

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

IN CIVIL COURT

\*\*\*\*\*

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

Plaintiffs,

JURY TRIAL  
R-120-99

-vs-

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

VOLUME I OF III  
PAGES 1 TO 227

Defendants.

\*\*\*\*\*

TIME AND PLACE: DECEMBER 6, 2002  
CHEYENNE RIVER SIOUX TRIBAL COURT  
EAGLE BUTTE, SD 57625

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

APPEARANCES: MR. JAMES P. HURLEY  
Attorney at Law  
P.O. Box 2670  
Rapid City, SD 57709-2670  
ATTORNEY FOR PLAINTIFFS

MR. DAVID A. VON WALD  
Attorney at Law  
P.O. Box 468  
Hoven, SD 57450-0468  
ATTORNEY FOR DEFENDANT BANK OF HOVEN

MR. KENNETH "CHUCK" E. JASPER  
Attorney at Law  
P.O. Box 2093  
Rapid City, SD 57709-2093  
ATTORNEY FOR DEFENDANTS EDWARD AND MARY  
MACIEJEWSKI AND RALPH AND NORMA PESICKA

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

INDEX

VOLUME I OF III

DECEMBER 6, 2002:

PAGE NO.

4	INTRODUCTION BY THE COURT.....	6
5	VOIR DIRE.....	8
6	SETTLING PRELIMINARY JURY INSTRUCTIONS.....	61
7	JURY SWORN.....	67
8	COURT READS PRELIMINARY JURY INSTRUCTIONS.....	68
9	OPENING STATEMENT BY MR. HURLEY.....	71
10	OPENING STATEMENT BY MR. VON WALD.....	79
11	OPENING STATEMENT BY MR. JASPER.....	86

PLAINTIFFS' WITNESSES:

DIRECT    CROSS    REDIRECT    RECROSS

MR. RONNIE LONG	90-H	184-VW	--	--
-----------------	------	--------	----	----

24 H - QUESTIONS BY MR. HURLEY  
 25 VW - QUESTIONS BY MR. VON WALD

PLAINTIFFS' EXHIBITS

		<u>OFFERED</u>	<u>RECEIVED</u>
1			
2			
3	PLF. 1 - CERTIFICATE OF INCORPORATION.....	100	100
4	PLF. 2 - LAST WILL AND TESTAMENT OF KENNETH L. LONG	100	100
5	PLF. 3 - AGREEMENTS RELINQUISHING AND TRANSFERRING INTEREST.....	100	100
6			
7	PLF. 4 - LETTER FROM CHARLES SIMON, BANK OF HOVEN, TO LONGS CONCERNING PROPOSED AGREEMENT....	99	100
8	PLF. 5 - OPTION AGREEMENT TO PURCHASE REAL ESTATE..	100	101
9	PLF. 5A- PROPOSED AGREEMENT 11-1-96 (ONE PAGE).....	--	331+
10	PLF. 6 - LOAN AGREEMENT.....	100	101
11	PLF. 7 - LEASE WITH OPTION TO PURCHASE.....	100	101
12	PLF. 8 - LETTER FROM JAMES NIELSEN, BANK OF HOVEN, REQUEST TO BIA 12-12-96 AND CASH FLOWS....	100	101
13			
14	PLF. 8A- CASH FLOWS - FAX DATE 10-29-96.....	140	140
15	PLF. 9 - PERSONAL REPRESENTATIVE'S DEED.....	100	101
16	PLF. 10 - LETTER 1-16-97 FROM CHARLES SIMON, BANK OF HOVEN, TO DENNIS HUBER.....	100	102*
17	PLF. 11 - LETTER 2-14-97 FROM BIA TO JAMES NIELSEN, BANK OF HOVEN, IN RESPONSE TO LETTER REQUEST 12-12-96.....	102	102
18			
19	PLF. 12 - CFR 103.22, PROTECTIVE ADVANCES.....	102 374	103* 374
20			
21	PLF. 13 - LETTER 2-18-97 FROM RONNIE LONG TO BANK OF HOVEN.....	102	103
22	PLF. 14 - FEMA CERTIFICATE OF LIVESTOCK LOSS.....	102	103
23	PLF. 15 - SETTLEMENT STATEMENT ON SALE OF HOUSE.....	102	103
24			

25 + - FIRST PAGE OF DEFENDANT'S EXHIBIT 10

\* - RULING OF ADMISSIBILITY RESERVED BY THE COURT

PLAINTIFFS' EXHIBITS

	<u>OFFERED</u>	<u>RECEIVED</u>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

\* - RULING OF ADMISSIBILITY RESERVED BY THE COURT

N/O - NOT OFFERED

N/R - NOT RECEIVED

DEFENDANT BANK'S EXHIBITS

	<u>OFFERED</u>	<u>RECEIVED</u>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 (THE FOLLOWING PROCEEDINGS  
2 TOOK PLACE ON DECEMBER 6, 2002,  
3 ON DUPLICATE #1 TAPE #1:)

4 THE COURT: Time for trial. Matter of Long Family Land and  
5 Cattle Company, Ronnie and Lila Long v. Edward and Mary  
6 Maciejewski, Ralph and Norma Pesicka, and the Bank of  
7 Hoven, now known as Plains Commerce Bank.

8 I want to welcome the jurors. Thank you for  
9 reporting. You've been summonsed today to be potential  
10 jurors in a civil jury trial. How many of you jurors have  
11 ever sat on a jury, either Tribe, State? Okay. Was that  
12 a couple of people? Was that tribal juries? Okay.

13 This may be a little unusual. It's -- most trials we  
14 have here that are tried before a jury are actually  
15 criminal trials. That's where the Tribe is alleging  
16 someone violated the law. This is called a civil case.  
17 That's where two private parties have a dispute, and the  
18 Tribe asks that you resolve that dispute for them. So  
19 it's a little bit different than a criminal case.

20 Let me introduce myself before we start getting to  
21 know you. My name is B. J. Jones. I'm a special judge  
22 here. I generally don't sit here in Cheyenne River. I'm  
23 actually the chief judge over in Sisseton-Wahpeton, over  
24 in northeast South Dakota, which I'm sure most of you  
25 folks know. But I've been called in to hear this

1 particular case.

2 What we're going to try to do this morning is to  
3 impanel -- or get a jury of seven members. In Tribal  
4 Court you are entitled to a jury of six tribal members,  
5 but we are also going to have an alternate today because I  
6 want to tell you, Jurors, that this particular case is  
7 probably going to last two days. This is Friday. If we  
8 don't finish today, which is very likely we will not, the  
9 case will continue next Wednesday. That's December 11<sup>th</sup>.  
10 So when I ask you questions and when these attorneys ask  
11 you questions, we're going to find out if you can sit  
12 today and also next Wednesday. So keep that in mind.

13 Here's how we are going to proceed today. In a  
14 moment I'm going to take the roll. That's basically to  
15 see if everyone has reported as they were summonsed to  
16 report, and then I'm going to administer an oath because  
17 we're going to ask you questions, and the law requires  
18 that I administer an oath so that when you answer those  
19 questions it's under oath. After that, we're going to try  
20 to select -- we're probably going to need 15 of you to  
21 come up here. Then we're going to ask -- the attorneys  
22 are going to ask you some questions. So the first thing I  
23 want to do is to call the roll of jurors, and that's a way  
24 for me to get to know you, for the attorneys to begin to  
25 meet you, get to know you.

1           Is this a list that's signed in?

2   THE CLERK:        Yeah.

3   THE COURT:        Okay. Great. Great. Before we go further,  
4           Jurors, let me introduce some of the players in this case.  
5           The plaintiffs' attorney is Mr. James Hurley. Jim is from  
6           Rapid City. He is going to be asking you some questions.  
7           And sitting with Jim is his client. And, Jim, this is --

8   MR. HURLEY:        This is Ronnie Long, Your Honor.

9   THE COURT:        This is Ronnie Long. And Mr. Long is one of the  
10           plaintiffs in this case. And sitting on the other side of  
11           the aisle is the Bank's attorney, Mr. Von Wald. And  
12           sitting with Mr. Von Wald, is this your client?

13   MR. VON WALD:     This is Chuck Simon.

14   THE COURT:        Chuck Simon.

15   MR. VON WALD:     From the Bank.

16   THE COURT:        Okay. Okay, Jurors, what I'm going to do is call  
17           your names. If you hear your name, just indicate that  
18           you're here. In Tribal Court we issue a summons to  
19           jurors. If you don't answer the summons, that could be  
20           charged out as a violation of the law. So the folks that  
21           don't answer the summons and were not excused, we give  
22           that list to the tribal prosecutor who then decides what  
23           to do with that list. Okay. Debbie Dorset? It looks  
24           like she is not served, right, Dale?

25   THE CLERK:        (INAUDIBLE).



1 THE COURT: Okay. Debra Jeffries? Debra, welcome. And  
2 raise your hand so our attorneys can get to know you.  
3 Steve Moran? Steve, welcome. Gerald Brown? Gerald  
4 Brown? I don't have -- is he excused, Dale?

5 THE CLERK: No.

6 THE COURT: Okay. We will issue a show cause to Gerald.  
7 Wakiyan -- how do you pronounce -- is Wakiyan here? Peta?  
8 Peta?

9 THE CLERK: Peta.

10 THE COURT: Peta. It looks likes Wakiyan was served 10-29.  
11 So we will -- was Wakiyan excused?

12 THE CLERK: No, he wasn't.

13 THE COURT: Okay. How about Frank Iron Hawk?

14 MR. IRON HAWK: Here.

15 THE COURT: Frank, welcome. Cody Bendigo?

16 MR. BENDIGO: Bendigo.

17 THE COURT: Bendigo.

18 MR. BENDIGO: Here.

19 THE COURT: Cody, welcome. Robert Hale was not served.  
20 Pamela Semon? Semon?

21 THE CLERK: Semon.

22 THE COURT: Pamela is she here? Don't see her. We will do a  
23 show cause to Pamela. Was she excused, Dale?

24 THE CLERK: No.

25 THE COURT: Okay. Riley Anderson was not served. Myron

1 Curley?

2 MR. CURLEY: Here.

3 THE COURT: Myron, welcome. Willard Eagle Chasing? Willard  
4 here? Okay. We will do a show cause to Willard. Looks  
5 like he was served. Mary Garter?

6 MS. GARTER: Here.

7 THE COURT: Mary, welcome. Suella High Elk?

8 MS. HIGH ELK: Here.

9 THE COURT: Suella, welcome. Jennifer Keller? Jennifer,  
10 welcome. Justin Lawrence? Justin Lawrence? Okay.  
11 Justin was served. We will issue a show cause to Justin.  
12 Was Justin excused? Any of the jurors that were excused,  
13 are they off the list, Dale?

14 THE CLERK: No. They're still on.

15 THE COURT: Oh, they're still on there. Okay. Theresa  
16 Lofton?

17 MS. LOFTON: Here.

18 THE COURT: Welcome, Theresa. Carson Mound?

19 MS. MOUND: Here.

20 THE COURT: Carson, welcome. Nancy Reddog?

21 MS. REDDOG: Here.

22 THE COURT: Nancy, welcome. Rhonda Swan? Rhonda, welcome.  
23 Jared Uses Many? Is Jared here? Okay. He was served so  
24 we will do a show cause to Jared. Sylvan Bald Eagle?  
25 Sylvan not here? Sunshine Brown was not served. Evelyn

1 Condon? Evelyn, welcome. Carol Eagle Chasing? Is Carol  
2 here? Okay. Looks like she was served. Was she excused?

3 THE CLERK: No.

4 THE COURT: Show cause to Carol. Latonne Gunville?

5 MS. GUNVILLE: Latonne Gunville.

6 THE COURT: Sorry. Sorry, Latonne. Latonne Gunville is  
7 present. Lori Kennedy? Oh, Lori wasn't served. Sichangu  
8 Lee?

9 MR. LEE: Here.

10 THE COURT: Welcome. Carla Montreal?

11 MS. BLUECOAT: I go -- I go by Bluecoat now.

12 THE COURT: Okay. We will change that, Carla. And  
13 attorneys, if you would note that. It's Carla Bluecoat.  
14 Okay. Delphine Red Fox? Welcome, Delphine. Carol Ann  
15 Thompson? Carol Ann, welcome. Craig Zephier? Craig  
16 Zephier? Looks like he was served. Was he excused?

17 THE CLERK: No.

18 THE COURT: Okay. We will issue a show cause to Craig.  
19 Carmen Cutt?

20 THE CLERK: She was excused.

21 THE COURT: Carmen was excused. We will -- counsel will  
22 remove her name. Marcella Gilbert was not served. Sharon  
23 LeCompte? Sharon, welcome. Narcisse Rousseau? Narcisse,  
24 welcome. Rita Birkeland?

25 THE CLERK: She was excused.

1 THE COURT: Rita was excused. Counsel will strike her name.

2 Nadine Fisherman? Welcome, Nadine. Vincent LeClarie?

3 THE CLERK: He put in a letter of excuse.

4 THE COURT: Okay. It hasn't been ruled on yet?

5 THE CLERK: (INAUDIBLE).

6 THE COURT: We will rule on that. Take a look at it later.

7 William Red Bear?

8 THE CLERK: He was excused.

9 THE COURT: William was excused. So counsel will strike  
10 that. Okay. Well, that's a good turnout.

11 THE CLERK: (INAUDIBLE).

12 THE COURT: Who is it?

13 THE CLERK: Gerald Brown.

14 THE COURT: Gerald Brown has now reported. So we will vacate  
15 that order to show cause to Gerald. You're Gerald?

16 MR. BROWN: Yeah.

17 THE COURT: Welcome, Gerald. Okay, Jurors, if all of you  
18 would raise your right hand. Do each of you swear to tell  
19 the truth, the whole truth, and nothing but the truth? If  
20 so, say "I do."

21 ALL: I do.

22 THE COURT: Okay. The jurors have been sworn. I'm going to  
23 ask you a few questions, Jurors. All of you are tribal  
24 members here of Cheyenne River?

25 ALL: (INAUDIBLE).

1 THE COURT: Okay. Now, I read the heading of this case.  
2 Long Family Land and Cattle Company, Ronnie and Lila Long  
3 v. Edward and Mary Maciejewski, Ralph and Norma Pesicka  
4 and the Bank of Hoven.

5 Do any of you have any personal knowledge of the  
6 dispute between these parties? Okay. As I indicated,  
7 this could be a two-day trial. At a minimum it's going to  
8 be two days, today and next Wednesday. Can all of you  
9 jurors sit today and next Wednesday? When I say "today,"  
10 we're probably talking about until 5 o'clock today.

11 Do any of you have any pressing commitments today or  
12 next Wednesday that would prevent you from sitting as  
13 jurors in this case? Okay. Your name again?

14 MS. FISHERMAN: Nadine Fisherman.

15 THE COURT: Nadine.

16 MS. FISHERMAN: I work with preschool children, so it's hard for  
17 me to get away.

18 THE COURT: Okay. You got excused for today though?

19 MS. FISHERMAN: Yeah.

20 THE COURT: Okay. And you are getting administrative leave  
21 from the trial?

22 MS. FISHERMAN: (INAUDIBLE).

23 THE COURT: So if you got selected, and it was two days -- I  
24 know that -- we appreciate all of you appearing. We  
25 realize two days of your time is a serious commitment.

1 You could get release from next Wednesday also, Nadine?

2 MS. FISHERMAN: I don't know. It's really hard for me to take  
3 leave from where I work.

4 THE COURT: Okay. I think the tribal law does require that  
5 you be given administrative leave. Do you have other  
6 people at work that could help out with the kids that you  
7 work with, Nadine?

8 MS. FISHERMAN: (INAUDIBLE).

9 THE COURT: You do? And they're helping out today?

10 MS. FISHERMAN: Yes.

11 THE COURT: Okay. We will keep you in the pool for now,  
12 okay, Nadine, but we will note that. Anyone else? Does  
13 anyone here -- and I don't mean to pry, but I just want to  
14 make sure that you can sit as jurors. Do you have any  
15 medical -- physical or mental problems that would prevent  
16 you from being able to hear the evidence and -- you are  
17 going to be sitting for a substantial period of time. Do  
18 any of you have any medical problems that you think may  
19 interfere with your ability to sit as jurors?

20 MS. THOMPSON: Does a hearing aid mean a problem?

21 THE COURT: Okay. Are you having -- your name is?

22 MS. THOMPSON: Carol Thompson.

23 THE COURT: Carol. Okay. It's Carol -- I think it was  
24 Carol -- Carol Thompson.

25 MS. THOMPSON: Yeah.

1 THE COURT: Carol Ann Thompson, we've got you listed. Can  
2 you hear me as I talk now, Carol Ann?

3 MS. THOMPSON: Yes.

4 THE COURT: Do you have a problem with hearing, Carol?

5 MS. THOMPSON: Yes.

6 THE COURT: You do? But where I'm sitting now, if everyone  
7 spoke at this level during the trial, would you be able to  
8 hear?

9 MS. THOMPSON: Yes.

10 THE COURT: Okay. Anyone else? So everyone here would be  
11 able to sit today and next Wednesday? Great. Well, let  
12 me ask you jurors this: Do any of you have any reason to  
13 believe that you could not be fair to the plaintiff in  
14 this case, which is Ronnie Long or Lila Long? Okay.  
15 We've got a couple.

16 Mr. Rousseau? And I don't need you to go into why.  
17 Do you feel that you could not be fair to the plaintiff?

18 MR. ROUSSEAU: Well, I just got back (INAUDIBLE). I know them,  
19 both the parties.

20 THE COURT: You know the Bank of Hoven? And you know --

21 MR. ROUSSEAU: I know Ron and his wife and Doc Pesicka and his  
22 wife (INAUDIBLE) Norma.

23 THE COURT: You did what, Mr. Rousseau?

24 MR. ROUSSEAU: I know Ralph Pesicka and his wife, and I know Ron  
25 and his wife.

1 THE COURT: Oh, you do?

2 MR. ROUSSEAU: Quite well.

3 THE COURT: Okay. Are you friends with either side?

4 MR. ROUSSEAU: Both.

5 THE COURT: Friends with both sides?

6 MR. ROUSSEAU: Yeah, both.

7 THE COURT: With that friendship, do you think that would  
8 interfere with your ability to be fair as a juror?

9 MR. ROUSSEAU: It would have to be preserved.

10 THE COURT: Okay. Are you saying you would be fairer to one  
11 side over the other? Would you be biased towards one side  
12 over the other, Mr. Rousseau?

13 MR. ROUSSEAU: It's a possibility.

14 THE COURT: It's a possibility. When you say you're  
15 friends -- let's take the plaintiff -- how close of  
16 friendship do you have with Mr. Long?

17 MR. ROUSSEAU: Well, him and his wife, I guess, I consider them  
18 as friends.

19 THE COURT: You do?

20 MR. ROUSSEAU: I visited them often from time to time.

21 THE COURT: Okay. And then you said you also --

22 MR. ROUSSEAU: As well --

23 THE COURT: Go ahead. Sorry.

24 MR. ROUSSEAU: As well as Ralph and his wife.

25 THE COURT: Mr. Pesicka?



- 1 MR. ROUSSEAU: Um-hum.
- 2 THE COURT: And you think that would interfere with your  
3 ability to serve as a juror, Mr. Rousseau?
- 4 MR. ROUSSEAU: Honestly, yes.
- 5 THE COURT: Well, I would be inclined to strike him for  
6 cause. Do either counsel have any questions of  
7 Mr. Rousseau?
- 8 MR. VON WALD: I have none, Your Honor.
- 9 THE COURT: Any objection to striking him for cause,  
10 Mr. Von Wald?
- 11 MR. HURLEY: No, Your Honor. Oh, excuse me.
- 12 THE COURT: Mr. Von Wald, any objection to striking --
- 13 MR. VON WALD: No, I do not, Your Honor.
- 14 THE COURT: Mr. Hurley?
- 15 MR. HURLEY: No, Your Honor.
- 16 THE COURT: Mr. Rousseau, we're going to excuse you. I  
17 appreciate your honesty. You still get your fee for  
18 reporting as a juror, but you're free to go at this time.
- 19 MR. ROUSSEAU: Thank you, Your Honor.
- 20 THE COURT: Thank you. We had -- I'm trying to think.  
21 Ms. Gunville? Latonne. Latonne Gunville? Am I  
22 pronouncing that --
- 23 MS. GUNVILLE: Latonne Gunville.
- 24 THE COURT: You raised your hand, correct, Latonne?
- 25 MS. GUNVILLE: (INAUDIBLE).

1 THE COURT: No. No. You don't have to.

2 MS. GUNVILLE: He's my uncle.

3 THE COURT: Mr. Rousseau -- what's that?

4 MS. GUNVILLE: He's my uncle.

5 THE COURT: Who is? Mr. Long?

6 MS. GUNVILLE: Yeah.

7 THE COURT: He's your uncle?

8 MS. GUNVILLE: And she's my auntie.

9 THE COURT: I see -- and are you pointing to your auntie in  
10 the back row there?

11 MS. GUNVILLE: Yeah.

12 THE COURT: Well, I hope she raised your hand, too. All  
13 right. Your auntie --

14 MS. GUNVILLE: She is my mom's sister.

15 THE COURT: Okay. And how are you related to Mr. Long?

16 MS. GUNVILLE: That's his wife, and he's my (INAUDIBLE).

17 THE COURT: Okay.

18 MR. VON WALD: She's pointing -- Your Honor, she is pointing to  
19 Ronnie's wife behind her.

20 THE COURT: Oh, okay.

21 MS. GUNVILLE: She's my mother's sister.

22 THE COURT: I didn't know that was Ronnie's wife. I thought  
23 that was a juror back there. Okay. All right. So do you  
24 think that would prevent you from being fair to the Bank  
25 in this case, Latonne?

1 MS. GUNVILLE: Yeah. I mean --

2 THE COURT: Okay. Well, I would be inclined to strike her  
3 for cause -- for cause. Does counsel have any objection?

4 MR. HURLEY: No objection, Your Honor.

5 MR. VON WALD: I have none, Your Honor.

6 THE COURT: All right. Thank you for your honesty, Latonne,  
7 and you are free to go, also. Check with the clerk. How  
8 are we doing -- what are we going to do with their fees,  
9 Dale?

10 THE CLERK: Probably just work it out.

11 THE COURT: Although, if you get admin leave from the Tribe,  
12 you don't also get a fee, do you?

13 THE CLERK: (INAUDIBLE).

14 THE COURT: Oh, everybody gets one. So great. All right,  
15 Latonne. Thank you.

16 MS. GUNVILLE: Okay. Thanks.

17 THE COURT: Anyone else? All right. Last chance before we  
18 select -- we're going to select 15 of you. How many seats  
19 do we have up here? We don't have enough seats. What we  
20 may have to do is -- I wonder if we can put three more  
21 seats over there, Dale. Last chance. What we're going to  
22 do now is pick 15 names. The 15 of you are going to come  
23 up here, and then the attorneys are going to ask you some  
24 questions. So anybody else have any concern you wanted to  
25 raise to the Court? Okay. Yes. Your name again is?

1 MS. LOFTON: Theresa Lofton.

2 THE COURT: Theresa, okay. Yes, Theresa.

3 MS. LOFTON: I work in a program where I know the  
4 plaintiffs -- or defendants, Ronnie and Lila Long.

5 THE COURT: Okay.

6 MS. LOFTON: I don't know if that's . . .

7 THE COURT: Do you have any personal knowledge about the  
8 transactions between these parties, Theresa?

9 MS. LOFTON: No. I think what -- where we have to verify  
10 income, I don't know if that's . . .

11 THE COURT: Where do you work, Theresa?

12 MS. LOFTON: I work with the Food Administration program.

13 THE COURT: I see. Okay. The knowledge that you have about  
14 the plaintiffs, would that bias you against Mr. Long and  
15 his wife or --

16 MS. LOFTON: No.

17 THE COURT: Would it bias you against the Bank?

18 MS. LOFTON: No.

19 THE COURT: Okay. Thank you, Theresa. We will keep you in  
20 the pool for now. Anyone else? All right. Let's draw  
21 out 15 names. And what we will do is the first 12 of you  
22 just come on up here, and then we'll have to clear an  
23 aisle -- maybe three seats there in front. So just call  
24 15 names, Dale.

25 THE CLERK: (INAUDIBLE).

1 THE COURT: Yeah, just at random. You -- does counsel have a  
2 chart to -- so you can get all of these names?

3 THE CLERK: Carson Mound.

4 THE COURT: Who was that?

5 THE CLERK: Carson Mound.

6 THE COURT: Carson Mound? Carson, come on up here. Just  
7 have a seat right over here, Carson, at the back left.

8 MR. VON WALD: Tell me which number (INAUDIBLE).

9 THE CLERK: Nadine Fisherman.

10 THE COURT: Nadine Fisherman?

11 THE CLERK: Rhonda Swan.

12 THE COURT: Rhonda Swan?

13 THE CLERK: Debra Jeffries.

14 THE COURT: Debra Jeffries?

15 MR. VON WALD: Just a second. Hold on. I started --

16 THE COURT: David is a slow writer.

17 MR. VON WALD: Yeah. I'm a slow writer. I started writing the  
18 other way around here.

19 THE COURT: Okay. We have Carson, Nadine. This is Rhonda.

20 THE CLERK: This is Rhonda. (INAUDIBLE).

21 THE COURT: Oh. Well, hold on, Rhonda. Let Rhonda get in  
22 front of you, Debra. Rhonda and Debra.

23 THE CLERK: Evelyn Swift Eagle.

24 THE COURT: Evelyn? Evelyn Swift Eagle?

25 THE CLERK: Carla Bluecoat

1 THE COURT: Carla Bluecoat?

2 THE CLERK: Jennifer Gaytan -- Jennifer Keller.

3 THE COURT: Jennifer Keller?

4 THE CLERK: Mary Garter.

5 MR. HURLEY: Excuse me? Who was after Carla Bluecoat, Your  
6 Honor?

7 THE COURT: This is Jennifer Keller.

8 MR. HURLEY: Okay. And the next juror was who, Dale?

9 THE CLERK: Mary Garter.

10 THE COURT: Mary? Mary Garter?

11 THE CLERK: Nancy Reddog.

12 THE COURT: Nancy?

13 MR. VON WALD: Just a second, Your Honor. I started writing  
14 wrong again.

15 THE COURT: Actually -- okay. Do counsel see how they are  
16 sitting?

17 MR. VON WALD: I do now, yeah. Jennifer Keller.

18 THE COURT: That's Mary. This is Nancy assuming her seat.

19 THE CLERK: Delphine Red Fox.

20 THE COURT: Delphine?

21 THE CLERK: Suella High Elk.

22 THE COURT: The juror again was? What's the juror's name,  
23 Suella?

24 THE CLERK: Suella High Elk.

25 THE COURT: Suella High Elk. Suella?

1 THE CLERK: Steve Moran.

2 THE COURT: Steve? And I think that fills up -- Jurors, I  
3 apologize. I forgot your two names. Could you move over,  
4 so we could place the three remaining jurors in those  
5 seats?

6 MR. VON WALD: We have seven chairs instead of six in there. So  
7 we (INAUDIBLE) 14 chairs up there.

8 THE COURT: No. I think we will go one, two, three, four,  
9 five, six, seven --

10 MR. VON WALD: Oh.

11 THE COURT: -- eight, nine, ten, eleven, twelve. We've got  
12 seven in back and five in front.

13 MR. VON WALD: Okay.

14 THE COURT: So we need three more jurors. Actually -- and I  
15 did not -- this juror's name?

16 THE CLERK: Steve Moran.

17 THE COURT: Steve. All right. We need three more names.  
18 Yeah, Jim. Did you have a question?

19 MR. HURLEY: Could we move that table out, Your Honor, for  
20 more room?

21 THE COURT: Yeah. We could move that table out and put three  
22 more chairs there. How heavy is that table, Dale?

23 THE CLERK: (INAUDIBLE).

24 THE COURT: Jim, let's test your strength, here. Maybe our  
25 juror, Steve, could help. We'll give him a little more

1 money here.

2 MR. VON WALD: Do you have them written down?

3 THE COURT: And now maybe we can move three chairs over.

4 Thank you, Steve.

5 MR. MORAN: You bet.

6 THE COURT: Maybe Steve should be our bailiff. He's a pretty  
7 good worker. That's going to be tight. You know, we  
8 could either put that back by Carson -- oh, yeah. Slide  
9 it up. That's a good idea. These are very industrious  
10 attorneys, Jurors. Okay. Thank you. So we left off with  
11 Steve. We need three more, and we will just go beside  
12 Steve and then over here.

13 THE CLERK: Myron Curley.

14 THE COURT: Myron Curley?

15 THE CLERK: Frank Iron Hawk.

16 THE COURT: Frank Iron Hawk?

17 THE CLERK: And one more, right?

18 THE COURT: One more juror.

19 THE CLERK: Carol Thompson.

20 THE COURT: Carol Thompson? And, Carol, you've been hearing  
21 everything okay, Carol?

22 MS. THOMPSON: (INAUDIBLE).

23 THE COURT: Oh, thank you, Carol. Come right up here. And,  
24 Jurors -- why don't I introduce you, Chuck. Chuck Jasper.  
25 Chuck is an attorney, also. You're from Rapid City right,



1 Chuck?

2 MR. JASPERS: I am.

3 THE COURT: Chuck is appearing today on behalf of the other  
4 defendants, Edward and Mary Maciejewski and Ralph and  
5 Norma Pesicka. But, Chuck, you won't be participating in  
6 voir dire or anything like that?

7 MR. JASPERS: No. I don't think I would, Your Honor.

8 THE COURT: Okay. So that's who this gentleman is, Jurors.  
9 Okay. So we've impaneled 15 jurors now. And at this time  
10 what I would do then is tender these jurors to counsel for  
11 the plaintiff. Do you have any questions of these jurors,  
12 both for cause and the peremptories?

13 MR. HURLEY: Thank you, Your Honor. Ladies and gentlemen of  
14 the jury, I'm Jim Hurley from Rapid City, South Dakota,  
15 and I represent Ronnie Long and his wife Lila Long, in the  
16 back of the room. And like the Court said, we don't mean  
17 to pry in any way into your lives, but we need to find out  
18 a little bit more about you. As the Court said, the Bank  
19 of Hoven is a party in this case. And the plaintiffs  
20 would -- would ask this question: Do you or your spouse  
21 or any of your relatives or any of your friends work for a  
22 bank or a financial institution?

23 THE COURT: Carson, you raised your hand?

24 MR. HURLEY: Yes, ma'am.

25 MS. MOUND: My niece works for a bank.

1 MR. HURLEY: For the Bank of Hoven?

2 MS. MOUND: Oh, no.

3 MR. HURLEY: Oh, for a different bank?

4 MS. MOUND: Yes.

5 MR. HURLEY: Okay. Is there anything about the fact that your  
6 niece is working for a bank that would cause you not to  
7 render a fair and impartial jury verdict today?

8 MS. MOUND: No.

9 MR. HURLEY: Is there anything about the fact that your niece  
10 works for a bank that would make you believe that anything  
11 that this man says in this case would be absolutely right  
12 and the Longs would be wrong?

13 MS. MOUND: No.

14 MR. HURLEY: Thank you, ma'am. Anyone else work for a bank or  
15 have any relatives that works for a bank, works for any  
16 bank?

17 As the Court said, Attorney David Von Wald is  
18 representing the Bank. Are any of you a client of David  
19 Von Wald or his law firm or a friend or relative of his  
20 wife or his children?

21 As the Court said, sitting beside David is an  
22 employee of the Bank of Hoven, Charles Simon. Are any of  
23 you a relative or friend of Charles Simon or his wife or  
24 his children?

25 As the Court said also a named defendant in this case

1 are Ralph and Norma Pesicka, and I believe you answered  
2 the Court's question about them. There isn't anybody here  
3 that is a friend of the Pesickas? Thank you.

4 Also, I believe an officer of the Bank, Jim Nielsen,  
5 will be called as a witness, and the schedule indicates  
6 probably the second day of the trial. Do any of you know  
7 Jim Nielsen, or are you a friend or relative of Jim  
8 Nielsen or his wife or their children?

9 MR. HURLEY: No further questions, Your Honor.

10 THE COURT: You pass for cause?

11 MR. HURLEY: Yes, Your Honor.

12 THE COURT: And pass also for peremptories? Do you  
13 understand you exercised yours?

14 MR. HURLEY: I believe we have some peremptories, Your Honor.

15 THE COURT: Well, I know. But as far as questioning for  
16 peremptories, that's all the questions you have?

17 MR. HURLEY: Yes, Your Honor.

18 THE COURT: All right. Plaintiff passes for cause. David,  
19 do you have any questions of the jurors?

20 MR. VON WALD: I have some. Ladies and gentlemen of the jury,  
21 as the Court has introduced you -- me to you before, my  
22 first name is David Von Wald, and I practice law in Hoven.  
23 And I also have a -- actually, it's a nephew of mine, John  
24 Von Wald, from Selby that practices in the same law firm  
25 that I do; we're in a partnership. Do any of you -- and

1 to be frank with you, I don't know just exactly who -- the  
2 clients that he has and what he doesn't have, so I don't  
3 want any conflict. Do any of you do any business with  
4 John Von Wald, an attorney from Selby, or his wife Lisa?  
5 Okay.

6 Now Ronnie and Lila Long I know live in the area  
7 here, and some people may be related to them. I think  
8 most of those that were related to them have raised their  
9 hand. But are any of you related to Ronnie or Lila Long?

10 And the -- Jim Hurley has a firm out in Rapid City.  
11 It's the Bangs, McCullen Firm. I don't know how many  
12 lawyers are on your title page, Jim. There are about --  
13 how many attorneys are out there? About 15 or 20? It's a  
14 fairly large firm.

15 MR. HURLEY: Yes.

16 MR. VON WALD: At any rate, it's Bangs, McCullen Law Firm. Have  
17 any of you ever used that law firm before to do any  
18 (INAUDIBLE) work for you? Have any of you hired that law  
19 firm at all?

20 Okay. And -- now, this case has to do with banks,  
21 the Bank of Hoven. That's who I represent. And I know  
22 that a number of people who borrow money from banks not  
23 all of it turns out well. Some of it does; some of it  
24 doesn't. And I'm really not trying to pry into anything  
25 as far as your past is concerned, but what I do want to

1 know is generally just get an idea of whether any of  
2 you -- first of all, have any of you ever borrowed any  
3 money from a bank? And first of all -- let's start with  
4 you, Carson.

5 MS. MOUND: Um-hum.

6 MR. VON WALD: When you borrowed money from a bank, would it be  
7 like car loans or home loans or --

8 MS. MOUND: Home loans.

9 MR. VON WALD: Home loans. How about a business loan, have you  
10 ever had that (INAUDIBLE)?

11 MS. MOUND: No.

12 MR. VON WALD: And with your experience with the bank, have you  
13 had any problems with it or do you think the bank treated  
14 you fairly?

15 MS. MOUND: I haven't.

16 MR. VON WALD: So you don't basically have any ill will towards  
17 the Bank?

18 MS. MOUND: No.

19 MR. VON WALD: (INAUDIBLE). Okay. And now your name is Rhonda?

20 MS. SWAN: Yeah.

21 MR. VON WALD: Rhonda, how much -- you said you borrowed money  
22 from a bank? What kind of loans?

23 MS. SWAN: Personal.

24 MR. VON WALD: Personal loans?

25 MS. SWAN: And auto.

1 MR. VON WALD: Auto loans or personal loans?

2 MS. SWAN: (INAUDIBLE).

3 MR. VON WALD: And have you been treated fairly by the bank in  
4 those cases, do you think?

5 MS. SWAN: Most of the time.

6 MR. VON WALD: Most of the time. That wasn't the Bank of Hoven  
7 that you were dealing with though, right?

8 MS. SWAN: Huh-uh.

9 MR. VON WALD: And with your dealings that you've had as far as  
10 loans are concerned most of the time, you said you didn't  
11 think that you were treated fairly apparently all of the  
12 time. Would that change your outlook as far as banks?  
13 You know, in other words, do you have some sort of ill  
14 feelings towards banks because of your borrowing money?

15 MS. SWAN: (INAUDIBLE).

16 MR. VON WALD: You don't think you do? Okay. So what I'm  
17 getting at is we have testimony in this case. All we  
18 really want to have is a fair jury. And if we have  
19 testimony in this case that you think the facts would be  
20 unfavorable to the Bank, but you think, geez, that's the  
21 Bank of Hoven; I'm not going to vote for them (INAUDIBLE).  
22 Yeah. And who else then has borrowed some money? Your  
23 name is Debra?

24 MS. JEFFRIES: Um-hum.

25 MR. VON WALD: Okay. How about you, is it personal loans or car

1 loans?

2 MS. JEFFRIES: Auto and home.

3 MR. VON WALD: Auto, home?

4 MS. JEFFRIES: Auto and home.

5 MR. VON WALD: Okay. And have you ever had any, you know,  
6 problems with a bank regarding any of your loans?

7 MS. JEFFRIES: (INAUDIBLE).

8 MR. VON WALD: Do you know of anybody that's had problems and  
9 because of that it would influence how you think about  
10 banks?

11 MS. JEFFRIES: No.

12 MR. VON WALD: Do you think that you could be fair pretty much  
13 as far as sitting here today and say, well, if the facts  
14 look this way, I don't care if it's the Bank or it's  
15 Ronnie Long, and that's the way I'm going to vote?

16 MS. JEFFRIES: I think I could.

17 MR. VON WALD: Okay. You don't think you're biased -- you would  
18 be biased towards either of the parties here?

19 MS. JEFFRIES: No.

20 MR. VON WALD: Okay. Thanks. And who else? Evelyn, first.

21 How about you, was it personal loans or --

22 MS. SWIFT EAGLE: (INAUDIBLE).

23 MR. VON WALD: Okay. Any business loans?

24 MS. SWIFT EAGLE: No.

25 MR. VON WALD: Okay. And by the way -- I guess I didn't ask

1           you, Debra. Yours wasn't with the Bank of Hoven, was it?

2 MS. JEFFRIES:     No.

3 MR. VON WALD:     None of you have borrowed from the Bank of Hoven,  
4           right?

5 MS. JEFFRIES:     No.

6 MR. VON WALD:     Okay. Have any of you heard of Bank of Hoven?

7 MS. MOUND:        (INAUDIBLE) .

8 MR. VON WALD:     You have?

9 MS. MOUND:        My brother --

10 MR. VON WALD:     You've heard --

11 MS. MOUND:        My brother --

12 MR. VON WALD:     Pardon me?

13 MS. MOUND:        My brother banks over there.

14 MR. VON WALD:     Okay. Your brother is probably not Mound; is  
15           that correct?

16 MS. MOUND:        No.

17 MR. VON WALD:     What's your brother's name?

18 MS. MOUND:        Pierman.

19 MR. VON WALD:     Pierman. Rusty?

20 MS. MOUND:        Ronald.

21 MR. VON WALD:     Oh, Ronald. Does that influence you one way or  
22           another as far as the --

23 MS. MOUND:        I think it would.

24 MR. VON WALD:     You think it would?

25 MS. MOUND:        (INAUDIBLE) .



1 MR. VON WALD: All right. You think that would influence you,  
2 so it would be tough for you to make a decision --

3 MS. MOUND: Yeah.

4 MR. VON WALD: -- in favor of the Bank? Okay. So you think  
5 that it would be pretty difficult for you to be impartial  
6 then as a juror here?

7 MS. MOUND: Yes, it would.

8 THE COURT: Are you asking that she should be removed for  
9 cause?

10 MR. VON WALD: Yes, Your Honor.

11 THE COURT: Any questions, Jim?

12 MR. HURLEY: No questions, Your Honor.

13 THE COURT: I think we will strike Carson for cause. And we  
14 will have to pull a name. Carson, you are free to go  
15 also.

16 MS. MOUND: Thank you.

17 THE COURT: Make sure that you get your fee. Thank you for  
18 your patience and your honesty. And let's call another  
19 juror to replace her, Dale.

20 THE CLERK: Sharon LeCompte.

21 THE COURT: Sharon? And the jurors back there, make sure to  
22 listen to all of the questions. If you get called up  
23 here, the attorneys may ask you again if you've heard the  
24 questions that you have anything to say about.

25 This is Sharon LeCompte, correct? Sharon, you heard

1 David's questions. Did you have any response to any of  
2 them?

3 MS. LECOMPTE: I think that I -- I should tell you about my  
4 husband is a board of director on a bank. It's not the  
5 Hoven Bank, but I think that that would influence my  
6 decision on how I would view this case, honestly.

7 THE COURT: Your husband is a board of director on a bank in  
8 this area?

9 MS. LECOMPTE: In this state. It can't be in this area because  
10 I think (INAUDIBLE).

11 THE COURT: Okay. Are you saying that it would influence you  
12 because you tend to agree with banks or because you know a  
13 lot about banking?

14 MS. LECOMPTE: Not that I know a whole lot about banking, but  
15 because -- I don't know if I would be able to.

16 THE COURT: Okay. But if I gave you like clear law to apply  
17 to the case, would you be fair to the Longs? If the Longs  
18 were to show you that the Bank did something wrong, do you  
19 think that you could be fair to the Longs, even though  
20 it's a bank that's being sued?

21 MS. LECOMPTE: (INAUDIBLE).

22 THE COURT: Do you think you could?

23 MS. LECOMPTE: I just wanted you to know that, though.

24 THE COURT: Well, we appreciate you revealing that. I think  
25 I'm not inclined to strike her. Now, we will reopen it,

1 Jim, since we've got a new juror. Did you want to ask  
2 this juror any questions?

3 MR. HURLEY: Yes, Your Honor, if I might. Good morning,  
4 Sharon. Thank you for sharing with us that information.  
5 Does the fact that your husband serves as a director of a  
6 bank, would that tend to cause you to believe that the  
7 Bank or the banker in this case would be perhaps more  
8 entitled -- would perhaps be more entitled to belief by  
9 you?

10 MS. LECOMPTE: The bank that my husband is a board of director  
11 of is like a people's bank (INAUDIBLE).

12 UNIDENTIFIED: You should have her speak up.

13 MR. VON WALD: I didn't -- I didn't hear you, Sharon,  
14 Mrs. LeCompte?

15 THE COURT: She said that the bank that her husband -- you  
16 said people's bank?

17 MS. LECOMPTE: Yeah.

18 THE COURT: Is that --

19 MS. LECOMPTE: (INAUDIBLE).

20 THE COURT: That's a credit union.

21 MS. LECOMPTE: It's a people's bank. So I don't think that --  
22 that the issue here is probably the same -- the same way  
23 as -- the Bank of Hoven and other banks are different  
24 (INAUDIBLE).

25 THE COURT: Okay.

1 MR. HURLEY: And I appreciate what you are saying, ma'am. Do  
2 you believe that bankers in what they say are more  
3 entitled to be believed than someone who is complaining  
4 about a bank, like Mr. and Mrs. Long?

5 MS. LECOMPTE: (INAUDIBLE).

6 MR. HURLEY: You would be able -- you believe that you would  
7 be able to be a fair and impartial juror in this case for  
8 either side, call it as you see it?

9 MS. LECOMPTE: Yes.

10 MR. HURLEY: You would be able to render a fair and impartial  
11 verdict in the case, one way or the other?

12 MS. LECOMPTE: (INAUDIBLE).

13 MR. HURLEY: Thank you.

14 THE COURT: All right. Go ahead, David. Finish up. Now I  
15 want to make sure, Carol Ann, are you hearing everything?  
16 These two gentlemen are kind of soft spoken. Are you  
17 picking up on everything they're saying now?

18 MS. THOMPSON: (INAUDIBLE).

19 THE COURT: Okay. Thank you.

20 MR. VON WALD: I can speak louder, if you need me to. You could  
21 ask any one of my brothers, and they would tell you that.

22 Let's see. Now I was with you, Evelyn. And you had  
23 some -- I guess I changed right in the middle of the  
24 stream when I was talking to you before. All of a sudden  
25 I got an answer down here. You said you had some personal

1 loans, right?

2 MS. SWIFT EAGLE: (INAUDIBLE).

3 MR. VON WALD: And were any of those personal loans that you had  
4 with banks, did you have any problems with them where you  
5 felt that the bank did not treat you fairly?

6 MS. SWIFT EAGLE: (INAUDIBLE).

7 MR. VON WALD: So in your estimation, the loans that you had,  
8 you had no problems with the banks because of that; is  
9 that right?

10 MS. SWIFT EAGLE: (INAUDIBLE).

11 MR. VON WALD: Okay. Anyone else? Carla? How -- you had  
12 personal loans then or --

13 MS. BLUECOAT: Personal loans and a car.

14 MR. VON WALD: Okay.

15 MS. BLUECOAT: I had car payments.

16 MR. VON WALD: Okay. Whatever --

17 MS. BLUECOAT: But it was (INAUDIBLE). And the Bank of Eagle  
18 Butte, I -- I have a direct deposit. And even though I  
19 have a direct deposit, I tried to put in for loan. And it  
20 wasn't for a large amount. It was for a small amount.

21 MR. VON WALD: Okay. I -- I don't really want to delve into  
22 your personal finances, but --

23 MS. BLUECOAT: I have a say in this bank here. I -- I believe  
24 you're very prejudiced myself.

25 MR. VON WALD: Okay.

1 MS. BLUECOAT: Because I've been banking there for the last --  
2 since I've been back in (INAUDIBLE).

3 MR. VON WALD: Okay.

4 MS. BLUECOAT: And --

5 THE COURT: Okay. And, Evelyn, you don't have to give us any  
6 specifics or anything, but you feel that you -- do you  
7 have a bias you think against banks?

8 MS. BLUECOAT: Yeah.

9 MR. VON WALD: Do you think that would interfere with you being  
10 fair in this case to the Bank of Hoven?

11 MS. BLUECOAT: I believe I do because I -- I believe that even  
12 if you do have your -- your -- what would you call it --  
13 your collateral, you know, mine was my salary which went  
14 in. I still wasn't -- I still didn't get the loan.

15 THE COURT: Okay.

16 MS. BLUECOAT: I feel that -- I believe -- I believe for the  
17 Longs, you know.

18 MR. VON WALD: You would be in favor of the Longs?

19 MS. BLUECOAT: Yes. I would be in favor of the Longs.

20 MR. VON WALD: You have a preset mind right now, and it's in  
21 favor of the Longs as you are sitting here.

22 MS. BLUECOAT: Yes.

23 MR. VON WALD: Even though you've really heard nothing about the  
24 case?

25 MS. BLUECOAT: Even though I haven't heard, I know -- I know

1           them through my parents. My parents both -- (INAUDIBLE).

2 MR. VON WALD:     Okay.

3 THE COURT:        Okay. You're Carla, right?

4 MS. BLUECOAT:    I'm Carla.

5 THE COURT:        Okay. Jim, I assume you are asking that she be  
6           removed?

7 MR. VON WALD:    David, Your Honor.

8 THE COURT:        Oh, you're David.

9 MR. VON WALD:    Yeah.

10 THE COURT:       Sorry. Any questions of her, Jim?

11 MR. HURLEY:      No, Your Honor.

12 THE COURT:       All right. Carla, thank you for your honesty.

13 MS. BLUECOAT:    Um-hum.

14 THE COURT:       You are free to go. Check with the clerk before  
15           you leave. And we need to replace Carla.

16 THE CLERK:       Sichangu Lee.

17 THE COURT:       Sichangu Lee?

18 THE CLERK:       (INAUDIBLE).

19 THE COURT:       Sichangu is not here, right?

20 THE CLERK:       (INAUDIBLE).

21 THE COURT:       Oh, there. Sichangu, come on up. You take  
22           Carla's seat.

23 THE CLERK:       (INAUDIBLE).

24 THE COURT:       Oh, do we have a juror that reported late? Okay.  
25           What's your name, sir?

1 MR. LAWRENCE: Justin Lawrence.

2 THE COURT: Justin Lawrence. We may need you, Justin. Okay.

3 I'll vacate the order to show cause for Justin. You are a  
4 little late; but better late than never, right, Justin? I  
5 appreciate you coming. Just sit still for now. We're not  
6 asking you any particular questions, but we may need you.  
7 Okay, Justin? All right. Go ahead. You can proceed.

8 MR. VON WALD: Do you want Mr. Hurley to proceed, Your Honor  
9 or --

10 THE COURT: Well, I think --

11 MR. VON WALD: -- with this witness?

12 THE COURT: Well, go ahead and ask questions. If you want to  
13 ask some of Sichangu, you can. If not, just go ahead.

14 MR. VON WALD: All right. You heard the questions that I've  
15 asked before sitting back here. And you don't know me or  
16 anyone in my firm (INAUDIBLE), my niece -- my niece and my  
17 nephew in the firm -- that firm in Selby? You have not  
18 had any legal work with them?

19 And let -- now we're down to the corner, I guess. Do  
20 you know the Longs at all, Ronnie or Lila Long?

21 MR. LEE: (INAUDIBLE).

22 MR. VON WALD: And have you ever made any loans at a bank?

23 MR. LEE: (INAUDIBLE).

24 MR. VON WALD: Okay. And so do you know anything about a bank  
25 or have you ever heard anything about a bank that would



1 make you think that they're no good or that they're good,  
2 either way?

3 MR. LEE: (INAUDIBLE).

4 MR. VON WALD: You mean you may have heard something that might  
5 make it difficult for you to vote in favor of the Bank or  
6 vote against the Bank?

7 MR. LEE: I would have to say in favor.

8 MR. VON WALD: It would make it difficult to vote in favor of  
9 the Bank?

10 MR. LEE: (INAUDIBLE).

11 MR. VON WALD: And do you think that you could, if you sat here  
12 and you listened to all of the evidence and you listened  
13 to -- you've got to understand that the Bank is -- even  
14 though it's a corporation, it's still people. And the  
15 people are the ones that are (INAUDIBLE). They are people  
16 just like Ronnie Long or Long Family Land and Cattle  
17 Company, Inc. And so if the people are sitting there  
18 testifying for the Bank, do you think it would be  
19 difficult to believe those people? You could probably  
20 believe them? But what you are saying is if you had heard  
21 all of the evidence that you could fairly interpret that  
22 evidence and that you might be prejudiced basically  
23 against banks?

24 MR. LEE: (INAUDIBLE).

25 THE COURT: All right. He is shaking his head no. I'm

1 wondering if we're getting these in. Sichangu, can you  
2 say yes or no, so we can get it on the mike, please?

3 Thank you.

4 MR. LEE: No.

5 MR. VON WALD: Okay. So you don't think you are prejudiced  
6 against the Bank, but somehow or another I think I picked  
7 up some bias from you, Sichangu, that -- that you've got  
8 something that you don't like about banks; is that right?

9 MR. LEE: (INAUDIBLE).

10 MR. VON WALD: Okay. But as between Mr. Long and Lila Long and  
11 the Bank if everything was equal, as an example, as you  
12 are sitting here right now, just say everything was equal,  
13 who would you vote in favor, the Bank or the Longs?

14 MR. LEE: I wouldn't be able to say right there and then.

15 MR. VON WALD: Okay.

16 MR. LEE: (INAUDIBLE). Listen to both side of the story.

17 MR. VON WALD: So you would listen to both sides of the story?

18 MR. LEE: I would.

19 MR. VON WALD: You would try to be fair about it?

20 MR. LEE: I would not take sides.

21 MR. VON WALD: Okay. Until you've heard the evidence?

22 MR. LEE: Yes, sir.

23 MR. VON WALD: And the judge advises of what the law is. That's  
24 what we want people to do is be, you know -- and I'm glad  
25 by the way that all of you jurors have said something.

1 You know, it's not really easy as a juror to sit here.  
2 Who wants to talk about this? But I'm glad that everybody  
3 is honest with me and is saying whether they're prejudiced  
4 against the Bank or against the Longs or whatever. That's  
5 what makes a fair jury, and that's what we want. Okay.

6 Now ---

7 THE COURT: Do you want to ask any questions, Jim, of  
8 Sichangu or did Dave kind of cover everything?

9 MR. HURLEY: I think David covered everything. Thank you,  
10 Your Honor.

11 THE COURT: Go ahead, David. Sorry.

12 MR. VON WALD: Jennifer, did you have -- you ever had any loans?

13 MS. KELLER: (INAUDIBLE).

14 MR. VON WALD: Okay. Are they personal loans?

15 MS. KELLER: Personal.

16 MR. VON WALD: Personal. Have any -- have you been treated  
17 fairly by the banks that you've dealt with?

18 MS. KELLER: Yes.

19 MR. VON WALD: And you've not dealt with the Bank of Hoven, have  
20 you?

21 MS. KELLER: No.

22 MR. VON WALD: And so there is nothing as far as your --  
23 basically, the bank is there for people to deposit money  
24 and get interest or people like us who come there and  
25 borrow money to buy cars, you know. So you don't have any

1 problems with banks?

2 MS. KELLER: No.

3 MR. VON WALD: Okay. Now, have any of the rest of you borrowed  
4 any from banks (INAUDIBLE)?

5 MS. RED FOX: (INAUDIBLE).

6 MR. VON WALD: Delphine Red Fox. Okay. Have you had personal  
7 loans or business loans?

8 MS. RED FOX: Personal.

9 MR. VON WALD: Personal loans. And have you had any -- have you  
10 been treated fairly, basically?

11 MS. RED FOX: Fair.

12 MR. VON WALD: Okay. And so you don't have any prejudices as  
13 you are sitting here either in favor or against banks  
14 then?

15 MS. RED FOX: (INAUDIBLE).

16 MR. VON WALD: You could sit here basically and listen  
17 basically? I keep telling my secretary (INAUDIBLE) all  
18 the time. You can sit here and listen to the evidence as  
19 it comes in throughout the trial, right?

20 MS. RED FOX: (INAUDIBLE).

21 MR. VON WALD: And be fair about it and keep an open mind?

22 MS. RED FOX: (INAUDIBLE).

23 MR. VON WALD: Okay. How about any of the rest of you? Nobody?  
24 Nobody else? (INAUDIBLE). Okay. Do -- now even though  
25 you haven't borrowed any money from a bank, do any of you

1 have any preset or preconceived ideas about a bank that  
2 you think might make you a little bit nervous to vote in  
3 favor of the Bank? So you could -- everybody here thinks  
4 that -- and I hate to harp on this, you know. But the --  
5 if the Bank is the bad guy, though, it's not really. But  
6 I know that a number of people have had problems with  
7 banks and that influences the way you think. So that's  
8 all I'm trying to do in asking my question here. I'm not  
9 done with everybody, but (INAUDIBLE) my impression.

10 Okay. Is there anything else that I haven't brought  
11 up so far that you can think of that would make it either  
12 difficult for you to sit here. You've been able to hear  
13 everything that we have been saying.

14 MS. SWIFT EAGLE: I guess I did have a problem with a bank, the  
15 First State Bank (INAUDIBLE). I was thinking about taking  
16 them to court.

17 MR. VON WALD: You are thinking about suing a bank?

18 MS. SWIFT EAGLE: Actually, I don't know if the bank is going to  
19 be involved, but the guy I got the car from.

20 MR. VON WALD: Why don't you give me the bank's name? It looks  
21 like a future client.

22 MS. SWIFT EAGLE: But I guess I -- I guess I kind of feel  
23 prejudiced against the bank here, the First State Bank of  
24 Eagle Butte. (INAUDIBLE). They really never did anything  
25 to me because their banker was also the gentleman's name

1           that I got the car from. I guess he's not an attorney,  
2           but I do believe that -- I did have -- that's the first  
3           bank I've ever did a loan through.

4 MR. VON WALD:     Okay.

5 MS. SWIFT EAGLE:  And I did really have a hard time with that.

6           But the second bank that I am currently at, I have really  
7           good communication with them and didn't have a lot of  
8           trouble, but I guess I'm half and half.

9 MR. VON WALD:     Carla?

10 MS. SWIFT EAGLE:  But . . .

11 THE COURT:        And this is Evelyn. Right, Evelyn?

12 MS. SWIFT EAGLE:  Yeah.

13 THE COURT:        Evelyn Swift Eagle.

14 MR. VON WALD:     Yeah.

15 MS. SWIFT EAGLE:  To be honestly truthful, I think that I  
16           would -- I would go with the Longs.

17 MR. VON WALD:     You would?

18 MS. SWIFT EAGLE:  (INAUDIBLE).

19 MR. VON WALD:     Again, you don't think that you could listen to  
20           the evidence and be fair and impartial?

21 MS. SWIFT EAGLE:  I could listen to it, but I guess I'm  
22           (INAUDIBLE).

23 MR. VON WALD:     I would ask that she be excused for cause, Your  
24           Honor. Thank you, Evelyn for being honest.

25 THE COURT:        So hold on a minute. So if I were to tell you

1           what the law is and you would listen to that and think the  
2           Bank was in the right, you think that you would still go  
3           with the Longs, Evelyn?

4 MS. SWIFT EAGLE: I guess, yeah.

5 THE COURT:           You would?

6 MS. SWIFT EAGLE: (INAUDIBLE).

7 THE COURT:           Okay. Jim, did you want to ask any questions?

8 MR. HURLEY:           Just briefly, Your Honor.

9 THE COURT:           Go ahead.

10 MR. HURLEY:           Good morning.

11 MS. SWIFT EAGLE: Good morning.

12 MR. HURLEY:           Of course, as you sit here right today, you  
13           haven't heard any evidence in this case.

14 MS. SWIFT EAGLE: No.

15 MR. HURLEY:           And you don't know the Longs and you don't know  
16           the Bank, and you don't know any facts of the case,  
17           correct?

18 MS. SWIFT EAGLE: No.

19 MR. HURLEY:           But if the evidence starts out and it's clear to  
20           you that the Longs were in the wrong and the Bank was  
21           right, could you not then make your decision (INAUDIBLE)  
22           jury and the, Court if that's the way you felt about the  
23           case, after hearing the evidence?

24 MS. SWIFT EAGLE: I guess when I first walked in and saw Ronnie,  
25           he had opened the door for me. I have -- I liked you

1 right away because you were a nice person. (INAUDIBLE) I  
2 automatically thought that was honestly (INAUDIBLE) --

3 THE COURT: You mean Ronnie opened the door for you?

4 MR. HURLEY: What I'm saying though is even if in your own  
5 family, I mean like your mother and your father, if  
6 they're wrong, you would make sure to say so, won't you?  
7 That's what we're asking here. If you hear all of the  
8 evidence and you feel the Bank is right and the Longs are  
9 wrong, would you stand up and say so as a (INAUDIBLE) of  
10 your decision?

11 MS. SWIFT EAGLE: I guess I would have to (INAUDIBLE).

12 MR. HURLEY: Okay.

13 THE COURT: All right. Thank you for your honesty, Evelyn.  
14 You're excused. All right, Evelyn, check with -- you know  
15 Melanie In the Woods? Check with her. She needs to visit  
16 with you before you leave.

17 THE CLERK: (INAUDIBLE).

18 THE COURT: She's where?

19 THE CLERK: At the civil court.

20 THE COURT: She's at the civil court. Oh, that's the other  
21 court. You know where that is?

22 MS. SWIFT EAGLE: Yeah.

23 THE COURT: Okay. Thank you. Okay. Let's go ahead and  
24 replace that juror.

25 THE CLERK: Theresa Lofton.



1 THE COURT: Theresa? Dale, could you -- do you have a chart  
2 you can put the names in so when they exercise their  
3 peremptories they could use that chart? So draw them like  
4 a little diagram where they are, not draw their pictures  
5 or anything. All right. Theresa is now seated. I think,  
6 Dave, you were questioning.

7 MR. VON WALD: Thank you, Your Honor. And your name is Theresa  
8 Lofton?

9 MS. LOFTON: Yes.

10 MR. VON WALD: And you've heard the questions that I asked the  
11 other jurors?

12 MS. LOFTON: (INAUDIBLE).

13 MR. VON WALD: You don't know either my nephew or my niece who  
14 practice law?

15 MS. LOFTON: No, I don't.

16 MR. VON WALD: Know the Hurley's law firm?

17 MS. LOFTON: No.

18 MR. VON WALD: How about Ronnie and Lila Long?

19 MS. LOFTON: I know them.

20 MR. VON WALD: Okay. What's your relationship with them?

21 MS. LOFTON: I'm --

22 MR. VON WALD: Oh, you're the one that said --

23 MS. LOFTON: Yeah. They're a client at the Food  
24 Administration program.

25 MR. VON WALD: Do you think that that would make it difficult

1 for you to render a verdict in this case against them?

2 MS. LOFTON: I believe so because I've had dealings with the  
3 Bank of Hoven.

4 MR. VON WALD: Okay.

5 MS. LOFTON: I was a customer for over two years and then --

6 MR. VON WALD: Okay.

7 MS. LOFTON: And they --

8 MR. VON WALD: And so you have some animosity towards the Bank  
9 of Hoven or some partiality in favor of the Longs; is that  
10 right?

11 MS. LOFTON: And mostly towards the Bank of Hoven.

12 THE COURT: Okay. All right. Theresa, why don't we excuse  
13 you then. Thank you for your honesty. That seems to be  
14 the hot seat right there. That's the second juror  
15 that's . . .

16 UNIDENTIFIED: (INAUDIBLE).

17 THE COURT: Don't do that. Check with -- do you know where  
18 Melanie is? The court over -- check with her, okay.  
19 Thank you, Theresa. Okay. We can actually -- maybe we'll  
20 swear Mr. Lawrence. Justin, raise your right hand.

21 (JUROR SWORN.)

22 All right. Justin, you may be called up here.  
23 Just have a seat there.

24 THE CLERK: Cody Bendigo.

25 THE COURT: Cody? Come on up, Cody. Cody is juror 7. Cody,

1           you heard all of the questions so far, right?

2 MR. BENDIGO:       Yes.

3 THE COURT:        Did you want to make any comments on the  
4           questions?

5 MR. BENDIGO:       No. I'm a rancher, so I've got good and bad  
6           things with banks, you know.

7 THE COURT:        So you could be fair to the Bank --

8 MR. BENDIGO:       I could be fair to both sides.

9 THE COURT:        Go ahead, David. Questions?

10 MR. VON WALD:     Cody, your last name is Bendigo?

11 MR. BENDIGO:     Bendigo, yes, sir.

12 MR. VON WALD:     Where do you ranch at?

13 MR. BENDIGO:     Oh, my address is Howes from down the River --  
14           the Cheyenne River back by the Takini School, out in the  
15           middle of nowhere.

16 MR. VON WALD:     Okay.

17 THE CLERK:        About 60 miles from nowhere, anywhere.

18 MR. VON WALD:     All right. That's about where Hoven is. You  
19           have to go 80 miles to get a pair of shorts (INAUDIBLE).

20 MR. BENDIGO:     Yeah.

21 MR. VON WALD:     Anyway, you said you've had some dealings with  
22           the -- first of all, do you know the Longs?

23 MR. BENDIGO:     No. Not personally.

24 MR. VON WALD:     Okay.

25 MR. BENDIGO:     But he did own (INAUDIBLE).

1 MR. VON WALD: That's what you call being in the right place at  
2 the right time, huh?

3 MR. BENDIGO: No, I don't know them personally.

4 MR. VON WALD: Okay. And you don't know either my nephew or my  
5 niece over in Selby?

6 MR. BENDIGO: No. No. Just know the name. I mean, you  
7 know . . .

8 MR. VON WALD: Von Wald. Don't do any business with them or  
9 anything?

10 MR. BENDIGO: No.

11 MR. VON WALD: And don't know anyone at Mr. Hurley's firm?

12 MR. BENDIGO: Right. No, I don't, no.

13 MR. VON WALD: Okay. And you said that you had some problems  
14 with banks before?

15 MR. BENDIGO: Well --

16 MR. VON WALD: Not problems -- or -- you had some -- first of  
17 all, you've had farm and ranch loans?

18 MR. BENDIGO: Correct. But there's -- there's good things and  
19 bad things, meaning bankers I should say.

20 MR. VON WALD: Good bankers and bad bankers?

21 MR. BENDIGO: No. No. I mean I don't have nothing personal  
22 against any one banker.

23 MR. VON WALD: Okay. So -- so as you are sitting here today,  
24 Cody --

25 (END OF DUPLICATE #1 TAPE #1).

1 (THE FOLLOWING PROCEEDINGS TOOK  
2 PLACE ON DUPLICATE #1 TAPE #2).

3 -- if -- if the testimony came in and the testimony  
4 Basically was such that -- that say it appeared that  
5 Ronnie Long was wrong and the Bank was right, would it  
6 make it difficult for you to render a decision in favor of  
7 the Bank?

8 MR. BENDIGO: No. I mean I could be fair. I mean I could be  
9 fair to both sides.

10 MR. VON WALD: Okay. And that would be the same thing with  
11 Ronnie Long?

12 MR. BENDIGO: Yes, sir.

13 MR. VON WALD: If it looked like Ronnie was right and the Bank  
14 was wrong, why you would render a decision in favor of --

15 MR. BENDIGO: (INAUDIBLE).

16 MR. VON WALD: And is there any other reason that anybody can  
17 think of that -- that they may not be able to act as a  
18 fair and impartial juror? Any reason? I mean basically  
19 all we're trying to get is fair people for both sides.  
20 And, of course, it's sometimes difficult to be fair  
21 100 percent of the time; but that's what we're looking  
22 for. And are there -- is there any other problem that you  
23 might have serving as a juror? You don't have any kids at  
24 home -- I think you said Wednesday you had a difficult  
25 time, right? But you think you could handle that; so you

1           could be here Wednesday?

2 MS. FISHERMAN:   (INAUDIBLE).

3 MR. VON WALD:    And you don't think that -- that you would be  
4           sitting here worrying about losing your job or something  
5           and that you would be able to listen to the evidence?

6 MS. FISHERMAN:   (INAUDIBLE).

7 MR. VON WALD:    So it won't affect your job basically?  Could  
8           they possibly manage it if you don't show up?

9 MS. FISHERMAN:   Probably, but . . .

10 MR. VON WALD:    Get over it, huh?

11 MS. FISHERMAN:   (INAUDIBLE).

12 MR. VON WALD:    You are what?

13 MS. REDDOG:      (INAUDIBLE).

14 MR. VON WALD:    Self -- child care and you're self-employed?

15 MS. REDDOG:      (INAUDIBLE).

16 MR. VON WALD:    So do you have kids that come there every day?  
17           Who do you have taking care of the kids today?

18 MS. REDDOG:      They have -- their parents have days off now.

19 MR. VON WALD:    Okay.  Would their parents have like a day off on  
20           Wednesday?

21 MS. REDDOG:      I can probably ask (INAUDIBLE).

22 MR. VON WALD:    Would you have someone else that could fill in  
23           for you if you couldn't show up or something?

24 MS. REDDOG:      She usually has a difficult time trying to find  
25           somebody.

1 MR. VON WALD: Okay. So are you telling the Court that you  
2 think you might not be able to do it then on Wednesday?

3 MS. REDDOG: Yeah.

4 MR. VON WALD: You're not just -- (INAUDIBLE). You can ask her  
5 questions if you like.

6 THE COURT: Well, our margin of error is getting slimmer and  
7 slimmer.

8 MR. VON WALD: I know it.

9 THE COURT: And -- but I'm sensitive to your -- you provide  
10 day care in your home. I think we have some compassionate  
11 counsel that could address that maybe in peremptories, so  
12 I'm not going to remove her for cause. But hang in there.  
13 You are Nancy, right?

14 MS. REDDOG: Yeah.

15 THE COURT: Hang in there. Just because you are sitting here  
16 doesn't mean you get to sit as a juror. Seven of -- eight  
17 of you are not, so . . . There is fifteen. Eight of you  
18 are not. So chances are you are not going to sit, so --  
19 but I'm not telling you you're not, but . . .

20 MS. REDDOG: Okay.

21 THE COURT: Hang in there with us. Anything else, David?

22 MR. VON WALD: Nobody else has anything that they could think of  
23 where you would be impartial -- not be impartial? Okay.  
24 I have no further questions.

25 THE COURT: Pass for cause.

1 MR. VON WALD: Yeah.

2 THE COURT: I will reopen it just for the jurors that were  
3 added. Do you have any questions?

4 MR. HURLEY: No questions, Your Honor. Pass for cause.

5 THE COURT: All right. All right. Then we've got -- do you  
6 have a little chart of them or do either counsel have a  
7 chart that we can use as the official one that you can  
8 exercise peremptories? And just for the record, Chuck,  
9 you are joining in with Dave's voir dire and his  
10 peremptories?

11 MR. JASPERS: That's correct.

12 THE COURT: Okay. We will make that clear. The other  
13 defendants are stipulated or agreed that the Bank's voir  
14 dire and its exercise of peremptories will also be the  
15 exercise of peremptories for Edward and Mary Maciejewski  
16 and Ralph and Norma Pesicka. Okay, Jurors. These  
17 attorneys are going to mull over your names, and we're  
18 going to whittle it down to 7.

19 (WHISPERED, INAUDIBLE DISCUSSION  
20 TOOK PLACE.)

21 Would it be possible to use that chart as the  
22 official one?

23 MR. HURLEY: Yes, Your Honor. We could do that.

24 (FURTHER WHISPERED, INAUDIBLE  
25 DISCUSSION TOOK PLACE.)



1 MR. VON WALD: We would have four, right, Your Honor?

2 THE COURT: Each side has four. Do you want to alternate or  
3 do you just want to -- generally, you come up here, and  
4 you can alternate. Why don't we use that -- come on up,  
5 Counsel.

6 MR. HURLEY: Okay.

7 THE COURT: Are you finished, David?

8 MR. VON WALD: He's got number one down.

9 THE COURT: Okay. One.

10 MR. VON WALD: This is in pencil, Jim?

11 MR. HURLEY: Yes.

12 MR. VON WALD: Just -- you have an eraser on it?

13 MR. HURLEY: Um-hum.

14 MR. VON WALD: I don't know which one you wanted to pick for  
15 number one, but --

16 THE COURT: Just pick your number one and then let -- let  
17 counsel for the defendant pick his number one.

18 (INAUDIBLE).

19 MR. HURLEY: (INAUDIBLE).

20 (FURTHER WHISPERED, INAUDIBLE

21 DISCUSSION TOOK PLACE).

22 THE COURT: Just for counsel's information, the juror that's  
23 left that was called last will be the alternate. Does  
24 everybody understand that?

25 (WHISPERED, INAUDIBLE DISCUSSION

1                                   TOOK PLACE).

2                                   Okay.

3 MR. HURLEY:           (INAUDIBLE).

4 THE COURT:           All right. It appears to the Court that both  
5 sides have exercised their peremptories, and I also note  
6 that counsel for Maciejewskis and Pesickas also  
7 participated with counsel for the Bank in exercising its  
8 peremptories. Okay, Jurors. And the form appears to be  
9 in order. If I call your name, Jurors, you have been  
10 selected as a juror in this civil matter. If I don't call  
11 your name, you have not been selected, which means that  
12 you can go to the other court, visit with the court  
13 administrator and get your fee and go home.

14                   Rhonda Swan, you are a juror. Debra Jeffries, you  
15 are a juror. Your writing is worse than mine, Jim. Is  
16 that -- is that --

17 MR. VON WALD:       Cody Bendigo.

18 THE COURT:           Okay. He may have to be our alternate. You may  
19 have to be our alternate, I guess. Cody Bendigo. Cody  
20 Bendigo, you are selected as a juror in this case. Is  
21 that Frank -- I think it's Frank Iron Hawk, right? Okay.  
22 It looks like -- okay. Frank Iron Hawk, you are selected.

23 MR. VON WALD:       On the side, Your Honor, there is Carol Thompson,  
24 I think.

25 THE COURT:           Oh, I see. All right. So Carol is left, too.

1 Carol Ann Thompson. You have been selected, Carol. And  
2 Delphine Red Fox. Delphine, you've been selected. And  
3 the last juror I have here is -- again, your handwriting  
4 is -- what's the last juror on the far right?

5 MR. VON WALD: Mary Garter, Your Honor.

6 THE COURT: Mary Garter. Mary Garter. And last selected was  
7 Cody, which means that Cody will be our alternate.  
8 "Alternate" means, Cody, kind of you sit through dinner,  
9 but you don't get dessert, or in this case you don't get  
10 the antacid tablets. I have had trials like that, too,  
11 so . . . All right. So who are our seven jurors? Let's  
12 see you raise -- raise your hands. One, two, three, four,  
13 five, six, seven. Who is our alternate? Cody. Which  
14 means you are going to participate in all respects; but if  
15 the other jurors are still there after the case is  
16 presented, you will not deliberate the case. Do you  
17 understand that, Cody?

18 MR. BENDIGO: Yes.

19 THE COURT: All right. The jurors that were not selected are  
20 excused. So the eight that were not selected, make sure  
21 that you again check with Melanie about payment. And the  
22 seven that were just selected, sit there just a moment.  
23 Thanks for coming. Yeah. You guys, we'll move some of  
24 those seats because we're going to give you a break in  
25 just a moment. Both counsel are satisfied that these are

1 the seven jurors selected through the process of voir  
2 dire?

3 MR. HURLEY: Yes, Your Honor.

4 THE COURT: Dave?

5 MR. VON WALD: Yes, Your Honor.

6 THE COURT: Chuck?

7 MR. JASPERS: Yes, Your Honor.

8 THE COURT: All right, Jurors. Jurors, I'm going to give you  
9 a break. But before I do, let me just tell you that you  
10 are not to talk amongst yourselves about the case. I mean  
11 don't go out and nudge your fellow juror and say, how's it  
12 look so far. You're not to do that, okay. You're not to  
13 deliberate until I give you all of the instructions;  
14 you've heard all of the evidence; and then you go back to  
15 the deliberation room. Okay? When you come back in here,  
16 I'm going to administer an oath to you, and then we're  
17 going to give you what is called preliminary instructions.  
18 That tells you what the case is about, gives you a  
19 summary, and then each side will be able to make an  
20 opening statement and then we're going to get into some  
21 testimony.

22 So we're going to take a lot of breaks during the  
23 trial. So you're not to talk to -- amongst yourselves.  
24 You're not to talk to any of the attorneys. Don't talk to  
25 any of the parties to the case. You are to keep an open

1 mind. We're also going to give you -- and it looks like  
2 you already have note pads, so you can take notes.

3 So, Jurors, I'm going to give you about a ten-minute  
4 break, and the attorneys stay in here. We've got some  
5 legal matters to handle. So step out if you need to call  
6 someone.

7 MR. VON WALD: Your Honor, could I take a couple-minute break?

8 THE COURT: Yes, go ahead.

9 (RECESS.)

10 All right. We're back on the record in the  
11 matter of Long Family Land and Cattle Company versus  
12 Edward and Mary Maciejewski, Ralph and Norma Pesicka, Bank  
13 of Hoven. The jurors -- seven jurors have been impaneled.  
14 They're not in the court. The Court is discussing  
15 preliminary jury instructions, and I believe it's  
16 stipulated by counsel that the Court will read -- even  
17 though they're not numbered, what I see as Instruction  
18 No. 1 would be, "This case is presented to the jury." Any  
19 objection from the defendant?

20 MR. VON WALD: I must have them mixed up somewhere (INAUDIBLE).

21 "This case is presented." I have no objection.

22 THE COURT: All right. And I assume, Jim, you've submitted  
23 it. So no objection from the plaintiff?

24 MR. HURLEY: No objection.

25 THE COURT: Chuck, no objection?

1 MR. JASPERS: That's correct, Your Honor.

2 THE COURT: All right. Then we're going to read instruction  
3 number what I'll mark as 2, "Evidence includes testimony  
4 of witnesses, documents."

5 MR. VON WALD: No objection.

6 MR. JASPERS: No objection, Your Honor.

7 THE COURT: Does this have anything about jurors asking  
8 questions?

9 MR. HURLEY: In the fourth paragraph it speaks of notes. I  
10 don't believe it speaks to questions.

11 MR. JASPERS: Yeah, it does.

12 THE COURT: Well, you know, I just read the rules. There is  
13 nothing about jurors asking questions, but in some civil  
14 cases I think it's important -- we don't want to leave a  
15 juror over there thinking that something is so relevant,  
16 nobody is talking about it. I would like to dispel that  
17 notion. So I'm going to allow -- how we'll do it is we'll  
18 have jurors -- if they have a question, we'll have them  
19 give it to the bailiff. The bailiff can bring it up to me  
20 after both sides have questioned the witness. And if  
21 there is something I think should be asked, I will ask the  
22 witness. Then if that opens something up, I will allow  
23 the witness to be examined more by counsel.

24 MR. VON WALD: Unless -- unless you would treat it like you  
25 would, you know, a question by a jury after they go in the

1 jury room. Let both counsel look at it. If either side  
2 have any objections --

3 THE COURT: We could do that, too. Let's do it that way  
4 then. All right. So Instruction No. 2 will be read. How  
5 about Instruction 3, which reads, "The trial will proceed  
6 in the following manner"?

7 MR. VON WALD: No objection.

8 THE COURT: No objection from you, Chuck?

9 MR. JASPERS: No.

10 THE COURT: All right. Jim?

11 MR. HURLEY: No objection, Your Honor.

12 THE COURT: All right. That's stipulated to then, too. All  
13 right. Then just so -- we're on the record. As I  
14 indicated, I've read Rule 48. Rule 48 seems to state that  
15 the verdict should be simple majority, which in a jury of  
16 six members that's four to two, so just to let counsel  
17 know. And again, there is a counterclaim before the  
18 Court, which the Court is hearing, since it's in the  
19 nature of an equitable claim.

20 Anything else before we get the jurors in here and  
21 swear them in and start this trial?

22 MR. JASPERS: Is the Court going to make the jury aware that  
23 there is a counterclaim and that you will make all the  
24 rulings -- court rulings (INAUDIBLE)?

25 THE COURT: That's why I think it's important that the

1 jury -- that's why I was thinking maybe we needed a  
2 preliminary instruction on that.

3 MR. VON WALD: Well, we could probably explain that.

4 THE COURT: When you make your opening statement.

5 MR. VON WALD: When you make your opening statement, that either  
6 Jim, you know, saying that the Bank has a counterclaim  
7 against --

8 MR. JASPERS: Either you or me.

9 MR. VON WALD: Whatever. But -- but I think --

10 THE COURT: With the evidence -- the evidence that's  
11 submitted, it's going to be the same.

12 MR. VON WALD: Yeah.

13 THE COURT: Because in essence plaintiffs can't prove their  
14 case or breach, then I doubt they have a defense to the  
15 counterclaim. So that's the way I'm looking at the case  
16 right now. Or they do prove it, then the Court's  
17 determination of whether that's -- there is a correlation  
18 between the contract and the deed and whether that can be  
19 the basis for a finding against defendant on the  
20 counterclaim? That's the way I'm looking at the case.

21 MR. JASPERS: Do we want to let the jury know that in essence  
22 they're not going to make a determination as far as the  
23 land itself in terms of affecting my clients or would you  
24 handle that in final instructions?

25 THE COURT: I'm thinking -- and you may want to make a brief



1 opening, say, I'm here for the Maciejewskis and the  
2 Pesickas. This is what happened, you will hear in this  
3 case. And really this case doesn't involve any claim that  
4 your clients did anything wrong.

5 MR. JASPERS: Okay.

6 THE COURT: I will give you the right to make an opening if  
7 you want.

8 MR. JASPERS: I would certainly do that.

9 THE COURT: Just to point that out. Because they may be  
10 confused about why your clients are named as defendants.

11 MR. JASPERS: And why I'm not really participating.

12 THE COURT: Yeah.

13 MR. JASPERS: And that may well help them understand.

14 THE COURT: So --

15 MR. JASPERS: Okay. I would appreciate that.

16 THE COURT: You wouldn't have a problem with that, right,  
17 Jim?

18 MR. HURLEY: No, Your Honor.

19 THE COURT: All right. So we'll have these three  
20 instructions, and then we'll turn it over to Jim for his  
21 opening. And I imagine you want to make your opening now  
22 and not reserve it?

23 MR. VON WALD: Right.

24 THE COURT: All right. And then, Chuck, you can make your  
25 remarks.

1 MR. JASPERS: Right.

2 THE COURT: Okay.

3 MR. JASPERS: Okay.

4 THE COURT: Do you want to get the jurors? What's your name,  
5 sir?

6 BOB: Bob (INAUDIBLE).

7 THE COURT: Bob, do you want to get the jurors back in here?  
8 Thank you. We have --

9 MR. VON WALD: Could the Court get some water for us? Every  
10 once in a while I get the cottonmouth.

11 THE COURT: Yeah. We'll get that, and maybe get some for the  
12 jurors. We'll take a break about every hour. That way we  
13 can get two hours in before -- lunch is coming when?

14 THE CLERK: (INAUDIBLE).

15 (JURY RETURNED TO THE COURTROOM).

16 THE COURT: Okay. Let's go back on the record. Back on the  
17 record, in the matter of Long Family Land and Cattle  
18 Company versus Bank of Hoven and others. Seven jurors  
19 have reported back. And again, Counsel -- both counsel  
20 are satisfied that these are the seven jurors who have  
21 been selected through the process of voir dire?

22 MR. HURLEY: Yes, Your Honor.

23 THE COURT: Plaintiffs' counsel?

24 MR. VON WALD: We are, Your Honor.

25 THE COURT: Okay. Defendants' counsel. Okay. Jurors, what

1 I need to do now is administer an oath of juror. So if  
2 each of you would stand and raise your right hand, please.  
3 Okay. After I repeat the oath, if you would just say "I  
4 do." Do each of you agree to discharge your duties as  
5 jurors in this case in accordance with the law and  
6 Constitution of the Cheyenne River Sioux Tribe? If so,  
7 say "I do."

8 ALL: I do.

9 THE COURT: Okay. The jurors have been administered an oath.  
10 You can sit down, Jurors. A couple things, Jurors, you  
11 got a note pad there. You don't have to take notes; but  
12 if you want to take notes, this is going to be a two-day  
13 trial, so -- and we're going -- remember, after we finish  
14 today, we've got to come back Wednesday. So you have  
15 every right to take notes. You're not going to take them  
16 home with you. But when you come back Wednesday, we will  
17 give your pad back. But you don't have to. That's up to  
18 you. Okay. So you take your notes today. We'll keep  
19 your note pad. When you come back Wednesday, you will get  
20 it.

21 Also, because, as I indicated to you, this is a civil  
22 case. As a result, when you are hearing the witnesses  
23 testify, if you've got a question that you just want  
24 answered, and you don't hear either of the attorneys  
25 asking the question, you can write it down, and then we'll

1 get it to our bailiff. It will get up here to me. I will  
2 take a look at it. We'll talk to the attorneys. And if  
3 need be, we will ask the question. Okay. Because I don't  
4 want you sitting there thinking, I wish someone would ask  
5 this question of the witness. Okay. So if that's  
6 something that you want to do -- you don't have to do that  
7 either; but if that's something that you would like to do,  
8 you can certainly do it. As I indicated before, we are  
9 going to take breaks probably about every hour. We do  
10 have lunch for the jurors, right, Dale?

11 THE CLERK: Yes.

12 THE COURT: We have lunch for you. And I think that will  
13 probably be around 12, 12:15. We'll break for lunch, and  
14 we -- we'll probably break at 4:30 today, 4:30 or 5. So  
15 we'll see how much progress we make as we go along.

16 Let me just tell you how we're going to proceed. I'm  
17 going to read to you some instructions that lays out the  
18 law for you, and then each side gets to make an opening  
19 statement to you. We'll start with the plaintiffs'  
20 attorney, and then the defendants' attorneys will then  
21 make an opening statement, and then we're going to get  
22 into the testimony of the witnesses. Okay, Jurors? So  
23 just listen closely. When you go to deliberate, you will  
24 be able to take these instructions with you, also.

25 Instruction 1. This case is presented to the jury

1 because the parties dispute certain facts. It is your  
2 duty to resolve this case by determining the facts and  
3 following the law that's given to you in the instructions.  
4 In deciding this case, you must be fair and impartial to  
5 all parties and consider the case honestly and carefully.  
6 You must not base your verdict on speculation, prejudice,  
7 or sympathy.

8 You are the only judges of all questions of fact.  
9 You must determine the facts from the evidence that will  
10 be produced here in open court. You should consider all  
11 of the evidence regardless of which party produced it. In  
12 weighing the evidence, you may consider the common  
13 knowledge you all possess. You may also use common sense  
14 gained from your life experiences in evaluating what you  
15 see and hear during the trial. In deciding what the facts  
16 are, you may have to decide what testimony you believe and  
17 what testimony you do not believe. You may believe all of  
18 what a witness says, or only part of it, or none of it.

19 In deciding what testimony to believe, consider the  
20 witnesses' intelligence, their opportunity to have seen or  
21 heard the things they testify about, their memories, any  
22 motives they may have for testifying a certain way, their  
23 manner while testifying, whether they said or did  
24 something different at an earlier time, their  
25 qualifications and experience, the general reasonableness

1 of their testimony, and the extent to which their  
2 testimony is consistent with other evidence that you  
3 believe.

4 Instruction 2. Evidence includes testimony of  
5 witnesses, documents, and other things received as  
6 exhibits as well as any facts that may have been  
7 stipulated to -- that is, formally agreed to by the  
8 parties; and any facts that the Court may taken judicial  
9 noticed of, that is, facts which I say you must accept as  
10 true.

11 You may see or hear certain things during the trial  
12 that are not evidence and which you should not consider in  
13 determining the facts. First of all, a lawyer's  
14 statements, arguments, questions, and comments are not  
15 evidence. During the trial, a lawyer may make objections  
16 to certain questions or evidence, which that lawyer  
17 believes are not legally admissible. As the judge, I will  
18 rule on the objections. Neither the objections nor my  
19 rulings should influence you. If I sustain an objection  
20 to a question, you must ignore the question and must not  
21 try to guess what the answer might have been.

22 There may be times when you hear improper testimony,  
23 and I will tell you to disregard it because it is improper  
24 and must not be considered. You are also to disregard  
25 anything you see or hear about this case outside the

1 courtroom unless I specifically tell you otherwise.

2 Furthermore, a particular item of evidence is  
3 sometimes received for a limited purpose only. That is,  
4 you can consider it for one particular purpose and not for  
5 any other purpose. I shall tell you when that occurs and  
6 instruct you on the purposes for which the item can and  
7 cannot be used.

8 At the end of the trial you must make your decision  
9 based on what you recall of the evidence. Again, if you  
10 wish, you may take notes to help you remember what  
11 witnesses said. If you do take notes, please keep them to  
12 yourself until you and your fellow jurors go to the jury  
13 room to decide the case. Do not let note-taking distract  
14 you from hearing other answers by the witness. If yours  
15 or someone else's notes conflict with what you remember,  
16 you should rely on your own memory of the evidence. Also,  
17 just because a juror has taken notes does not mean the  
18 juror's memory of the evidence carries more weight than a  
19 juror's memory who has not taken notes. When you leave at  
20 night or during a recess, your notes will be secured and  
21 not read by anyone.

22 You will be able to take the exhibits with you into  
23 the jury room. You will not, however, be able to take any  
24 deposition testimony or any other written record of the  
25 testimony with you to the jury room. You must rely on

1 your memory of all of the testimony presented during the  
2 trial in arriving at your verdict.

3 Instruction 3. The trial will proceed in the  
4 following manner:

5 First, the plaintiffs' attorney will make an opening  
6 statement. Next, the defendants' attorney may make an  
7 opening statement. An opening statement is not evidence  
8 but is simply a summary of what the attorney expects the  
9 evidence to be. The plaintiffs will then present  
10 evidence, and counsel for the defendants may  
11 cross-examine. Following the plaintiffs' case, the  
12 defendant may present evidence and plaintiffs' counsel may  
13 cross-examine.

14 After the presentation of evidence is completed, the  
15 Court will instruct you further on the law. The attorneys  
16 will then make their closing arguments to summarize and  
17 interpret the evidence for you. As with opening  
18 statements, closing arguments are not evidence. After  
19 that, you will retire to deliberate on your verdict.

20 Okay. Counsel for plaintiff may make his opening  
21 statement.

22 MR. HURLEY: Thank you, Your Honor. Counsel. Good morning,  
23 ladies and gentlemen of the jury. Thank you for being a  
24 part of the judicial system here this morning. Of course,  
25 it's a duty that all of us as citizens to come and hear



1 cases when parties have a dispute between them, and they  
2 can't get it resolved. In the United States of America,  
3 we have a jury system, and you're a part of it this  
4 morning. You will listen to the evidence presented by  
5 both sides and decide on these issues that exist between  
6 them that they can't get it decided by themselves. So we  
7 thank you for your time. Everybody, we know, has busy  
8 schedules and a lot of other things to be doing, but your  
9 duty -- your performance of your duty here as jurors is  
10 what makes our judicial system work. So we thank you for  
11 that.

12 I'm Jim Hurley from Rapid City, South Dakota, and I  
13 represent Ronnie Long and his wife Lila Long sitting back  
14 by the back wall. His daughter Rhonda is with them. And  
15 as the Court stated in its opening statement, it is the  
16 Longs' opportunity to present to you an outline of what  
17 they think the evidence will prove in this case, and this  
18 is what the Longs intend to prove at least in part on what  
19 they think the evidence will show. It's just kind of an  
20 overview so you can follow the evidence more easily when  
21 it is presented to you and hopefully with the opening  
22 statements of plaintiffs and defense counsel when somebody  
23 starts giving testimony you won't be saying, what the heck  
24 is he saying that for. At least you can tie it together a  
25 little bit because of what we're saying here in opening

1 statements.

2 The first thing you probably need to know is that  
3 this case arises out of agreements entered into by the  
4 Bank of Hoven and the Longs, and of course they're called  
5 contracts sometimes, but they're written agreements. And  
6 they were entered into December 5, 1996. And the Longs  
7 are farmer/ranchers, and they borrowed money from the Bank  
8 as farmer/ranchers, and they entered into these agreements  
9 that you will hear about or one of them that you will hear  
10 is about is a loan agreement, and the other one you will  
11 hear about is a lease with option to purchase -- two  
12 written agreements.

13 And we think the Bank will show -- that -- excuse  
14 me -- we think that the evidence will show in this case  
15 that the Bank obtained the deed to Longs' 2230 acres of  
16 land, and in exchange they got a lease back and an option  
17 to purchase their land back. And in addition, in the loan  
18 agreement, the Bank agreed to make a loan to the Longs so  
19 that they could operate their farm and ranch, \$70,000  
20 annual operating loan, and the Bank also agreed to make a  
21 loan to the Longs for \$37,500 to buy 110 head of calves to  
22 feed and raise along with the Longs' calves so they could  
23 increase their cattle income. And the lease ran for two  
24 years, and at the end of two years they would be back on  
25 their feet, and they would have enough money where they

1 could buy their ranch back from the Bank.

2 We think the evidence will show that the Bank  
3 received title to the 2230 acres of land. That land was  
4 worth about \$468,000. And in consideration for receiving  
5 transfer of the land, the Bank promised to make the loan  
6 of \$70,000 annually to the Longs for their farming and  
7 ranching operation, and the Bank promised to make the  
8 second loan to the Longs of -- 37,5 to the Longs to use to  
9 purchase 110 calves to increase their ranch income, and  
10 over two years they would be able to buy their land back.

11 The Longs claim that the Bank breached those  
12 contracts, breached those agreements because the Bank  
13 failed to perform what it promised to do. When the Bank  
14 failed to perform what it agreed to do, the Longs could  
15 not -- could not perform their obligation under the option  
16 to purchase it back.

17 The Longs claim that the Bank had to perform first by  
18 making it an operating loan so they could continue to  
19 operate for two years. The Bank had to perform first by  
20 making a loan to buy some cattle so they could feed those  
21 cattle and raise them up and make some money at the end of  
22 two years and then buy their land back.

23 We think the evidence will show that where the Bank  
24 failed to make those two loans, then the Longs could not  
25 perform.

1           Without the operating loan money, we think the  
2 evidence will show that the Longs could not pay for what  
3 they needed to have done on the ranch to care for their  
4 cattle. The Longs had cows and calves to feed and care  
5 for, and winter was fast approaching. It was December 5,  
6 1996. The Longs needed the operating loan that was in the  
7 written agreements that the Bank promised before the  
8 winter snows and the winter season came along and closed  
9 the roads. The Longs needed to move their hay from where  
10 the hay was put up some 20 miles from where the winter  
11 pastures were, and they needed the operating money for  
12 that.

13           Also, in the agreement we think the evidence will  
14 show that the Bank agreed to apply to the BIA to increase  
15 the BIA guarantees 84 to 90 percent on the loan agreement.  
16 We think the evidence will show that the Bank failed to  
17 fill out a complete application to the BIA. The BIA  
18 informed the Bank of its failure and suggested that the  
19 Bank reapply. In addition, the BIA authorized the Bank to  
20 make an emergency loan of up to 10 percent of the original  
21 amount of the guarantee, some \$42,000 to the Longs.  
22 However, the Bank did not make the emergency loan, so they  
23 could move their hay to their cattle, get feed to their  
24 cattle. And the Bank never reapplied to the BIA after  
25 having been turned down by the BIA. And after they

1 suggested that they reapply, they never did reapply.

2 We anticipate the evidence will show that the Longs  
3 claim that they needed the emergency property loan right  
4 away to save their cattle and get the cattle fed before  
5 winter set in.

6 The Longs claim that the Bank failed to make the  
7 cattle purchase loan; therefore, the Longs could not  
8 purchase the 110 cattle that they needed to increase their  
9 cattle income, which is what they agreed to do.

10 The Longs claim that failure of the Bank to perform  
11 the agreement in good faith caused them to suffer  
12 substantial damages. We anticipate that the evidence will  
13 show that because the Bank breached the agreement to make  
14 the \$70,000 operating loan, the Longs could not haul their  
15 hay some 20 miles to feed their cattle, and as a result  
16 they lost a lot of cattle in the winter storms.

17 The Longs claim that the cows they lost would have  
18 had calf crops each year that would have produced  
19 substantial income each year in the future for them, which  
20 would have enabled them to buy their land back from the  
21 Bank.

22 In addition, the Longs claim that the Bank's failure  
23 to make the loan, \$37,500 as agreed, to purchase cattle,  
24 that that the Longs could not buy the 110 head of  
25 additional calves, which would have increased their income

1 over the next two years to enable them to buy their land  
2 back from the Bank.

3 We anticipate that the evidence will show that the  
4 Bank received the deed to the Longs' 2230 acres of land,  
5 that that land was worth \$468,000, and that the Bank in  
6 the agreements promised to loan the Longs \$70,000 annually  
7 for the Longs to use to pay ranch operating expenses, and  
8 the Bank agreed to loan to the Longs \$37,500 to buy an  
9 additional 110 head of calves to raise and feed with their  
10 own calves to increase their income over the next two  
11 years so they could buy their land back from the Bank.

12 The Longs claim that the Bank got title to their  
13 land, but the Bank then failed to make them the loans as  
14 promised.

15 The Longs claim that because the Bank failed to  
16 perform as promised, the Longs sustained substantial  
17 damages. The Longs request in this case that you award  
18 them substantial damages from the Bank in the amount of  
19 the losses they suffered as a result of the Bank's failure  
20 to perform.

21 The Bank has made a counterclaim in this case to  
22 evict the Longs off the land.

23 We hope that just this overview or road map will give  
24 you just a little hint about where the parties will be  
25 coming from when they get up there and offer testimony to

1           you on the case.

2   THE COURT:           Thank you, Jim. Okay. Dave, opening statement,  
3           please.

4   MR. VON WALD:        Thank you, Your Honor. Again, my name is Dave  
5           Von Wald. I practice over at Hoven, and I have five  
6           daughters, and I'm married, and I've lived there for about  
7           25 years, and I have represented the Bank of Hoven for  
8           probably about the entire time I've been there. Hoven is  
9           a small town. There's about 500 people, and that's where  
10          the Bank is located. The Bank now -- just for the  
11          purposes of knowing what has happened -- has changed its  
12          name actually to Plains Commerce Bank. It used to be the  
13          Bank of Hoven, but throughout this trial that's really how  
14          I remember it anyhow, is the Bank of Hoven. That's how  
15          we'll refer to it.

16                 Just like Mr. Hurley did, I would like to thank all  
17                 of you for being here, and it's no small chore to sit  
18                 through a jury trial for two days, which you people are  
19                 willing to do, and I know that each one of you would  
20                 rather be someplace else. You've got other things that  
21                 you want to do. This just isn't the most important thing  
22                 in your lives. However, it's because of good people like  
23                 you that our whole judicial system in the United States  
24                 works. And so because you're willing to come here and act  
25                 and do your civic duty, we're really grateful, including,

1 I'm sure the Court, and I know for certain for Mr. Hurley  
2 and our clients.

3 As we go on through life, many things we see are  
4 wrong, and we feel powerless to correct it. We see the  
5 World Trade bombing -- Trade Tower bombings. We see the  
6 children as an example use and are on drugs, and drugs  
7 seem to come into the country and so forth, and it seems  
8 like we know it's bad, but we don't have any power to do  
9 anything about it.

10 This time, ladies and gentlemen, you six people --  
11 seven right now -- but eventually six people are the ones  
12 that have the power. You have the power to decide this  
13 case for -- either for Mr. Long or for the Bank of Hoven,  
14 and it's going to take -- and it's an awesome power that  
15 you hold. It's an awesome responsibility. Now I'm glad  
16 that you're here to do that, and I feel confident that you  
17 will make the right decision. And I want to point out you  
18 are the ones with the power, not us.

19 In this opening statement, like Mr. Hurley said, what  
20 I intend to say here -- and you've heard the judge say,  
21 it's -- it's not evidence. So if I say something that you  
22 don't hear later on coming in through witnesses or through  
23 exhibits, just disregard what I've said. I made a  
24 mistake. I'm not going to do that intentionally but that  
25 could happen, and the same thing with Mr. Hurley that



1 could happen. Neither one of us are going to  
2 intentionally mislead you, but sometimes statements that  
3 lawyers make is not what you hear on the jury stand, so  
4 that's prefaced to my comments. But here's what -- and  
5 when we're making these statements, we want to make them  
6 so that you understand what our -- what we think the  
7 evidence will show.

8 You just heard Mr. Hurley say what he thinks the  
9 evidence will show. The Bank of Hoven obviously disagrees  
10 with what Mr. Hurley thinks the evidence will show.

11 What we think it will show is that back in 1987 or  
12 '88, the Long Family Land and Cattle Company, Inc., was  
13 incorporated, and the reason that they were incorporated  
14 is so that they could get BIA -- BIA guaranteed loans.  
15 And in order to have a BIA guaranteed loan, it has to be a  
16 51 percent Indian-owned corporation, and that  
17 incorporation was that. Kenneth at the time -- Ron's  
18 dad -- is not Indian, and Kenneth Long's dad, Mr. Kenneth  
19 Long, owned the real estate. He is the one that owned the  
20 real estate. So they incorporated.

21 And when they did, they banked at the Dewey County  
22 Bank for a while, and for some reason they changed. They  
23 went with the Bank of Hoven in about 1988. And when they  
24 got to the Bank of Hoven, they borrowed money. Some of it  
25 was on the land. The money that they borrowed from the

1 Dewey County Bank was transferred over to the Bank of  
2 Hoven, and they borrowed money. And Kenneth pledged his  
3 land as collateral for the mortgage -- excuse me -- for  
4 the debts of Long Family Land and Cattle Company, Inc. He  
5 pledged that as collateral. And he also had a house in  
6 town in Timber Lake, and he pledged that as collateral.

7 And as time went on, the Longs kept borrowing more  
8 and more money. And as they borrowed more and more money,  
9 the operation kept getting bigger and bigger, the net  
10 worth for the corporation kept going down and down.

11 So what happened, actually, is that the more they  
12 borrowed it seemed like, the worse off they were  
13 financially. And in 1995 Kenneth died. And when he died,  
14 basically they owed the Bank of Hoven approximately,  
15 \$750,000. Some of those were direct loans from the Bank.  
16 Some were BIA guaranteed loans. But that's approximately  
17 what the Long Incorporation owed the Bank of Hoven at that  
18 time.

19 Then we think that the evidence will show that  
20 because of the high borrowing and the decrease in net  
21 worth that the Bank wasn't willing to go along and lend  
22 more and more money. They wanted to lower indebtedness.  
23 So eventually, a plan was arrived at with -- through  
24 negotiations of the Longs and the Bank and the BIA, you  
25 know, a number of people. John Lemke worked for the

1 Cheyenne River Sioux Tribal financial portions. There  
2 were a number of people that were involved. But they were  
3 trying to work some plan out to lower the indebtedness to  
4 make it work. And eventually what happened is that land  
5 was deeded by Kenneth spouse then. Paulette Long deeded  
6 the land to the Bank of Hoven. The Bank of Hoven lowered  
7 the debt of the Long Family Land and Cattle Company, Inc.,  
8 or paid bills of Long Family Land and Cattle Company,  
9 Inc., to the tune of \$468,000. That was agreed to  
10 (INAUDIBLE).

11 Then we think the evidence will show that the deed --  
12 the first deed where they deeded the land was in September  
13 of 1996, that's where the personal representative deeded  
14 the land first. And then because of estate was insolvent,  
15 Kenneth's estate was insolvent, it wasn't going to have  
16 enough to pay off all of the creditors, the attorney for  
17 the estate then notified other creditors, and the second  
18 deed was made in December of 1996. Now you don't have to  
19 remember those figures right now. Hopefully, they will  
20 stick in your mind before this is all said and done.

21 At any rate, the land was deeded over. And when the  
22 Bank did that, they came up with an agreement with the  
23 Longs to continue to loan them money, to continue to  
24 finance the operation. And they did this by the loan  
25 agreement, and in the loan agreement they said that they

1 would -- they would restructure two BIA loans.

2 One of them was to the tune of about \$340,000. There  
3 was back interest that hadn't been paid for over a year --  
4 two years, and the interest on it would have been about  
5 70,000. So they were going to add the interest to the  
6 principal and increase the guarantee from 80 or 84 percent  
7 up to 90 percent, and they were going to ask the BIA to do  
8 that.

9 There was another loan for about \$17,000, but the  
10 same thing, they were going to add the interest to the  
11 principal and ask the BIA to increase their guarantee to  
12 90 percent, and they said they were going to make then an  
13 operating line if the BIA would give them a \$70,000  
14 guarantee operating money. That's what the Bank said they  
15 were going to do. And if that happened, if that happened,  
16 then they also said, we will loan you about \$53,000 to buy  
17 a hundred head -- 110 head of cattle, calves.

18 So the Bank signed the -- the agreement was signed on  
19 December 5<sup>th</sup> of 1996. The Bank sends the agreement into  
20 the -- the request I should say -- into the BIA on  
21 December 10<sup>th</sup>. And they don't hear anything from the BIA  
22 until -- until February 14<sup>th</sup>, about two months later. And  
23 at that time the BIA says we need a more complete  
24 application.

25 But in the meantime, but in the meantime, what

1 happened is we had the worse storm that we've ever had on  
2 record, the worst winter that we've ever had on record,  
3 and that is the winter of '96, '97. I don't know if you  
4 folks remember that. But I will bet you do. It's the  
5 worst any of us have seen.

6 And we think the evidence will show that the reason  
7 the cattle died is because of the fact that it was a bad  
8 winter. Ronnie had hay out there. He had some hay out  
9 there, number one.

10 We think the evidence will show that -- that the Bank  
11 loaned him some money during this time period. They  
12 loaned him \$16,000 so that he could lease land for the  
13 next spring, you know, his range units that he -- that he  
14 was -- for the next spring. They did that in December.  
15 They loaned him that money. They loaned him \$5,000 for  
16 operating emergency type thing if he needed something for  
17 feed or family living or whatever. They loaned him \$2,250  
18 to go out and buy a snowmobile because the roads were so  
19 bad he couldn't get out there to feed his cattle, and the  
20 cattle were 18 miles away from where he lived, and  
21 18 miles away from where most of the hay was.

22 At any rate, the Bank feels that they loaned him the  
23 money. We don't feel that we've breached any agreement  
24 whatsoever, but after Ronnie lost those cattle --

25 (END OF TAPE DUPLICATE #1 TAPE #2.)

1 (REMAINING OPENING STATEMENT OF  
2 MR. VON WALD WAS NOT RECORDED.)  
3 (THE FOLLOWING PROCEEDINGS TOOK  
4 PLACE ON DUPLICATE #3 TAPE #1  
5 AND BEGINS IN THE MIDDLE OF  
6 MR. JASPER'S OPENING STATEMENT:)

7 THE COURT: You got one? Oh, sorry. All right. Sorry,  
8 Chuck. Go ahead. We're back on the record.

9 MR. JASPERS: Thank you. I lost my train of thought there for  
10 a moment, but that's okay. We'll see if we can get back  
11 on.

12 And my purpose actually in being here today is to try  
13 and help you, I think, I understand a little bit of what  
14 happened. In some respects we can take the approach that  
15 we really don't have a dog in this fight, if you remember  
16 that old expression. And by that I mean even though the  
17 Maciejewskis and the Pesickas are named as defendants in  
18 this case, I think the evidence is going to show that  
19 they're not really involved, that this is a disagreement  
20 between the Bank of Hoven and the Long Family Cattle  
21 Company, which is a corporation, rather than a personal  
22 thing.

23 As I understand what has happened in the past, part  
24 of it Mr. Hurley has talked about, part of it Mr. Von Wald  
25 has talked about. After Kenneth Long died, that's

1 Mr. Long's father, then there was a deed done to the Bank  
2 of Hoven. Then the Bank of Hoven entered into a lease  
3 agreement with Ronnie Long -- or should I say the Long  
4 Family Corporation -- and also entered into a loan  
5 agreement. It's my understanding that the evidence will  
6 plainly show that my clients were not involved in that  
7 transaction in any way.

8 Now further, the evidence will show that that lease  
9 was, I believe, for about two years. After the two years  
10 had expired, and it had not been renewed, as I understand  
11 the evidence will show, then the land was sold to the  
12 Pesickas or the Maciejewskis some time later. And that's  
13 why I say we don't really believe the evidence is going to  
14 show that my clients were involved in that in any way.

15 But the main reason why I'm here and my clients were  
16 named is because they now either own the land or they have  
17 a contract to buy the land, and the Longs are hoping at  
18 some point in the future to get this land. That's why  
19 we're involved.

20 It's my understanding the evidence is going to show,  
21 as I said, my clients aren't involved. And I don't  
22 believe you folks are going to be called on to make a  
23 decision as to whether or not they ever get the land back.  
24 That's something that may be -- have to be handled at some  
25 point in the future by another court, but that's not

1 something that you folks have to be concerned about.

2 And as the Judge pointed out earlier, if you have  
3 some questions, write them down. He will take a look at  
4 them and see if they're proper questions that should be  
5 answered. Well, in part, that's why I'm here explaining  
6 what the Maciejewskis' and Pesickas' involvement is, so  
7 hopefully that answers questions in your minds as to what  
8 this third attorney is doing here, and he's really not  
9 sitting up here at the bench, he's sitting back there,  
10 because my involvement today and next week is going to be  
11 very limited.

12 As I said, I think the evidence will show that my  
13 clients aren't involved, and so you don't have to spend a  
14 lot of time worrying about their involvement.

15 So with that in mind, let me thank you on behalf of  
16 the Court, the attorneys, the clients, and especially my  
17 clients in this case because it's you people that are  
18 making our system work.

19 Now, there are very few attorneys can say I've been  
20 where you are. I did that about 30 years ago. It doesn't  
21 seem like it's been that long, but it's been that long. I  
22 was a juror. And I can certainly commensurate with what  
23 you are having to go through today. You know, as the  
24 other attorneys pointed out, it's because of you that our  
25 system works, and it's because of you -- you've been



1 willingly -- maybe you're not here willingly -- but you're  
2 here acknowledging that you have a right and a  
3 responsibility as a citizen of the U. S. and also as a  
4 member of the Tribe. You know, that gives you an  
5 additional right, if you will, and responsibility. And  
6 I'm thanking you on everybody's behalf for exercising that  
7 responsibility, and you are -- stay true to your oath and  
8 that you're going to treat everyone here fair. Thank you,  
9 ladies and gentlemen.

10 THE COURT: All right. Thank you, Chuck.

11 MR. JASPERS: Thank you, Your Honor.

12 THE COURT: All right. Plaintiff may call its first witness.

13 MR. HURLEY: Your Honor, plaintiff calls Ronnie Long to the  
14 stand.

15 THE COURT: Ronnie, come forward. Again, all jurors have  
16 note pads, pen? Okay. Ronnie, raise your right hand. Do  
17 you swear to tell the truth, the whole truth, and nothing  
18 but the truth?

19 THE WITNESS: I do.

20 MR. RONNIE LONG,

21 called as a witness on behalf of the plaintiffs, being  
22 first duly sworn upon his oath, testified as follows:

23 THE COURT: Have a seat right here, and speak up nice and  
24 loud for the jurors.

25 MR. HURLEY: Your Honor, plaintiffs have placed their exhibits

1 in exhibit books. Original for the clerk, one for the  
2 Court, one for opposing counsel, and for the witness.

3 THE COURT: Okay.

4 MR. HURLEY: May I distribute those?

5 THE COURT: Sure. And, David, you've looked at these?

6 MR. VON WALD: No.

7 THE COURT: Okay.

8 MR. HURLEY: It (INAUDIBLE) index to opposing counsel.

9 THE COURT: Okay.

10 MR. HURLEY: I have placed the stamps of Plaintiff's Exhibits  
11 on these.

12 THE COURT: Okay. Jurors, when you deliberate, you will be  
13 able to look at these. Sometimes they're distributed  
14 during the trial, but there is a lot of documents here, so  
15 it may delay things. So if there's a document I think  
16 that's real important that you look at to understand the  
17 testimony, we'll distribute it around, okay. Go ahead.  
18 Jim.

19 MR. HURLEY: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. HURLEY

22 Q Will you state your name for the record, please?

23 A Ronnie Long.

24 Q And where do you live?

25 A Timber Lake.

1 Q Are you married?

2 A Yes, I am.

3 Q And what's your wife's name?

4 A Lila.

5 Q Is she present here in the courtroom?

6 A Yes, she is.

7 Q Would you point her out for the Judge and jury?

8 A In the blue shirt back there.

9 THE COURT: I assume that's Lila who was identified. She  
10 waves.

11 Q (BY MR. HURLEY) How long have you and Lila been married?

12 A Thirty-seven years.

13 Q And do you have children?

14 A Yes, we do.

15 Q How many children did you have?

16 A Three daughters.

17 Q And where did you raise your children?

18 A On the farm south of Timber Lake.

19 Q Were they raised and educated in the Timber Lake area?

20 A Yes, they were.

21 Q And now are they adults themselves?

22 A Yes, they are.

23 Q And have they remained in the area of Timber Lake?

24 A Yes, they have.

25 Q Okay. And have your children married?

1 A Yes.

2 Q And do you and Lila now have grandchildren?

3 A Yes, we do.

4 Q What was your father's work in life?

5 A He was a farmer/rancher.

6 Q And did he do that all of his life?

7 A Yes, he did.

8 Q In what area?

9 A South of Timber Lake.

10 Q All right. Did you work with your father in the farming  
11 and ranching business south of Timber Lake?

12 A Yes, I did.

13 Q And did your wife work with you in the farming, ranching  
14 business?

15 A Yes.

16 Q I ask you to look at Exhibit 1. Can you identify those  
17 documents?

18 A Those are corporation papers.

19 Q And what's the name of the corporation?

20 A Long Family Land and Cattle Company.

21 Q And what date was that company incorporated?

22 A In '87, 1987.

23 Q And is that a stock company?

24 A Yes.

25 Q Stock is issued?

1 A Yes.

2 Q Who were the stockholders?

3 A My wife and I, and dad and mother.

4 Q In opening statements it was said that your father was not  
5 an enrolled member of the Cheyenne River Sioux Tribe; is  
6 that correct?

7 A That's correct.

8 Q Was your mother?

9 A Yes.

10 Q She was an enrolled member of CRST?

11 A Yes.

12 Q Are you an enrolled member of CRST?

13 A Yes, sir.

14 Q Is Lila an enrolled member of CRST?

15 A Yes.

16 Q As are your children?

17 A Yes.

18 Q Getting back to your company then, Exhibit 1, did your  
19 enrolled member status of CRST then make this a majority  
20 Indian-owned corporation?

21 A Yes. It always was.

22 Q And did you use this corporation then in your farming and  
23 ranching business?

24 A Yes.

25 Q And was your company entitled to apply for and receive BIA

1 guarantees for bank loans?

2 A Yes.

3 Q And did you and your wife, and father and mother, do that?

4 A Yes, we did.

5 Q And did there come a time when the Bank of Hoven was your  
6 lender?

7 A Yes.

8 Q And were one or more of your loans from the Bank of Hoven  
9 guaranteed by the Bureau of Indian Affairs?

10 A Yes, there were.

11 Q Okay. Would you take a look at Exhibit 2, please?

12 Ronnie, what is that document?

13 A That's my Dad's last will and testament.

14 Q And did there come a time when your dad died?

15 A Yes.

16 Q And when was that?

17 A In July of 1995.

18 Q Who died first, your father or mother?

19 A My mother.

20 Q When your mother died, what happened to her shares in the  
21 family company?

22 A She give enough of her shares to make Lila and I own  
23 51 percent of the corporation and my dad 49.

24 Q Okay.

25 A So it would stay an Indian-owned corporation.

1 Q Did your father own farmland in that area?

2 A Yes, he did.

3 Q And which county was that land located?

4 A Dewey.

5 Q Dewey County?

6 A Dewey County.

7 Q And did you and your wife, and your father and mother, and  
8 your company use that land in your farming and ranching  
9 operations?

10 A Yes, we did.

11 Q And did your land -- did your father mortgage that land?

12 A Yes, he did.

13 Q Did he mortgage it to the Bank of Hoven?

14 A He mortgaged it to the Bank of Hoven for collateral for  
15 the corporation.

16 Q Okay. Was your operating entity then on the farm and  
17 ranch there, was that the company?

18 A Yes, it was.

19 Q And did the company own cattle?

20 A Yes.

21 Q Did the company own farming machinery?

22 A Yes.

23 Q And your father owned the land?

24 A Right, yes.

25 Q Take a look at Exhibit 3. What do those exhibits mean?

1 A In dad's will when he passed away, he left his shares of  
2 the corporation and his land and that stuff to me and my  
3 two brothers and sister. And they didn't want anything to  
4 do with it, so they transferred all of their belongings to  
5 me, all their interest.

6 Q So everything that your brothers and sister received under  
7 their father's will they transferred to you?

8 A Yes.

9 Q And under your father's will then what did you receive  
10 from your father?

11 A We received all of his shares.

12 Q In the company?

13 A In the company and the real estate.

14 Q And by virtue of your brothers and sister transferring  
15 their interest to you then, under your father's will, you  
16 ended up with his land and his shares in the company?

17 A Yes.

18 Q And the company owned the cattle, the machinery, and the  
19 feed?

20 A Yes.

21 Q As you stated, your father died in July of 1995, correct?

22 A Yes, sir.

23 Q And did his death cause a change in your relationship with  
24 Bank of Hoven?

25 A Yes.



1 Q In what respect?

2 A They were reluctant to give me any loans until we had the  
3 estate settled.

4 Q And by "estate" you mean what your father owned when he  
5 died?

6 A Yes.

7 Q Did the Bank make a proposal to you as far as a plan to  
8 restructure, resolve matters?

9 A Yes.

10 Q When did that happen initially?

11 A I believe it was around in -- some time in April of '96  
12 when we started talking about it.

13 Q And where did that conversation take place?

14 A Well, it took place at the Bank and at the Planning Office  
15 in Eagle Butte and at the ranch.

16 Q And did Bank officers come out to your ranch?

17 A Yes.

18 Q And they looked at the cattle the company owned?

19 A Yes.

20 Q And they looked at the machinery the company owned?

21 A Yes.

22 Q And basically, what was being proposed?

23 A It was proposed that if they got the deed to the land that  
24 we would do this contract deal --

25 Q Excuse me. If who got the deed?

1 A If the Bank of Hoven got the deed.

2 Q Okay. How much land was there?

3 A 2230 acres.

4 Q Do you know the value of that land approximately at that  
5 time?

6 A The -- like \$210 an acre.

7 Q So if the Bank received the deed to the land, 2230 acres,  
8 worth about \$210 an acre, then what?

9 A Then we would enter into a lease purchase deal and a --  
10 refinance -- or -- into our contract, that we would get  
11 operating money and buy more cattle.

12 Q And after April of '96 when that was initially proposed,  
13 were there further discussions about that proposal?

14 A Yes.

15 Q And as the discussion developed, whereby the Bank would be  
16 transferred the land, and then you would lease the land  
17 back for a period of time from the Bank, correct?

18 A Yes.

19 Q And then there would be a loan agreement where you would  
20 have an operating loan and a cattle purchase loan?

21 A (COULD NOT HEAR AN ANSWER).

22 Q And then there was an opportunity for you to buy the loan  
23 back --

24 A Yes.

25 Q Buy the land back from the Bank?

1 A Correct.

2 Q Was the Bank initially talking about selling the land, the  
3 Long land back to you on a contract for deed?

4 A I don't -- that was a lease with option to purchase.

5 Q No. I'm talking about initially. Would you take a look  
6 at Exhibit 4, please? For example, the last line of the  
7 first paragraph, "And the land base would be deeded to the  
8 Bank and sold back to you --"

9 MR. VON WALD: Well, excuse me, Your Honor. I have an  
10 objection. He's testifying about an exhibit that's not  
11 into evidence.

12 THE COURT: Okay. Sustained. You can ask a question but lay  
13 foundation for the admissibility of this.

14 Q (BY MR. HURLEY) Would you take a look at Exhibit 4,  
15 please?

16 A Yes.

17 Q Is that a letter dated April 26<sup>th</sup>, 1996?

18 A Yes, it is.

19 Q Is that letter addressed to you?

20 A Yes, it is.

21 Q And it was written to you by Charles Simon, Bank of Hoven?

22 A Yes.

23 Q And did you receive that letter?

24 A Yes, I did.

25 MR. HURLEY: Your Honor, we would offer Exhibit 4.

1 MR. VON WALD: No objection, Your Honor.

2 THE COURT: All right. It will be admitted. And again,  
3 Jurors, there is several exhibits here. You will be able  
4 to look at these later. Go ahead, Jim.

5 MR. VON WALD: Your Honor, I do have one question. None of the  
6 other exhibits have been offered.

7 THE COURT: I was going to ask that. I imagine a lot of this  
8 can be stipulated to. 1, 2, 3 you want to move their  
9 admission?

10 MR. HURLEY: I move their admission, Your Honor.

11 THE COURT: Any objection, Mr. Von Wald?

12 MR. VON WALD: No. No objection.

13 THE COURT: How about just for the record, Chuck, do you have  
14 any objection?

15 MR. JASPERS: I haven't seen them, but I have no objection,  
16 Your Honor. I know what they are.

17 THE COURT: 1 through 4 will be admitted into the record.

18 MR. HURLEY: And we would offer -- also offer I think all the  
19 parties -- or at least the Bank and the Longs are familiar  
20 with -- 5, 6, 7, 8, 9, 10.

21 THE COURT: All right. 5, do you have an objection to  
22 Exhibit 5? It appears to be the option agreement to  
23 purchase real estate.

24 MR. VON WALD: I have no objection.

25 THE COURT: Chuck?

- 1 MR. JASPERS: I see no objection.
- 2 THE COURT: 5 will be admitted. 6, the loan agreement?
- 3 MR. VON WALD: No objection.
- 4 THE COURT: Chuck?
- 5 MR. JASPERS: I see no objection, no.
- 6 THE COURT: 5 will be admitted. 6, the loan agreement?
- 7 MR. VON WALD: No objection, Your Honor.
- 8 THE COURT: No objection. Chuck?
- 9 MR. JASPERS: None, Your Honor.
- 10 THE COURT: That will be admitted. 7, lease option to  
11 purchase?
- 12 MR. VON WALD: No objection.
- 13 MR. JASPERS: No objection, Your Honor.
- 14 THE COURT: That will be admitted. And what else did you  
15 ask?
- 16 MR. HURLEY: 8, 9, 10.
- 17 THE COURT: All right. 8, Letter of December 12, 1996 to  
18 Russell McClure, Superintendent, Cheyenne River Sioux  
19 Tribe.
- 20 MR. VON WALD: No objection.
- 21 MR. JASPERS: No objection, Your Honor.
- 22 THE COURT: It will be admitted. 9, any objection?
- 23 MR. VON WALD: No objection.
- 24 MR. JASPERS: No objection, Your Honor.
- 25 THE COURT: 9 will be admitted. 10, a letter from Charles

1 Simon, VP, Bank of Hoven.

2 MR. VON WALD: I would object -- at this time I would object  
3 until foundation is laid for the relevance of that letter,  
4 Your Honor.

5 THE COURT: All right.

6 MR. HURLEY: Which number?

7 MR. VON WALD: No. 10.

8 THE COURT: We will reserve ruling on 10. Did you say 11 you  
9 wanted?

10 MR. HURLEY: Yes, Your Honor.

11 THE COURT: How about 11, Dave?

12 MR. VON WALD: No objection.

13 MR. JASPERS: No objection, Your Honor.

14 THE COURT: Is that as far as you want to go for now?

15 MR. HURLEY: We might as well go ahead with the others, too.  
16 We would offer 12, 13, 14, 15.

17 THE COURT: 12 appears to be some federal regulations.

18 MR. VON WALD: I would object at this point as far as the  
19 admissibility of that.

20 MR. JASPERS: I would join that, Your Honor. I think that's  
21 probably the subject of an instruction.

22 THE COURT: Of an instruction, yeah. Well, why would you  
23 want to offer that? Is it separate from --

24 MR. HURLEY: We will lay further foundation.

25 THE COURT: Do you have any basis for admitting that separate

1 from the Court instructing as to what the law is?

2 MR. HURLEY: Yes. It's in connection with Exhibit 11 where  
3 the BIA quotes that particular provision of 25 CFR to the  
4 Bank, and we will lay further foundation when we come to  
5 that, Your Honor.

6 THE COURT: Okay. We will reserve ruling on 12. 13?

7 MR. VON WALD: No objection.

8 MR. JASPERS: No objection, Your Honor.

9 THE COURT: Chuck, no objection. That will be admitted. 14?

10 MR. VON WALD: No objection.

11 MR. JASPERS: None, Your Honor.

12 THE COURT: 14 will be admitted. 15?

13 MR. VON WALD: No objection.

14 MR. JASPERS: None, Your Honor.

15 THE COURT: 15 will be admitted. 16?

16 MR. VON WALD: I would object to the relevance of this, I guess,  
17 this 16, those copies there.

18 THE COURT: All right. You will have some foundation for  
19 Exhibit 16, also?

20 MR. HURLEY: Yes, Your Honor.

21 THE COURT: So we reserved No. 12, 16. And what was the  
22 first one?

23 MR. VON WALD: 10.

24 THE COURT: 10. And I imagine Chuck same objection to 16?

25 MR. JASPERS: I have none, Your Honor.

- 1 THE COURT: All right. So the Bank has an objection. All  
2 right. 17?
- 3 MR. VON WALD: No objection.
- 4 MR. JASPERS: None, Your Honor.
- 5 THE COURT: 17 will be admitted. 18?
- 6 MR. VON WALD: No objection.
- 7 THE COURT: All right.
- 8 MR. JASPERS: None, Your Honor.
- 9 THE COURT: 19?
- 10 MR. VON WALD: I have no objection.
- 11 MR. JASPERS: Yeah.
- 12 MR. VON WALD: That's the deed to your clients.
- 13 MR. JASPERS: Yeah. I have none, Your Honor.
- 14 THE COURT: Okay. 19 admitted -- will be admitted. 20?
- 15 MR. VON WALD: I object just to a portion of it as to relevance,  
16 and that would be my letter. The second portion, I don't.
- 17 THE COURT: Could we take the letter out? Unfortunately,  
18 that's probably the exhibit sticker on No. 20. Did you  
19 take -- go to 20, Dale, and take the exhibit sticker off  
20 and put it on the notice to quit.
- 21 THE CLERK: All right.
- 22 THE COURT: I would admit 20. So simply take off the cover  
23 letter. No. 21?
- 24 MR. VON WALD: We're at 21 now.
- 25 MR. JASPERS: I have no objection.



1 MR. VON WALD: No objection.

2 THE COURT: 21 will be admitted. 22 now we're getting --

3 MR. HURLEY: Yes, Your Honor. 22 and 23 we'll have to wait  
4 for further foundation.

5 THE COURT: Okay. All right. Those will be admitted without  
6 objection except 10, 12, 16. We'll defer ruling on the  
7 admissibility of those, and 22 and 23 haven't been  
8 offered. So you've got some reading material now, Jurors.  
9 You will get this when you go to deliberate. You will get  
10 what Dale has. She's got the originals.

11 MR. JASPERS: Did we address No. 11 at all, Your Honor?

12 THE COURT: I thought we admitted 11.

13 MR. VON WALD: Yeah.

14 MR. JASPERS: I'm wasn't sure. That's why I'm asking.

15 THE COURT: We admitted 11.

16 MR. JASPERS: Yeah. Okay.

17 THE COURT: 12 was the attachment to 11 but we deferred it --  
18 we deferred ruling on that.

19 I think maybe it's a good time to give our jurors a  
20 break. They've been patiently waiting there. So let's  
21 take about a ten-minute break there, Jurors. Stretch.  
22 Don't talk to anybody about the case or among yourselves.  
23 Just go out, stretch your legs, take it easy. We'll  
24 invite you back in here around 11:30.

25 (RECESS TAKEN).

1 All right. Let's go back on the record. Oop. We're  
2 missing a juror. We're going to be breaking at noon for  
3 lunch, Jurors. And we do have a lunch for our jurors. So  
4 we can't force you to eat it. You can go eat it -- eat  
5 somewhere else, but we do have a lunch for you, so. . .  
6 All right. Let's go back on the record. Back on the  
7 record in the matter of Long Cattle Company versus Bank of  
8 Hoven. Ronnie Long is testifying, questioning by his  
9 counsel. Go ahead, Jim.

10 MR. HURLEY: Thank you, Your Honor.

11 Q (BY MR. HURLEY) Ronnie, we were looking at Exhibit 4 and  
12 that was the letter from the Bank to you April 26<sup>th</sup>, 1996,  
13 correct?

14 A Correct.

15 Q And when you first started talking to the Bank about this  
16 plan, did the plan involve the transfer of your land to  
17 the Bank and then the Bank selling it back to you on a  
18 contract for deed?

19 A Yes, it did.

20 Q Did there come a time when the Bank's position on that  
21 changed?

22 A Yes.

23 Q And when was that?

24 A It was on April 26<sup>th</sup> here on the terms of this letter.

25 Q And why did the Bank's position change?

1 A Because of possible jurisdictional problems if they sold  
2 it back me and because I was an Indian-owned entity.

3 Q And how did the proposal then change? Would you not be  
4 able to buy it back on a contract for deed then?

5 A No. I had to find -- I would have to find different  
6 financing, I guess BIA or FHA or something.

7 Q And by a contract for deed, who is then financing the --  
8 your purchase of the land back from the Bank?

9 A I would say the Bank.

10 Q And that position changed to where you couldn't do that;  
11 you had to find other financing?

12 A Yes.

13 Q And that's because you are an enrolled Indian?

14 A Yes.

15 Q Yes. And you have an Indian-controlled company or  
16 corporation?

17 A Yes.

18 Q And that's what the Bank states to you in Exhibit 4?

19 A Yes.

20 Q And did you discuss that with the Bank as to how that  
21 would make a difference?

22 A They just told me that you would have to find another  
23 financial institution.

24 Q Okay. Would you turn to Exhibit 6, please. And do you  
25 recognize Exhibit 6?

1 A Yes, I do.

2 Q And can you describe it briefly?

3 A Well, it's where the Bank has the deed to the real estate,  
4 and they would write off \$478,000 and in lieu of that --

5 MR. VON WALD: Which exhibit are you looking at?

6 MR. HURLEY: Exhibit 6.

7 A They would make a contract with me to give me operating  
8 money and with that buy back more cattle.

9 MR. VON WALD: Excuse me. Just so that we don't get  
10 (INAUDIBLE). Did you say 178,000?

11 THE WITNESS: No.

12 MR. VON WALD: I must have misunderstood you.

13 THE WITNESS: It says 478,000.

14 MR. VON WALD: 478,000. I'm sorry. I misunderstood then.

15 Q (BY MR. HURLEY) Ronnie, you're reading off the -- about  
16 in the middle of the page, and that is in the loan  
17 agreement?

18 A Yes.

19 Q The figure there appears 478,000?

20 A Yes.

21 Q Okay. And so the Bank gets the deed to your land, and in  
22 the first paragraph of the loan agreement the Bank is  
23 giving you credit of 478,000 for the land and little house  
24 that got deeded to the Bank?

25 A Yes. I had no problem with them having the deed. This

1 contract with them come full circle.

2 Q Okay.

3 MR. HURLEY: Your Honor, we have Exhibit 6 on a large board  
4 for the jury. May I set that up?

5 THE COURT: Any objection? I think it would be helpful to  
6 the jurors, since they don't have the exhibit.

7 MR. VON WALD: Do you want to set it on the easel, Jim, so that  
8 we could maybe it put it right here? Everybody could see  
9 it.

10 MR. HURLEY: Yes. Well, maybe I could get it closer to the  
11 jurors.

12 THE COURT: Then how could -- the problems is then could --  
13 the problem is then I couldn't see it. David couldn't  
14 maybe.

15 MR. HURLEY: Okay.

16 THE COURT: But we can always move --

17 MR. HURLEY: And you have the written one, too.

18 THE COURT: Yeah. I've got a written one, too.

19 MR. HURLEY: To show the Judge what it looks like.

20 THE COURT: Have you seen this exhibit?

21 MR. VON WALD: No. I assume it's a copy of this.

22 THE COURT: It's a copy of this. There's no problem. It  
23 appears to be -- it appears to me to be an exact replica.

24 MR. VON WALD: Yeah. Is the second page there?

25 THE COURT: It's reduced to one page apparently.

1 MR. VON WALD: Oh.

2 THE COURT: It's reduced.

3 MR. HURLEY: I told her just to put it on one, to get one page  
4 instead of two.

5 MR. VON WALD: Okay.

6 THE COURT: Okay. Can all the jurors see that? Okay.

7 Q (BY MR. HURLEY) And we're looking at Exhibit 6. That  
8 small 6 down here in the right, so the jurors are looking  
9 at the same thing we're looking at. So far what we've  
10 looked at is this is called a loan agreement, first two  
11 words on the document. And the first line says that this  
12 is a loan agreement between Long Family Land and Cattle  
13 Company, Inc., and the Bank of Hoven. That's what's  
14 referred to as a loan agreement. What we've covered so  
15 far in the first line of the second paragraph is that the  
16 Bank of Hoven is receiving a deed to the property, which  
17 is described in Exhibit A --

18 MR. VON WALD: Attached.

19 Q (BY MR. HURLEY) -- is your 2200 --

20 THE COURT: Hold on. What's that?

21 MR. HURLEY: Excuse me.

22 MR. VON WALD: That says attached, right? Is that deed then  
23 attached thereto?

24 MR. HURLEY: No.

25 MR. VON WALD: It's not on your exhibit?