

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

Plains Commerce Bank,)	Civ. No. 05-3002
)	
Plaintiff,)	
)	
v.)	AFFIDAVIT OF
)	THOMAS J. VAN NORMAN
Long Family Land and Cattle Company,)	
Inc., and Ronnie and Lila Long,)	
)	
Defendants.)	

I, Thomas J. Van Norman, being duly sworn in the premises, do hereby state and affirm based upon personal knowledge as follows:

1. I am over the age of eighteen and am competent to testify;
2. I am the Senior Tribal Attorney for the Cheyenne River Sioux Tribe, and I work in the Tribe's Legal Department, P.O. Box 590, Eagle Butte, South Dakota 57625; telephone number (605) 964-6686; facsimile (605) 964-1166;
3. I am Counsel of Record for the Cheyenne River Sioux Tribe as *amicus curiae* in Plains Commerce Bank v. Long Family Land and Cattle Company, Inc., and Ronnie and Lila Long, Civ. No. 05-3002 (D.S.D. Central);
4. I am familiar with the court record in the case captioned as Long Family Land and Cattle Company, Inc., and Ronnie and Lila Long v. Edward and Mary Maciejewski and Ralph H. and Norma J. Pesicka, and The Bank of Hoven, n/k/a Plains Commerce Bank, Civ. No. R-120-99 (Chey.R.Sx.Ct.) and I certify that the attached documents are true and accurate copies of original documents, exhibits, and transcripts in the court record;

5. Exhibit A is a true and correct copy of a Civil Docket sheet prepared for this matter;
6. Exhibit B is a true and correct copy of pages 72-79, 94-97, 106-107, 130, 149-152, 156, 159, 167-170, 215, 291, 304-305, 330, 349, 351, 358, 366-368, 438-439, 588-601 from the Trial Transcript dated December 6, 2002, and December 11, 2002;
7. Exhibit C is a true and correct copy of Plaintiffs' Exhibit 14;
8. Exhibit D is a true and correct copy of Plaintiffs' Exhibit 15;
9. Exhibit E is a true and correct copy of Plaintiffs' Exhibit 23;
10. Exhibit F is a true and correct copy of Defendant's Motion for Summary Judgment dated September 12, 2002; and
11. Exhibit G is a true and correct copy of the jury instructions.
12. I was Counsel of Record for the Cheyenne River Sioux Tribe as *amicus curiae* on appeal in Bank of Hoven n/k/a Plains Commerce Bank v. Long Family Land and Cattle Company, Inc. - Ronnie and Lila Long, Appeal No. 03-002-A (Chey.R.Sx. Ct. App.), and I sent an official copy of the tape recordings of the appellate argument to a professional court reporter for transcription. Exhibit H is a true and correct copy of pages 13-14 and 113-114 of a transcript dated October 6, 2004, of the oral argument before the CRST Tribal Court of Appeals.
13. Exhibit I is a true and correct copy of Plaintiffs' Exhibit 23a.
14. Exhibit J is a true and correct copy of Plaintiffs' Exhibit 25.
15. Exhibit K is a true and correct copy of a Notice of Appeal with the Interior Board of Indian Appeals involving BIA loan guarantees involving the Long Family Land and Cattle Company.

Affiant further sayeth naught.

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF DEWEY)

I, THOMAS J. VAN NORMAN, the Affiant herein, being first duly sworn upon oath, depose and say that I have read the foregoing Affidavit, and know the contents are true to the best of my knowledge and belief.

Dated this 21st day of December, 2005.



Thomas J. Van Norman
THOMAS J. VAN NORMAN

Sworn to and subscribed before me
this 21 day of December, 2005

My Commission Expires:

Matthew Cooke
Notary Public

13 July, 2011

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

CIVIL DOCKET SHEET

Vs.

Case No.: R-120-99

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

Appeal No. 03-002-A

EXHIBIT

A

PARTIES

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

DEFENDANTS EDWARD AND MARY MACIEJEWSKI AND RALPH H. AND NORMA J.
PESICKA AND THE BANK OF HOVEN (nka PLAINS COMMERCE BANK)

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

IN CIVIL COURT

4 * * * * *



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

Plaintiffs,

JURY TRIAL
R-120-99

-vs-

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

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Defendants.

10 * * * * *

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

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

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

23 MR. DAVID A. VON WALD
24 Attorney at Law
25 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

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 yeas 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 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 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 26th, 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 26th 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 Q Okay. Off of the --

2 A Purchase price.

3 THE COURT: That's where we're -- that's where I guess the
4 objection would be. And I guess the document speaks for
5 itself. You are saying 88,000. The 88,000 plus the
6 interest would be deducted, and I assume you're saying the
7 88,000 minus the interest, that that amount would be
8 deducted. So the document speaks for itself. I
9 understand your point you raised, but the witness can
10 testify as to what he believed that document says.

11 Q (BY MR. HURLEY) And at the end of the two-year lease,
12 December 5th, 1998, were you able to exercise your option
13 to purchase and buy your land back?

14 A No, I wasn't.

15 Q And why not?

16 A Because I never did have the -- the 70,000 operating, and
17 I never had the \$53,000 to buy more cattle back to
18 increase my herd.

19 Q And over the two-year period of the lease then, did that
20 hurt your production?

21 A Yes.

22 Q And was that the cause that you could not then generate
23 enough money to be in a position to buy your land back?

24 A Yes.

25 Q Would you turn to Exhibit 8, please?

1 between Bank of Hoven and loan specialist, Stacey Johnston
2 on February 3, 1997. Do you see that?

3 A Yes.

4 Q Were you a party to that conversation?

5 A No.

6 Q And it appears from paragraph one that this letter of
7 February 14th is responding to the Bank's letter of
8 December 12th; is that correct?

9 A That's correct.

10 Q Which would be Exhibit 8, the one we just went through,
11 correct?

12 A Yes.

13 Q Did the Bank make to you an emergency feed loan as pointed
14 out in this letter?

15 A No, they never.

16 Q Did the Bank make to you the operating loan of \$70,000 as
17 set out in the loan agreement, which is Exhibit 6?

18 A No, they never.

19 Q And in reference to the last paragraph, did the Bank ever
20 respond back to BIA with a more complete application to
21 the BIA to approve an increase in the BIA percentage from
22 84 to 90 percent?

23 A No, they never.

24 Q Would you go to paragraph 13 -- or Exhibit 13, please?

25 Can you explain that document?

1 A Seeing John Lemke down to the Eagle Butte Planning Office
2 and he told me that the Bank had told him to have me write
3 a letter describing what I was doing all winter. I don't
4 know why. It seems as though there was some rumors going
5 around that I just let the cows die.

6 Q Who is John Lemke?

7 A He was the planning officer in Eagle Butte here.

8 Q And as a result of that request, you wrote up this letter?

9 A Yes.

10 Q And you sent it to Bank of Hoven?

11 A Yes.

12 Q And I see on page two you copied it to others?

13 A Sent it to John Lemke, Cheyenne River Tribe Credit
14 Officer; Russell McClure, Agency Superintendent; Stacey
15 Johnston, Area Loan Specialist; and Delbert Brewer, Area
16 Director.

17 Q Okay. Page one you start out with December 5. Where were
18 you on December 5, 1996?

19 A I was in Hoven discussing our plans for our cattle
20 operation and doing the contract.

21 Q But that was the date that you signed Exhibit 6 and 7,
22 isn't it, the loan agreement --

23 A Yes.

24 Q -- and the lease with option to purchase?

25 A Yes.

1 Q At that meeting, did you discuss your needs for a line of
2 credit?

3 A Yes.

4 Q With who?

5 A Everybody that was there.

6 Q And did you explain why?

7 A Yeah. Because winter was coming on fast and we needed to
8 move the hay. We had the hay. We needed the operating
9 money.

10 Q How much hay did you have?

11 A 1400 ton.

12 Q Was that adequate to care for your cattle?

13 A Yes.

14 Q Where were the cattle?

15 A They was down on my range unit down in the winter country.
16 It's about 20 miles from home. We usually raise the feed
17 up at the farm and take the cattle down to the breaks in
18 the winter.

19 Q What do you mean by the "breaks"?

20 A Down on the range unit.

21 Q What do "breaks" mean?

22 A Well, it's real deep draws and stuff, and they get out of
23 the wind down there. You know, they can take a very hard
24 winter.

25 Q And where was the hay?

1 A It was up at the farm.

2 Q And that's how much distance from where the cattle were?

3 A About 20 miles.

4 Q And why does it take operating expense to move the hay to
5 the cattle?

6 A It takes -- it takes money to hire stack movers, you know.
7 They don't -- they can't -- they don't do it for nothing,
8 and they need the money up front just about because they
9 haul it.

10 Q And how was this hay packaged?

11 A Round bales.

12 Q So the round bales needed to be loaded?

13 A Yes.

14 Q On trucks?

15 A Yeah.

16 Q And taken to the cattle?

17 A Taken down there and stacked.

18 Q And unloaded and stacked?

19 A Yes.

20 Q And what was the response of those who were there at the
21 signing of the loan agreement and the lease with option to
22 purchase?

23 A Well, all that I got is that I would be -- they would be
24 receiving the BIA guarantee shortly.

25 Q And then what?

1 insured which the blanket insurance would have cost
2 approximately \$2,000 covering the cattle plus. The
3 insurance was brought to everyone's attention the first
4 part of December."

5 Q And by "everyone's attention," who are you talking about?

6 A At the Bank.

7 Q And was -- how is -- how did you plan to pay for that
8 2,000 insurance premium?

9 A With the operating loan.

10 Q Okay. And you never did get the operating loan?

11 A No.

12 Q And then you couldn't insure the cattle?

13 A Right. I had them insured before, but I didn't -- I ran
14 out of money, and I couldn't renew the premium.

15 Q Okay. Go to the next paragraph if you would.

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

20 Q And the next paragraph?

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

25 Q Now, those that didn't drift out of the draws, down in the

1 general or whatever. I even had to take them and show
2 them, so they were -- they verified it.

3 Q Okay. And were you paid for the full and true value of
4 the cows and calves that you lost?

5 A No.

6 Q How much money did you receive through FEMA?

7 A About 48,000.

8 Q And that was just a part of the value -- a portion of the
9 value of those cattle that you lost?

10 A Yeah. I lost over 500 head.

11 Q Would you go onto Exhibit 15, please? And what do you
12 understand about Exhibit 15?

13 A This is the sale of the house in town, Dad's house. It
14 sold for \$30,000. It costs about 3500 to have it -- to
15 get it ready for sale, and after deducting the -- that and
16 the previous credit of 10,000 that was on that contract,
17 there was \$16,478 leftover.

18 Q And when you refer to that contract, do you mean the lease
19 with option to purchase?

20 A Yes -- no. Well, it's the contract that goes with the
21 lease with option to purchase.

22 Q Okay.

23 THE COURT: Let me just step out here. I will make a real
24 quick call. So, Jurors, let's talk about five. Let's
25 keep it real short. Five-minute recess, Jurors, and come

1 A Yes.

2 Q And did the Bank follow up on that with a hearing in this
3 Court and obtain an order to force you to get off your
4 land?

5 A No.

6 Q Take a look at Exhibit 19. And what happened there?

7 A This is a -- this is where the Bank sold the Pesickas
8 320 acres of the land for a quit claim deed.

9 Q Okay. And was this sale made on the same basis that the
10 Bank allowed you to buy the land back?

11 A No.

12 Q In what respect is it different?

13 A Well, they charged these guys \$155 an acre, and they
14 wanted \$210 an acre from me.

15 Q So Pesickas were allowed to buy it for less?

16 A Yes.

17 Q And would you look at Exhibit 21, please? What's your
18 understanding of that document?

19 A This is where they sold the rest of the land to the
20 Maciejewskis.

21 Q Who did?

22 A The Bank of Hoven.

23 Q Had the Bank obtained an order of the Cheyenne River Sioux
24 Tribal Court forcing you off the land prior to selling the
25 land under this contract of deed to Maciejewskis?

1 A No.

2 Q And was the terms of this sale of your land to the
3 Maciejewskis on terms more favorable than the Bank had
4 agreed to, that you could buy your land back from the
5 Bank?

6 A Yeah, it was different. They were charging me 8 and a
7 half percent interest, the Bank was. They charged
8 Maciejewskis, 7 and three-quarters percent. I had two
9 years to pay for it. They give Maciejewskis ten.

10 Q And did the Bank offer to finance your purchase through a
11 contract for deed?

12 A No.

13 Q Yours was cash in full?

14 A Yes.

15 Q And if you were offered this contract for deed on these
16 terms with these payments, would that have been
17 substantially easier for you to buy your land back than
18 the offer that the Bank made to you?

19 A Yes.

20 Q In what respect.

21 A Well, they give them ten years here, and I had two. I
22 guess it was a cheaper percent of interest.

23 Q And did you have to --

24 A I had land come out of the CRP, and then there was a
25 \$23,000 a year FSA payment that could have went as a

1 payment of the land. The Bank and Maciejewskis have
2 collected that ever since.

3 Q Ever since 12-5 of '98?

4 A Yeah. Ever since his contract.

5 Q Okay. Would you look at Exhibit 22? Before we leave
6 that, did you voluntarily give up possession of the
7 2230 acres of land?

8 A No.

9 Q What happened?

10 A Pesickas just took over.

11 Q In what respect?

12 A Two quarters.

13 Q How did they do that?

14 A Just moved his cattle in. Maciejewskis chased my cattle
15 off of part of Parcel 1, moved machinery off of it, just
16 drug it off.

17 Q Your machinery?

18 A And put a fence on it, fenced it separate from Parcel 2,
19 and I never did give up possession of any of it.

20 Q Do you still have any machines on Parcel 1?

21 A Yes.

22 Q What is it?

23 A I got a lot of machinery on Parcel 1.

24 Q Okay. Would you look at Exhibit 22, please? Okay. And
25 is this something that you wrote down and had my office

1 type up?

2 A Yes.

3 Q And does this Exhibit 22 help illustrate your testimony?

4 A Yes.

5 Q And what are you trying to describe here?

6 A Well, at our hearing before, it was brought up that the
7 Bank had given me a lot of money after our agreement --
8 our purchase agreement.

9 Q December 5, 1996?

10 A Yes. So I documented what money they give me, and I wrote
11 it down and -- should I go through it?

12 THE COURT: Well, let's determine its --

13 MR. HURLEY: Your Honor, we would offer Exhibit 22.

14 THE COURT: Any objection?

15 MR. VON WALD: No objection.

16 THE COURT: All right. That will be admitted as Plaintiff's
17 Exhibit 22. Now go ahead.

18 Q (BY MR. HURLEY) To answer your question, no, I don't
19 think it's necessary for you to go through that. The
20 document speaks for itself, and of course the jury will be
21 able to read it. But I have this question: Was this
22 money that you document here that you received after
23 December 5, 1996, was any of that the result of new money
24 under a new note or \$70,000 for an operating line?

25 A It wasn't -- it wasn't under the \$70,000 operating line.

1 A I don't know.

2 Q Okay.

3 A But 70,000, I believe.

4 Q Okay. Ronnie, in April of 1997, after you had had the
5 blizzard and so forth?

6 A Yeah.

7 Q In April of 1997, you were actually given an operating
8 line of credit, weren't you?

9 A \$40,000.

10 Q \$40,595, right?

11 A Yes. And I paid off the 23,000 that was borrowed after
12 December 5.

13 Q Right. And the rest of it was for operating?

14 A Um-hum.

15 Q Okay. And you were also -- the loan was also
16 restructured, right? The BIA guaranteed loans, weren't
17 they restructured?

18 A Yup.

19 MR. VON WALD: (INAUDIBLE).

20 THE COURT: Do you have any more exhibits? Just mark them
21 yourself.

22 MR. VON WALD: No. 3.

23 THE COURT: Okay.

24 Q (BY MR. VON WALD) Okay. Now, Ronnie, I'm going to hand
25 you what has been marked as Defendant's Exhibits 4, 5 --

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1 CHEYENNE RIVER SIOUX TRIBAL COURT
 CHEYENNE RIVER SIOUX TRIBE IN CIVIL COURT
 2 CHEYENNE RIVER INDIAN RESERVATION

3 * * * * *

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

5
 6 Plaintiffs, JURY TRIAL
 -vs- R-120-99

7 EDWARD AND MARY MACIEJEWSKI VOLUME II OF III
 and RALPH H. AND NORMA J. PESICKA, PAGES 228 TO 430
 8 and THE BANK OF HOVEN,

9 Defendants.

10 * * * * *

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

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

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

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

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

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

6 A The Area Director.

7 Q Of?

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

10 Q And who is he writing it to?

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

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

15 A No.

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

18 A Yes.

19 Q When was that?

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

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

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

9 A Yeah.

10 Q During that time period?

11 A Yes.

12 Q Okay.

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

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

3 Q Okay. And would you move on?

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

13 Q Would you go to 2001, please?

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

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

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

21 MR. VON WALD: Was it? Okay.

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

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

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

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

6 A Yes.

7 UNIDENTIFIED: (INAUDIBLE).

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

11 UNIDENTIFIED: Yes.

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

14 MR. HURLEY: 4.

15 THE COURT: -- 4.

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

21 A Yes.

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

24 A Yes.

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

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

4 A Yes.

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

8 A Yes.

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

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

13 Q Okay.

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

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

19 A Yes.

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

23 A Yes.

24 Q By the Bank?

25 A Yes.

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

6 A Yes.

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

9 A Yes.

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

14 A Yes.

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

18 A 53,500.

19 Q 53,500?

20 A You said 300.

21 Q Oh, excuse me. 53,500.

22 A Yes.

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

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

4 A Yes.

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

7 A Yes.

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

11 A Yes.

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

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

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

18 A That's right.

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

21 A Yes.

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

1 purchase by the Maciejewskis of this piece of land?

2 A Yes.

3 Q And there is roughly 1905 acres described here?

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

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

10 A Yes.

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

14 A Right.

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

18 A Yes.

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

22 A Yes.

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

24 A Yes.

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

1 A That's on Parcel 1, right?

2 Q Parcel 1.

3 A Yes.

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

7 A Yes.

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

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

11 Q Well --

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

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

17 A Yes.

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

20 A No.

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

22 A Yes.

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

1 A Yes.

2 MR. VON WALD: That may be --

3 THE COURT: Do you have an objection?

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

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

9 MR. HURLEY: Okay.

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

14 A Yes.

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

16 A Yes.

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

19 A Yes. On 1, not 2.

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

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

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

24 A Yes.

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

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1 CHEYENNE RIVER SIOUX TRIBAL COURT
 CHEYENNE RIVER SIOUX TRIBE IN CIVIL COURT
 2 CHEYENNE RIVER INDIAN RESERVATION

3 * * * * *

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

5
 6 Plaintiffs, JURY TRIAL
 -vs- R-120-99

7 EDWARD AND MARY MACIEJEWSKI VOLUME III OF III
 and RALPH H. AND NORMA J. PESICKA, PAGES 431 TO 629
 8 and THE BANK OF HOVEN,

9 Defendants.

10 * * * * *

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

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

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

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

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

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

1 private --

2 MR. VON WALD: It is.

3 THE COURT: I assume there is a federal law.

4 MR. VON WALD: There is another federal law that covers that,
5 and I did not look that up. But -- but basically, Nevada
6 v. Hicks stands for the -- there is a discrimination
7 action period for the -- through federal law, period. And
8 I don't have the Code --

9 THE COURT: Is it Title 7? That's discrimination in private
10 lending.

11 MR. VON WALD: I (INAUDIBLE) think it is.

12 THE COURT: Well, I think we have authority to enforce
13 federal laws. The reason Nevada v. Hicks is because we
14 don't have jurisdiction over state actors, state entities,
15 counties entities; but the Tribe has jurisdiction over
16 private entities that engage in commerce with tribal
17 members.

18 MR. VON WALD: Okay.

19 THE COURT: So I'm going to rule that -- and primarily based
20 on that letter, the mere fact that the Bank subsequently
21 sold this land to non-Indians for a lesser -- well -- or
22 did a contract for deed with a non-Indian or sold it for
23 less per acre to the non-Indian, in my mind is a prima
24 facie evidence of discrimination. They could have been
25 situated differently than Mr. Long and his corporation,

1 but when you've got a letter from the Bank that says we --
2 we can't do a contract for deed with you --

3 MR. VON WALD: Or a lease.

4 THE COURT: -- because you're an Indian, subject to tribal
5 jurisdiction, but the Bank would do a contract for deed
6 with a non-Indian, I think that's a prima facie case.
7 That should go to the jury. So . . .

8 MR. VON WALD: And the letter did say a contract or a lease and
9 they actually did make a lease to Mr. Long. They didn't
10 make a contract for purchase, but they did make a lease.

11 THE COURT: Well, I'm talking about the letter that said the
12 contract for deed was not possible because --

13 MR. VON WALD: Yeah.

14 THE COURT: -- because of the tribal jurisdiction.

15 MR. HURLEY: I think that's Exhibit 4.

16 THE COURT: So we've got three counts that can go to the
17 jury. Bad faith. Are you making a motion to dismiss
18 that?

19 MR. VON WALD: I am, Your Honor. There again with a bad faith,
20 every contract requires good faith, and the bad faith is a
21 tort action, and a tort action is something that would --
22 would take more than what the prima facie case that the
23 plaintiff has set forth. What he is saying is basically
24 there is a breach of contract to the bad faith, and the
25 bad faith --

1 monetary amount there, and then agree and disagree, number
2 for the jurors. And then the question: Should interest
3 be added to the judgment? And then yes or no.

4 Foreperson.

5 All right. Plaintiffs will make their closing
6 argument to the jury.

7 MR. HURLEY: May we approach, Your Honor, with a question?

8 THE COURT: Sure. Dave?

9 (INAUDIBLE, WHISPERED DISCUSSION
10 WAS HAD OUT OF THE HEARING OF THE
11 TAPE RECORDER.)

12 MR. HURLEY: Good evening, ladies and gentlemen of the jury.

13 All of us here want to sincerely thank for your time and
14 attention, and those of us who speak to juries on occasion
15 would agree that you were -- you have been very attentive
16 and oftentimes ahead of the lawyers in -- in seeing where
17 the exhibits are and what the answer is to the issue at
18 hand. And it's late in the evening, and all of us and
19 especially Ronnie and Lila Long sincerely appreciate the
20 job you've done here. Without your good work, of course,
21 our system of justice would not operate at all.

22 This is plaintiffs' opportunity to speak to you on
23 the issues as we see them and to try to draw together the
24 facts here and make some sense out of the facts that
25 happened between these two parties.

1 As you can tell from the evidence, quite a few things
2 happened, and it got to be quite complicated, and I would
3 like to make a couple of comments here to try to sort that
4 out.

5 As the Court has instructed, of course, what I say is
6 not evidence and what Mr. Von Wald says is not evidence.
7 This is our chance to argue to you from the evidence and
8 to persuade you one way or another.

9 Plaintiffs' first issue is breach of contract. And
10 I'm sure by now you are quite familiar with the basic
11 agreement where the Bank received a deed to 23 -- 2230
12 acres and then made certain other agreements, which were
13 all part and parcel to the same agreement, and I'm sure
14 you are quite familiar by now with the loan agreement.

15 And, of course, as you heard the testimony, the deed
16 went to the Bank. Certain credits were allowed, and there
17 were other agreements. As -- as part of that, though,
18 it -- (INAUDIBLE) go on further. And this is the first
19 one that we need to talk about. The Bank of Hoven will
20 request from the BIA to increase the guarantees to 90
21 percent, to reschedule note 98181 over 20 years with
22 annual payment from crop and yearling sales. The Bank of
23 Hoven will also request a 90 percent BIA guarantee on the
24 70,000 annual operating note.

25 As you remember from the testimony in a farm and

1 ranch situation, especially in these times that they were
2 going through, in -- in '96, '97, and the previous years
3 actually, '94, '95, cattle prices were very, very low.
4 Those of you who are familiar with those markets, you
5 could tell from the cash flows, the calves' low price,
6 cows' low price, and so very, very key to continuing in
7 business as the operating loan.

8 So as in every contract, there is something for the
9 Bank, and there was something for the Longs. Right here,
10 this 70,000 annual operating loan was crucial to the
11 Longs. And you heard Dennis Huber say that and you heard
12 Ronnie Long say that, anybody that's had experience with
13 farm and ranch. Chuck Simon said that with many years of
14 experience as a banker, that this operating loan is
15 critical. Without it, you're going to fail.

16 And so there it is, right there. The Bank agreed
17 that the Bank will request from the BIA a 90 percent
18 guarantee, and the Bank of Hoven will also request a 90
19 percent guarantee on the 70,000 annual operating loan.

20 We saw in the evidence -- and you'll have to rely on
21 your own memory -- but in the evidence there was an
22 attempt made by the Bank in Exhibit 12. Let me pull it
23 out for you. You know better than I do, Exhibit 8,
24 December 12th. And December 5th, of course, was the date
25 of the loan agreement and the lease with option to

1 purchase were entered into.

2 About some seven days later, the Bank writes a
3 letter, and the total request for the guarantee to be
4 increased to 90 percent is right here in the last
5 paragraph, that we submit should have been a more complete
6 application. Maybe it will work, maybe not, in a couple
7 of sentences -- one sentence actually.

8 And then we see the letter back from the BIA, and the
9 BIA says -- and you'll have to rely on your memory -- but
10 you'll want to look at that letter when you look through
11 the exhibits. And the BIA says that that is not a
12 complete application. And at that point, February 14th,
13 1997, a letter from the BIA, Plaintiffs' Exhibit 11, and
14 apparently in the first paragraph you will see it recaps a
15 conversation with Stacey Johnston. It's a conversation on
16 February 3 responding to the December 12th letter. And
17 the BIA says that Stacey Johnston informed you that this
18 request requires a more complete application, modification
19 criteria is outlined in your loan guarantee agreement
20 (INAUDIBLE) and the statute CFR 103.21. In the last
21 paragraph, we will not act on your requests until we
22 receive a complete application.

23 And then what happened? Absolutely nothing. The
24 Bank never again attempted to follow-up or make any kind
25 of effort to request from the BIA approval of this \$70,000

1 operating loan. Realizing as we all do, that without that
2 operating loan, this whole plan will fail. The purpose of
3 the plan, as we've heard from several different people on
4 the witness stand, was to reduce the debt of the Longs,
5 see that they get an operating loan, and if they make it
6 through the first year and pay it down \$1.00 annually,
7 then they can borrow that much again the second year if
8 they need it, and move through two years and be able to
9 buy their land back.

10 In the last paragraph, another important point. This
11 is the contract that the Bank agreed that it's going to
12 make a loan to the Longs of 53,5. 37,5 of that will be
13 used to purchase 110 calves. And you've heard enough
14 about cash flows that you're probably sick of hearing
15 about them. But in a cash flow -- and you've heard
16 testimony to this effect -- they -- they raise about 270
17 calves. Another 110 bought as calves, light calves, get
18 them bought right. They've got a lot of rough feed.
19 They've got grass for the summer, grow them up. And Chuck
20 Simon and others agreed that oftentimes that does work in
21 this country. It's an opportunity for them to increase
22 their ranch income. And you heard Chuck Simon agree that
23 the Bank never made the \$70,000 annual operating loan,
24 never made the \$37,500 cattle purchase loan. That's the
25 breach of contract.

1 Of course, the Bank says, well, we couldn't make the
2 \$70,000 annual operating loan because the BIA never agreed
3 to increase the guarantee to 90 percent. And we say you
4 didn't make a very good effort. You can pick up a phone.
5 You can send a fax. You can go over to their office and
6 visit the BIA officer. What is it that you don't like
7 about this? You were present late October by speaker
8 phone. Stacey Johnston was representing the BIA.
9 Everybody that was there all agreed to it, and said let's
10 go forward. And yet when this letter comes out, it didn't
11 happen. It didn't happen. Very, very critical. We think
12 the breach happened very early on in this process,
13 insuring the Longs' failure under this entire plan.

14 You will recall the cash flows prepared by Dennis
15 Huber. The Longs needed \$40,000 the 1st of November. Why
16 is that? Because you're getting cattle ready for winter.
17 Dennis Huber says he likes to put it on the front end, so
18 you can get your work out of the way. It was supposed to
19 be there in November. The meeting was late October.
20 Everybody agreed. It took until December 5 to get the
21 documents put together. The documents were signed
22 December 5. Ronnie Long testified -- and you'll have to
23 rely on your memory -- but December 5, okay. We're still
24 within the window of time. I will sign the documents. I
25 will get my operating money. I will get everything in

1 shape for winter. Did that happen? No. The 40,000 loan
2 was never made. If that is zero, then everything else
3 changes.

4 In addition, purchasing 110 head of calves didn't
5 happen. So again, there comes this bottom line which is
6 very important to try to make this work so the Longs can
7 buy their land back. Of course, you have to have an
8 operating line of credit. On the testimony in this case,
9 anybody who said otherwise wouldn't be honest. You have
10 to have it. It's key. Number two, you had to have an
11 extra 110 calves to increase your income.

12 Then you go onto Year 2. Of course, without the line
13 of credit from Year 1, without the extra calves, there is
14 no hope of making this project work.

15 That is breach of contract, and we submit to you that
16 it -- the terms on Exhibit 6, which is the loan agreement
17 which we are looking at here, and then also Exhibit 7,
18 which is the, you will recall, the lease with option to
19 purchase. The lease with option to purchase, of course,
20 has the goal posts, I guess you could say, if we were
21 talking football. Because when you get to the end of this
22 thing, there was an option in the lease. There was an
23 option to purchase. And you might recall that the Longs
24 were working towards and everybody was working towards
25 (INAUDIBLE) having the Longs be in a position where they

1 could exercise this option and buy their land back.

2 There was some -- some important credits in there
3 where we -- we would reduce their price so they could buy
4 it back. The key though -- and you heard various people
5 testify about this -- is that on these cash flows, this
6 system or this plan was put in place, this contract.
7 These agreements had to work well enough so that they had
8 a cash down payment and that they could interest the Bank
9 to come in with them and make a loan. And you heard
10 Dennis Huber say that, yes, this was built that way. Yes,
11 this would work. But if you take out the operating line
12 of credit, you take out the extra cattle, no, it isn't
13 going to work.

14 We would submit to you and what's in evidence on this
15 case on breach of contract to make it very clear, there is
16 no question, I asked Chuck Simon, was the \$70,000
17 operating loan ever made? No. We loaned some money. And
18 you will see in the exhibit books here what that was
19 loaned for and why.

20 Ronnie Long said it was under a controlled account,
21 and money was allowed for very specific purposes. He did
22 not have the discretion to take any money and do something
23 with it, like hire hay movers at 12,000 and upward to take
24 the hay over to the cattle. He -- he was very limited on
25 the controlled account basis, and on that basis he had to

1 have the operating line of credit above and beyond the
2 money he was working with. And we would submit to you
3 that breach of contract on this point was very, very
4 clear.

5 On the second point it's also clear. Chuck Simon
6 agreed with me, no, that loan was never made; and
7 therefore, the Longs could not buy the cattle and increase
8 their income and buy their land back. For that, under the
9 Court's instructions, if you find that the Bank has
10 breached this contract, and we would submit to you that
11 the Longs are entitled to damages.

12 And you will see in Exhibit 23, and you heard Ronnie
13 Long testify to the damages that he claims, then the
14 reason why. Because the contract was breached and because
15 he didn't have operating money to run his place like he
16 saw fit, his cattle were some 20 miles -- 18 miles from
17 the feed, where the feed was baled and put up. It had to
18 be hauled down to the breaks in the winter (INAUDIBLE)
19 couldn't get it done. He brought it up; he mentioned it;
20 he requested it.

21 Chuck Simon said yes; we knew we had a problem with
22 that. And yet, the \$70,000 operating money was not there
23 to work with to get the job done, and that is part of the
24 breach of contract. It's part of this story. And the
25 cattle did not have the feed they needed.

1 You heard the testimony. It got cold in January --
2 mid-January, deep snow, cold winds. If the cattle would
3 have had the feed down in the gullies of the breaks in the
4 timber, they would have stayed there. They would have had
5 something in their stomachs, and they would have stayed
6 there and stayed warm and survived as (INAUDIBLE).

7 When they had no feed, became weak, they came up out
8 of the draws to the flat country, and then they were in
9 trouble. The wind chill, the weather got them. And we
10 submit that that's a direct result -- direct result from
11 failure to have enough money to operate this ranch the way
12 it should be operated. And it's a direct result of the
13 Bank of Hoven not diligently making the request, getting
14 on the phone, driving over there saying what is wrong with
15 our application. In late October you all agreed. So
16 let's get our ducks in an order, and let's not be held up
17 with bureaucracy. Put your stamp on there. We'll make
18 the loan. Everybody will get going. It didn't happen.
19 The letter came back, said you needed a more complete
20 application. None was ever made. Now the 37,5, that's a
21 direct loan. That doesn't even depend on BIA approval.
22 You can make the loan and go forward.

23 In addition, we heard testimony that in that letter
24 from the BIA they authorized the Bank to make an emergency
25 loan. Just write a check \$42,000, take care of the

1 problem, automatically guaranteed by the United States
2 through the BIA. It didn't happen. So the breach
3 happened early on and the breach of the annual operating
4 loan, lack of purchasing the cattle caused the entire
5 failure of this system that was put together.

6 Our second cause of action is bad faith, good faith.

7 THE COURT: Five minutes, Counsel.

8 MR. HURLEY: Thank you. The Court has instructed that every
9 contract has a provision of good faith and bad faith in
10 it, and we ask you to pay special attention to the
11 instruction of the Court in defining what good and bad
12 faith is. It's very helpful in defining -- in defining
13 that particular concept.

14 For example, good faith is designed -- is defined as
15 honesty in fact in the conduct or transaction concerned.
16 The implied covenant of good faith must arise from the
17 language in the contract or it must be indispensable to
18 carry out the intention of the parties. And we ask you to
19 look at that.

20 In other words, if the Bank acted in such a way as to
21 deny the Longs the benefit of the contract, which we
22 submit it did, then that is not good faith. That's bad
23 faith. We submit that the Bank did not make a good faith
24 effort to obtain the BIA guarantee. Therefore, the Longs
25 didn't get the 70,000 operating loan because the Bank did

1 not get the BIA guarantee on the 70,000 operating loan.

2 We also have a claim for self-help. We claim that
3 the Longs were damaged by the Bank selling the land to the
4 Maciejewskis and the Pesickas, and therefore the Longs
5 lost the use of that land. You will remember the Pesickas
6 bought 320 acres of grass. The Longs could have used
7 that. And you will recall that the Bank sold 960 acres to
8 the Maciejewskis and the Longs could have used that.

9 In this plan they were -- they were intending on
10 using it. Part of their plan they needed that for
11 producing feed for their cattle, cash grain, FSA payment
12 (INAUDIBLE). When you look at Exhibit 23, you will see
13 that Ronnie Long has set out the value of the land that he
14 was denied the use of. And when you go through Exhibit
15 23, you will see that he has put a value on that, and we
16 would ask you to take a look at that.

17 (END OF DUPLICATE #9 TAPE #2).

18 (THE FOLLOWING PROCEEDINGS TOOK

19 PLACE ON DUPLICATE #10 TAPE #1:)

20 We also have a claim for discrimination, and as you
21 have picked up from the testimony, the discussion between
22 the Longs and the Bank started out -- and you will see in
23 Exhibit 4 where Chuck Simon is writing to Ronnie Long and
24 says that we started out talking about this where the land
25 base would be deeded and sold back to you on a contract.

1 The contract is very favorable.

2 That's like the Bank did for Maciejewskis. You don't
3 have to go out and find a loan. The Bank, as a seller,
4 just says we'll finance you. And we'll give you ten
5 years. Your annual payment -- for example, Maciejewskis'
6 annual payment on Parcel 1 was 23,000. Well, the FSA
7 payment was 23,000. So you've got a payment on all of
8 the -- all of the 1905 acres was 23,000. And that
9 payment, if Ronnie Long could have bought it, that 23,000
10 would have paid half of the payment.

11 And you will recall from the contract for deed that
12 the Bank gave the Maciejewskis, it was about 23,000 annual
13 payment on Parcel 1, and 23 on Parcel 2. If the CRP had
14 been continued, you will recall that payment was 44,000.
15 The CRP would have paid the payment on both Parcel 1 and
16 Parcel 2 under the contract for deed.

17 But why wasn't Ronnie Long offered a contract for
18 deed? The Bank goes on to explain, says that they've
19 talked to their lawyer, and they feel there would be some
20 possible jurisdictional problems if the Bank ever had to
21 foreclose on this land, and that's because this is an
22 Indian-owned entity on the reservation.

23 The essence of discrimination is that every one of us
24 who are United States citizens, regardless of race, color,
25 or creed, have a right to be treated fairly. And all

1 things considered equally, the right to be treated
2 equally. And to not be discriminated against solely on
3 the basis of race. Here in this letter the Bank says that
4 we're originally talk about taking the deed from you; and,
5 Ronnie, we would sell it back to you on a contract. And
6 then in the next paragraph it says that after talking with
7 the lawyer, the only way that we can sell the property
8 back to you would be if you would find financing elsewhere
9 and would pay it in a lump sum.

10 That we submit is discrimination. And when you think
11 your way through this and you look at the special
12 interrogatories, there is one on breach of contract. Did
13 the Defendant Bank breach the loan agreement?

14 THE COURT: Time, Counselor. It's time.

15 MR. HURLEY: Thank you.

16 THE COURT: All right.

17 MR. HURLEY: At the close the -- the Court perhaps would give
18 me a few minutes to close up, you know (INAUDIBLE) --

19 THE COURT: You have five minutes for rebuttal.

20 MR. HURLEY: Pardon me?

21 THE COURT: Remember, you have five minutes for rebuttal.

22 MR. HURLEY: Oh, yes. Thank you.

23 THE COURT: Counsel for the Bank?

24 MR. VON WALD: Thank you, ladies and gentlemen, for sitting
25 through this whole thing. It's taken a lot of time out of

CCC-661 (06-18-97) USDA-CCC 1. APPLICATION NUMBER
 Certification of Livestock/Poultry Losses for Eligible Disaster 74

NOTE: The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is Pub. L. 105-18. The information will be used to determine eligibility in accordance with the requirements of the regulation for applicants who are requesting Livestock Indemnity Program. Furnishing the requested information is voluntary, however, failure to furnish the requested information will result in a determination of ineligibility for Livestock Indemnity Program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal.

Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM (OMB No. 0560-0025), Stop 7830, Washington, D.C. 20250-7830. RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.

PART A - PRODUCER IDENTIFICATION AND DISASTER OCCURRENCE

2. PRODUCER'S NAME: Ronnie Long
 3. IRS IDENTIFICATION NUMBER: 510-54-0201
 4. Describe the disaster occurrence that caused the animal losses. (Example: Blizzard conditions and snow and ice.)
 Winter Storms

PLAINTIFF'S EXHIBIT 14

PART B - ANIMAL LOSSES BY KIND AND TYPE

5. Check the applicable animal losses reported and enter your share of the ownership as a percentage. Prepare a separate CCC 661 for each animal type and operation.

Kind/Type	Share	Kind/Type	Share	Kind/Type	Share	Kind/Type	Share	Kind/Type	Share
Non-Adult Beef-Less than 400 lbs/ Buffalo/Beefalo		Non-Adult Dairy Less than 400 lbs.		Ewes		Layer/Roasters		Poult	
Non-Adult Beef-Over 400 lbs/ Buffalo/Beefalo	X All	Non-Adult Dairy More than 400 lbs.		Lambs					
Adult Beef-Cow/Beefalo/ Buffalo		Feeder Pigs		Bucks		Chicks		Goose	
Beef Bulls		Sow/Boars/Barrows/Gilts		Nannies		Ducks		Gosling	
Adult Dairy-Mature Cow		Rams		Slaughter Goats/Kids		Ducklings		Horses	
				Broilers/Pullets		Toms/Fryers/Roasters			

PART C - NUMBER OF ANIMALS BEFORE DISASTER AND SUPPORTING DOCUMENTATION

Describe the document provided to verify livestock interests inventory at the time of the disaster. Attach copies of documents. (Number of Animals before disaster loss)

Example: Receipt from Harry's Sale Barn for purchase of 25 feeder pigs on November 10, 1996. 25

a. Bank of Hoven Inspection Report yearlings 286

b.

c.

d. TOTAL

PART D - DOCUMENTATION TO VERIFY ANIMAL LOSSES

7. Describe the document provided to verify animal losses. Attach copies of documents. (Number of Animal loss)

Example: Receipt for pick up of 10 pigs on December 24, 1996. 10

a. Inspection Report of CRST office for All Planning Office BIA \$177

b.

c.

d. TOTAL

PART E - PRODUCER'S CERTIFICATION

I hereby certify that all information listed above and on documents attached are true and correct, and all documents provided are true copies of the transaction reported. Providing a false certification to the government is punishable by imprisonment, fines and other penalties. All information provided herein is subject to verification by the Commodity Credit Corporation. The provisions of criminal and civil fraud statutes that apply to this certification, includes 18 U.S.C. 238, 387, 371, 641, 651, 1001 and 1014; U.S.C. 714m; and 31 U.S.C. 3729.

8A. I hereby certify that: (Check the appropriate box below before signing.)

More than 50 percent of my gross annual revenue (receipts) is received from farming and ranching operations and that my gross annual revenue (receipts) from these operations is not in excess of \$2.5 million.

Fifty percent or less of my gross annual revenue (receipts) is received from farming and ranching operations and that my gross annual revenue (receipts) from all agriculture and nonagricultural sources is not in excess of \$2.5 million.

8B. SIGNATURE OF PRODUCER: Ronnie Long DATE: 7-9-97

EXHIBIT C

CCC-661-1
06/30/1997

U.S. Department of Agriculture
Commodity Credit Corporation

State Code 46
County Code 41

Livestock Indemnity Program
Application Entitlement Report

A - APPLICATION INFORMATION

Application No.	Livestock Kind	Type	Eligible No. of Head Lost	Payment Rate	Covered Loss
74	BEEF	NON ADULT - OVER 400 LBS.	270	\$137.00	\$36,990.00
TOTAL			270		\$36,990.00

PART B - PRODUCER SHARE INFORMATION

Producer	Share	Pymt Ind	Covered Loss	Payment Limitation Reduction	Net Covered Loss
RONNIE R LONG PO BOX 172 TIMBER LAKE SD 57656-0172 510540201 S	ALL	Y	\$36,990.00	\$0.00	\$36,990.00

DISCLAIMER: The covered loss amounts reflected on this entitlement report include estimated payment rates set at national market value averages and may vary due to changes in availability of funds, producer eligibility, payment limitation, or producer shares. The distribution of this entitlement report does not in any way obligate CCC to disburse the covered loss amounts reflected.

The program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or disability.

CCC-6C1-1
06/30/1997

U.S. Department of Agriculture
Commodity Credit Corporation

State Code 46
County Code 41

Livestock Indemnity Program
Application Entitlement Report

PART A - APPLICATION INFORMATION

Application No.	Livestock Kind	Type	Eligible No. of Head Lost	Payment Rate	Covered Loss
74	BEEF	NON ADULT - OVER 400 LBS.	270	\$137.00	\$36,990.00
TOTAL			270		\$36,990.00

PART B - PRODUCER SHARE INFORMATION

Producer	Share	Pymt Ind	Covered Loss	Payment Limitation Reduction	Net Covered Loss
RONNIE R LONG PO BOX 172 TIMBER LAKE SD 57656-0272 510540201 S	ALL	Y	\$36,990.00	\$36,025.00	\$965.00

DISCLAIMER: The covered loss amounts reflected on this entitlement report include estimated payment rates set at national market value averages and may vary due to changes in availability of funds, producer eligibility, payment limitation, or producer shares. The distribution of this entitlement report does not in any way obligate CCC to disburse the covered loss amounts reflected.

program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or disability.

REPRODUCE LOCALLY. Include form number and date on reproductions.

CCC-661W U. S. DEPARTMENT OF AGRICULTURE
(06-18-97) Commodity Credit Corporation

1. FSA COUNTY OFFICE NAME

Dewey Co FSA

2. APPLICATION NUMBER

74

3. PRODUCER ID NUMBER

510-54-0201

4. PRODUCER NAME

Rennie Long

LOSS CALCULATION WORKSHEET

Enter applicable Livestock/Equity Types from Form CCC-661, Item 6a.

Type	Type	Type
non adult over 400		

5. Beginning Inventory of Livestock Type (CCC-661, Item 6d)

286

6. Total Number of Head Lost (CCC-661, Item 7d)

277

7. Mortality Rate for Applicable Livestock Type (Notice DF-303, Exhibit 1).

2.5%

8. Loss Threshold (Item 5 x Item 7, round to nearest whole number.)

7

9. Eligible Number of Losses (Item 6 minus Item 8. If Item 6 is less than or equal to Item 8, enter zero and STOP.)

270

10. Payment Rate for Applicable Livestock Type, (Notice DF-303, Exhibit 1).

137

11. Producers Share (CCC-661, Item 5)

All

12. Covered Loss (Item 9 x Item 10 x Item 11). Round to whole dollars.

36990

13. Total Payment (Add all Type entries in Item 12).

\$

36990

14. If Item 13 is less than \$50,000, enter zero. If Item 13 is greater than 50,000, enter the result of Item 13 minus \$50,000.

\$

15. Total eligible payment (Item 13 minus Item 14).

\$

36990

16. Factored Payment (Item 15 times the National Factor, after announced.)

\$

INSPECTION REPORT

Bank B.L.A.

Owner of Livestock Long Family Cattle Co

at CRST Credit Office

Location of Farm or Ranch: _____

Date 7-7-97

Miles from _____

Bank Representative's Signature

Handwritten Signature

Owner's Signature

*Handwritten Signature: Long Family Cattle Co
Ronnie Long*

CLASSIFICATION OF LIVESTOCK COVERED INSPECTOR'S ACTUAL COUNT AND ESTIMATED VALUES

KIND OR CLASS	ACTUAL COUNT	Weight	Breed	Quality	Worth Per Head	Total Value	Anticipated Sale Date
Cows	119	1150	Xbrid	good			
Cows							
Cows							
Heifers	9	650	Xbrid	good			
Heifers							
Steers							
Heifers							
Calves	95	225	Xbrd	good			
Calves							
Bulls							
TOTAL CATTLE							
Sows							
Butchers							
Pigs							
Other Hogs							
TOTAL HOGS							
Sheep (ewes) 1-2							
Sheep (ewes) 3-5							
Sheep (Lambs)							
Sheep (bucks)							
Sheep (other)							
TOTAL SHEEP							
TOTAL LIVESTOCK							

MACHINERY & EQUIPMENT			
No.	Article	Year	Make
	Tractor		
	Tractor		
	Tractor		
	Tractor		
	Plow		
	Plow		
	Disc		
	Disc		
	Drag		
	Grain Drill		
	Swather		
	Combine		
	Corn Picker		
	Corn Planter		
	Cultivator		
	Blower		
	Feed Grinder		
	Field Sprayer		
	Auger		
	Elevator		
	Tractor Loader		
	Disc Plow		
	Chisel		
	Rotary Hoe		
	Wagon		
	Wagon		
	Mixer Wagon		
	Stalk Cutter		
	Manure Spreader		
	Duck Foot		
	Spring Tooth Harrow		
	Mower		
	Rake		
	Hay Conditioner		
	Hay Baler		

GRAIN & FEED		Bushel	Acres	Unit Value	Total Value
Corn					
Oats					
Barley					

CCC-661 (06-18-97) USDA-CCC 1. APPLICATION NUMBER
 Certification of Livestock/Poultry Losses for Eligible Disaster 76

NOTE: The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1993, as amended. The authority for requesting the following information is Pub. L. 105-18. The information will be used to determine eligibility in accordance with the requirements of the regulation for applicants who are requesting Livestock Indemnity Program benefits. Furnishing the requested information is voluntary, however, failure to furnish the requested information will result in a determination of ineligibility for Livestock Indemnity Program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal.

Other Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM (OMB No. 0560-0029), Stop 7630, Washington, D.C. 20250-7630. RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.

PART A - PRODUCER IDENTIFICATION AND DISASTER OCCURRENCE

2. PRODUCER'S NAME: 2019 Family Land & Cattle Co
 4. Describe the disaster occurrence that caused the animal losses. (Example: BRIZANT conditions and snow and ice) winter storms
 3. IRS IDENTIFICATION NUMBER: 46-0395501

Simon
 DEPOSITION
 EXHIBIT
 32
 8-9-00 JAC

PART B - ANIMAL LOSSES BY KIND AND TYPE

5. Check the applicable animal losses reported and enter your share of the ownership as a percentage. Prepare a separate CCC 661 for each animal type and operation.

Kind/Type	Share	Kind/Type	Share	Kind/Type	Share	Kind/Type	Share	Kind/Type	Share
X Non-Adult Beef-Less than 400 lbs/Buffalo/Beefalo	100%	Non-Adult Dairy Less than 400 lbs.		Ewes		Layer/Roasters		Poult	
				Lambs					
Non-Adult Beef-Over 400 lbs/Buffalo/Beefalo		Non-Adult Dairy More than 400 lbs.		Bucks		Chicks		Goose	
X Adult Beef-Cow/Beefalo/Buffalo	100%	Feeder Pigs		Nannies		Ducks		Gosling	
Beef Bulls		Sow/Boars/Barrows/Gilts		Slaughter Goats/Kids		Ducklings		Horses	
Adult Dairy-Mature Cow		Rams		Broilers/Pullets		Toms/Fryers/Roasters			

PART C - NUMBER OF ANIMALS BEFORE DISASTER AND SUPPORTING DOCUMENTATION

6. Describe the document provided to verify livestock interests inventory at the time of the disaster. Attach copies of documents.

Document	Number of Animals before disaster loss
Example: Receipt from Harry's Sale Barn for purchase of 25 feeder pigs on November 10, 1996	25
a. Bank of Hoven Inspection Report	349
b. 119 - LIPCS	119
c.	
d. TOTAL	

PART D - DOCUMENTATION TO VERIFY ANIMAL LOSSES

7. Describe the document provided to verify animal losses: Attach copies of documents.

Document	Number of Animal loss
Example: Rendering receipt for pickup of 10 pigs on December 12, 1996	10
a. Inspection Report BIA Planning Office	230
b. Number of calves lost from 119 cows	29 1/2
c.	
d. TOTAL	

PART E - PRODUCER'S CERTIFICATION

I hereby certify that all information listed above and on documents attached are true and correct, and all documents provided are true copies of the transaction reported. Providing a false certification to the government is punishable by imprisonment, fines and other penalties. All information provided herein is subject to verification by the Commodity Credit Corporation. The provisions of criminal and civil fraud statutes that apply to this certification, includes 18 U.S.C. 186, 187, 371, 641, 651, 1001 and 1014; U.S.C. 714mc and 31 U.S.C. 3729.

8A. I hereby certify that: (Check the appropriate box below before signing.)

More than 50 percent of my gross annual revenue (receipts) is received from farming and ranching operations and that my gross annual revenue (receipts) from these operations is not in excess of \$2.5 million.

Fifty percent or less of my gross annual revenue (receipts) is received from farming and ranching operations and that my gross annual revenue (receipts) from all agriculture and nonagricultural sources is not in excess of \$2.5 million.

8B. SIGNATURE OF PRODUCER: Lee J. Lusk, DVM, Lisa Long (led) DATE: 7-9-97

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or disability.

ADVANCE PAYMENT DEFERRED ADVANCE PAYMENT NOT REQUESTED

CCC-661-1
36/30/1997

U.S. Department of Agriculture
Commodity Credit Corporation

State Code 46
- County Code 41

Livestock Indemnity Program
Application Entitlement Report

A - APPLICATION INFORMATION

Application No.	Livestock Kind	Type	Eligible No. of Head Lost	Payment Rate	Covered Loss
76	BEEF	NON ADULT - LESS THAN 400 LBS.	14	\$97.50	\$1,365.00
		ADULT - BEEF COW	227	\$210.00	\$47,670.00
TOTAL			241		\$49,035.00

PART B - PRODUCER SHARE INFORMATION

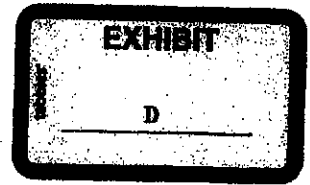
Producer	Share	Pymt Ind	Covered Loss	Payment Limitation Reduction	Net Covered Loss
LONG FAMILY LAND & CATTLE INC. PO BOX 272 TIMBER LAKE SD 57656-0272 460395501 E	ALL	Y	\$49,035.00	\$0.00	\$49,035.00

CLAIMER: The covered loss amounts reflected on this entitlement report include estimated payment rates set at national market value averages and may vary due to changes in availability of funds, producer eligibility, payment limitation, or producer shares. The distribution of this entitlement report does not in any way obligate CCC to disburse the covered loss amounts reflected.

The program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or disability.

REPRODUCE LOCALLY. Include form number and date on reproductions.

CCC-661W (06-18-97)	U. S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation		1. FSA COUNTY OFFICE NAME DeWitt Co. FSA	
	2. APPLICATION NUMBER 76		3. PRODUCER ID NUMBER 46-039550	
	4. PRODUCER NAME Long Family Land + Cattle			
	Enter applicable Livestock/ poultry Types from Form CCC-661, Item 6d		Type Aven adult Beef less 400lb	Type Adult cow or Beef
5. Beginning Inventory of Livestock Type (CCC-661, Item 6d)			119	349
6. Total Number of Head Lost (CCC-661, Item 7d)			29	230
7. Mortality Rate for Applicable Livestock Type (Notice DF-303, Exhibit 1).			2.5	.8
8. Loss Threshold (Item 5 x Item 7, round to nearest whole number.)			3.0	3.0
9. Eligible Number of Losses (Item 6 minus Item 8. If Item 6 is less than or equal to Item 8, enter zero and STOP.)			26	227
10. Payment Rate for Applicable Livestock Type, (Notice DF-303, Exhibit 1).			97.50	210
11. Producers Share (CCC-661, Item 5)			All	All
12. Covered Loss (Item 9 x Item 10 x Item 11). Round to whole dollars.			2535	47670
13. Total Payment (Add all Type entries in Item 12).			\$	50205
14. If Item 13 is less than \$50,000, enter zero. If Item 13 is greater than 50,000, enter the result of Item 13 minus \$50,000.			\$	205
15. Total eligible payment (Item 13 minus Item 14).			\$	50000
16. Factored Payment (Item 15 times the National Factor, after			<	



Settlement Statement

Sale of House in Timber Lake	\$30,000.00
Sale Expenses	
Dave Von Wald Attorney (Purchase Contract, Adv., Deed etc.)	\$ 366.85
R. A. Enright- showing house	200.00
Clearing supplies	77.77
Survey	147.00
Property Ins.	303.00
Moreau Grand Elec.	50.16
Repairs	112.84
Clearing Pansy Boysen	607.75
Cleaning Wayne Boysen	422.50
Real Estate Taxes	1,311.21
Title Ins	91.88
Transfer fee	30.00
 Total	 \$3,521.36
 Net from sale	 \$26,478.64
Previous Credit	\$10,000.00
Balance to be deducted from lease purchase option price on farmland.	\$16,478.64

House closed \$10,000.00

Entire to court





PLAINTIFFS' DAMAGES

1997

230 bred cows died January & February 1997 @ \$620 =	\$142,600.00
260 mixed steer & heifer yearlings died	
January & February 1997 @ \$700 =	182,000.00
10 yearling culls @ \$700 =	7,000.00
CRP Annual Payment =	<u>44,198.00</u>
	\$375,798.00
-FEMA Payment	<u>-48,000.00</u>
	\$327,798.00
Operating Expense (34%)	<u>-112,744.00</u>
	<u>\$215,054.00</u>



1998

230 bred cows died January & February 1997

@ 90% calf crop = 207 calves which would
have been born in 1998

207 yearlings would have been born in 1997 @ \$600 = \$124,200.00

Operating Expenses (34%) -42,228.00

\$ 81,972.00

CRP Annual Payment =

44,000.00

1998

\$125,972.00

2002

330 cows @ 90% calf crop = 297 calves that would have been born in 2002 @ \$420 330 x \$420 =	\$138,600.00
297 yearlings would have been born in 2001 @ \$700 =	207,900.00
Operating Expenses (34%)	-117,800.00
	<u>\$228,700.00</u>
FSA Payment =	23,000.00
Use of Land =	50,000.00
Replace Fences =	<u>9,000.00</u>
	<u>\$310,700.00</u>

Summary

1997	\$ 215,054
1998	125,972
1999	183,634
2000	244,814
2001	234,816
2002	<u>310,700</u>
	\$1,314,990

In addition, BIA claims that Longs owe BIA \$438,120 for the notes assigned to BIA by Bank of Hoven under the guarantees.

438,120
\$1,753,110

Plus accrued interest.

If the jury awards you damages in this amount plus accrued interest, what will you do with the money?

Pay Bank of Hoven to get the land back (including accrued interest).

Pay BIA (including interest).

Buy cows and yearlings to replace the ones I lost.

1999

330 bred cows @ 90% calf crop = 297 calves born 1999	
207 yearlings would have been born in 1998 @ \$700 =	\$144,900.00
Operating Expenses (34%)	<u>-49,266.00</u>
	\$ 95,634.00
FSA Payment =	23,000.00
Use of Land =	<u>65,000.00</u>
	<u>\$183,634.00</u>

2000

330 cows @ 90% calf crop = 297 calves that
would have been born in 2000

297 yearlings would have been born in 1999 @ \$800 = \$237,600.00
Operating Expenses (34%) -80,786.00

\$156,814.00

FSA Farm Program Payment =

23,000.00

Use of Land =

65,000.00

\$244,814.00

2000

\$244,814.00

Loss

2001

330 cows @ 90% calf crop = 297 calves that
would have been born in 2001

297 yearlings would have been born in 2000 @ \$800 =	\$237,600.00
Operating Expenses (34%)	<u>-80,784.00</u>
	\$156,816.00
FSA Payment =	23,000.00
Use of Land =	<u>55,000.00</u>
	<u>\$234,816.00</u>

2001	\$234,816.00	Loss
------	--------------	------

2002

330 cows @ 90% calf crop = 297 calves that would have been born in 2002 @ \$420	
330 x \$420 =	\$138,600.00
297 yearlings would have been born in 2001 @ \$700 =	207,900.00
Operating Expenses (34%)	<u>-117,800.00</u>
	\$228,700.00
FSA Payment =	23,000.00
Use of Land =	50,000.00
Replace Fences =	<u>9,000.00</u>
	<u>\$310,700.00</u>

Summary

1997	\$ 174,856
1998	87,972
1999	183,634
2000	244,814
2001	234,816
2002	<u>310,700</u>
	<u>\$1,236,792</u>

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,



vs.

MOTION FOR SUMMARY
JUDGMENT

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

R-120-99

Comes now Defendant, Plains Commerce Bank, formerly known as the Bank of Hoven, by and through its attorney, David A. Von Wald, and moves the Court for Summary Judgment on its counterclaim for the following reasons:

1. This Motion is brought pursuant to Rule 56 of the Rules of Civil Procedure of the Cheyenne River Sioux Tribal Law and Order Code.
2. The Court has jurisdiction over Long Family Land and Cattle Company, Inc. and Ronnie Long and Lila Long in that the majority ownership of the corporation is owned by Ronnie Long and Lila Long, enrolled members of the Cheyenne River Sioux Tribe and the Court has jurisdiction over the subject matter of this action.
3. There are no genuine issues of material fact.
4. Plaintiffs have wrongfully held over possession of a portion of the real estate described in Plaintiff's Amended Complaint after the execution of a Lease With An Option To Purchase entered into on December 5, 1996.
5. The Lease With Option To Purchase wherein Bank of Hoven, now Plains Commerce Bank, was the Lessor and Long Family Land and Cattle Company, Inc. by its terms expired on expired December 5, 1998.

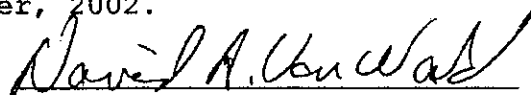
6. Defendant, Plains Commerce Bank, has sold a portion of the real estate which was leased to the Long Corporation to Ralph H. and Norma J. Pesicka and the remaining portion to Edward Maciejewski and Mary Jo Maciejewski. The Maciejewskis, however, have been able to take possession of only about one half of the real estate they bought since Plaintiffs are wrongfully holding over possession of a portion of the real estate. The legal description of the wrongfully retained real estate is as follows:

The Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty Five (25), all of Section Twenty Eight (28), and the Southwest Quarter (SW $\frac{1}{4}$) of Section Thirty Four (34), all in Township Seventeen (17), Range Twenty Five (25), East of the Black Hills Meridian, subject to easements, reservations and conveyances, if any, existing and of record.

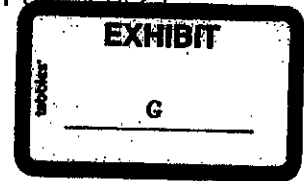
7. This Motion is made based on the Affidavit of Charles Simon, attached hereto as Exhibit "1", the depositions of the parties, the pleadings and the entire file in this case.

WHEREFORE, Defendant, Plains Commerce Bank, prays the Court grant its Motion for Summary Judgment against Plaintiffs and order that Plaintiffs be evicted from possession of said real estate, granting Defendants possession of the same. And additionally, the Court enter a judgment against Plaintiffs for damages sustained by Defendants for the wrongful possession of said real estate by Plaintiffs, and for whatever other relief as to the Court is deemed just and equitable in the premises.

Dated this 12th day of September, 2002.



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



INSTRUCTION NO. 1

Both sides having rested, it is now the duty of the Court to give you the instructions that are to guide and govern you in arriving at a verdict. The law that applies to this case is contained in these instructions, and it is your duty to follow them. You must consider these instructions as a whole and not single out one instruction and disregard others. The order in which the instructions are given has no significance as to their relative importance.

By the language of these instructions, the Court does not intend to imply what any of the disputed facts in this case are, or what your verdict in this case should be.

Each of you must faithfully perform your duties as jurors. You must carefully and honestly consider this case with due regard for the rights and interests of the parties. Neither sympathy nor prejudice should influence you. Your verdict must be based on the evidence and not upon speculation, guess, or conjecture.

INSTRUCTION NO. 2

It is your duty as a jury to determine the facts, and you must do this from the evidence that has been produced here in open court. This consists of the testimony of the witnesses and the exhibits which have been received. This evidence is governed by various rules of law. Under these rules, it has been my duty as judge to rule on the admissibility of the evidence from time to time. You must not concern yourselves with the reasons for these rulings, and you must not consider any exhibit which was not received in evidence or any testimony which has been ordered stricken. Such things you must put out of your mind.

And you must not consider anything you may have heard or read about this case other than the evidence which has been properly admitted herein.

INSTRUCTION NO. 3

The attorneys for the respective parties will present to you their arguments of the case for your assistance in coming to a decision. The order of their appearance and the length of the time of their arguments is regulated by the court. While the final argument of counsel is intended to help you in understanding the evidence and applying the law as set forth in these instructions, their remarks are not evidence. Any argument or any statement or any remark of counsel which has no basis in the evidence should be disregarded by you. (However, an admission of fact by an attorney for a party is binding on that party.)

INSTRUCTION NO. 4

If you should determine that the plaintiff should recover a verdict, you should not return what is known as a quotient verdict in this case. By a quotient verdict is meant one which is reached pursuant to a prior agreement made by all the jurors to add up the amount which each of the several jurors would award and divide such sum by the number of jurors and treat the quotient or result of such division as the amount of the verdict to be returned by the jury.

If you find the issues in favor of the plaintiff, the verdict you are to return must be for such an amount as _____ or more of you agree upon as the proper amount in this case. A verdict reached by adding the amounts suggested by the several jurors and then dividing in the manner I have indicated would not be the judgment of the individual jurors and such a method is likely to produce a verdict at variance with the sound judgment of each member of the jury. The rights of the parties to a suit should never be finally determined in this manner. It is for you to determine by the use of your best judgment the verdict which you should return in this case without resort to chance or the method above indicated.

INSTRUCTION NO. 5

In weighing the evidence in this case, you have a right to consider the common knowledge possessed by all of you, together with the ordinary experiences and observations in your daily affairs of life.

INSTRUCTION NO. 6

In the instructions which the court originally gave you, you were advised that when the same 4^{or more} of your members have agreed upon the right of the plaintiff to recover damages, and upon the amount of the damages allowed, if any, or when 4^{or more} of your members have agreed that plaintiff should not be allowed any damages, that will be the verdict of the jury. In your deliberations you should examine the questions submitted with a proper regard and consideration for the opinions of each other. You should listen to each other's arguments with an open mind, and you should make every reasonable effort to reach a verdict.

INSTRUCTION NO. 7

You are the sole judges of all facts and credibility of witnesses. In deciding what testimony to believe, you may consider:

- (1) the witnesses' ability and opportunity to observe;**
- (2) their intelligence;**
- (3) their memories;**
- (4) their manner while testifying;**
- (5) whether they said or did something different at an earlier time;**
- (6) their qualifications and experience;**
- (7) any apparent interest, bias, or prejudice they may have; and**
- (8) the reasonableness of their testimony in light of all the evidence in the case.**

INSTRUCTION NO. 8

This is a civil case brought by Long Family Land and Cattle Company, Inc. and Ronnie and Lila Long who are considered Plaintiffs. Plaintiffs' claims are against the Bank of Hoven, who is a Defendant. Also named as defendants in this case are Edward and Mary Maciejewski and Ralph H. and Norma Psicka.

The Plaintiffs allege that the Defendant Bank breached written agreements entered into by the Longs and the Bank. Plaintiffs allege that on December 5, 1996, the Longs and the Bank entered into a Loan Agreement and a Lease With Option To Purchase. The Longs claim that the bank agreed to make loans to the Longs in the Loan Agreement, and Lease 2230 acres of land to the Longs two years with an option to buy the land from the Bank for an agreed Price.

The Longs claim that the Bank breached the agreements and acted in bad faith. The Bank denies that it breached any agreements or that it acted in bad faith.

The Longs claim that the breach of agreement by the bank caused them to sustain damages. The Bank denies that it caused any damage and that Plaintiff failed to act with reasonable diligence to minimize existing damage and prevent future damages.

INSTRUCTION NO. 9

You may have heard the terms "direct evidence" and "circumstantial evidence." Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eye witness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

The law makes no distinction between direct and circumstantial evidence. The jury must simply determine the facts from the greater convincing force of all the evidence in the case, both direct and circumstantial.

INSTRUCTION NO. 10

The measure of damages for a breach of contract is the amount which will compensate the aggrieved party for all detriment (legally)(proximately) caused by the breach, or which, in the ordinary course of things, would be likely to result from the breach.

No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and their origin.

INSTRUCTION NO. 10A

Any person who is entitled to recover damages is entitled to recover interest thereon from the day that the loss or damage occurred except:

(1) During a period of time, the person liable for the damages was prevented by law, or an act of the person entitled to recover the damages from paying the damages, or

(2) Interest is not recoverable on damages which will occur in the future, punitive damages, or intangible damages such as pain and suffering, emotional distress, loss of consortium, injury to credit, reputation or financial standing, loss of enjoyment of life, or loss of society and companionship.

You must decide:

- (1) the amount of damages (if any), and
- (2) the amount of damages which are subject to prejudgment interest (if any), and
- (3) the date or dates on which the damages occurred.

If you return a verdict for the plaintiff, you must indicate on the verdict form whether you find plaintiff is entitled to prejudgment interest, and if so, the amount of damages upon which interest is granted and the beginning date of such interest. Based upon your findings, the Court will calculate the amount of interest the plaintiff is entitled to recover.

INSTRUCTION NO. 11

Every contract contains an implied covenant of good faith and fair dealing which allows an aggrieved party to sue for breach of contract when the other contracting party, by its lack of good faith, limited or completely prevented the aggrieved party from receiving the reasonably expected benefits of the contract.

INSTRUCTION NO. 11A

“Good faith” is defined as honesty in fact in the conduct or transaction concerned. The meaning of good faith varies with the type of contract involved. The implied covenant of good faith must arise from the language used in the contract or it must be indispensable to carry out the intention of the parties to the contract.

[A lack of good faith in performance of a contract may be identified by, among others, the following conduct: (evasion of the spirit of the contract), (abuse of power to determine compliance), or (interference with or failure to cooperate with the other parties’ performance.)]

The intention of the parties may be established by the custom and usage in that trade or business.

Instruction No. 12

A contract is an agreement to do or not to do a certain thing.

The essential elements to the existence of a contract are:

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

A contract is either express or implied.

An express contract is one, the terms of which are stated in words.

An implied contract is one, the existence and terms of which are manifested by conduct.

Instruction No. 13 .

The execution of a written contract supersedes all previous or contemporaneous oral negotiations or stipulations concerning its matter.

Instruction No. 14

An express contract is an actual agreement of the parties which is created by distinct and explicit language at the time of making the contract. An express contract may be created orally or in writing.

Instruction No. 15

In determining the amount of money which will reasonably compensate the plaintiffs, you are instructed that a person whose business is damaged must exercise reasonable diligence and effort to minimize existing damages and to prevent further damages. Plaintiffs cannot recover money for damage to their business which could have been avoided by such exercise of reasonable diligence and effort.

INSTRUCTION NO 16

A person or entity engages in self-help remedies under the Tribal Code and these instructions when that person or entity forces the removal of a person from land or premises without that person's consent.

INSTRUCTION NO 17

A person or entity engages in discrimination under these instructions when that person or entity intentionally denies a privilege to a person based solely upon that person's race or tribal identity.

Instruction No. 18

There are certain rules you must follow as you deliberate and return your verdict. I will list those rules for you now.

First, when you go to the jury room, you must select one of your jurors as foreperson. That person will preside over your discussions and speak for the jury here in court.

Second, in order to reach a verdict in this case, four or more jurors must agree with that verdict. It is your duty to discuss this case with one another in the jury room. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans, you are judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or in open court. Remember that you should not tell anyone, including me, how your vote stands numerically or

otherwise, until after you have reached a verdict and reported the same into court.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. You will be provided with a copy of these instructions, which you will return into court with your verdict and the exhibits in this case. Nothing I have said or done is intended to suggest what your verdict should be. That is entirely for you to decide.

1 I think the theory of the discrimination claim was not
2 that it created a Federal cause of action, which under
3 Nevada v. Hicks would raise some problems, but that it
4 was a recognized Tribal Court cause of action.

5 MR. VON WALD: Well, I don't think the Plaintiff
6 has ever alleged that, your Honor. The Tribe has
7 alleged that, but the Plaintiff has never alleged the
8 authority for what the discrimination cause of action
9 is. As I understand it, there is no tribal statute
10 specifically on point, that would allege that,
11 whatsoever. So either, because of the fact that there
12 is no tribal statute that alleges that the Tribe can
13 have a cause of action against a tribal member, I don't
14 see that tribal law can be used at all. So if it isn't
15 tribal law, it has to either be State law or Federal
16 law.

17 So in the Federal case, it came out specifically
18 -- and not to say that the Plaintiff has brought forth
19 specifically, 42 U.S.C.S. 1981. They haven't. But the
20 allegations they have made would be taken care of under
21 that Federal statute, or possibly under a State statute.
22 But in either case, Tribal Court doesn't have
23 jurisdiction, unless there is a specific statute that
24 allows Tribal Court to have jurisdiction over
25 discrimination cases, and/or a treaty, and there isn't

1 anything in this case. That's why I'm saying, to me,
2 this is about as black and white as what it can get.

3 And when you think about it, your Honor, I
4 think the problem that -- this is basically using the
5 race card, is what it's using. /And you are using the
6 race card against a non-tribal member in Tribal Court,
7 which is consistent of 100 percent tribal members. I
8 mean, it's just a place where it's very, very difficult
9 to get a fair trial, once that race card is used, and
10 that's what was done here. Basically I think that's
11 what tainted the whole case. I'm not even opposed to
12 walking into Tribal Court and trying something. I think
13 the tribal members are just as honest as any other
14 members are, but when it comes to arguing race, boy, you
15 are in trouble if you are in Tribal Court, when race can
16 be brought in./ And that's what I am thinking has
17 happened here.

18 For issue two, did the Trial Court err in not
19 granting the bank's Motion For a Directed Verdict or NOV
20 on a breach of contract action? Now, the document which
21 I showed, to begin with, I don't think, which is what
22 was alleged to have been breached, was the loan
23 agreement. Now, I don't think that was an agreement to
24 begin with, whatsoever -- it was a binding contract I
25 should say. Because if you look at that lease

1 being statutory statutes that were passed, that allowed
2 those things. There wasn't any common law
3 discrimination case in either Federal or State Court. I
4 don't see how there would be --

5 THE COURT: But I think the origin of statutory
6 claims, based on discrimination, actually tract back to
7 torts. I mean, because I think a common law tort, a
8 certain kind of common law tort does involve today what
9 we call today discrimination. So, I think actually
10 statutory claims of discrimination are actually grounded
11 in sort of the tort understanding of differential
12 treatment being a tort. Because I think that's --

13 MR. VON WALD: Basically, I think that's about all
14 I have. But one of the things that Mr. Van Norman was
15 concerned about, and so are we, and that is that -- by
16 the way, the bank admits that they were dealing with
17 tribal members to make money. It wasn't just to help
18 tribal members. The bank was doing it with the intent
19 of making money. That's what any business does. And
20 how much money they made from tribal members, is really
21 nothing for us to even worry about. But assuming that
22 they did money, that's what they are in business for.
23 And they will continue to do business with tribal
24 members on the reservation, as long as they have a
25 feeling that they're being treated fairly. We don't

1 have any problem with that.

2 That's why I'm concerned, not just for the bank,
3 the bank has got the money to pay the judgment, your
4 Honors. What I'm concerned with, is that this bank is
5 not acting on its own. There are a number of banks
6 around that are looking at this case, not just this
7 Tribe; there are a number of banks around. And let me
8 tell you, if they want to discriminate against tribal
9 members, they can do it and get by with it. They can.
10 They don't have to make everybody loans. They can find
11 a reason for rejecting the loans.

12 We are here in Tribal Court hoping that we are
13 treated fairly, and that's all we are asking for,
14 according to what the law is. That's it. Period. But
15 what I am saying is, that this case is not only being
16 looked at by this Cheyenne River Sioux Tribe, it's also
17 being looked at by banks. And it's necessary for the
18 Tribe to be able to borrow money off of, the tribal
19 members to be able to borrow money. And as long as
20 tribal courts treat banks fairly, I think that that will
21 come to pass.

22 THE COURT: Thank you, counsel.

23 MR. VAN NORMAN: I have one point of authority.
24 Counsel, I also note that in the Cheyenne River Sioux
25 Tribal Rules of Procedure, Rule 1-C states about the

March 1, 2000



Ronnie Long
PO Box 272
Timber Lake SD 57656-0272

Dear Ronnie:

On February 29, 2000 your attorney requested copies of the payments issued on Farm #2254. After talking to our State Office personnel and reviewing FSA Instr. 2Info, Par. 69, I am releasing the following information for your records:

7-28-1999	Maciejewski Inc. HC 64 Box 6 Timber Lake SD 57656	PFC pymt. = \$3163.00
7-30-1999	Bank of Hoven PO Box 7 Hoven SD 57450	PFC pymt. = \$8767.00
10-27-1999	Maciejewski Inc. HC 64 Box 6 Timber Lake SD 57656	MLA pymt. = \$3163.00
10-27-1999	Bank of Hoven PO Box 7 Hoven SD 57450	MLA pymt. = \$8767.00

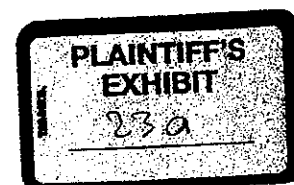
I hope this information is of some help to you. If you have any additional questions, feel free to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Bev Selzler".

Bev Selzler
Dewey County Program Technician

"AN EQUAL OPPORTUNITY EMPLOYER AND LENDER."





ANNUAL FSA FARM PROGRAM PAYMENTS

6/30/01	Maciejewski, Inc. (PFC) FSA Farm Program Payment, Parcel 1	\$5,896.00
9/5/00	Maciejewski, Inc. (MLA) FSA Farm Program Payment, Parcel 1	6,397.00

Parcel 1: 960 acres (6 quarters)

6/30/00	Bank of Hoven (PFC) Parcel 2	\$5,098.00
9/5/00	Bank of Hoven (MLA) Parcel 2	5,531.00

Parcel 2: 945 acres (6 quarters minus 15 acres)

\$22,922.00



LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET
P. O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

GLENN W. MARTENS 1881-1963
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THOMAS C. ADAM
DAVID A. GERDES
CHARLES H. THOMPSON
ROBERT B. ANDERSON
BRENT A. WILDOR
TIMOTHY M. ENGEL
MICHAEL F. SHAW
NEIL FULTON

February 17, 1999

RECEIVED
FEB 11 1999
COUNTY OF SIOUX
WARREN W. MAY, JR.

TELEPHONE
605 224-6803
TELECOPIER
605 224-6289

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Interior Board of Indian Appeals
4015 Wilson Boulevard
Arlington, VA 22203



RE: Bank of Hoven/Long Family Land and Cattle Company, Inc.
Our File: 3125
BIA Loan Guarantee Certificates
G922D1A0103 and G924C1A0113

Dear Sir/Madam:

Enclosed please find an original Notice of Appeal that we are today filing with the Interior Board of Indian Appeals on behalf of the Bank of Hoven. Please note that the Notice includes a certification concerning the service of that Notice on all interested parties.

It is my understanding that you will shortly advise us concerning further procedures for this appeal. If you have any questions, please do not hesitate to contact me.

Best regards.

Sincerely,

MAY, ADAM, GERDES & THOMPSON LLP

TIMOTHY M. ENGEL

TME:drb

Enclosure
cc/enc.: Charles Simon
cc/enc. by certified mail:

Assistant Secretary-Indian Affairs
Office of Economic Development
Office of BIA Superintendent
Cheyenne River Sioux Tribe
Long Family Land & Cattle Co., Inc
Ronnie Long ✓

2-17-99

INTERIOR BOARD OF INDIAN APPEALS

NOTICE OF APPEAL

TO: ALL INTERESTED PARTIES

NOTICE IS HEREBY GIVEN that the Bank of Hoven, P.O. Box 7, Hoven, South Dakota, 57450, hereby appeals from the decision of the Director of the Office of Economic Development, Bureau of Indian Affairs, United States Department of the Interior ("the Director"), which decision is undated, but which was received by Bank of Hoven on or about January 25, 1999, denying the Claim of Loss on BIA Loan Guarantee Certificates No. G922D1A0103 and G924C1A0113. In support of this Notice of Appeal, the Bank of Hoven further states as follows:

1. This appeal is from the decision of the Director, which decision is undated, denying the request of the Bank of Hoven that the BIA make payment pursuant to the Loan Guarantee Certificates above-described. A copy of the Director's undated decision is attached hereto, marked as Exhibit A, and incorporated herein by this reference.

2. The reasons for this appeal are as follows:

(a). The denial by the Director is based upon erroneous factual findings, and is not supported by law.

(b). The Bank of Hoven gave notice to the Commissioner as required by 25 CFR sec. 103.36 within the time required by that and other applicable regulations.

(c). No "default" occurred until the Bank of Hoven declared a default. The Bank of Hoven gave timely notice to the Commissioner of that default.

(d). Even if the Bank of Hoven did not give timely written notice of default as to any or all of the loans which are the subject of this appeal, the Bank of Hoven substantially complied with all applicable regulations and the government did not suffer any prejudice because the Bank of Hoven throughout the applicable time periods kept Cheyenne River Agency Superintendent Russell McClure, Credit Officer John Lemke and other persons employed by or affiliated with the BIA advised of the status of the loans, including the status of payments.

(e). The government has waived any right it might otherwise have to deny payment on the Guarantee Certificates above-described.

(f). The government is estopped from denying payment on the Guarantee Certificates above-described.

(g). The Bank of Hoven complied with 25 CFR sec. 103.46, in that it used prudence in disbursing loan funds and only disbursed loan funds for purposes provided for by the loan agreement.

(h). The Bank of Hoven has complied, or substantially complied with, all BIA Guarantee Conditions.

(i). After all of the alleged defaults and other Guarantee Condition violations described in the Commissioner's denial letter, BIA agreed to restructure the debt guaranteed by the Guarantee Certificates above-described. Accordingly, BIA has specifically waived any defaults or breaches that may have occurred prior to the date of the restructuring, and BIA is otherwise barred from relying upon any prior defaults or other breaches as a basis for denying payment on the BIA Guarantee Certificates above-described.

(j). The Bank of Hoven has substantially complied with all applicable regulations, in that it kept in constant and timely contact with Cheyenne River Agency Superintendent Russell McClure and Credit Officer John Lemke, and others, and kept them advised about the status of the loans. Superintendent McClure and Credit Officer Lemke were also in contact with the borrowers during the applicable time periods, and were well aware of the status of the loans. At no time did Superintendent McClure, Credit Officer Lemke or any other person affiliated with BIA in any way object to the actions of the Bank of Hoven in making or administering the above-referenced loans. The appropriate BIA officials concurred with Bank of Hoven's request to restructure the above-described loans, and did so with full knowledge of the alleged defaults and other alleged breaches above-described.

3. The names and addresses of all interested parties and the parties required by rule to be served with a copy of this notice are as follows. The undersigned hereby certifies that said parties were today served by United States mail, certified-return receipt requested, with a true and correct copy of this notice by mailing to them at the following addresses:

Interior Board of Indian Appeals
4015 Wilson Boulevard
Arlington, VA 22203

Assistant Secretary-Indian Affairs
4140 MIB, US Dept. of Interior
18th & C Streets, NW

Washington, DC 20240

Office of Economic Development
Bureau of Indian Affairs
4660 MIB, US Dept. of Interior
Washington, DC 20240

Office of BIA Superintendent
Cheyenne River Agency
P.O. Box 590
Eagle Butte, SD 57625

Cheyenne River Sioux Tribe
Office of the Chairman
P.O. Box 590
Eagle Butte, SD 57625

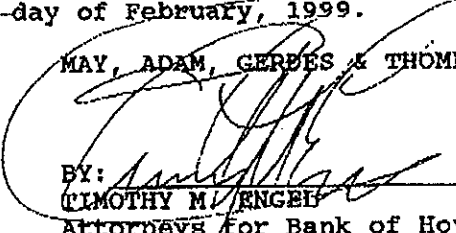
Long Family Land and Cattle Co., Inc.
Ronnie Long, President
Box 272
Timber Lake, SD 57656

Ronnie Long
Lila Long
Box 272
Timber Lake, SD 57656

4. The undersigned hereby certifies that he is attorney for the Bank of Hoven, and that he is admitted to practice before the courts of the State of South Dakota, the United States District Court for the District of South Dakota, the United States Court of Appeals for the Eighth Circuit and the United States Supreme Court.

Dated this 17th day of February, 1999.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 
TIMOTHY M. ENGEL
Attorneys For Bank of Hoven
503 South Pierre Street
P.O. Box 160
Pierre, South Dakota 57501-0160
(605) 224-8803