contract.

15 THE COURT: I thought that was already admitted.

16 MR. HURLEY: Well, I had it not in, so . . .

17 THE COURT: Do you have any objection?

18 MR. VON WALD: No. I think it's in.

19 THE COURT: How about 16?

20 MR. HURLEY: Yes, and 16.

21 THE COURT: Any objection to 16?

22 MR. VON WALD: No objection.

23 THE COURT: All right. And lastly, we never did resolve 12,
24 but you didn't offer it, so . . .

25 MR. HURLEY: Has -- has 10 been offered?

1 THE COURT: 10 was offered and admitted.

2 MR. VON WALD: Do you want to offer 12?

3 THE COURT: Do you want to offer 12?

4 MR. HURLEY: Yes. That would be good.

5 THE COURT: Any objection?

6 MR. VON WALD: No objection.

7 THE COURT: All right 12 will be admitted.

8 Q (BY MR. VON WALD) Okay. During the -- December of 1996
9 and January of 1997, up until -- and go through February,
10 were you aware at that time that Ronnie Long needed money
11 to move his hay? Was the Bank aware at that time?

12 A No.

13 Q You became aware of that, right?

14 A Yes.

15 Q But at the time that it was happening, had Ronnie ever
16 requested from the Bank money to move his hay to the
17 cattle?

18 A No, no.

19 Q And the deposition that Mr. Hurley read here said -- why
20 don't you read this to the jury. Read the complete
21 question and answer starting right here. The question all
22 the way down to the end there.

23 THE COURT: What page is that, Dave?

24 MR. VON WALD: This is page eight, I think.

25 Q (BY MR. VON WALD) What page was that, Chuck? Page 81.

1 A This is (INAUDIBLE).

2 Q No. But read that, what that deposition said.

3 A The question is: "Was the Bank aware that the Longs did
4 not have the money to move their hay from where it was
5 located to where the cattle were located during the severe
6 winter weather late December of 1996 and the early months
7 of 1997?"

8 The answer is, "I believe they did get some money
9 advanced to them by the Bank to help take care of the
10 cattle."

11 Question: "The Bank was aware of that situation
12 where --"

13 And then it has answer: "Yes."

14 Question: "The Longs had a problem -- they -- they
15 could -- the Longs had a problem they couldn't get the hay
16 moved over to their cattle?"

17 Answer: "Yes."

18 Q Okay. So you knew that the Longs had a problem with that,
19 they couldn't get the hay moved over to their cattle was
20 caused by the snow, right?

21 A Yes.

22 Q But you didn't know that it was caused by the Bank not
23 giving them the money, did you?

24 A That's right.

25 Q Okay. When the land was bought by the Maciejewskis --

1 we'll start with the Maciejewskis -- was there a down
2 payment made?

3 A Yes.

4 Q And about a 20 percent down payment?

5 A Yes.

6 Q Parcel 1 sold for about \$200,000?

7 A Yes.

8 Q And so with a 20 percent down payment, they come up with
9 40,000 in cash?

10 A Yes.

11 Q In that neighborhood?

12 A Yes.

13 Q Could Ronnie Long have come up with 40,000 cash?

14 A He would have exercised the option to purchase, so I would
15 say no.

16 Q Okay. And is there difference in the financial condition
17 of Ed Maciejewski and Ronnie and the Long Family Land and
18 Cattle Company, Inc.?

19 A Yes.

20 Q Substantial difference?

21 A Yes.

22 Q Was the land sold to the Pesickas under a contract for
23 deed?

24 A No.

25 Q It was sold outright?

1 A Yes.

2 Q For cash?

3 A Yes.

4 Q Okay. And if you add the contract prices together, the
5 whole contract price of the Ronnie Long property that --
6 excuse me -- of the Ed Maciejewski property, that he
7 agreed to buy -- what was the selling price of that?

8 A It was right at 400 -- a little over 400,000.

9 Q And it was about 50,000 that the Pesickas paid?

10 A Yes.

11 Q A total of about 450,000?

12 A Yes.

13 Q And if you would take -- and Ronnie Long had an option to
14 purchase the land, right?

15 A Yes.

16 Q Before it expired?

17 A Yes.

18 Q And his option to purchase would have been \$468,000?

19 A Yes.

20 Q And if you would take the 16 or 17,000 off on the house,
21 what would that leave?

22 A About 450,000.

23 Q So in other words, Ronnie Long was given an option to
24 purchase it for the identical price almost, that these
25 people bought it for, wasn't he?

1 A Yes. Plus, he would reduced it about another 8,000 had --
2 you know, had he --

3 (END OF DUPLICATE #6 TAPE #2).

4 (THE FOLLOWING PROCEEDINGS TOOK

5 PLACE ON DUPLICATE #7 TAPE #1:)

6 -- exercised the option to purchase because of that
7 interest rate and using the 44,000 each year from the CRP
8 payments. So -- but, yes.

9 Q So technically, Ronnie was given an option to purchase for
10 even less than what these people paid, right?

11 A Yes.

12 Q Okay. I will hand you now what has been marked as Exhibit
13 12, I think. You probably have looked at it before. But
14 Exhibit 12 is the CFR regulation that's referred to by the
15 letter of February 14th of 1997?

16 A Yes.

17 THE COURT: Do you have that letter on a blowup?

18 MR. HURLEY: I was reading something else. Was that 11, Your
19 Honor?

20 THE COURT: 12.

21 MR. HURLEY: 12. No.

22 MR. VON WALD: No. Not the letter itself --

23 MR. HURLEY: 11, no.

24 Q (BY MR. VON WALD) The letter that was written by the area
25 director of the BIA said the application was not complete

1 enough, correct?

2 A Yes.

3 Q And it also referred to a CFR section; isn't that right?

4 A Yes.

5 Q They said they referred you to that and said look at that
6 and see what else you need for documentation --

7 A Yes.

8 Q -- to make it more complete? And that CFR regulation was
9 25 CFR 103.21?

10 A Yes.

11 Q And that's Plaintiff's Exhibit 12?

12 A Yes.

13 Q And in 25 -- 25 CFR 103.21, does it say anything at all in
14 there, anything at all, about what other documentation is
15 needed?

16 A No.

17 Q As a matter of fact, when the Bank would make these
18 applications for a change in the BIA guarantee in either
19 Mr. Long's or in other cases, was any different
20 documentation furnished than what was furnished here?

21 A No.

22 Q So basically, this documentation is the same thing that
23 they always did, right?

24 A Yes.

25 Q The letter that you wrote to Mr. Huber -- I don't know if

1 that's one of those blowup exhibits or not -- but the
2 letter that you furnished to Mr. Huber is -- it mentions
3 in there debt of 343,874.42; is that correct?

4 A Yes.

5 Q That would not have included interest, would have it?

6 A No.

7 Q So if you would have added interest to it, it was like
8 415,000 or thereabouts at that time?

9 A Yes.

10 Q Okay. And this letter was furnished to Mr. Huber
11 basically because he requested it?

12 A Yes.

13 Q Okay. And that was to give to his superiors or whatever?

14 A Yes.

15 Q Okay. Would you look at 5A in the plaintiff's exhibits?
16 That would be the --

17 A Is this the one --

18 Q -- November 1st, 1996?

19 A (INAUDIBLE).

20 Q Okay. And then you -- that was a -- that exhibit is what?

21 A Proposed loan agreement.

22 Q Okay. And that was a -- a proposed loan agreement that
23 was not yet etched in stone at the time, right?

24 A Yes.

25 Q And as a matter of fact the last page of it says what?

- 1 A "This proposed loan agreement is only a general guide in
2 getting all the lease loan and financial conditions worked
3 out between Long Family Land and Cattle Company and the
4 Bank of Hoven. A written lease with option to purchase
5 agreement will be drafted at a later date between Long
6 Family Land and Cattle Company and the Bank. Thank you."
- 7 Q Okay. And in -- in that, when you look at it, as an
8 example, it lists that there would be three CRP payments
9 made, right, for '97, '98?
- 10 A Yes.
- 11 Q And this was in '96 yet? In '96, right? It lists three
12 of them. And, of course, three CRP payments were never
13 made, were they? Do you see where I'm talking about
14 there?
- 15 A It says the Bank will receive the CRP payments of
16 approximately 44,000 for 1997, 1998, and 1999.
- 17 Q Okay. So it lists three of them?
- 18 A Yes.
- 19 Q And, of course, the contractually expired in '98, didn't
20 it?
- 21 A Yes.
- 22 Q And so when the contract expired in '98, did that have to
23 do with the term of the lease expiring in '98?
- 24 A Yes.
- 25 Q Okay. So that was one of the things that was different

1 than what this proposed agreement was, right?

2 A Yes.

3 Q And it -- this proposed agreement here refers to about
4 \$100,000 line of credit type of thing for 25 -- 250
5 calves. That was never done, right?

6 A That's right.

7 Q Was that ever approved by the Bank?

8 A No.

9 Q Okay. And so what -- is that why that didn't show up in
10 the loan agreement then?

11 A Right.

12 Q Okay. Now, a little while ago I was asking you, Chuck,
13 about -- about the -- Ronnie Long buying their land back.
14 I misspoke somewhat. He never did own the land, did he?

15 A No.

16 Q His father owned the land?

17 A Yes.

18 Q And it was never ever deeded to Ronnie Long, was it?

19 A That's right.

20 Q Counsel for the plaintiff has made a big deal about the
21 land selling to the Pesickas for \$155 an acre, and what
22 kind of land was that?

23 A It was pasture ground.

24 Q Is pasture ground worth less than crop ground?

25 A Yes.

1 Q Okay.

2 MR. VON WALD: That's all I have as far as periphery cross, Your
3 Honor.

4 THE COURT: Any questions, Chuck?

5 MR. JASPER: Yes, Your Honor.

6 THE COURT: Come forward.

7 MR. JASPER: I think I only have one or two questions.

8 THE COURT: You can ask them from there.

9 CROSS-EXAMINATION

10 BY MR. JASPER

11 Q Did you perceive any need to get a court order in order to
12 sell this land to either Pesicka or Maciejewski?

13 A No.

14 Q Okay.

15 MR. JASPER: No further questions.

16 THE COURT: All right. Do you have any redirect?

17 MR. HURLEY: No redirect.

18 THE COURT: Okay. How about, Jurors, any questions? If so,
19 pass them to the last juror.

20 MR. VON WALD: Your Honor, I would like to reserve the right
21 recall this witness in my case in chief.

22 THE COURT: Sure. Well -- okay. Pass that to the end there,
23 and I will take a look at it. Dale, could you get that
24 question? And I'm going to look at it. And if it's
25 appropriate, I'm going to ask it. Okay. Perfect timing,

1 Dale. (BEEPING SOUND). (PAUSE). And I will read it
2 verbatim here. "In the --

3 A JUROR: Hoven Bank.

4 THE COURT: Oh. " -- the Hoven Bank application to the BIA,
5 what was included?"

6 THE WITNESS: Are you talking December 12th, 1996?

7 A JUROR: Well, were there two separate requests made to
8 the BIA? And were they under their own request?

9 THE WITNESS: Okay. This is under number --

10 THE COURT: I think the juror's question is regarding --

11 MR. HURLEY: No. 8. No. 8.

12 THE COURT: When the request to increase the guarantee was
13 made, what all did that include to the BIA? Do we have an
14 exhibit on that, Counsel?

15 MR. HURLEY: We do. It's No. 8, Your Honor. But it's not a
16 blowup.

17 THE COURT: It's not a blowup.

18 THE WITNESS: Okay. What we did is we --

19 MR. HURLEY: Well, let's see. Wait a minute.

20 MR. VON WALD: I think there is a blowup.

21 THE COURT: Let's get that up for the jurors. They're
22 interested in that.

23 MR. HURLEY: I have it right here.

24 THE COURT: I think I know the gist of the juror's question.
25 Was the Bank of Hoven requesting the BIA to also guarantee

1 the \$70,000 operating loan?

2 THE WITNESS: Well, this was an \$85,000, so -- and what we
3 would have presented with that would be the -- the
4 financial statement, cash flows, and the request, which is
5 what you are seeing there.

6 MR. HURLEY: The financial statement and a three-page cash
7 flow?

8 THE WITNESS: Yeah. That was a complete application. And we
9 didn't note nothing different with this one that we would
10 do with any other modification of the -- of the BIA
11 guarantee and on the other ones they acted on, and so when
12 we got denied by the BIA or at least that --

13 THE COURT: Okay. You're going a little beyond the scope of
14 the question.

15 THE WITNESS: Okay.

16 THE COURT: It was just what you requested of the BIA, not
17 the BIA's response.

18 THE WITNESS: Well, it would have been the financial statement,
19 the cash flows, and the -- and the request.

20 THE COURT: So you also asked for a guarantee on the \$70,000
21 loan, now what's an \$85,000 loan, correct?

22 THE WITNESS: Yes.

23 THE COURT: All right. Does that answer the juror's
24 question? All right. That was a very good question. All
25 right. I think that --

1 MR. VON WALD: That prompts one other question, Your Honor.

2 THE COURT: Go ahead.

3 FURTHER CROSS-EXAMINATION

4 BY MR. VON WALD

5 Q That BIA guaranteed operating loan that in the loan
6 agreement said 75,000 --

7 MR. HURLEY: Excuse me. 70,000.

8 MR. VON WALD: Excuse me.

9 Q (BY MR. VON WALD) 70,000. And we applied for 85,000. Had
10 Ronnie Long already had a BIA guaranteed operating loan?

11 A Yes.

12 Q And how much was that?

13 A 50,000.

14 Q So he had a \$50,000 guaranteed loan. We were going to
15 increase that, as it turned, out to 85,000?

16 A Yes.

17 THE COURT: Do you have any questions of that, Jim?

18 MR. HURLEY: Yes, Your Honor. Just to tie it together.

19 REDIRECT EXAMINATION

20 BY MR. HURLEY

21 Q On Exhibit 6, which is the loan agreement, it said the
22 Bank of Hoven will request -- do you see that paragraph?

23 A Right underneath of -- where the payments show?

24 Q Yes.

25 A Yes.

1 Q The Bank of Hoven will also request a 90 percent BIA
2 guarantee on the 70,000 annual operating loan. Do you see
3 that?

4 A Yes.

5 Q And are you saying that in the letter of December 12th,
6 that was increased by the Bank to an \$85,000 operating
7 loan?

8 A Yes.

9 Q And that was in line with the three-page cash flow as you
10 pointed out to counsel, which showed that need for that
11 level?

12 A I need my glasses.

13 Q Excuse me. Let me bring it up to you. It's 8 in your
14 book.

15 A Yes. Right. Yeah.

16 Q Okay.

17 MR. HURLEY: No further questions.

18 THE COURT: Anything from that, Chuck?

19 MR. JASPER: No, Your Honor.

20 THE COURT: All right. This witness is excused.

21 (WITNESS EXCUSED).

22 We'll take our first afternoon break, Jurors.

23 About ten minutes worth of break time, and we will come
24 back here and finish up the plaintiffs' case.

25 THE WITNESS: Can we leave these sitting here as they are?

1 THE COURT: Yeah. That's actually -- I need that. That's
2 going -- I'm going to replace that.

3 (RECESS.)

4 Oh, you've got --

5 MR. HURLEY: Yes.

6 THE COURT: -- you've got some new revised. You should run
7 those by David.

8 MR. HURLEY: Okay.

9 THE COURT: Revised exhibits -- what, just Exhibit 23, right?

10 MR. HURLEY: Yes. My secretary typed in the changes.

11 THE COURT: Okay. So I'm going to take the old one and pull
12 it out and put in the new 23 and the new 23A in.

13 Although, we still have that three-hole punch problem.

14 THE CLERK: (INAUDIBLE).

15 THE COURT: We'll get everything organized.

16 THE CLERK: Yeah.

17 MR. VON WALD: Are these the same figures that you had written
18 in (INAUDIBLE)?

19 MR. HURLEY: Yeah. I haven't checked to see.

20 (INAUDIBLE, WHISPERED DISCUSSION
21 WAS HAD BETWEEN MR. VON WALD AND
22 MR. HURLEY).

23 THE COURT: All right. You looked those over?

24 MR. VON WALD: Yes.

25 THE COURT: All right. We will replace them.

1 MR. HURLEY: Now what the Court needs is the front page.

2 THE COURT: There's '99, and 2000, and 2001.

3 MR. VON WALD: Yeah.

4 MR. HURLEY: (INAUDIBLE).

5 MR. VON WALD: You have the unchanged ones, right, Judge?

6 THE COURT: Okay. I will just keep the exhibits we have

7 as --

8 MR. VON WALD: 23.

9 THE COURT: I will keep the -- '99, 2000, 2001.

10 MR. HURLEY: Yes.

11 THE COURT: Originally proposed.

12 MR. HURLEY: Yes.

13 THE COURT: All right. Okay. You call the next witness,

14 Jim.

15 MR. HURLEY: Thank you, Your Honor. Plaintiff calls David

16 Huber.

17 THE COURT: David? Do you want to come forward, please?

18 THE WITNESS: Dennis, please.

19 THE COURT: Sorry. Sorry there, Dennis. Do you want to

20 raise your right hand? Do you swear to tell the truth,

21 the whole truth, and nothing but the truth?

22 THE WITNESS: I do.

23 MR. DENNIS HUBER,

24 called as a witness on behalf of the plaintiffs, being first

25 duly sworn upon his oath, testified as follows:

DIRECT EXAMINATION

BY MR. HURLEY

- 1
- 2
- 3 Q My apologies for misstating your name.
- 4 A Yeah.
- 5 Q Would you state your name for the record, please?
- 6 A Dennis Huber.
- 7 Q And where do you live?
- 8 A Bismarck, North Dakota.
- 9 Q And what do you do for a living?
- 10 A I'm presently retired.
- 11 Q Okay.
- 12 A I spent 58 years as director of the Business Development
- 13 Center at the United Tribes Technical College in Bismarck,
- 14 North Dakota.
- 15 Q And what is your education?
- 16 A College. BS degree NDSU, Fargo, in education and kind of
- 17 like a math major.
- 18 Q Did you teach then for a while?
- 19 A I did teach some school, yes.
- 20 Q And at what level of education were you a teacher?
- 21 A High school math.
- 22 Q And did you also participate in other activities there at
- 23 the school?
- 24 A Athletic coach, football.
- 25 Q And how many years did you do that?

1 A About nine years.

2 MR. HURLEY: Your Honor, are we on Exhibit 28?

3 THE COURT: We have 28.

4 MR. HURLEY: So this would be 28?

5 THE COURT: Plaintiff's 28.

6 Q (BY MR. HURLEY) I show you what's marked for
7 identification as Exhibit 28. And what is shown there on
8 your first page?

9 A Just a business card that shows my name. We had it
10 printed with our name -- printed on them, but with the
11 E-mail and the WEB site that we had, just made generic
12 cards, so -- because they are changing all the time, our
13 E-mail and WEB sites. So every time we would go out and
14 meet with a client or a Tribe or somebody, they would just
15 sign our name and issue the cards. But I do have credit
16 cards, too, but . . .

17 Q On this card it says U. S. Department of Commerce, MBDA,
18 what does that mean?

19 A MBDA is a Minority Business Development Agency within the
20 Department of Commerce. It's kind of like a sister agency
21 to SBA.

22 Q And would you look at page two of Exhibit 28? What do you
23 see there?

24 A It's kind of like our brochure that we hand out to
25 clients, to tribes, to colleges, or whomever that requests

1 our services.

2 MR. HURLEY: We move the admission of Exhibit 28.

3 THE COURT: Any objection.

4 MR. VON WALD: No objection.

5 THE COURT: All right. That will be admitted without
6 objection.

7 Q (BY MR. HURLEY) And what does the North Dakota, South
8 Dakota Native American Business Development Center do?
9 What work is done there?

10 A Basically, technical assistance for Native Americans in
11 both states, North and South Dakota. As director, we have
12 a business development specialist, Brett Maxon. We
13 probably generate a business plan for a client or a tribal
14 business counsel or whomever in these two states to assist
15 them in getting into business or negotiating with a lender
16 for their business activity.

17 Q In addition to helping individuals, I see that the Bureau
18 sure mentions that you assist Tribes in the region; is
19 that correct?

20 A Yes, we do.

21 Q And have you had any tribal projects in this area?

22 A The Super 8 motel where we stayed last night, we did their
23 grant application. They received quite a huge -- probably
24 the largest grant available at the time, so we did that
25 application for the Cheyenne River Sioux Tribe as the

1 client.

2 Q So the Cheyenne River Sioux Tribe then owns that project?

3 A They own that facility.

4 Q And that was a successful project?

5 A Yes, it is. I --

6 Q Have you had any other projects in South Dakota that come
7 to mind?

8 A Well, we've had a number -- like we did a truck stop,
9 convenience center down in Yankton, Yankton Sioux Tribe in
10 the southeast, a lot of farm and ranch proposals, a large
11 ranch purchase north of here on the Standing Rock Sioux
12 Reservation 15,000 acres about in that.

13 Q On the last page of the brochure, Exhibit 28, it talks
14 about technical assistance. Did you assist Ronnie and
15 Lila Long in their company in this matter that's at issue
16 here in this Court?

17 A Yes, we did. We were contacted by John Lemke here in the
18 Credit Office within the Tribe here. And of course, the
19 local people are really overwhelmed with work I guess in
20 trying to provide assistance to people, so every once in a
21 while they will call us in to kind of pass some of the
22 work onto us if we're not too busy. So in a meeting with
23 John, and I said, yeah, we'll come down and try to work
24 out something for the Longs and do some negotiations then
25 with the Bank of Hoven.

1 Q And were you aware that the Long Family Land and Cattle
2 Company was an Indian-owned corporation?

3 A Yes, I was.

4 Q And were you aware that Ronnie and Lila Long are enrolled
5 Indian citizens of Cheyenne River Sioux Tribe?

6 A Yes. They -- one or the other or both have to be before
7 we can provide assistance.

8 Q And then as your brochure states, as you -- when you do
9 provide assistance to enrolled members of tribes, then
10 that assistance is provided free of charge to minority
11 individuals or firms?

12 A Right.

13 Q And was that the case in this situation?

14 A That was the case here, yeah. We didn't charge any money
15 for the technical assistance.

16 Q Beginning your work on this project, who did you meet
17 with?

18 A First of all, Mr. Lenke, you know, figured out what we
19 needed to do and kind of developed a little strategy and a
20 meeting with the Bank, which came later, and probably the
21 mid-summer of '96. I think there were a number of
22 meetings down there at Hoven with myself or Brett Maxon as
23 my associate. And then, of course, we met with the Longs
24 a lot trying to develop a -- because it was kind of like a
25 consolidation on a lot of the debts or something into

1 maybe two or three larger loans, and you had to develop
2 some kind of strategy -- strategic plan that would work.

3 Q And in doing that work, did you go out and see the Longs'
4 home?

5 A Yeah. I've been in their house.

6 Q And you also observed the land which has been referred to
7 here at Parcel 1 and 2?

8 A Yeah.

9 Q And that land --

10 A Well, you couldn't miss the land because the CRP is grass
11 that's that tall. It's just awful good land, so . . .

12 Q And the land lies adjacent to their house and farm
13 buildings?

14 A Just a little ways out of Timber Lake, the city.

15 Q And you also met with the Bank and discussed what their
16 overall proposed direction might be for this project?

17 A Yes. A number of times. And I apologize for not having
18 our file. But when clients get five years old or
19 something, we don't keep a lot of the data. We just never
20 anticipated something like this would come about, so we're
21 kind of just kind of all on memory as to what we really
22 did.

23 Q There was testimony -- and you may not have been here
24 yet -- but there was testimony that there was a meeting in
25 late October 1996. And did you attend that meeting?

1 A Yes, I did.

2 Q And there was testimony that Chuck Simon, Jim Nielsen,
3 both were present from the Bank. Do you recall that?

4 A Yes, I do.

5 Q And also Bank of Hoven, President Dennis Jensen was
6 present?

7 A He was there, yeah.

8 Q And Bank Attorney, David Von Wald, was present?

9 A I think I sat next to David.

10 Q And you and Brett Maxon were there?

11 A Brett Maxon, my assistant.

12 Q And from the CRST Planning Office, John Lemke?

13 A Yeah, John was there.

14 Q Harley Henderson?

15 A Harley was there.

16 Q Also Monica Lind?

17 A Yeah.

18 Q And she's from the local CRST office as well?

19 A Right.

20 Q And Ronnie and Lila Long?

21 A Yes, they were there.

22 Q And then Stacey Johnston of the BIA was present by speaker
23 phone; is that correct?

24 A Speaker phone, yeah.

25 Q And during the period of time that you were working with

1 the Longs, as far as you know, they were not working with
2 a lawyer on their behalf?

3 A No. Never talked to any attorneys at any time.

4 Q And what was your involvement in this project with the
5 Longs and the Bank?

6 A As director and as head of the program, we assigned some
7 of the work to Brett Maxon, my associate, so he was always
8 kind of working when we traveled. But I usually had the
9 final say on what was going to be submitted to -- to the
10 BIA or to the Bank for consideration in terms of
11 documentation or -- in this case, you know, particularly,
12 probably the cash flow (INAUDIBLE).

13 Q Would you turn in the book before you to Exhibit 8A? The
14 implication do you see in that date line on there of 10-29
15 of 1996?

16 A Yes.

17 Q I will show you that blowup of 8A.

18 MR. HURLEY: May I show these to the jury, Your Honor?

19 THE COURT: You may.

20 Q (BY MR. HURLEY) Do you recognize those cash flows?

21 A Yes, I do.

22 Q And are those cash flows in part your work product?

23 A Yes.

24 Q Did you work with Ronnie and Lila Long in developing those
25 cash flows?

1 A Yes, we did.

2 Q And did you work with the Bank of Hoven in terms of what
3 their proposed plan was in developing those cash flows?

4 A Yes. We also worked with the Credit Office here, John
5 Lemke. Things had to go through him before they get to
6 the Bank, so . . .

7 Q And in your book, would you turn to Exhibit 5, please?
8 And do you see in Exhibit 5 a letter dated November 1st,
9 1996?

10 A Yes.

11 Q And were you present when Charles Simon was testifying
12 about that, that that was his -- his work product?

13 A Yes. This was (INAUDIBLE).

14 Q In listening to him testify as to November 1st, 1996, that
15 report that he gave, a proposed loan agreement, do the
16 terms -- do the terms of Charles Simon's report fit your
17 cash flows?

18 A Yes, I would say so.

19 Q We've heard testimony that that meeting took place in the
20 conference room at the Bank of Hoven; is that correct?

21 A Right. Yes.

22 Q Was the overall plan presented to the group?

23 A Yeah. The overall, I think, strategy was presented, and
24 then the consensus of the group was that we need to get
25 Stacey Johnston on the squawk box and get his opinion as

1 to what we needed to do.

2 Q And why was that important?

3 A Well, he -- he had the final say in approving any
4 restructuring or any request for new monies or anything.

5 Q And who does he work for?

6 A I works -- he's the credit officer for the Aberdeen area
7 Office Bureau of Indian Affairs.

8 Q So --

9 A He has the final say on recommending it to the area
10 director for approval.

11 Q And so where this proposal or the loan agreement, Exhibit
12 6, says that the Bank will make application to the BIA to
13 guarantee the percentage of guarantee from 84 to
14 90 percent, then that is a request to Stacey Johnston,
15 correct?

16 A Yes.

17 Q And he would have to pass on that?

18 A Yes.

19 Q Or in terms of the operating loan 70,000, request a
20 90 percent guarantee, Stacey Johnston of the BIA would
21 have to pass on that, correct?

22 A Right.

23 Q So it was important to have him in the discussion,
24 correct?

25 A Correct, yes.

1 Q And there was some talk that somebody made a presentation
2 in front of the group in terms of a blackboard or some
3 other presentation that everyone could see. Do you recall
4 that?

5 A Yes.

6 Q And who did that?

7 A Brett Maxon, I think was doing our writing for us at that
8 time.

9 Q Okay. And he was summarizing what was going on?

10 A Right.

11 Q At the end of that group meeting, what was the outcome?

12 A Well, I think we all came away feeling that this was
13 pretty well a done deal now. And with, like I said, the
14 consensus of the group, yeah, let's go forward with it.
15 And Stacey didn't seem to have any problems with what we
16 came up with. I don't think a lot of emphasis was put on
17 the guarantees because the loans that were there already
18 had 80 percent or 84 percent guarantees, so going to 90
19 really isn't going -- it's going to give the Bank a
20 6 percent extra cushion, but there's still -- you know,
21 the collateral seemed to be there, the guarantee was in
22 place already, so it was just a matter of getting his kind
23 of like -- kind of a nod that -- that the -- from the
24 speaker phone that, yeah, let's go ahead and do it now.

25 Q Was that --

1 A And I think the --

2 Q Was that the position of the BIA?

3 A Yeah, right.

4 Q In agreement?

5 A I would say so, yeah.

6 Q Was that the position of the Bank in agreement?

7 A Right.

8 Q When you look at your cash flow -- and we have it up here
9 on the board, Exhibit 8A -- were you asked to explain the
10 cash flow?

11 A I can't really say that we went through that in detail;
12 but to come up with these numbers, the operating loan and
13 all of that, I think we might have did that stuff on the
14 board. And this document was prepared afterwards and then
15 submitted to John Lemke.

16 Q Did the numbers at that meeting indicate that the plan
17 would work?

18 A Right. Yeah, it did.

19 Q And were you asked if the plan would work in your opinion?

20 A Yes. I think we did, yeah.

21 Q Because if the plan wasn't going to work cash flow wise,
22 then what?

23 A Well, we wouldn't -- you know, we wasted our time then.
24 Why would we present something that -- that isn't going to
25 work? The cash flow -- you have to have money coming in;

1 you've got to spend money; you've got to have an ending
2 balance. And when we worked it out, we -- we achieved
3 that.

4 Q And look at 8A if you would, again, please? And in that
5 cash flow, do you show cash from line of credit?

6 A Yes, we do.

7 Q And do you show cash needed in November of 1996?

8 A Yes.

9 Q And in what amount?

10 A 40,000.

11 Q And do you show cash needed from the line of credit in
12 January of 1997?

13 A Yes. 5,000.

14 Q And for the entire first year, does it show that the Longs
15 would be able to operate within the cash flow limit of
16 \$70,000?

17 A Yeah. Because in the end, it only totaled 68,000.

18 Q Okay.

19 A So they -- actually, they didn't utilize the whole 70,000.
20 They had a \$2,000 cushion here, which could eliminate some
21 of the negatives at the bottom on May, June, and July.

22 Q By simply --

23 A Moving it back one month.

24 Q Okay. And/or borrowing the extra 2,000?

25 A Borrowing an extra 2,000.

- 1 Q And going up to the full 70?
- 2 A Yeah.
- 3 Q At any --
- 4 A One month had a deficit.
- 5 Q Okay. In any event, in your cash flow, 70,000 was
6 sufficient operating line of credit?
- 7 A Yes.
- 8 Q In Year 2, under the same heading line of credit, were the
9 Longs again in need of using that line of credit?
- 10 A Well, no, because the cash carry-over was 164,000.
- 11 Q So the plan was working?
- 12 A The plan was working great.
- 13 Q Okay. And in your cash flow, does it show that the Longs
14 used the second loan, the cattle purchase loan to buy
15 calves?
- 16 A Yes.
- 17 Q And you show that down there in livestock purchases?
- 18 A Yeah.
- 19 Q And in your view, does that feature help the cash flow?
- 20 A Yes, it did.
- 21 Q And did it show that they are going to carry those over to
22 yearling status?
- 23 A To yearling status.
- 24 Q And does that help the Long farm and ranch bring in more
25 income?

1 A Yeah. In the fall of the year it does from the yearlings.

2 Q And the second year does it show them purchasing calves
3 again?

4 A Yes. 37 -- or 35,000.

5 Q And at the end of the two years, is there a positive cash
6 balance?

7 A Yes. Of 295,000.

8 Q And you were aware, were you not, that under the proposal
9 the Longs were going to be able to lease their land back
10 for two years and then exercise their option to purchase
11 their land back?

12 A Right. Yes, it would.

13 Q And in your view, would this cash flow, which ended them
14 up at \$295,000, provide the means for them to do that?

15 A Right. It would have, yes.

16 Q Would this have put them in a position to be able to go to
17 Federal Land Bank or any other institution and borrow the
18 money to do that?

19 A Yes. Because they could have still retained a guarantee
20 from one -- another lender at 80 percent or 90 percent, so
21 with that kind of cash left over, you know, you've got
22 your down payment pretty good. You've got your operating
23 money for the next year, so in a sense, you could -- and I
24 know Farm Credit Service, they require a -- a pretty high
25 equity contribution, you know, like the Bureau's is

1 20 percent, but theirs is probably 30 or 40, but they
2 would have had enough to meet that down payment.

3 Q And if the Longs reached that point and were able to buy
4 their land back from the Bank, would you have counted this
5 project a success?

6 A Yes, I would have.

7 Q And have you been present through some of the testimony
8 concerning Exhibit 6, which is the loan agreement?

9 A Yes, I have.

10 Q And in your view, does the loan agreement, Exhibit 6,
11 track your line of credit?

12 A Yes.

13 Q Excuse me, your cash flow?

14 A Yes, it does.

15 Q And there is a companion document dated the same date,
16 lease with option to purchase, and have you been present
17 for the testimony concerning the lease with option to
18 purchase?

19 A Yes.

20 Q Do you recall the testimony concerning the CRP payments
21 operating as rent?

22 A Yes.

23 Q And then if they -- if the Longs do exercise their option,
24 then it converts to a credit towards a payment reducing
25 the purchase price?

1 A Yes.

2 Q And in your cash flow, do you reflect those real estate
3 payments? Well, first of all, do you reflect the CRP
4 payments?

5 A Yes, we did.

6 Q Okay. In what amount?

7 A 44,000 even, I guess. On the first year, 44,000 even.

8 MR. VON WALD: Where is it? Where is that? I'm --

9 THE COURT: Looking at 8A.

10 THE WITNESS: Cash from BIA, interest subsidy, and CRP.

11 THE COURT: Do you see it now, Dave?

12 MR. VON WALD: That's the cash in --

13 THE WITNESS: In October.

14 MR. VON WALD: And then where do you have the cash out?

15 MR. HURLEY: That was my next question.

16 Q (BY MR. HURLEY) So did -- did you find it in -- 44,000 in
17 October of the first year?

18 A Yes.

19 Q Dennis?

20 A Yeah, 44,000.

21 Q Okay. And then where do you find the real estate loan
22 payment out to the Bank?

23 A It would be down at the bottom here. It would be -- out
24 of the 80,000, it would be in there.

25 Q Okay.

1 A Because the 68,000 is the operating line.

2 Q Okay.

3 A So it would be commingled with the 80,000 with the BIA
4 chattel guarantee. Those would be the . . .

5 Q Would you turn to Exhibit 8, please? Were you present
6 concerning the testimony concerning that letter dated
7 December 12th, 1996?

8 A Yes, I was.

9 Q I'm going to have you -- were you present concerning the
10 testimony relative to the cash flow that was attached to
11 that letter, the three-sheet --

12 A Yes.

13 Q -- cash flow?

14 A Yes.

15 Q And is that cash flow different than your cash flow?

16 A Well, yeah. Considerably, yeah. I can't see all the
17 numbers. But we would submit a document to the Bureau or
18 to the Bank that was negative straight through. And if it
19 didn't work, you know, we're wasting our time. So I don't
20 know where that came from there, but that's not our work.

21 MR. HURLEY: May I approach the witness, Your Honor?

22 THE COURT: You may.

23 Q (BY MR. HURLEY) I will show you a smaller version of
24 what's up there on the board and for the jury to see. And
25 in that cash flow, do you sign any operating line of

1 credit at all?

2 A No.

3 Q And in your work is an operating line of credit important
4 to this farm and ranch business?

5 A Well, yes, it is, because in farming and ranching both,
6 your income is mostly one time a year, you know. If it's
7 crops, it's in September and October. If it's cattle,
8 it's in October and November. So the remaining 9 months
9 or 11 months, you got to have something to keep your
10 operating going, and usually we front-load. I mean you
11 can look at your cash flows. We front load our operating
12 money in the beginning of the plan. And if they need
13 something during the hay season and so forth like that,
14 then we load it again. But -- I mean without operating
15 money, you're doomed. I mean you're doomed to fail right
16 away.

17 THE COURT: That -- Jim?

18 MR. HURLEY: Yes.

19 THE COURT: You've blown up Exhibit 8? Is that what you're
20 showing here?

21 MR. HURLEY: This is Exhibit 8.

22 THE COURT: All right. That's the cash flow that was
23 submitted along with the --

24 MR. HURLEY: Financial statement.

25 THE COURT: -- with the increase and the guarantee. You

1 didn't have that blown up last week, right?

2 MR. HURLEY: No. Because I didn't know it existed.

3 THE COURT: Just for the record, you've now blown up 8.

4 MR. HURLEY: Yes, sir.

5 THE COURT: All right.

6 A That's not our work.

7 Q (BY MR. HURLEY) Pardon?

8 A That's not our work, that -- that cash flow.

9 Q And this is Exhibit 8, which was an attachment with the
10 letter December 12th, you're looking at, which is Exhibit
11 8, correct?

12 A Yeah.

13 Q And you have the smaller versions of what the jury has,
14 right?

15 A (INAUDIBLE).

16 Q And you were explaining that the operating loan is key to
17 the success of a farm and ranch business like the Longs
18 have?

19 A Yes.

20 Q And does the operating loan also have to be timely? In
21 other words, when it's needed?

22 A Well, yes. It's kind of what I said earlier. We
23 front-load ours to make sure they've got enough right
24 away.

25 Q And before coming here today, had you ever seen this cash

1 flow before?

2 A No, I haven't. I don't know who would submit this. I
3 mean you've got a checking account that's in arrears for
4 28,000 the first month.

5 Q How do you know that?

6 A Well, it says it right here. Debt of 28,000, ending cash.

7 Q Do the parentheses around it mean that you're --

8 A I mean I wish I had a bank that would give me a line of
9 credit or let me write overdrafts in those amounts
10 straight through. I mean that would be everybody's dream,
11 I think, that --

12 Q If you were looking at a business with this cash flow
13 versus the one you did, would this one appear to have less
14 of a chance of making it?

15 A Well, yes. Yeah. I don't think the Bureau would even
16 approve that.

17 Q And under this, as we can see from the letter, the line of
18 credit is increased from 70,000 to 85,000. Do you see
19 that?

20 A Right on the left, yeah.

21 Q Does that indicate that this cash flow for the same
22 business is more needy of borrowed money?

23 A Yes.

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

25 THE COURT: You may.

1 Q (BY MR. HURLEY) Right behind the letter there apparently
2 is a couple of pages of narrative from John Lenke here as
3 the Credit Officer; to Jim Nielsen, Assistant Vice
4 President, Bank of Hoven. And if you would just take a
5 second and scan that through. And does that written
6 material appear to be a different business plan than what
7 was presented the end of October at the Bank and approved
8 by all parties there?

9 A Yes, it is.

10 Q And does it appear to be a different -- have different
11 elements than the business plan that you built your cash
12 flow on?

13 A Well, some are the same. The wheat, you know, 17,5 is the
14 same as ours. Subsidy is the same. CRP payment is the
15 same. I think some of the numbers that they -- that they
16 used are the same as ours in terms of income, what was
17 going to generate the income at that time, but they left
18 out some other things. But it still gives us a positive
19 cash flow. You look at the ending balance (INAUDIBLE).

20 Q And, of course, the critical point in your plan was the
21 end of Year 2, correct?

22 A Right.

23 Q And does it appear from page two of Exhibit 8, the cash
24 flow, that the plan with the cash flow attached to the
25 Bank's letter, which is Exhibit 8, is performing as well

1 as the plan that you had authored?

2 A No.

3 MR. HURLEY: No further questions. Tender to cross.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. VON WALD

7 Q Mr. Huber, when you look at Exhibit 8, again, which was
8 the statement that was submitted with the loan -- I wonder
9 if you could move just a little, so I have --

10 A The jury can't see it then.

11 Q I'm sorry. They can't see it then. The figure on the
12 bottom of the -- I guess it's the eighth month there. Do
13 you have the smaller one with you?

14 A Right.

15 Q It's \$84,477. It appears from whoever did this cash flow
16 statement that they would need an \$84,000 line of credit
17 at one point; isn't that correct?

18 A Yes. That's --

19 Q So --

20 A (INAUDIBLE).

21 Q So if they got the line of credit up front for 85,000 that
22 they borrowed the 85,000, then they would -- instead of a
23 minus \$28,000 balance, of course, they would have the
24 28 -- they would have the 85,000 sitting there.

25 Basically, it's a different way of making out a cash flow

1 from the way you did it is all, right?

2 A But I don't know -- I don't think the Bureau accepts this
3 format.

4 Q Well, I don't know either.

5 A No. But --

6 Q Who prepared the one that's 8A? You didn't prepare that?

7 A Yeah, we did. With the --

8 Q But it came from the Cheyenne River Sioux Chairman's
9 Office?

10 A Well, we -- we prepared it on our format, which is almost
11 identical to theirs.

12 Q Okay.

13 A We submitted to them, and they just transferred the
14 numbers onto theirs.

15 Q Okay.

16 A And faxed it over to Mr. Lemke.

17 Q Okay.

18 A I mean we don't -- we got to get the BIA's concurrence
19 before we can even get over there to see if he's like --
20 if this looks real or isn't it.

21 Q Right. Okay. So you -- you prepared this --

22 A This one.

23 Q -- that one, and sent it over to John then?

24 A John, yeah.

25 Q And -- then John sent that on to the Bank apparently on

1 10-29 this one says? 10-29 of '98?

2 A '96.

3 MR. HURLEY: '96.

4 Q (BY MR. VON WALD) Oh, '96?

5 A '96. 10-29 of '96.

6 Q Okay. And this was not at the meeting that we were all at
7 then?

8 A I think it was, because that meeting was 10-28, if I
9 remember right.

10 Q Okay.

11 A I looked at my notes the other day.

12 Q And at the meeting -- at the meeting then, where there was
13 Chuck Simon and Jim Nielsen and Denny Jensen, at that
14 meeting part of the proposal was that the Bank was to loan
15 Long Family Land and Cattle Company, Inc., another
16 100,000, right? Was this just a LIFO note then or what?

17 A Another 100,000 --

18 Q Well --

19 THE COURT: Was that plan admitted?

20 A Last in, first out.

21 Q LIFO note. Last in, first out.

22 THE COURT: Point of no return.

23 Q (BY MR. VON WALD) This -- this loan agreement that
24 (INAUDIBLE) here, that mentions, of course, rescheduling
25 the notes, and that's taken into account into the cash

1 flow that you had, right?

2 A Um-hum.

3 Q And it mentions the \$70,000 operating line some place?

4 A Um-hum.

5 Q Right here. 70,000. And then you said that was 68,000,
6 right?

7 A Yeah. That's -- that's what we needed at the time.

8 Q That line of credit of 60 -- 68,000, right. And actually,
9 you put as the very first figure a disbursement from that
10 line of credit of 40,000, right?

11 A Right.

12 Q Yeah. So the other -- the other one that we have here, if
13 they would have put 85,000 disbursement --

14 A Up front.

15 Q -- up front, you know, on the paper, they had the money.
16 Say -- say, if they got the 85,000 and they had the money
17 up front, it would be just exactly like you would have had
18 on your financial statement, right?

19 A Yeah. Yeah. You put it in up front. You erase the
20 negatives. That's the way it should have been done.

21 Q Yeah.

22 A And I'm surprised John didn't do that or whoever submitted
23 it.

24 Q It must have been done at the -- at the office over there.
25 At any rate, this cash flow that you got, requires,

1 doesn't it, another \$100,000 beyond the \$70,000 line of
2 credit?

3 A No.

4 Q Well, look at your breakdown at the bottom of the first
5 one. It says livestock purchases, 96,050.

6 THE COURT: Are you talking about 8A?

7 MR. VON WALD: 8A, yeah.

8 A That's for 55 --

9 THE COURT: It's probably right there, Dennis.

10 A -- plus 250 calves.

11 THE COURT: I think 8A is right there on the ground.

12 A And I see it's 96,000. I see what you're referencing
13 there.

14 Q (BY MR. VON WALD) Yeah. What -- what is that --

15 A Plus, too, it's those yearlings of 110 --

16 Q 110 head of yearlings.

17 A -- head of yearlings. And then the calves for the -- to
18 make yearlings out of them for the next year is in here,
19 plus 250 head of calves.

20 Q Okay. So --

21 (END OF DUPLICATE #7 TAPE #1).

22 (DUPLICATE #7 TAPE #2 DOES NOT

23 CONTINUE WITH THE CROSS-EXAMINATION

24 OF MR. DENNIS HUBER BY

25 MR. VON WALD).

1 (DUPLICATE #7 TAPE #2 BEGINS IN THE
2 MIDDLE OF REDIRECT EXAMINATION OF
3 MR. DENNIS HUBER BY MR. HURLEY AS
4 FOLLOWS:)

5 REDIRECT EXAMINATION

6 BY MR. HURLEY

7 Q -- to give them credit for 250 calves at \$250 a head or
8 \$62,500. Do you see that?

9 A That's where that figure came from.

10 Q With the balance of 37,5 to be used to purchase another
11 110 calves to be fed and pastured with their own calves,
12 right?

13 A Right.

14 Q The 62,5 will be used to help pay interest current on all
15 bank debt of approximately 91,000 of which approximately
16 12,500 would already be paid from the land credit proceeds
17 stated above. Do you see that?

18 A So it's in that 87,000 in interest then.

19 Q Well, if you start at the top on your 8A cash flow, let me
20 ask you if this isn't correct: That the 1996 calves
21 advance, 62,5 comes off of the proposed loan agreement of
22 Charles Simon, which is 5A?

23 A Right.

24 Q Didn't we just read that?

25 A Right. Yes.

1 Q And you reflected that accurately?

2 A Yes.

3 Q And it says 1996 calves advance, right?

4 A Right.

5 Q And you see down here in the heading livestock purchases,
6 the 1996 calves are still on hand, aren't they, when your
7 project started?

8 A Yeah, right. Advance of '96.

9 Q 250 head of 1996 models, and it says plus an advance on
10 250, 1996 calves, right?

11 A Right.

12 Q So didn't you reflect the plan correctly there?

13 A Right, yes.

14 Q And then there is another 37,5 in the projections we just
15 read to buy another 110 calves. Do you see that in
16 livestock purchases?

17 A Right, yes.

18 Q And to the extent that -- well, strike that. Let me go to
19 the -- well, let me ask the last question counsel asked.
20 To the extent that on this proposal, because the proposed
21 loan agreement, which is Exhibit 5A, provides that another
22 loan will be made of \$100,000 in addition to the 37,5 loan
23 to buy cattle. Do you see that?

24 A Um-hum.

25 Q To the extent that that provides an additional 62,5 that

1 counsel is now calling a mistake, if you go to the last
2 number on the far lower right of sheet one of 8A your cash
3 flow? Where it's 164,378 positive?

4 A Um-hum.

5 Q If you take 62 off of there -- 62,5, right?

6 A Right.

7 Q You're still 100,000 positive?

8 A 100,000, yeah.

9 Q You go to sheet two. You're positive 295,281 --

10 THE COURT: Jim, could you -- let's make sure the jurors are
11 following this.

12 MR. HURLEY: Okay.

13 THE COURT: And using our blowups.

14 MR. HURLEY: And I apologize. I do not have a blow up of 5A
15 which is --

16 THE COURT: But you do have a blowup of the spreadsheets of
17 October -- I mean the cash flows.

18 MR. HURLEY: Yes.

19 Q (BY MR. HURLEY) And so the jury follows, we read from the
20 third paragraph of Charles Simon's loan proposal
21 November 1st, marked 5A, correct?

22 A Correct.

23 Q And that is the loan proposal that you filed at the
24 meeting at the end of October --

25 A Right.

1 Q -- 1996 over at the Bank? That's what you built your
2 cash flow on?

3 A Right.

4 Q And it states another loan would be made to the Long
5 company of \$100,000, correct?

6 A Right.

7 Q To give them credit for 250 calves at \$250 a head for
8 62,5, right?

9 A Right.

10 Q With a balance of 37,5 to be used to purchase another 110
11 calves to be fed and pastured with their own, correct?

12 A Right.

13 Q So we're looking at the 62,5 where it says 1996 calves
14 advanced. Does that follow?

15 A Right.

16 Q And we come down below, and we see 55 head of purchased,
17 and 55 head purchased for 110 purchased?

18 A Yes.

19 Q That would be for 37,5?

20 A 37,5.

21 Q If you follow that to the right, you see plus advance 250
22 calves on the '96 models, right?

23 A Um-hum.

24 Q Doesn't that flow through?

25 A Right, yeah.

1 Q Now counsel is saying that the 96,050, which is on
2 livestock purchases, contains an extra 65,000. If that is
3 true -- 62,500 -- and he's saying perhaps it's in there
4 twice?

5 A It's in there, yeah.

6 Q If it is, and you backed that out of the bottom line,
7 lower right, on sheet one of Exhibit 8A, you're still
8 100,000 positive?

9 A 110.

10 Q And, of course, to follow that through at the end of the
11 plan, you would be 62,5 strong, right?

12 A Right.

13 Q And you're still at some place around 230, 225, right?

14 A At least 230.

15 Q And the plan still works, correct?

16 A Right.

17 Q Now, as to the cattle numbers, when this plan started,
18 there were 360 yearlings on hand, right?

19 A Right.

20 Q And that's what you put there, right?

21 A Sure.

22 Q And also, in the 1997 year, 300 cows, at 90 percent, 270
23 more calves, right? Do you see that on the same line?

24 A Yeah.

25 Q Then go back to your label and the answer is right there.

1 The yearlings will be sold, and the 1997 models will be
2 sold. Do you follow that?

3 A Right.

4 Q Now, if you go down below where you are putting together
5 the yearlings for next year, you've got the 110 purchased?

6 A Right.

7 Q And you've got the 1996 models, and you've got them
8 labeled. Do you see that?

9 A (INAUDIBLE).

10 Q So it's 250 there. So 250 and 110 is 360?

11 A 360.

12 Q You go to sheet two, and counsel was saying you made a big
13 mistake here because you put in 360 yearlings, Year 2.
14 Did you not show those on Year 1 as being the 1996 model
15 calves, 250 head?

16 A Right.

17 Q Plus the 110 purchased?

18 A 110 purchased.

19 Q And that equals how many?

20 A 360.

21 Q And if you carry them over to the end of the year, they
22 become not calves but --

23 A Yearlings.

24 Q And you're showing that on sheet two?

25 A Yes.

1 Q Plus now, when you've got them labeled again on sheet two,
2 you've got the yearlings, plus you've got the '98 calves.
3 Do you see that? The '98 calves are here, and the
4 yearlings are here, correct?

5 A Correct.

6 Q So where counsel says that a huge mistake was made on your
7 cattle numbers following that through under Mr. Simon's
8 proposed loan agreement, what do you see? First of all,
9 as to the cattle numbers.

10 A Well, they're correct -- correct according to the plan
11 with the cash flow.

12 Q And that's what you built this on?

13 A Yeah.

14 Q And where he asked you if there was a \$100,000 loan, isn't
15 that exactly what Mr. Simon's proposed plan says?

16 A Sure.

17 Q Plus, another 37,5 loan, correct?

18 A Correct.

19 Q Now, if that was trimmed down after you left, you couldn't
20 reflect that in your plan of --

21 A November.

22 Q -- October 29th, 1996, could you?

23 A No. (INAUDIBLE).

24 Q And when the plan was changed, were you asked to revise
25 your cash flow?

- 1 A No.
- 2 Q And I think you already testified to this earlier; but as
3 to the cash flow presented by the Bank to the BIA, did you
4 have any input in this three-sheet cash flow?
- 5 A No.
- 6 Q When the point was made by counsel for the Bank that this
7 cash flow is okay because the most money you need was
8 shown on Year 1 -- eight months -- it would be August is
9 how much?
- 10 A 84,000.
- 11 Q Okay. Then go forward, if you would? Do you have those
12 small sheets there?
- 13 A Yes.
- 14 Q And look at how much red ink there is August of the
15 following year. Read the number.
- 16 A 44,735.
- 17 Q Okay. Go to the following August.
- 18 A Third year?
- 19 Q Yes.
- 20 A 100,730.
- 21 Q Go to the next month over to the right.
- 22 A 104,280.
- 23 Q Is 85,000 line of credit going to cover that?
- 24 A No, not even close.
- 25 Q Does this line -- does this cash flow look like the

1 project is a failure?

2 A I would say so.

3 Q You're going to be bouncing checks all over, aren't you?

4 A Right.

5 Q To the tune of 20,000 short?

6 A (COULD NOT HEAR AN ANSWER).

7 MR. HURLEY: No further questions.

8 THE COURT: All right. Any recross?

9 MR. VON WALD: Yeah.

10 RECCROSS-EXAMINATION

11 BY MR. VON WALD

12 Q First of all, what you looked at, of course, with these
13 cash flows is the last figure, right?

14 A Right.

15 Q To see if they are successful or unsuccessful?

16 A Yeah.

17 Q Okay.

18 A Cash in, cash --

19 Q Yeah. And -- and the last figure for the third year,
20 which is a long ways of course to project what's going to
21 happen, right? But the last year for this cash flow shows
22 that they would be about \$90,000 ahead, right?

23 A Right.

24 Q Okay. And -- now, let's -- I really hate to beat a dead
25 horse to death or dead cattle to death, I guess. But, you

1 know, I just don't understand, I guess, how we can sell
2 cattle -- sell the calves for the first year, sell
3 these -- it's been a long day. 300 head of cows and 330
4 calves, that's the calf crop for 1997, right?

5 A Right.

6 MR. HURLEY: It says '98.

7 MR. VON WALD: No. It doesn't say '98.

8 MR. HURLEY: Wasn't that Year 2? Oh, Year 1.

9 MR. VON WALD: Year 1.

10 MR. HURLEY: Go ahead.

11 Q (BY MR. VON WALD) It says -- you're selling yearlings
12 right over here in September, and you're selling calves in
13 October, right?

14 A Right.

15 Q So he doesn't have any cattle on the place now after
16 that's done, right?

17 A Well, you've got 110 at the bottom.

18 Q Well, if he buys a hundred -- you see those 110 are
19 included in this 360 that he bought to begin with, right?
20 He had 250 head of yearlings, and he bought -- and the
21 proposed plan was that he buy, you know, 55, plus 55
22 heifers, I suppose and steers. So he would have 360 head
23 of yearlings then --

24 A Right.

25 Q -- that he had to sell? Okay. So we've got it projected

1 that he is going sell those for 187,000?

2 A Right.

3 Q And that he is going to sell all of his calf crop for
4 89,000. And -- and I'm not trying -- all I'm trying to do
5 is point out to the jury what this cash flow is. And if
6 there is a mistake, I hope that you'd say that you admit
7 that there is a mistake. When we come to sell 360 head of
8 yearlings now, he doesn't have any yearlings. If he buys
9 110 head, then he has got 110 head to sell.

10 A Okay.

11 Q But he has sold his '97 calf crop, didn't he?

12 A Right.

13 Q And so, like you mentioned before, that was lowered by
14 about 100,000, as far as your bottom line was concerned.
15 Okay. And this -- this \$100,000, if you look at Exhibit
16 5A there, the letter, it said -- it shows 62,500 plus
17 about 37,000?

18 A Right.

19 Q That's \$96,050, right, and that's what that letter says,
20 5A?

21 A Um-hum.

22 Q Okay. And the \$96,050 that he's got in here for the
23 purchase of the calves, plus the advance of 62,500, we've
24 got that income right here, but what we don't have is this
25 62,500. So either he has to borrow another 62,500 from

1 the Bank or he just borrows 96,050, and the letter says
2 that he would borrow 100,000, you know, but it said --
3 this plan says 96,050. But that's the 100,000 that you're
4 referring to. So this plan is 62,000 high and the last
5 plan -- so at the end of this year basically, this plan
6 should show that he has got \$102,000. And this plan --

7 THE COURT: And you got to make sure that he's answering the
8 question.

9 Q (BY MR. VON WALD) Is that right? The --

10 A Right, yes.

11 Q The 102,000?

12 A 102.

13 Q That's what that first year should be. So he's got
14 102,000 carry-over rather than 164,000. So that would --
15 lower this, you know, by 62,000. And then you said he
16 would have been short about 100,000 because he wouldn't
17 have all of these yearlings to sell?

18 A Yes.

19 Q This would be short about 132,000 -- 162,000. So he would
20 still end up with about a positive 130,000 --

21 A -- 30,000.

22 Q Yeah. Which is better than the other cash flow?

23 A Right.

24 Q But that's -- that's actually --

25 A The second year.

1 Q Yeah. At the end of the second year according to your
2 cash flow here, he should end up with about 130,000,
3 right?

4 A Yes.

5 MR. VON WALD: No more questions.

6 THE COURT: All right. Jurors -- all right. We've got a
7 question from the jury. Thank you. Okay. I think this
8 is a good question, good and simple, the way I like it.
9 "Whose initials are on top of 8A cash flow, Year 1?" I
10 don't know if Dennis knows that, but . . . It's the one --
11 can the parties stipulate whose initials are those?

12 MR. VON WALD: I think it's Jim Nielsen's.

13 THE COURT: Do you stipulate to that?

14 MR. HURLEY: That would be fine, Your Honor.

15 THE COURT: The answer to the question is Jim Nielsen who
16 is --

17 MR. VON WALD: A bank officer.

18 THE COURT: -- a bank officer. It's a good question though,
19 Jurors. Okay. Thank you.

20 THE WITNESS: Thank you.

21 (WITNESS EXCUSED).

22 THE COURT: Anything else from the plaintiff?

23 MR. HURLEY: Your Honor, may I have half a moment?

24 THE COURT: A half a moment.

25 MR. VON WALD: That's a short one.

1 (PAUSE) .

2 MR. HURLEY: Nothing further at this time.

3 THE COURT: Plaintiff rests. Do you want to make a motion?

4 MR. VON WALD: I've got motions to make, Your Honor.

5 THE COURT: Okay.

6 MR. VON WALD: But do you want me to reserve them until after
7 the case is done or do you want make them now?

8 THE COURT: Let's try to cull this down. Jurors, step out
9 just a moment, and then we will bring you back in. This
10 will be not too long a break.

11 UNIDENTIFIED: (INAUDIBLE) .

12 THE COURT: Yeah. Until they get out.

13 (JURORS LEFT THE COURTROOM) .

14 (END OF VOLUME II OF III) .

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