

# **EXHIBIT B**

**Part 5**

**Pages 483 - 611**

June 30, 2011

Motion to Dismiss Hearing

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

In Re: )  
 )  
BOISE COUNTY, ) Case No. 11-00481  
 )  
Debtor. ) Chapter 9  
\_\_\_\_\_ )

BANKRUPTCY COURT HEARING  
BEFORE THE HONORABLE TERRY MYERS

June 30, 2011

Boise, Idaho

Volume III - Pages 483 - 737

Colleen P. Zeimantz, CSR No. 345

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BANKRUPTCY COURT HEARING IN THE ABOVE-ENTITLED MATTER,

BE IT REMEMBERED that the bankruptcy court hearing in the above-entitled matter, was taken before THE HONORABLE TERRY L. MYERS, at the United States Bankruptcy Court, located at 550 West Fort Street, Courtroom No. 5, Boise, Idaho, on Thursday, the 30th day of June, 2011, commencing at the hour of 9:30 a.m. in the above-entitled matter.

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NO.	MARKED	ADMITTED
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<p>PROCEEDINGS</p> <p>THE COURT: Good morning. Have a seat, if you would, please.</p> <p>Do we have anything to take up preliminarily before we continue with the testimony, Mr. Clark?</p> <p>MR. CLARK: I do, Your Honor. It came to our attention that Exhibit 116 was not a complete copy. We got it from the exhibits that were used at the 2004 examinations, which evidently, itself, isn't a complete copy. I did obtain a complete copy from Ms. Prisco, which I sent to Counsel last evening.</p> <p>And with the Court's leave I would like to submit the complete 2009 audit report, and I've pre-marked it as Exhibit 116-A, whichever the Court wishes.</p> <p>THE COURT: Agreed?</p> <p>MR. BANDUCCI: Yes, Your Honor, that's fine.</p> <p>THE COURT: All right. 116-A will be made part of the record in place of 116. (Exhibit 116-A replacing Exhibit 116.)</p> <p>MR. BANDUCCI: May I approach, Your Honor?</p> <p style="text-align: right;">Page 488</p>	<p>1 Can the witness be shown Exhibit 101?</p> <p>2 CROSS-EXAMINATION (Continued)</p> <p>3 BY MR. BANDUCCI:</p> <p>4 <b>Q. And at this point, Ms. Anderson, I'm</b></p> <p>5 <b>not going to refer to a particular issue or item</b></p> <p>6 <b>in this budget. This is the fiscal year 2010 to</b></p> <p>7 <b>2011 final budget for Boise County; correct?</b></p> <p>8 A. That's what it says, yes.</p> <p>9 <b>Q. And you worked on that?</b></p> <p>10 A. Yes, I did.</p> <p>11 <b>Q. Okay. What I would like to address</b></p> <p>12 <b>your attention to is, the premise upon which this</b></p> <p>13 <b>budget is based. And at least one of those</b></p> <p>14 <b>premises is that the County will only expend as</b></p> <p>15 <b>much in this budget as it can bring in from</b></p> <p>16 <b>various revenue sources in the year; correct?</b></p> <p>17 A. There are some reserves, for specified</p> <p>18 purposes, that could be brought in at a later</p> <p>19 date.</p> <p>20 <b>Q. But you budget -- you, being Boise</b></p> <p>21 <b>County, budget based on projected revenue;</b></p> <p>22 <b>correct?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. All right. Now, let's turn our</b></p> <p>25 <b>attention to indigent funds; all right?</b></p> <p style="text-align: right;">Page 490</p>
<p>THE COURT: Yes, you may.</p> <p>MR. BANDUCCI: That's all right.</p> <p>THE COURT: Did Alamar have anything preliminary this morning?</p> <p>MR. HINDLEY: No, Your Honor.</p> <p>THE COURT: All right. We're going to continue with the examination of Ms. Anderson.</p> <p>MR. BANDUCCI: Exhibit 101.</p> <p>THE COURT: Good morning. I'll remind you that you are still under oath. And as soon as you are ready, we'll let Mr. Banducci proceed.</p> <p>JAMIE ANDERSON,</p> <p>previously, first duly sworn to tell the truth relating to said cause, testified as follows:</p> <p>MR. BANDUCCI: Shall we test? Is it working? Can you hear me? No? If I lean into it, can you hear it?</p> <p>THE CLERK: It's not working. Sorry for the disruption.</p> <p>THE COURT: That's all right, not a problem.</p> <p>MR. BANDUCCI: Try again. There we go. Okay.</p> <p>MR. CLARK: All right.</p> <p>MR. BANDUCCI: Are you ready?</p> <p style="text-align: right;">Page 489</p>	<p>1 MR. BANDUCCI: And can the witness be</p> <p>2 shown Exhibit 111? And, Kathy, if you could turn</p> <p>3 to the page, which reflects indigent funds, which</p> <p>4 I believe is -- there we go. It is page 6 of 18.</p> <p>5 You've already got it. Thank you.</p> <p>6 <b>Q. (BY MR. BANDUCCI) Now, as I understand</b></p> <p>7 <b>the testimony from Ms. Prisco, the expenditures</b></p> <p>8 <b>that were unanticipated in the total gross amount</b></p> <p>9 <b>of \$550,000, are not covered in this cash</b></p> <p>10 <b>projection; is that correct?</b></p> <p>11 A. Most likely, yes.</p> <p>12 <b>Q. All right. Do you remember Ms. Prisco</b></p> <p>13 <b>saying words to that effect?</b></p> <p>14 A. This is -- there is -- I do remember</p> <p>15 it.</p> <p>16 <b>Q. Okay. Now, would you focus on the cash</b></p> <p>17 <b>balance, ending February of 2011? Do you see</b></p> <p>18 <b>that?</b></p> <p>19 MR. BANDUCCI: And, Kathy, if you want</p> <p>20 to simply expand on the -- right through there.</p> <p>21 Perfect. Right through there.</p> <p>22 <b>Q. (BY MR. BANDUCCI) And over on the</b></p> <p>23 <b>right-hand side of the screen, we see February</b></p> <p>24 <b>2011, that would be the cash balance ending that</b></p> <p>25 <b>month, which would be February 28th, 2011. Do</b></p> <p style="text-align: right;">Page 491</p>

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1 you see that?  
 2 A. Yes.  
 3 Q. And do you see what the cash balance  
 4 ending is?  
 5 A. Yes.  
 6 Q. What is it?  
 7 A. \$647,597.  
 8 Q. So would you agree with me, that the  
 9 cash balance in the indigent fund could more than  
 10 pay for the indigent expenses that were  
 11 purportedly unanticipated, that had been  
 12 testified to here in this court?  
 13 A. Yes.  
 14 MR. BANDUCCI: Thank you. Can the  
 15 witness be handed Exhibits 248 through 252.  
 16 And these are in evidence, Your Honor.  
 17 THE WITNESS: I have 248 not the -- in  
 18 the book, and through 252.  
 19 Q. (BY MR. BANDUCCI) Through 252?  
 20 A. Are they attached?  
 21 Q. They were not originally in the  
 22 binders, but yes.  
 23 A. I've got them.  
 24 Q. Did you find them?  
 25 A. Yes.

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1 Q. Okay. Very good. Now, you were in the  
 2 courtroom when Ms. Prisco was handed these  
 3 resolutions. Have you looked at these  
 4 resolutions since they were introduced yesterday?  
 5 A. No.  
 6 Q. Okay. All right. Well, let's take a  
 7 look at them now. And, for example, let's take a  
 8 look at 248, which is a resolution passed in 2001  
 9 by the Boise County Commissioners, where funds  
 10 from the Highway 55 trust were transferred to  
 11 other funds in the County. Do you see that?  
 12 A. Yes.  
 13 Q. All right. So what we see here is that  
 14 the current expense fund, the road and bridge  
 15 fund, the justice fund, and the revaluation fund  
 16 received transfers totaling \$425,807.14. Do you  
 17 see that?  
 18 A. Yes.  
 19 Q. All right. Now, I may be incorrect in  
 20 my recollection of testimony thus far in this  
 21 hearing. But I was left with the impression from  
 22 testimony given by representatives of the County,  
 23 that it was unlawful to transfer from fund to  
 24 fund. Is that your understanding?  
 25 A. That is not my total understanding, no.

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1 Q. All right. So there are circumstances  
 2 where funds may be transferred, where monies in  
 3 one fund may be transferred to another fund;  
 4 correct?  
 5 A. Yes.  
 6 Q. All right. Tell the Court the  
 7 circumstances under which such monies may be  
 8 transferred from fund to fund.  
 9 A. My understanding is, that when there  
 10 are funds available in a certain fund, that is  
 11 allowable to be used for that purpose.  
 12 Q. I'm not sure I understand your answer.  
 13 Are you talking about excess funds?  
 14 A. For instance, I'll just -- one example?  
 15 Q. Okay. Please.  
 16 A. So we have a County improvement fund.  
 17 Q. And funds could be transferred, because  
 18 of the nature of the source, could be transferred  
 19 to another fund through a process. If it's for  
 20 an expenditure, a budget, we would have to open  
 21 the budget, and do the same process as we did to  
 22 adopt the budget. So there is a process to do  
 23 that. It's not just an accounting.  
 24 A. Right. There has to be a resolution.  
 25 But there are cases where it could happen.

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1 Q. All right. Well, let's take a look at  
 2 Exhibit 248. Here, the Highway 55 trust fund is  
 3 mentioned. Are you familiar with that trust  
 4 fund?  
 5 A. No.  
 6 Q. Okay. That's not one of the trust  
 7 funds that exists currently in the accounts of  
 8 Boise County; correct?  
 9 A. To the best of my knowledge.  
 10 Q. But this trust fund transferred over  
 11 \$400,000 to various funds that you are familiar  
 12 with; correct?  
 13 A. Yes.  
 14 Q. For example, the current expense fund  
 15 that's transferring, it looks like it's  
 16 transferring, roughly, over two fiscal years,  
 17 approximately, \$200,000 into the current expense  
 18 for general fund; correct?  
 19 A. Yes.  
 20 Q. And then it's transferring \$8,000 into  
 21 road and bridge; correct?  
 22 A. Yes.  
 23 Q. And then into the justice, in fiscal  
 24 year, \$38,000; correct?  
 25 A. That's what it says.

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7 (Pages 492 to 495)

1 Q. And then the revaluation fund is  
 2 receiving, roughly, \$178,000 in fiscal year 2001  
 3 and 2002, from the Highway 55 trust fund;  
 4 correct?  
 5 A. Yes.  
 6 Q. Now, all of the funds that I just  
 7 mentioned, they have different purposes; correct?  
 8 A. Yes.  
 9 Q. All right. And it's not as though the  
 10 monies in the Highway 55 trust fund were being  
 11 used for the same purposes, by these various  
 12 other funds; correct?  
 13 A. That's what it appears.  
 14 Q. And, in fact, anything in the Highway  
 15 55 trust fund that was transferred to the current  
 16 expense fund would, by definition, be  
 17 unencumbered; correct? Once those monies, the  
 18 200,000 or \$201,000 hits the current expense fund  
 19 from the Highway 55 trust fund, it is by  
 20 definition, according to Boise County,  
 21 unencumbered; correct?  
 22 A. Well, it's being appropriated under the  
 23 current expense there for particular expense line  
 24 items that it's being attributed to.  
 25 Q. But I thought -- again, correct me if

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1 A. I don't know.  
 2 Q. Is there anything on its face to you  
 3 that would suggest to you that it would be  
 4 unlawful?  
 5 A. I don't see a process for opening the  
 6 budget to approve additional expenditures.  
 7 Q. Okay. That may be another resolution;  
 8 correct?  
 9 A. Possibly.  
 10 Q. Okay. So what you are saying is, that  
 11 in addition to a resolution transferring the  
 12 funds, there actually has to be a resolution  
 13 opening the budget?  
 14 A. Typically.  
 15 Q. Okay. But if those things are done,  
 16 then you would assume that such transfer as  
 17 reflected in Exhibit 248 is lawful; correct?  
 18 A. No, I was not on the board at the time.  
 19 I don't know the clerk at the time. I don't know  
 20 the specific source of the Highway 55 trust fund,  
 21 so I can't say.  
 22 Q. You can't be certain?  
 23 A. I can't be certain.  
 24 Q. All right. But at least the discussion  
 25 to this point is, that there are circumstances

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1 I'm wrong, I was under the impression that it is  
 2 Boise County's position, that the general fund or  
 3 current expense fund contains monies that are  
 4 unencumbered?  
 5 A. A budget appropriates those funds,  
 6 which if you want to, it's going to encumber  
 7 those funds. Yes, I agree that there are  
 8 discretionary funds that can be used to  
 9 appropriate the expenses in that fund.  
 10 Q. Now, would you agree with me, that when  
 11 Boise County put money in the Highway 55 trust  
 12 fund, that this is like any other fund at the  
 13 County? The County would consider those funds to  
 14 be restricted to that fund; correct?  
 15 A. Are you speaking that the -- they would  
 16 be appropriated to that fund.  
 17 Q. Appropriated. All right. And what you  
 18 are telling this Court now, is that monies put in  
 19 a particular fund, can be moved to other funds  
 20 for other purposes, so long as the Commission  
 21 resolves to do so, as is demonstrated here in  
 22 Exhibit 248?  
 23 A. No.  
 24 Q. All right. Is 248 a lawful -- in your  
 25 view, a lawful transfer of funds?

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1 where funds can be transferred -- excuse  
 2 me -- monies -- I don't want to transfer this  
 3 terminology -- monies can be transferred from  
 4 fund to fund lawfully; correct, under certain  
 5 circumstances?  
 6 A. I would agree.  
 7 Q. Okay. Now, let's take a look at  
 8 another of these exhibits. Do you have the  
 9 fund -- excuse me -- the Resolution 9212, which  
 10 is Exhibit 249?  
 11 A. Okay.  
 12 Q. And here, there is \$20,000 being  
 13 transferred from the indigent fund to the  
 14 revaluation fund, the noxious weed fund, and the  
 15 tort fund; correct?  
 16 A. That's what it says.  
 17 Q. Okay. And I think it's safe to assume,  
 18 that the purposes for the indigent fund are very  
 19 different than the purposes for the noxious weed  
 20 fund; correct?  
 21 A. Correct.  
 22 Q. So you don't need to have the same  
 23 purpose, in order to make this transfer between  
 24 funds; correct?  
 25 A. Well, I would disagree with this whole

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1 resolution. And, yes, you have to have -- it has  
 2 to be allowable that those funds, and possibly in  
 3 1992, if restrictions that I'm aware of today on  
 4 indigent funds, collected per a specific  
 5 purposes, stay with that purpose.  
 6 **Q. You just don't know? Are there**  
 7 **indigent --**  
 8 A. I don't know --  
 9 **Q. I didn't mean to interrupt you, ma'am.**  
 10 A. I don't know the -- I do not -- this  
 11 was in '92, and I didn't know the law in 1992, if  
 12 that was allowed or not allowed.  
 13 **Q. That's fair enough, ma'am. Thank you.**  
 14 **Let's take a look again at 101, the**  
 15 **fourth page, at the bottom part. And here is the**  
 16 **current budget for the various County funds. And**  
 17 **here the indigent fund is listed; correct?**  
 18 A. Yes.  
 19 **Q. And the indigent fund is funded by**  
 20 **three different sources: The unencumbered**  
 21 **balance, other revenue, and property taxes;**  
 22 **correct?**  
 23 A. Excuse me. I'm not looking at -- oh,  
 24 thank you. Yes.  
 25 **Q. Okay. So would you agree with me, that**

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1 unencumbered.  
 2 **Q. So are you saying, that when the**  
 3 **tax -- the property taxes are collected, before**  
 4 **there is a budgeting process, that they**  
 5 **actually -- this \$100,000 is actually collected**  
 6 **for the indigent fund?**  
 7 A. Specifically, under an indigent levy,  
 8 yes.  
 9 **Q. So all right. Fair enough. Are you**  
 10 **saying then, that these funds can't be**  
 11 **transferred to another fund?**  
 12 A. That's my understanding.  
 13 **Q. All right. Let's go -- let's actually**  
 14 **go back, then. You are saying then, that once**  
 15 **the funds are -- as the funds are collected, they**  
 16 **are appropriated to a particular budget purpose;**  
 17 **right? Correct?**  
 18 A. Their budget --  
 19 **Q. Is that your testimony?**  
 20 MR. CLARK: Your Honor --  
 21 THE WITNESS: I would like to --  
 22 MR. CLARK: -- let the witness answer.  
 23 MR. BANDUCCI: Well, Your Honor --  
 24 THE COURT: No, I think you are  
 25 interrupting her answer. Give her a chance to

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1 **the funds today in the indigent fund, that are**  
 2 **general in nature, that are part of the indigent**  
 3 **fund, certainly could be transferred to another**  
 4 **fund; right?**  
 5 MR. CLARK: Your Honor, I'll have to  
 6 object to that question, because the question is  
 7 confusing funds in his question; the general and  
 8 indigent.  
 9 MR. BANDUCCI: All right. I'll  
 10 rephrase the question. It was very -- he's  
 11 right.  
 12 **Q. (BY MR. BANDUCCI) In the display for**  
 13 **Exhibit 101 that you have before you, there are**  
 14 **three sources of funds: property taxes, other**  
 15 **revenue, and unencumbered balance; correct?**  
 16 A. Correct.  
 17 **Q. And those all fund the \$173,000 for the**  
 18 **indigent fund; correct?**  
 19 A. For the indigent budget, yes.  
 20 **Q. And 100,000 of the 173,000 is property**  
 21 **tax; correct?**  
 22 A. Yes.  
 23 **Q. Property tax is unencumbered; correct?**  
 24 A. In this case, if it was collected for a  
 25 specific purpose for indigent. So, no, it's not

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1 answer, and then you can follow-up.  
 2 **Q. (BY MR. BANDUCCI) Ms. Anderson, I**  
 3 **apologize. Go ahead and answer the question.**  
 4 A. The budget is set. The budget is  
 5 approved. There are certain funds that have to  
 6 follow certain levy -- you have certain levy  
 7 limits.  
 8 **Q. Okay.**  
 9 A. And then there is a process, after the  
 10 budget is approved, as the property taxes come  
 11 in, there is a process that distributes based on  
 12 the budget approved how those property taxes are  
 13 distributed; not to exceed, and there is not  
 14 always taxes received of the amount of the  
 15 property tax needed.  
 16 **Q. Okay. So as we look at Exhibit 101,**  
 17 **the 1,021,233 is appropriated for current**  
 18 **expense, on Exhibit 101 on the screen. Do you**  
 19 **see that?**  
 20 A. Would you repeat that, again, please?  
 21 **Q. Yes, the 1,021,233 is appropriated,**  
 22 **that property tax is appropriated, according to**  
 23 **your description, to the current expense fund;**  
 24 **correct?**  
 25 A. Yes.

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1 **Q. All right. This Commission transferred**  
2 **funds out of the current expense fund to pay**  
3 **attorneys' fees for the Alamar case; did it not?**  
4 A. I'm not aware of that.  
5 **Q. You are not aware of that? All right.**  
6 **Okay. Are you aware of transferring, roughly,**  
7 **\$60,000 to pay the firm of Brassey, Wetherell to**  
8 **defend the Alamar charge?**  
9 A. Excuse me. I apologize to the Court.  
10 Inside the attorney expense is a sub-fund called  
11 "extraordinary legal expenses." So I misspoke.  
12 There is -- there was funds paid through the  
13 current expense fund.  
14 **Q. So they were appropriated for that**  
15 **particular purpose, or were they transferred**  
16 **after appropriation?**  
17 A. I believe they were appropriated for  
18 that purpose. I would have to look at the --  
19 **Q. Did you -- all right. We'll come back**  
20 **to that.**  
21 **Have we covered everything that you**  
22 **know about, relative to the appropriate**  
23 **circumstances under which funds may be -- excuse**  
24 **me -- monies may be transferred from fund to**  
25 **fund?**

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1 A. Well, I would add that those funds'  
2 balances, if they are reserved for the specific  
3 purpose that they were collected for --  
4 **Q. Okay.**  
5 A. -- and --  
6 **Q. Maybe I'm not asking my question**  
7 **clearly. You've talked a few minutes ago -- I**  
8 **asked you if there were circumstances under which**  
9 **monies could be transferred from fund to fund,**  
10 **and you said, under certain circumstances. Do**  
11 **you remember that?**  
12 A. Right. And I just wanted from clarify  
13 for you, that there were very few opportunities,  
14 in that government fund accounting. And that's  
15 why it's unique. And that's why there is legal  
16 constraints, fiscal constraints why we do it in  
17 separate funds. So I just wanted to make sure  
18 that we were clear, that funds are collected for  
19 a specific purpose, unless in my best  
20 understanding, are spent for that specific  
21 purpose.  
22 **Q. Well --**  
23 A. There are few --  
24 **Q. I'm sorry.**  
25 A. -- that we have, that we are allowed to

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1 spend, that are more discretionary. So could you  
2 repeat your -- repeat your question?  
3 **Q. Would you like me to repeat the**  
4 **question?**  
5 A. Yes.  
6 **Q. Okay. The question that I asked was**  
7 **simply this. You testified earlier, did you not,**  
8 **that there were certain circumstances under which**  
9 **monies could be transferred from fund to fund;**  
10 **correct?**  
11 A. Correct.  
12 **Q. All right. Now, can you**  
13 **describe -- and you also testified, that in order**  
14 **for that to occur, the County Commission has to**  
15 **vote to open up the budget, and that it has to**  
16 **also vote to have the transfer occur. You**  
17 **testified to that, too, as well; correct?**  
18 A. It's a process. So it may involve  
19 that, and it may not involve all of those parts.  
20 If there is an additional expenditure, then it  
21 absolutely has to go through opening of the  
22 budget.  
23 **Q. Fair enough. Okay. So thank you. So**  
24 **my question to you is: You seemed to indicate in**  
25 **that last answer, that you are aware of that,**

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1 **there is circumstances. You said, they were**  
2 **limited, but you understood that there is**  
3 **circumstances where that sort of transfer of**  
4 **monies from fund to fund can occur. We've talked**  
5 **about the process. I would like you to tell the**  
6 **Court, under what circumstances that transfer of**  
7 **monies from fund to fund would occur, if you**  
8 **know?**  
9 A. I'm not the best person to answer that.  
10 I think there is expertise within the County that  
11 could better answer that. I do approve -- I  
12 approve those transfers.  
13 **Q. Have you approved transfers of that**  
14 **sort before?**  
15 A. In the closing of the budget, yes.  
16 **Q. All right. Let's talk about that. So**  
17 **when you say, "the closing of the budget," what**  
18 **are you referring to?**  
19 A. The end of fiscal year, the former  
20 clerk had a process, by which we have to prepare,  
21 present, and follow a balanced budget. So, for  
22 instance, in the road department, and they had  
23 expenses exceeding not the whole budget, but  
24 within the expense lines, it is possible to  
25 balance that budget using the expense lines that

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1 weren't spent inside the budget. And there is a  
 2 transfer to balance those particular line items,  
 3 that were exceeded by using funds -- those are  
 4 other line items that weren't exceeded top  
 5 balance, but not exceed the bottom total line  
 6 budget. Does that make sense?  
 7 **Q. Well, I want to be sure that I**  
 8 **understand that as it relates to funds. Did you**  
 9 **just say that, that if one fund has an excess of**  
 10 **money --**  
 11 A. No.  
 12 **Q. Well, you need to let me finish my**  
 13 **question.**  
 14 A. I'm sorry.  
 15 **Q. I'm sorry?**  
 16 A. I'm sorry.  
 17 **Q. That's okay.**  
 18 A. Help me.  
 19 **Q. Were you talking about line items**  
 20 **within the fund, a given fund, or were you**  
 21 **talking about transfers between funds?**  
 22 A. I was talking about line items within  
 23 the fund.  
 24 **Q. In the fund. Okay. So that's the only**  
 25 **kind of transfer that you've approved at your**

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1 **end; is that what you are saying?**  
 2 A. Or using the funds reserve for a  
 3 specific purpose. I believe the past clerk's  
 4 practice was to -- I'm not absolutely positive if  
 5 there was reserve funds associated with the  
 6 account used to balance the budget.  
 7 **Q. And, again, I just want to make sure I**  
 8 **understand that answer. Are you saying that the**  
 9 **past clerk's practice was to move monies from one**  
 10 **fund to another fund at year end, so long as it**  
 11 **didn't affect the bottom line of the budget?**  
 12 A. No. No.  
 13 **Q. Okay. So again, these were**  
 14 **intra- -- excuse me -- inter-fund transfers you**  
 15 **are talking about?**  
 16 MR. CLARK: Your Honor, I have to  
 17 object.  
 18 THE WITNESS: Intra- --  
 19 MR. CLARK: Your Honor, I have to  
 20 object, because that question assumes facts not  
 21 in evidence. Her answer was, no. And he went on  
 22 like the answer was, yes.  
 23 MR. BANDUCCI: No, I don't think so.  
 24 THE COURT: I don't think so. I think  
 25 it's an ongoing process of clarification. If the

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1 witness is unclear about the question, she can  
 2 ask for it to be repeated.  
 3 MR. BANDUCCI: I want to rephrase the  
 4 question, because I think sometimes inter and  
 5 intra is subject to confusion.  
 6 **Q. (BY MR. BANDUCCI) Did you just say,**  
 7 **that the former clerk transferred funds, but**  
 8 **those funds -- I'm going to rephrase the**  
 9 **question. I'm sorry. I keep using the word**  
 10 **"funds," and I'm meaning "monies."**  
 11 Are you saying that the former clerk at  
 12 year end, fiscal year end, transferred monies  
 13 within the departments within the same fund, or  
 14 are you saying that the clerk transferred monies  
 15 between funds at year end?  
 16 A. The best of my knowledge, the monies  
 17 were within specific fund.  
 18 **Q. Okay. They didn't go outside the fund**  
 19 **they were originally --**  
 20 A. I cannot say for certainty. The best  
 21 of my knowledge, it's within fund.  
 22 **Q. Okay. Thank you. And I don't mean to**  
 23 **talk over you, ma'am. Sometimes I'm not sure**  
 24 **exactly when you are done with your answer. And**  
 25 **I'll try to do my best to keep this separate in**

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1 **terms of questions and answers.**  
 2 **Now, I want to finish this line of**  
 3 **questioning, if I may? I had asked you, if you**  
 4 **are aware of circumstances where -- okay. So**  
 5 **we've talked about the process. Now, I want to**  
 6 **know the circumstances that you are aware of,**  
 7 **that allow for the transfer of monies between**  
 8 **funds?**  
 9 A. And your question is?  
 10 **Q. Well, you know, let me rephrase my**  
 11 **question.**  
 12 **Earlier you testified that there is**  
 13 **somebody in the County, who knows better than**  
 14 **you, about transfers between funds. Who is that?**  
 15 A. That would be the duties of the county  
 16 clerk.  
 17 **Q. So that would be Ms. Prisco?**  
 18 A. Possibly.  
 19 **Q. Possibly?**  
 20 A. She's new to her job.  
 21 **Q. She's new to her job. So the person**  
 22 **before her was Ms. Swearingen; is that right?**  
 23 A. Yes.  
 24 **Q. Thank you.**  
 25 MR. BANDUCCI: The next number in order

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1 is?  
2 THE CLERK: 254.  
3 MR. BANDUCCI: Your Honor, we have an  
4 electronic version of a new Exhibit 254.  
5 THE COURT: I'm not sure I understand  
6 what you mean, an electronic version?  
7 MR. BANDUCCI: Well, I don't have a  
8 paper copy of it. We only have it  
9 electronically. We can have a paper copy brought  
10 for the record of the Court, if that's --  
11 THE COURT: Do you need it to conclude  
12 your examination of this witness?  
13 MR. BANDUCCI: Right now, you mean?  
14 THE COURT: Right. I would sooner have  
15 a paper copy in the courtroom, so that all of the  
16 parties, including opposing counsel, and the  
17 bench, can have a copy, rather than relying on  
18 the computer screen, instead of trying to refill  
19 the bucket later.  
20 MR. BANDUCCI: Fair enough. Fair  
21 enough. That makes all kinds of sense. And what  
22 we'll do is, we'll call to the office, and we'll  
23 get copies made.  
24 THE COURT: All right.  
25 MR. CLARK: And for the record, Your  
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1 Honor, we have not seen or heard anything about  
2 Exhibit 254 before this morning.  
3 THE COURT: Well, now, I understand.  
4 That's my point of getting it here.  
5 MR. BANDUCCI: Sure.  
6 THE COURT: And then everybody will be  
7 on the same page.  
8 MR. BANDUCCI: And it's an official  
9 record of the County.  
10 THE COURT: All right.  
11 MR. BANDUCCI: All right.  
12 **Q. (BY MR. BANDUCCI) How does the sweep**  
13 **account work?**  
14 A. I don't have firsthand knowledge of  
15 that.  
16 **Q. Okay. Do you know whether funds that**  
17 **are swept into the sweep account are traced, so**  
18 **that those monies can be characterized according**  
19 **to fund?**  
20 A. I believe the County treasurer  
21 testified that, no -- the answer is, no.  
22 **Q. Thank you.**  
23 **Now, can you find Exhibit 228?**  
24 A. (Witness complying.) Yes.  
25 **Q. All right. Now, Exhibit 228 is the**  
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1 **compilation of materials that you put together**  
2 **when you were researching into ways to pay the**  
3 **judgment; correct?**  
4 A. Correct.  
5 **Q. All right. Have you got the paper copy**  
6 **there?**  
7 A. I do.  
8 **Q. Can you show that to the Judge, just so**  
9 **he understands the size of the collection that**  
10 **you compiled?**  
11 THE COURT: Mr. Banducci, is there a  
12 reason why the bench copy of the exhibit doesn't  
13 give me exactly the same information, as opposed  
14 to the show and tell?  
15 MR. BANDUCCI: Your Honor, I'm so used  
16 to doing this only electronically in front of  
17 Judge Winmill, I apologize. It's just a habit.  
18 THE COURT: I have the bench copy of  
19 228.  
20 MR. BANDUCCI: You know, I knew that,  
21 but I apologize.  
22 THE COURT: That's fine. Go ahead with  
23 your question.  
24 MR. BANDUCCI: I'm sorry, Your Honor.  
25 **Q. (BY MR. BANDUCCI) All right. Let's go**  
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1 **to page 169 of Exhibit 228.**  
2 A. (Witness complying.) Okay.  
3 **Q. And I have got to get there. What do**  
4 **you have there; a copy of the statute that you**  
5 **made in the course of your research?**  
6 A. Yes.  
7 **Q. Okay. And this is a copy of Idaho Code**  
8 **Section 31-1605 A; correct?**  
9 A. Yes.  
10 **Q. All right. Did you -- why did you**  
11 **include this in your binder?**  
12 A. Because it's my -- it was my  
13 understanding to produce documents that I had  
14 used in my research prior to the bankruptcy.  
15 **Q. Okay. So this statute was one of the**  
16 **items you researched prior to the filing of the**  
17 **bankruptcy?**  
18 A. More, specifically, it was one of the  
19 items I was researching to help just remind me.  
20 And it was not for the purpose of the bankruptcy.  
21 It was for the purpose of finding a way to settle  
22 the judgment.  
23 **Q. Okay.**  
24 A. The majority of the documents were  
25 pre-bankruptcy, that I produced.  
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1 Q. All right.

2 A. And I wanted to pay the judgment.

3 Q. Okay. Now, this statute states,

4 "Counties may accumulate fund balances at the end

5 of the fiscal year, and carryover such fund

6 balances into the ensuing fiscal year sufficient

7 to achieve or maintain county operations on a

8 cash basis. A fund balance is the excess of the

9 assets of a fund over its liabilities and

10 reserves. Upon resolution by the Board of County

11 Commissioners, such funds may be carried over for

12 the use of specific County departments as an

13 additional appropriation in the next fiscal

14 year."

15 Do you see that?

16 A. I see that.

17 Q. Okay. When you were reviewing this

18 statute, did you review the resolutions of Boise

19 County to see whether at fiscal year end, the

20 Boise County Commission had passed resolutions to

21 carryover these fund balances into the ensuing

22 fiscal year?

23 A. My understanding, at the time, is in

24 the budget process, when the budget was approved,

25 those balances carried over.

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1 budget resolution as part of that resolution. If

2 you want to clarify it further, ask a different

3 question.

4 MR. BANDUCCI: All right. I'll ask it

5 differently. Thank you.

6 Q. (BY MR. BANDUCCI) If we pull out the

7 budget resolution, is it going to resolve that

8 the funds balances in the various funds, are

9 carried forward into the next fiscal year for use

10 in specific County departments?

11 A. Let's look at the document.

12 Q. Okay. Well, we'll have to pull that up

13 on the County website. Are you aware of such

14 provision in the budget resolution?

15 A. Not, specifically, without looking at

16 it.

17 Q. Do you know whether funds invested as

18 surplus funds at the end of the year, remained

19 dedicated to any particular fund?

20 A. I believe that the cash accounts are

21 accounted for in the funds.

22 Q. Again, that's not my question. My

23 question has to do with cash that's invested in

24 an investment, because it is surplus. Now, that

25 cash is connected to some fund; correct?

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1 Q. Ma'am, that was not my question. My

2 question was: Did you see whether or not the

3 County Commission had followed the law stated in

4 this statute, and passed resolutions to carryover

5 fund balances to specific County departments, as

6 an additional appropriation in the next fiscal

7 year?

8 A. My interpretation was, that it was part

9 of the budget process.

10 Q. Did you --

11 A. So did I go and look for specific

12 resolutions? Did I look at the specific

13 resolution for the budget? Yes.

14 Q. And did you find this carryover

15 budget -- excuse me -- carryover fund balance

16 resolution in the records of Boise County?

17 A. I'm not aware of something, other than

18 the budget resolution.

19 Q. And that does not include, does it,

20 that resolution required by 1605 A?

21 MR. CLARK: Objection, Your Honor. Her

22 testimony, was that she was a part of the budget

23 resolutions. It's misstating her testimony.

24 THE COURT: Well, I followed the answer

25 to be, that she thought it was in the general

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1 A. Yes.

2 Q. Okay. My question to you is: If that

3 cash that is attributable to some fund, is

4 invested at the end of the fiscal year, does it

5 lose its dedication to that original fund from

6 whence -- to which it was appropriated?

7 A. No.

8 Q. Let's take a look at your deposition,

9 which I think is Exhibit 209. And let's turn to

10 page 100.

11 A. My deposition?

12 Q. Yes, Exhibit 209.

13 A. (Witness complying.)

14 Q. Yes. Actually, I think we need to

15 start at 99, the last line of 25, of page 99.

16 Okay? Are you with me?

17 A. No.

18 Q. Okay.

19 A. (Witness complying.) Page?

20 Q. Page 99 of your --

21 A. 99?

22 Q. Yes.

23 A. (Witness complying.) All right.

24 Q. At line 25, the question asked of you

25 was, "Now, those monies that have come in, that

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13 (Pages 516 to 519)

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1 the Commission has then appropriated or dedicated  
2 to particular funds shown on the budget, at the  
3 end of the year, if there was an overage, is it  
4 your testimony that those funds still remain  
5 dedicated to the fund that they were originally  
6 dedicated to at the beginning?"  
7 And what was your answer?  
8 A. "I don't know."  
9 Q. All right. Thank you.  
10 Now, let's talk a little bit  
11 about -- can we go to 106?  
12 A. Is that page or --  
13 Q. No, no, I'm -- Exhibit 106. I'm sorry.  
14 MR. BANDUCCI: And, Kathy, I think it's  
15 about the eighth page in. I'm talking about the  
16 February -- no, back. February -- there we are.  
17 Thank you.  
18 Q. (BY MR. BANDUCCI) And, Ms. Anderson,  
19 we have that on the screen for you. I'm just  
20 going to be asking generally about this. The  
21 second line down, under "Accounts," is reference  
22 to the diversified bond fund in the amount of,  
23 approximately, two-and-a-half million dollars.  
24 Do you see that?  
25 A. Yes.

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1 Q. Okay. And you heard Ms. Hutchings'  
2 testimony regarding the investments made by Boise  
3 County yesterday; correct?  
4 A. Yes.  
5 Q. All right. And I think part of her  
6 testimony related to information regarding this  
7 diversified bond fund; do you remember that?  
8 A. Yes.  
9 Q. And I believe I asked her whether or  
10 not she had provided you with information  
11 regarding the diversified bond fund; correct? Do  
12 you remember that?  
13 A. No.  
14 Q. All right. Did you ask Ms. Hutchings  
15 to gather information regarding the diversified  
16 bond fund?  
17 A. I did.  
18 Q. And let's go to Exhibit 228, page 102.  
19 A. (Witness complying.)  
20 Q. And again, Ms. Anderson, we have it  
21 right here in front of you, if you want to take a  
22 look at that?  
23 A. Okay. I see it.  
24 Q. Now, that's an email from you?  
25 A. Yes, it is.

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1 Q. February 10th, at 6:02 p.m., to  
2 Ms. Hutchings. Where you thank her for sending  
3 certain reports?  
4 A. Correct.  
5 Q. And you say, "I am just not seeing when  
6 the two million diversified bond fund was bought,  
7 the reports are all different, even though they  
8 all say, quarter report."  
9 Did Ms. Hutchings provide you with  
10 certain reports from, roughly, 2005, relative to  
11 the procurement of this diversified bond?  
12 A. No.  
13 Q. Let's take a look at pages  
14 112 -- starting at page 112, in the same -- the  
15 Exhibit 102. Let's go to 112.  
16 A. (Witness complying.)  
17 Q. Well, actually, the immediate  
18 prior -- to the next page I think. I'm in the  
19 same Exhibit 228, page 112. There we go.  
20 A. (Witness complying.)  
21 Q. On that same day, earlier in the day,  
22 Ms. Hutchings sent you the quarterly report for  
23 the period that the diversified bond was done.  
24 Do you see that?  
25 A. I see that.

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1 Q. If we go to the next page, there is a  
2 treasurer auditor joint quarterly report. And I  
3 think she sent you something in the neighborhood  
4 of ten pages of reports; do you remember that?  
5 A. Yes.  
6 Q. And then you sent her, later in the  
7 day, the email at page 102 of 228. Which  
8 basically says, I'm not getting the information I  
9 need; correct?  
10 A. I was looking for some way to see, from  
11 my lay position, at the time, because I didn't  
12 understand her specific role in managing the  
13 accounts separate for the funds. I was looking  
14 to think that there would be a reduction in a  
15 fund. And that's why I answered, no. I didn't  
16 see a reduction in any fund, her cash side, which  
17 showed the purchase, showed that new investment  
18 in that report from '05.  
19 Q. And that's why you can't trace these  
20 investments right, because there is nothing in  
21 the fund side of the accounting to indicate what,  
22 out of that fund, is being invested in the  
23 investment accounts; correct?  
24 A. So that is --  
25 Q. Is that correct?

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14 (Pages 520 to 523)

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1 A. Not entirely.  
2 **Q. Okay.**  
3 A. Because of the -- well, I heard  
4 Ms. Hutchings testify to something yesterday.  
5 But at this point in time, to the best of my  
6 knowledge, we can -- all of the other -- my  
7 understanding is, that all of the other  
8 investments are liquid. The only thing that is  
9 not liquid is the long-term investment, and that,  
10 we can trace it to the general fund, as having  
11 the authority to actually take that if we wanted  
12 to use that money in a settlement.  
13 **Q. Are you talking about the diversified  
14 bond fund?**  
15 A. No, I'm not talking there of --  
16 **Q. Let's talk about the diversified bond  
17 fund, ma'am. That's what we have in front of  
18 you.**  
19 A. Okay.  
20 **Q. Are you able to trace the fund that is  
21 attributed with the investment of the diversified  
22 bond fund?**  
23 A. Only by hearsay from Treasurer  
24 Hutchings.  
25 **Q. Thank you.**

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1 **Now, you proposed an investment policy,  
2 and we can go to Exhibit 234. And again,  
3 Ms. Anderson, we'll put the whole thing right up  
4 in front of you there.**  
5 A. Right, fund. Can you enlarge it?  
6 **Q. Sure, we can.**  
7 A. Thank you.  
8 **Q. Is this a proposed amendment to the  
9 investment policy that you proposed to the County  
10 Commission?**  
11 A. I proposed it for -- during the  
12 Commissioner discussion with Clerk Prisco and  
13 clerk -- or Treasurer Hutchings, and the County  
14 Commission, yes.  
15 **Q. Okay. And so there was a Commissioner  
16 discussion on February 14th, 2011, regarding this  
17 proposed amendment to the investment policy;  
18 correct?**  
19 A. To my knowledge.  
20 **Q. Okay. Is that your handwriting?**  
21 A. Yes, it is.  
22 **Q. Okay. And did you mean by that  
23 handwriting, that you presented this proposed  
24 amendment on February 14th, 2011?**  
25 A. During Commissioner discussion, where

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1 there is no opportunity to -- there is no  
2 decision opportunity during that period.  
3 **Q. Okay. Now, this proposed amendment  
4 says, "The treasurer with County Commission  
5 approval has the authority to invest surplus fund  
6 when not needed for operating expenses. The  
7 investment by fund, or its proportion in the pool  
8 funds used for such investment, must be  
9 identified by resolution prior to approval." Do  
10 you see that?**  
11 A. Yes, I do.  
12 **Q. That's your proposed amendment;  
13 correct?**  
14 A. That's my suggestion.  
15 **Q. So you are proposing that before  
16 surplus funds are used to make an investment,  
17 that they be traced back to the fund; correct?**  
18 A. Yes.  
19 **Q. Why?**  
20 A. It was a source of a lot of  
21 frustration, not knowing which funds were  
22 associated with which investments. And my  
23 personal belief is it's prudent that we do so.  
24 **Q. Why would it be important to be able to  
25 trace those funds?**

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1 A. So that we could tell you exactly which  
2 funds were there.  
3 **Q. And you could tell us which were  
4 restricted, and which weren't; correct?**  
5 A. That was my intent.  
6 **Q. Thank you.**  
7 MR. BANDUCCI: Your Honor, we're going  
8 to mark another exhibit, Exhibit 254.  
9 May I approach the clerk, Your Honor?  
10 (Exhibit 254 marked.)  
11 **Q. (BY MR. BANDUCCI) Handing you what's  
12 been marked as Exhibit 254, this is a section out  
13 of the Idaho World. And let me direct your  
14 attention to the article entitled, "Boise County  
15 Commissioners' meeting." Do you see that, it's  
16 by Eileen Capson?**  
17 A. Yes.  
18 MR. BANDUCCI: Now, Kathy, this is  
19 going to be hard to --  
20 MR. CLARK: May I object, Your Honor?  
21 THE COURT: To what?  
22 MR. CLARK: Well, until admitted, yes.  
23 THE COURT: Mr. Banducci?  
24 MR. BANDUCCI: Your Honor, I'm just  
25 going to ask, if she recalls making comments that

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15 (Pages 524 to 527)

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1 are referred to in the document.  
2 MR. CLARK: Your Honor, if he was going  
3 to introduce the exhibit, I would object that  
4 it's hearsay. I would make the objection that  
5 using the exhibit in this manner, is using  
6 inadmissible hearsay for improper purpose.  
7 MR. BANDUCCI: Your Honor, I'll  
8 re-frame the approach then, if I may?  
9 THE COURT: Go ahead.  
10 **Q. (BY MR. BANDUCCI) Ms. Anderson, do you**  
11 **remember having a meeting with the Commission,**  
12 **where there was a discussion regarding**  
13 **interpreting investments made by the County, how**  
14 **they are identified, and surplus funds?**  
15 A. Not -- it could have been -- it -- we  
16 just testified that I presented the investment  
17 policy. So if, as through that discussion is  
18 what you say, there -- specifically right now,  
19 not specifically, exactly, what was said.  
20 **Q. Do you remember making statements at a**  
21 **Commission meeting publicly attended, along the**  
22 **lines that the co-policy, and no policy, have**  
23 **become really important to know for long-term**  
24 **investments? We need to identify which fund was**  
25 **used for a specific investment, or words to that**

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1 effect.  
2 A. I would agree to that.  
3 **Q. Okay. And did you also, at such**  
4 **meeting, state words to the effect of, "We can't**  
5 **put our finger on any one thing, whether it's**  
6 **encumbered or dedicated"?**  
7 A. No, I think that's taken out of  
8 context.  
9 **Q. Well, let me show you Exhibit 154, and**  
10 **refer you to the second column of the article**  
11 **entitled, "Boise County Commissioners' meeting."**  
12 A. 154?  
13 **Q. No, 254, I apologize. I think it**  
14 **is --**  
15 MR. CLARK: I'll make the same  
16 objections, Your Honor.  
17 MR. BANDUCCI: I wish I could -- I'm  
18 going to use the term --  
19 THE COURT: The witness has already  
20 admitted making statements, publicly, at the  
21 commission meeting in February, concerning the  
22 general subject. And I think he's entitled to  
23 find out exactly what she said. This, in many  
24 ways, is like refreshing recollection. And if  
25 she disagrees with what the reporter said, I

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1 think she's capable of saying, they got it wrong.  
2 It wasn't correctly reported.  
3 I'm going to go ahead and allow the  
4 examination to continue from the exhibit. The  
5 objection is overruled.  
6 MR. CLARK: Very good, Your Honor.  
7 **Q. (BY MR. BANDUCCI) Let me refer you to**  
8 **the second column of the article about -- oh,**  
9 **about two inches down from the top of that**  
10 **column, where it says, "Anderson commented, 'We**  
11 **can't put our finger on any one thing encumbered**  
12 **or dedicated.'" Do you see that?**  
13 A. I do see that.  
14 **Q. Now, does that refresh your**  
15 **recollection as to the statements you made,**  
16 **relative to funds or monies that were used for**  
17 **Boise County investments?**  
18 A. I don't recall that that -- that that's  
19 in context with what the discussion was. I don't  
20 recall that if I -- the reporter --  
21 **Q. Would you -- are you done? I'm sorry.**  
22 **I didn't mean to step into your answer.**  
23 A. You could listen to the tape and  
24 confirm it. But I can't confirm that that was  
25 said in reference to the investment funds.

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1 **Q. Would you agree with me, that with**  
2 **respect to the monies used for investments, that**  
3 **you can't put your finger on whether or not those**  
4 **monies are encumbered or dedicated?**  
5 A. I would agree to that.  
6 **Q. Thank you.**  
7 **Let's talk about the settlement**  
8 **discussions surrounding the February 22nd, 2011**  
9 **letter. Before we get to that letter, would it**  
10 **be fair to say, ma'am, that you knew that Alamar**  
11 **had offered to reduce the ultimate award,**  
12 **including attorneys' fee award, to \$5,000,000**  
13 **going into the February 22nd discussions?**  
14 A. Yes, they made an offer of \$5,000,000.  
15 **Q. And they had also agreed to accept**  
16 **those payments over time; correct?**  
17 A. I believe there was discussion to that,  
18 yes.  
19 **Q. And when we talk about over time, did**  
20 **you have a sense for how long Mr. Oaas and**  
21 **Mr. Laney were willing to extend payment?**  
22 A. There was multiple year numbers, I  
23 believe, discussed. And my hesitation is, that  
24 we couldn't commit to long-term debt without a  
25 vote for -- and I don't understand the process of

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16 (Pages 528 to 531)

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1 the judicial confirmation.  
2 **Q. Well, and I'm not talking about that.**  
3 **I'm talking about what Mr. Oaas and Mr. Laney**  
4 **were willing to accept, in terms of a period of**  
5 **time over which payment could be made. Did you**  
6 **have an understanding as to the length of that**  
7 **time?**  
8 A. No.  
9 MR. BANDUCCI: Could we bring up  
10 Exhibit 106, with respect to February 28th? The  
11 next page. I think you had it, Kathy. There you  
12 go.  
13 **Q. (BY MR. BANDUCCI) Now, this is the**  
14 **statement of treasurer's cash on February 28th.**  
15 **When you made the counteroffer in your February**  
16 **22nd letter, there was over \$4,000,000 of surplus**  
17 **funds in the investment accounts; correct?**  
18 A. Funds not used for operations.  
19 **Q. Okay.**  
20 A. And I'm --  
21 **Q. Let's use that term.**  
22 A. Okay.  
23 **Q. And on that day that you made the**  
24 **offer, you had \$4,000,000 of funds that were not**  
25 **being used for operations; correct?**

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1 A. Correct.  
2 **Q. Now, with respect to the \$4,178,000 in**  
3 **the investment accounts, did you have any basis**  
4 **to believe that such accounts were exempt from**  
5 **execution?**  
6 A. Will you define "exempt for execution"?  
7 **Q. Yes. That if a writ of execution was**  
8 **issued, that those funds would not be subject to**  
9 **execution?**  
10 A. These are -- are bank accounts?  
11 **Q. Yes, they are, ma'am.**  
12 A. And I believe some of them were not  
13 available due to the restrictive nature of some  
14 of those monies associated with certain funds.  
15 **Q. Okay. Now, did you know, as of**  
16 **February 22nd, that the funds that made up the**  
17 **investment accounts of 4,178,000 were commingled?**  
18 MR. BANDUCCI: This is 255?  
19 UNIDENTIFIED SPEAKER: 3.  
20 MR. BANDUCCI: Does the clerk want to  
21 put a sticker on these?  
22 THE CLERK: I can do that.  
23 MR. BANDUCCI: May I approach, Your  
24 Honor?  
25 THE COURT: That's 253?

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1 MR. BANDUCCI: This is 255.  
2 THE COURT: 255?  
3 MR. BANDUCCI: Yes.  
4 (Exhibit 255 marked.)  
5 **Q. (BY MR. BANDUCCI) I'm handing you what**  
6 **has been marked as Exhibit 255, which I've**  
7 **marked, really, for purposes of ease of**  
8 **examination.**  
9 MR. BANDUCCI: Your Honor, as you can  
10 see, this is a document -- this is part of the  
11 files and records of the Court, and I would offer  
12 this as evidence.  
13 MR. CLARK: I certainly recognize it,  
14 Your Honor. I have no problem if he wants to use  
15 it for an exhibit.  
16 THE COURT: All right. Without  
17 objection, 255 is in.  
18 (Exhibit 255 admitted into evidence.)  
19 **Q. (BY MR. BANDUCCI) And, Ms. Anderson,**  
20 **would you turn to page 22?**  
21 MR. CLARK: Exhibit page 22?  
22 **Q. (BY MR. BANDUCCI) Well, actually,**  
23 **before we get to that. Did you review this**  
24 **Memorandum of Boise County in Opposition to the**  
25 **Motion to Dismiss?**

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1 A. Yes.  
2 **Q. Did you review it before it was filed?**  
3 A. Yes.  
4 **Q. Okay. Now, let's turn to page 22.**  
5 A. (Witness complying.)  
6 **Q. And at page 22, about -- well, the**  
7 **second full paragraph. It starts out, "When**  
8 **considering." Do you see that?**  
9 A. Yes.  
10 **Q. It says, "When considering specific**  
11 **property as exempt from execution of a judgment,**  
12 **the court must first consider, examine Idaho Code**  
13 **11-605. The statute contains a specialist of**  
14 **public property which is exempt in that section."**  
15 **And then it quotes from paragraph 5 of the**  
16 **statute.**  
17 **It goes on, "No accounts, funds, or**  
18 **cash are therein mentioned. The County,**  
19 **therefore, is faced with a how many dilemma. It**  
20 **cannot legally incur long-term debt to pay the**  
21 **judgment without an election, (the success of**  
22 **which is extremely doubtful). It cannot take**  
23 **from its own funds to pay the judgment if those**  
24 **funds are restricted, (assuming it had the**  
25 **wherewithal to do so, which it does not). But**

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1 the Alamar creditors may be able to levy on the  
2 funds and make the County destitute."  
3 "Secondly, even if those funds are  
4 somehow exempt, general fund monies are not. But  
5 the County does not allocate its separate funds  
6 into separate accounts, rather most of the  
7 County's bank accounts will have some general  
8 fund money, and some money from the restricted  
9 funds therein. Idaho has held, as this Court,  
10 that exemption from garnishment is lost upon  
11 commingling." And I'll stop right there.  
12 Did I read that properly?  
13 A. Yes.  
14 Q. Now, were you aware, before February  
15 22nd, that commingling of the investment accounts  
16 could render them subject to execution?  
17 A. No.  
18 Q. When did you learn that the investment  
19 accounts were subject to execution, because they  
20 had been commingled?  
21 A. Could you ask that question, again?  
22 Q. Sure. When did you learn that  
23 commingling subjected the investment accounts to  
24 execution?  
25 A. I don't recall.

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1 Q. It was before -- was it before  
2 bankruptcy was filed?  
3 A. I'm -- no.  
4 Q. No?  
5 A. I don't really recall when I -- if I  
6 learned that. I learned early -- before  
7 bankruptcy, that they were commingled.  
8 Q. Sure. Well, you've actually proposed a  
9 policy amendment relative to investment funds,  
10 because the commingling caused those funds to be  
11 untraceable; right?  
12 A. To some degree, yes.  
13 Q. Okay. And I'm just curious whether  
14 part of your motivation for asking for the  
15 amendment was so that, even though these funds  
16 might be commingled, they could be traceable; and  
17 therefore, not subject to execution? Part of the  
18 motivation?  
19 A. No.  
20 Q. Now, just a few more questions, then  
21 we're done, ma'am.  
22 MR. BANDUCCI: Could the witness be  
23 shown 215, please?  
24 THE CLERK: 2-1-5? 2-1-5? I'm sorry.  
25 MR. BANDUCCI: Yes, please.

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1 Q. (BY MR. BANDUCCI) All right. And,  
2 Ms. Anderson, have you got that?  
3 A. I do.  
4 Q. Okay. Well, then I simply want to  
5 refer to the date of that. That is a March 30th  
6 email from Mr. Clark to Mr. Hindley. And it cc's  
7 you in the email; correct?  
8 A. Yes.  
9 Q. All right. And this, as you can see by  
10 looking at page -- I think it's page 3 of the  
11 email. This is the email that offered payment of  
12 \$5,000,000 over time; correct?  
13 A. That is what it says.  
14 Q. Okay. And would you agree with me,  
15 that by March 30th, 2011, Boise County was aware  
16 of the gross claim on indigent funds of \$550,000?  
17 A. I don't recall when, exactly, the  
18 \$550,000 was confirmed. And I don't believe  
19 it's -- I don't believe it's been confirmed.  
20 It's still a gross number that we're waiting for  
21 confirmation of.  
22 Q. Understood. Understood. You attended  
23 the February 22nd meeting at Ms. Buxton's office;  
24 correct?  
25 A. Yes.

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1 Q. And at that meeting, the participants  
2 discussed the indigent claims?  
3 A. Yes.  
4 Q. And they were characterized in the  
5 hundreds of thousands of dollars; right?  
6 A. Yes.  
7 MR. BANDUCCI: Can the witness be shown  
8 Exhibit 228? And let's go to page 183. And --  
9 THE WITNESS: Okay. I've got it.  
10 Q. (BY MR. BANDUCCI) This is an email to  
11 you, from Ms. Swearingen, dated January 9th,  
12 2011; correct?  
13 A. Yes.  
14 Q. And had you enlisted Ms. Swearingen's  
15 assistance in looking for money to pay the  
16 judgment?  
17 A. Generally, the Commissioners did. I,  
18 personally, was just part of a general  
19 discussion.  
20 Q. Okay. So my -- the -- my question  
21 should be modified. The Commission asked  
22 Ms. Swearingen to help the Commission find money  
23 to pay the judgment?  
24 A. Yes.  
25 Q. And is this email, Ms. Swearingen's

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1 response to that request?  
 2 A. I don't know that that's the case.  
 3 This was an unsolicited email to me. It appears  
 4 to be a response, or part of a response.  
 5 **Q. Was there additional response by**  
 6 **Ms. Swearingen?**  
 7 A. Not to the best of my knowledge.  
 8 **Q. Okay. So as best you know, this is**  
 9 **Ms. Swearingen's response to the Commission's**  
 10 **request for assistance in looking for money to**  
 11 **pay the judgment; is that right?**  
 12 A. I don't know what Ms. Swearingen's,  
 13 specifically -- I couldn't say, definitively,  
 14 that this is her response to the Commission.  
 15 **Q. All right. Did you talk to**  
 16 **Ms. Swearingen after you received this letter on**  
 17 **January 9th?**  
 18 A. No.  
 19 **Q. Did you share this information with the**  
 20 **Commission?**  
 21 A. I believe I did.  
 22 **Q. Okay. Now, let me refer you to the**  
 23 **fourth paragraph. And that says, "I think April**  
 24 **said that the unpaid property taxes on South Fork**  
 25 **Landing amounted to \$350,000. If we could reduce**  
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1 A. I don't recall that.  
 2 **Q. Let's take a look at page 156 of your**  
 3 **deposition, which I believe is Exhibit 209.**  
 4 THE COURT: Before we have her testify  
 5 to that. Let's take a break. We've been at it  
 6 this morning without a break for the witness.  
 7 And during the break, maybe she can find the  
 8 place in the deposition you are referring to.  
 9 MR. BANDUCCI: Thank you, Your Honor.  
 10 THE CLERK: All rise, please.  
 11 (A recess was had.)  
 12 THE CLERK: The court is once again in  
 13 session.  
 14 THE COURT: Have a seat.  
 15 Mr. Banducci, go ahead.  
 16 MR. BANDUCCI: Thank you, Your Honor.  
 17 **Q. (BY MR. BANDUCCI) I believe when we**  
 18 **were at the break, I was referring you to your**  
 19 **deposition at page 156. And I had asked you if**  
 20 **you recalled telling representatives of Alamar**  
 21 **that they would get paid. And let me refer you**  
 22 **to line 15, and -- yeah, of a rather long answer.**  
 23 **But feel free to look before, and after this**  
 24 **reference I'm bringing out on the screen,**  
 25 **Ms. Anderson, if you believe that it would help**  
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1 the judgment by that amount, and then use the  
 2 PILT, and the interest earned as an immediate  
 3 payment right now. Eric Oaas and Gary Laney  
 4 might be willing to work the terms out with the  
 5 County on the remainder. If the Judge awards the  
 6 total 1.5 million in attorneys' fees with a down  
 7 payment, right now as discussed above, the County  
 8 would roughly owe 3.5 million. Then the County  
 9 could levy for that next year through the tort  
 10 levy all at once, which if there are  
 11 approximately 5,000 taxpayers in Boise County,  
 12 everyone would pay an additional \$700 property  
 13 tax for one year."  
 14 **Do you see that?**  
 15 A. I see that.  
 16 **Q. Did you discuss with the Commissioners,**  
 17 **Ms. Swearingen's suggestion that the Commission**  
 18 **use the tort levy to tax Boise County taxpayers?**  
 19 A. I don't remember if there was any  
 20 discussion.  
 21 **Q. Thank you. Ms. Anderson, do you recall**  
 22 **telling the representatives of Boise -- excuse**  
 23 **me -- the representatives of Alamar, after the**  
 24 **filing of bankruptcy, that Alamar's judgment**  
 25 **would be paid?**  
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1 in the explanation of the statement.  
 2 **But is it fair to say, that this**  
 3 **statement, "The silver lining is, we will get you**  
 4 **paid. We will get our other debtors paid, our**  
 5 **other creditors paid, and the money is accounted**  
 6 **for." Do you see that?**  
 7 A. Yes.  
 8 **Q. By that, you meant that Alamar would**  
 9 **get paid for the judgment; correct?**  
 10 A. Well, that's our hope.  
 11 **Q. All right.**  
 12 MR. BANDUCCI: Your Honor, may I  
 13 approach? I have two more exhibits.  
 14 THE COURT: All right.  
 15 THE WITNESS: Now, I add that, you  
 16 know, there is the reference on page -- on line  
 17 15 doesn't refer to an amount.  
 18 THE CLERK: Thank you.  
 19 MR. CLARK: Just some clarification,  
 20 Your Honor, I ask for the numbers.  
 21 THE COURT: 256 and 257, as I  
 22 understand it.  
 23 (Exhibit 256 and 257 marked.)  
 24 MR. CLARK: This says, it says, 2009  
 25 offsets is 256.  
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1 MR. BANDUCCI: That is 257.  
2 MR. CLARK: That's 257.  
3 MR. BANDUCCI: Just so the record is  
4 clear, we've marked two exhibits, 256 is  
5 Resolution 2010 56. And Exhibit 257 is  
6 Resolution 2009 35. Have I got that correct,  
7 Your Honor, is that what --  
8 THE COURT: That's what the bench copy  
9 shows.  
10 MR. BANDUCCI: All right. Thank you.  
11 **Q. (BY MR. BANDUCCI) And, Ms. Anderson, I**  
12 **want to make sure we've got this straight. Is**  
13 **your Exhibit 256, is that the 2010 Resolution?**  
14 A. Yes.  
15 **Q. And the 257, is the 2009 Resolution;**  
16 **right?**  
17 A. Yes.  
18 **Q. Okay. With respect to 256 and 257, are**  
19 **these the resolutions adopting the Boise County**  
20 **budget for fiscal year 2009-10, and '10-'11?**  
21 A. Yes.  
22 MR. BANDUCCI: Thank you. I have no  
23 further questions, Your Honor. Oh, I would offer  
24 them, Your Honor.  
25 THE COURT: Mr. Clark?

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1 **Q. Now, go back, if you would, please, to**  
2 **a new exhibit -- one of the new exhibits, 255,**  
3 **which is our brief.**  
4 A. Okay.  
5 **Q. And he was talking about page 22.**  
6 A. Okay.  
7 **Q. Okay. Now, on that page, the position**  
8 **was, you could not legally incur long-term debt**  
9 **without an election; is that your understanding?**  
10 A. That's my understanding.  
11 **Q. You could not take money from**  
12 **restricted funds, because that's illegal; is that**  
13 **correct?**  
14 MR. BANDUCCI: Objection; lack of  
15 foundation.  
16 THE COURT: In your opinion.  
17 THE WITNESS: In my opinion, you could  
18 not take restricted funds. That was illegal.  
19 **Q. (BY MR. CLARK) Okay. So what would**  
20 **happen to the County, if Alamar holds anywhere**  
21 **between four and five million dollars out of**  
22 **Ms. Hutchings treasurer's accounts?**  
23 MR. BANDUCCI: Asked and answered.  
24 MR. CLARK: Not from her, Your Honor.  
25 THE COURT: There has been a lot asked

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1 MR. CLARK: I have no objection, Your  
2 Honor.  
3 THE COURT: 256 and 257 are admitted.  
4 (Exhibits 256 and 257 admitted into  
5 evidence.)  
6 THE COURT: Mr. Clark, do you have  
7 further examination?  
8 MR. CLARK: A little bit, Your Honor.  
9 THE COURT: Go ahead.  
10 REDIRECT EXAMINATION  
11 BY MR. CLARK:  
12 **Q. Can you go back to Exhibit 215?**  
13 A. Yes.  
14 **Q. On the second page of that document,**  
15 **Mr. Banducci talked about the third page. But on**  
16 **the second page, there is a sentence that says,**  
17 **"I'm going to be meeting with our clients as soon**  
18 **as they all get together, and I receive the**  
19 **information I need to have concerning the**  
20 **sanctity of some of those funds as we discussed."**  
21 **Is that right?**  
22 A. Yes.  
23 **Q. Because that had not yet totally been**  
24 **resolved yet; had it?**  
25 A. No, it hadn't.

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1 and answered over the last couple of days. I'll  
2 allow it.  
3 Answer the question.  
4 THE WITNESS: I believe that the County  
5 could not provide the services necessary to the  
6 citizens.  
7 **Q. (BY MR. CLARK) Now, as far as the**  
8 **funds, themselves, in using funds in the actual**  
9 **sense.**  
10 A. Okay.  
11 **Q. The sense that we've all been**  
12 **discussing. Mr. Dornfest's levy limits have**  
13 **different levies for different funds; do they**  
14 **not?**  
15 A. Correct.  
16 **Q. So if money would have been taken out**  
17 **of the indigent fund, it could not have been**  
18 **replenished, could it, for more than the levy**  
19 **limit in his memorandum?**  
20 A. Going forward, I agree --  
21 MR. BANDUCCI: Objection; misstates.  
22 **Q. (BY MR. CLARK) I'm sorry?**  
23 MR. BANDUCCI: Objection. It misstates  
24 the testimony of Mr. Dornfest.  
25 THE COURT: I'll overrule it. But I

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20 (Pages 544 to 547)

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1 would like you to rephrase the question, so that  
 2 I can follow it a little bit better.  
 3 MR. CLARK: Okay. Okay.  
 4 **Q. (BY MR. CLARK) This is a copy of**  
 5 **Exhibit 141, and this is Mr. Dornfest's**  
 6 **memorandum that we talked about. I would like**  
 7 **you to look down in the middle of the page, where**  
 8 **it talks about charities and indigent.**  
 9 A. I see that.  
 10 **Q. Do you see that?**  
 11 A. Yes.  
 12 **Q. And there is a maximum rate shown of**  
 13 **.001; is that right? Do you see that?**  
 14 A. Yes.  
 15 **Q. Do you know, or do you have an opinion,**  
 16 **whether or not the County can legally assess for**  
 17 **that fund more than that percentage?**  
 18 A. I --  
 19 MR. BANDUCCI: Your Honor -- excuse me,  
 20 Your Honor, lack of foundation. And all she  
 21 could base this on is what Mr. Dornfest said.  
 22 THE COURT: Well, I don't think it asks  
 23 about her opinion of Mr. Dornfest's testimony.  
 24 It asks for her opinion about whether the County  
 25 can assess. And I appreciate there may be limits

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1 on the scope of her knowledge. But we've spent  
 2 the better part of a day asking her similar  
 3 questions about the scope of her knowledge, and  
 4 her belief on the use of the funds, including  
 5 most of the examination that you've had.  
 6 Do you have an opinion about whether  
 7 you can assess beyond the .001?  
 8 THE WITNESS: I have an opinion.  
 9 THE COURT: What is it?  
 10 THE WITNESS: That you cannot assess  
 11 beyond .001.  
 12 THE COURT: Okay. What's your next  
 13 question, Mr. Clark?  
 14 MR. CLARK: Thank you, Your Honor.  
 15 Thank you very much.  
 16 Your Honor, I don't think I have any  
 17 further cross that wouldn't be cumulative.  
 18 THE COURT: Thank you.  
 19 Anything else?  
 20 MR. BANDUCCI: No, Your Honor.  
 21 THE COURT: Very well, you may step  
 22 down. Thank you.  
 23 (Witness excused.)  
 24 THE COURT: We still have time before  
 25 our lunch break. Mr. Clark, do you have another

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1 witness to call?  
 2 MR. CLARK: I think I can get most of  
 3 the direct in on Ms. Mace.  
 4 THE COURT: Okay.  
 5 MR. CLARK: And she does need to get  
 6 back to Saint Anthony as soon as she can.  
 7 THE COURT: Okay. Well --  
 8 MR. CLARK: I would like to call  
 9 Ms. Abbie Mace.  
 10 THE COURT: Okay. Ms. Mace, if you'll  
 11 come forward, and be sworn, please.  
 12 ABBIE MACE,  
 13 first duly sworn to tell the truth relating to  
 14 said cause, testified as follows:  
 15 THE CLERK: Please have a seat. And  
 16 would you please state your name, and spell your  
 17 last name for the record.  
 18 THE WITNESS: My name is Abbie Mace,  
 19 M-a-c-e.  
 20 THE CLERK: Thank you.  
 21 DIRECT EXAMINATION  
 22 BY MR. CLARK:  
 23 **Q. Ms. Mace, could you tell the Court,**  
 24 **what is your job at the moment?**  
 25 A. I am the Fremont County Clerk.

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1 **Q. Would that be the same job as**  
 2 **Ms. Prisco has?**  
 3 A. Yes, it is.  
 4 **Q. How long have you been the Fremont**  
 5 **County Clerk?**  
 6 A. For 11 years.  
 7 **Q. Where is Fremont County?**  
 8 A. Fremont County, our county seat, is  
 9 Saint Anthony for geographical. If you've been  
 10 to Yellowstone Park, part of our county is in  
 11 Yellowstone Park. So we're Island Park, the  
 12 upper north regions of the state.  
 13 **Q. How long have you been a clerk over**  
 14 **there?**  
 15 A. 11 years.  
 16 **Q. Were you a deputy clerk before then?**  
 17 A. Yes, I was.  
 18 **Q. Do you work with the Idaho Association**  
 19 **of Counties on their training seminars?**  
 20 A. I do.  
 21 **Q. And what part of it do you teach?**  
 22 A. Budget and levy.  
 23 **Q. And how long have you done that?**  
 24 A. The past three years.  
 25 **Q. Can you tell the Court, what is the**

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21 (Pages 548 to 551)

1 **primary duty of a county clerk?**  
 2 A. County clerk has many duties and wears  
 3 many hats. They are the fiscal officer for the  
 4 county. So in doing so, they are the budget  
 5 officer. They take care of the payroll, paying  
 6 the bills, and tracking the monies that come into  
 7 the county into the various funds.  
 8 They are the land record keeper for the  
 9 County, and keep the -- do the recording. Run  
 10 the indigent program on behalf of the county.  
 11 And on top of that, are also clerk of the  
 12 district court, and make sure that the judge has  
 13 the clerks, and the staff he needs to operate the  
 14 court system.  
 15 **Q. Can you compare your function to that**  
 16 **of a treasurer?**  
 17 A. No.  
 18 **Q. They are a totally different function,**  
 19 **also?**  
 20 A. Totally different functions.  
 21 **Q. Okay. What is your software package?**  
 22 A. We use Computer Arts software.  
 23 **Q. Is that the same package that Boise**  
 24 **County uses?**  
 25 A. It is.

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1 **Q. Does the treasurer have any input on**  
 2 **your books?**  
 3 A. No, she doesn't.  
 4 **Q. Do you any input on her books?**  
 5 MR. WOODARD: Your Honor, I've got an  
 6 objection to relevancy. I mean, what the  
 7 treasurer in Fremont County does, as compared to  
 8 what the treasurer and clerk interact in --  
 9 THE COURT: Overruled. You can argue  
 10 it to me later in your closing.  
 11 Go ahead.  
 12 **Q. (BY MR. CLARK) You've been here for**  
 13 **the last three days; have you not?**  
 14 A. Yes.  
 15 **Q. You've heard discussion about the**  
 16 **foregone amount?**  
 17 A. Yes.  
 18 **Q. Does the foregone amount enter into the**  
 19 **budget?**  
 20 A. Yes, it does. It is monies that a  
 21 taxing district, of which the County is one, has  
 22 the opportunity to levy against their property  
 23 owners, but have chosen not to in the past. And  
 24 it is money that is available, as long as they do  
 25 not exceed any of their levy limits, or their

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1 three percent cap, that they are able to utilize  
 2 in the following year's budget.  
 3 **Q. You talked about levy limits. Are you**  
 4 **familiar with levy limits?**  
 5 A. Yes.  
 6 **Q. Is that Mr. Dornfest's table that he**  
 7 **had yesterday?**  
 8 A. Yes, it is. I'm very familiar with it.  
 9 I use it every year.  
 10 **Q. You, yourself, do?**  
 11 A. I do.  
 12 **Q. Do you, in the budget process, which I**  
 13 **understand you teach, how do you handle cash**  
 14 **forward?**  
 15 A. In Fremont County, what we do with our  
 16 cash forward is, it stays within the fund, that  
 17 it was appropriated for. And on my budget  
 18 worksheets that I publish in the paper, I  
 19 indicate that as cash forward for that fund.  
 20 **Q. For that fund?**  
 21 A. For that fund.  
 22 **Q. Is that what you also teach in your**  
 23 **seminars?**  
 24 A. Yes.  
 25 **Q. In your knowledge, is that generally**

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1 **accepted throughout the wait (inaudible) type of**  
 2 **fund?**  
 3 A. Yes.  
 4 **Q. Have you had occasion to examine Boise**  
 5 **County's operations?**  
 6 A. I have, on a very limited basis.  
 7 **Q. Okay. Are there similarities between**  
 8 **the two counties; Fremont County and Boise**  
 9 **County?**  
 10 A. We have some similarities in the  
 11 geographic make up of the county. Fremont County  
 12 also deals a lot with second home and transient  
 13 population. We don't have a lot of industry, and  
 14 we're very similar in those types of things. We  
 15 are a larger county than they are,  
 16 population-wise. But we have similarities in our  
 17 geographical aspects. And the diversity of our  
 18 population is similar.  
 19 **Q. Is your population declining?**  
 20 A. Ours is not. It's maintaining, but  
 21 just barely.  
 22 **Q. Your county also has a couple of things**  
 23 **that are unique; does it not?**  
 24 A. Yes, it does.  
 25 **Q. What are those?**

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1 A. We are the only county in the state  
 2 that owns and operates a sewer system. And that  
 3 has been a very interesting venture for us, let's  
 4 put it that way.  
 5 **Q. Are you familiar with the secure rural**  
 6 **schools program?**  
 7 A. Yes, I am.  
 8 **Q. What is that?**  
 9 A. That is federal legislation that was  
 10 passed, I want to say, probably about seven or  
 11 eight years ago. I'm not sure of the exact date,  
 12 by Senator Crapo -- or not Crapo, excuse  
 13 me -- Craig and Senator Widen from Oregon. And  
 14 it was put in place as a mechanism to help  
 15 counties and schools out of lost timber sales.  
 16 And through that process, there is three  
 17 different divisions of money that are available,  
 18 that have to be designated each year for that  
 19 process.  
 20 **Q. When you say "designated," what do you**  
 21 **mean?**  
 22 A. The Commissioners have the  
 23 responsibility to determine how much money they  
 24 are going to put in each of those different  
 25 categories. The first decision they have to make

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1 is with Title 1.  
 2 **Q. Which is, what?**  
 3 A. Title 1 monies, are monies that are  
 4 split between the county road and bridge  
 5 operations for highway districts, if the county  
 6 has highway districts, and the school districts.  
 7 It's a -- 70 percent goes to the counties, and 30  
 8 percent goes to the school districts. So their  
 9 first decision is whether or not 80 or 85 percent  
 10 of the total money appropriated for that county  
 11 goes into Title 1. And then divided into Title 2  
 12 and 3, or if it's -- so if it's 80 percent or 85  
 13 percent.  
 14 **Q. And what are Titles 2 and 3?**  
 15 A. Title 2 monies, are monies that are  
 16 overseen by a regional grant, that includes a  
 17 large geographical area of several forests. And  
 18 I think there are four or five of them set up  
 19 across the state. And it is governed through a  
 20 grant-type operation of how those monies can be  
 21 spent, according to what the law has specified.  
 22 And that board is made up of three  
 23 different groups of individuals. The first one  
 24 is local government, the second group is users,  
 25 and that can be everyone -- anything from

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1 agricultural producers to recreationalist. And  
 2 the third group is people of the environmental  
 3 group. And so it's a very diversified group that  
 4 oversees those.  
 5 Title 3 money, is monies that are held  
 6 on a county level. And since the  
 7 re-appropriation of the secure rural schools  
 8 funding that was done three years ago, has  
 9 limited the abilities of what that money can be  
 10 used for. Mostly, it can be used for educational  
 11 purposes, like on a fire-wise type program, and  
 12 for some reimbursement of search and rescue  
 13 operations done on federal ground.  
 14 **Q. Can those monies be used for other**  
 15 **purposes?**  
 16 A. No, it's very distinct in the law what  
 17 they can be used for.  
 18 **Q. What about PILT? Have you heard that**  
 19 **phrase?**  
 20 A. Yes, I have.  
 21 **Q. What is that?**  
 22 A. PILT is payment in lieu of property  
 23 taxes. It's monies that the counties receive  
 24 from the federal government in behalf of the  
 25 acreage that they have in their counties that are

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1 public lands.  
 2 **Q. Do you have a lot of public lands in**  
 3 **your county?**  
 4 A. We do. We're 69 percent public land.  
 5 **Q. You understand that Boise County has a**  
 6 **lot of public land?**  
 7 A. Yes, they do.  
 8 **Q. Okay. So how does the PILT work? Is**  
 9 **that the same number?**  
 10 A. No. PILT money is determined through  
 11 one of -- the many different formulas that are  
 12 put out in distributing money, which affects how  
 13 much property you have that's public lands, and  
 14 also your population. And so every county is  
 15 going to have a different distribution, based on  
 16 that. And it is also affected by any other  
 17 federal monies that you may receive.  
 18 So if you are receiving secure rural  
 19 schools money, then that is taken into account,  
 20 into the formula. And so it can reduce your  
 21 PILT, if you receive a large amount of secure  
 22 rural schools monies, for example.  
 23 **Q. Does your county operate in terms of**  
 24 **funds?**  
 25 A. Yes, we do.

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1 **Q. Do you know, from your knowledge,**  
2 **whether all counties operate in terms of funds?**  
3 A. That's too (inaudible). We're required  
4 to operate like that.  
5 **Q. Okay. You've heard explanation and**  
6 **discussion from other witnesses as to what funds**  
7 **are. Do you agree with that?**  
8 A. Yes.  
9 **Q. Were you acquainted with the phrase**  
10 **"three percent cap"?**  
11 A. Very.  
12 **Q. And do you have to follow that, as**  
13 **well?**  
14 A. Yes, we do.  
15 **Q. Everybody does?**  
16 A. Every taxing district in the State of  
17 Idaho has to follow a three percent cap.  
18 **Q. Do you send your budget down to**  
19 **Mr. Dornfest's office?**  
20 A. Every year.  
21 **Q. How much, in your experience, does**  
22 **county revenue actually come from property taxes?**  
23 A. I will speak on behalf of Fremont  
24 County. About 25 percent of our operating budget  
25 comes from property tax. Other counties, in

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1 monies that we received through the state. So  
2 there have been examples. Those are a couple of  
3 examples of them.  
4 **Q. (BY MR. CLARK) How about federal**  
5 **funds?**  
6 A. Federal funds are always interesting,  
7 because they are based on population. They can  
8 vary from year to year, and also, on what types  
9 of federal revenues you receive will affect  
10 those, also. So they can be reduced, also, based  
11 on those complications, I guess.  
12 **Q. When you agreed to testify for us,**  
13 **Abbie, I sent you over quite a few documents;**  
14 **didn't I?**  
15 A. Yes, you did.  
16 **Q. I also sent you over, for example, the**  
17 **cash flow projections?**  
18 A. Yes.  
19 **Q. Did you read those?**  
20 A. I did review them.  
21 **Q. Did you also have occasion to, given**  
22 **the questions, answer what you had with regard to**  
23 **them?**  
24 A. I did. I did with the clerk, herself,  
25 and asked her a couple of questions on them.

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1 visiting with other clerks, it ranges anywhere  
2 from -- we're one of the lower counties from  
3 upwards of 60 to 70 percent of their budget. It  
4 just depends on the make-up of the county.  
5 **Q. Okay. Are you part of the budget**  
6 **process for your county?**  
7 A. Yes.  
8 **Q. From your understanding of the "other**  
9 **than property tax funding mechanisms," have you**  
10 **been informed whether or not the State of Idaho**  
11 **funds are being cut back?**  
12 MR. WOODARD: That's hearsay, Your  
13 Honor.  
14 THE COURT: Overruled.  
15 You can go ahead and answer.  
16 THE WITNESS: Over the past couple of  
17 years, we have seen a reduction in sales tax, for  
18 example. That has kind of leveled off, but is  
19 something that is always a variable. We have  
20 seen a reduction in our tobacco taxes that we  
21 receive, that helps fund our juvenile correction  
22 programs.  
23 And, also, in that same program, there  
24 has been a reduction in the amount of money that  
25 comes through. It's called JAC money, which is

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1 **Q. Now, based on your knowledge, does the**  
2 **County have the legal authority, and I understand**  
3 **it's a legal issue. I want to know your**  
4 **opinion -- to use designated fund money for**  
5 **general fund purposes?**  
6 MR. WOODARD: Your Honor, I just want  
7 to note that (inaudible).  
8 THE COURT: I'll allow you to explore  
9 it on cross.  
10 Go ahead and answer the question.  
11 THE WITNESS: I am not an attorney, and  
12 I don't profess to be. But with my simple  
13 understanding, as doing the functions of the  
14 county clerk, and what I have learned over the  
15 course of my tenure, is that, no, it cannot.  
16 **Q. (BY MR. CLARK) Okay. Now, you did**  
17 **look at -- let's see. I'm showing you now,**  
18 **ma'am, what has been marked and introduced into**  
19 **evidence as Exhibit 111. Is that one of the**  
20 **documents that I sent you?**  
21 A. It is.  
22 **Q. And that shows the provisions of the**  
23 **county cash flow summary for the current fiscal**  
24 **year, broken out by various funds?**  
25 A. Yes, it does.

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1 **Q. And you've seen that document before;**  
2 **have you not?**  
3 A. Yes, I have.  
4 **Q. Okay. Now, I would like you to make an**  
5 **assumption, that on March 1st, 2011, there was an**  
6 **additional \$4,000,000 debt, that was general fund**  
7 **debt. Did the County have the ability to pay**  
8 **that?**  
9 A. I cannot see where they can, because  
10 the funds that are indicated on this cash flow  
11 have restrictions on them.  
12 **Q. Okay. Does your treasurer -- do you**  
13 **know whether your treasurer commingles funds,**  
14 **like Ms. Hutchings does?**  
15 A. He does.  
16 **Q. Okay. Do you know whether or not**  
17 **that's common practice?**  
18 A. It's my understanding, having had  
19 worked in the treasurer's office in Madison  
20 County a few years ago, it's my understanding  
21 that it's common practice across the state, that  
22 the monies are put into different types of  
23 accounts.  
24 **Q. Now, do you automatically get what's**  
25 **called a statement of treasurer's pick?**

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1 **Q. And that comes from whom?**  
2 A. That comes from the State in the form  
3 of fuel taxes that are paid by us, as  
4 individuals, when we drive our cars, and fill up  
5 our tanks.  
6 **Q. Okay.**  
7 A. Yeah.  
8 **Q. And where else?**  
9 A. It can come also from -- secure rural  
10 school monies come into that fund, which are very  
11 designated monies that have to be used for that  
12 purpose. And property tax. The counties can  
13 choose to put interest earned in that account,  
14 which we do. And also sales tax could be  
15 distributed into that fund, based on the  
16 distribution that the County decides to use their  
17 sales tax for.  
18 **Q. What can the road and bridge fund be**  
19 **used for?**  
20 A. Road and bridge, for the maintenance  
21 and operations of the county's roads.  
22 **Q. And that's it?**  
23 A. Yes.  
24 **Q. Can the clerk or the Commissioners**  
25 **borrow from funds?**

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1 A. No.  
2 **Q. You don't? How do you get it?**  
3 A. It's a public record that would have to  
4 be requested. And if I wanted a copy of it, I  
5 would have to request it for my treasurer.  
6 **Q. It doesn't just automatically come to**  
7 **you?**  
8 A. No.  
9 **Q. Okay. Is part of your functions, yours**  
10 **and the treasurer's functions, to make sure that**  
11 **your fund balances and her cash balances equal?**  
12 A. Yes, we are to balance our books on a  
13 monthly basis.  
14 **Q. By that method?**  
15 A. Yes.  
16 **Q. And when you look at her books, do you**  
17 **try to reconcile her accounts with your funds?**  
18 A. No, I do not.  
19 **Q. Where does the money come from -- in**  
20 **your knowledge, for road and bridge funds?**  
21 A. There are several sources that the  
22 monies come from for road and bridge. The main  
23 purpose -- or the main monies that come into road  
24 and bridge are, of course, the fuel taxes. Most  
25 counties operate primarily off of that fund.

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1 A. They can, with interest bearing -- with  
2 resolutions there, and they are interest bearing.  
3 But they have to be repaid in a short period of  
4 time.  
5 **Q. How short?**  
6 A. I don't know what the State statute  
7 says, exactly. But I know that it's common  
8 practice that you cannot bind another board. So  
9 if that be the case, I would say, within a  
10 two-year time period, because you cannot bind a  
11 future board.  
12 **Q. Let's talk about indigency claims for a**  
13 **minute. When an indigency medical claim comes**  
14 **into your office, I think, you said?**  
15 A. Yes.  
16 **Q. What do you do?**  
17 A. We review with the applicant, whether  
18 or not they are deemed to be indigent through  
19 their financial records. And then review the  
20 request that they are coming in for, whether it  
21 be medical, or non-medical assistance, and put  
22 together a record, which we then present to the  
23 Board of County Commissioners. And they review  
24 and make the ultimate determination on whether  
25 this individual is indigent or not.

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25 (Pages 564 to 567)

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1 If it is a medical claim that exceeds  
2 the amount of \$11,000, then if the County deems  
3 this individual meets the requirements of  
4 indigency, the County is responsible for the  
5 first \$11,000 of an indigent claim, and the  
6 remainder goes on to what's called the  
7 catastrophic health care board, which is made up  
8 of County Commissioners and a couple of  
9 legislators. And they review that claim at that  
10 level. And if they agree with what the County's  
11 determination is, which they usually do, then  
12 they pay the remainder, from state funds, of  
13 those indigent claims.

14 **Q. How long does the County have to  
15 process that claim?**

16 A. We have 45 days to process the claim,  
17 and get it submitted to the -- excuse me. It's  
18 90 days to process the claim, and get it  
19 submitted to the Cat board. If it goes beyond  
20 that, then it's the county's responsibility.

21 **Q. And if it gets to the Cat board, isn't  
22 there also a reduction?**

23 A. Yes. At the -- at the county level,  
24 also, we pay medical claims on the Medicaid rate.

25 **Q. What happens if it goes over the 45**

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1 **days?**

2 A. Then it's my understanding of the law,  
3 that we would be required to pay the full amount,  
4 and that we wouldn't -- we wouldn't qualify for  
5 the Medicaid rate.

6 **Q. Having looked at Exhibit 111, and the  
7 other documents that I sent you, showing the  
8 County's position. Do you have an opinion as to  
9 whether or not, if this judgment were levied  
10 upon, all at one time, it could be paid?**

11 A. I don't think it could, because it  
12 would devastate the County's ability to do their  
13 statutory requirements as a county in operation.

14 **Q. And if they just simply garnish the  
15 accounts, would there be fund monies in those  
16 accounts?**

17 A. Yes, there would.

18 MR. CLARK: Thank you very much, ma'am.  
19 I have no further questions on direct.

20 THE COURT: All right. Thank you.  
21 Inquiry?

22 CROSS-EXAMINATION  
23 BY MR. WOODARD:  
24 **Q. Good morning, Ms. Mace. My name is  
25 Wade Woodard, and I represent Alamar.**

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1 **Do you have training as a CPA?**

2 A. No, I do not.

3 **Q. Okay. Now, I think that Mr. Clark  
4 talked -- did you say, you teach for the Idaho  
5 Association of Counties, the budgeting process?**

6 A. I do. Part of the seminar that reviews  
7 how the budgeting and levying process works on a  
8 county level.

9 **Q. Okay. And I think up there, and I'm  
10 not sure if it's in the binder or not, there is  
11 Exhibit 253. And it's either in the black  
12 binder, or it's going to be separate.**

13 MR. CLARK: You are referring to the  
14 IAC manual?

15 MR. WOODARD: Yes.

16 MR. CLARK: Okay.

17 **Q. (BY MR. WOODARD) Okay. And this was  
18 introduced into evidence yesterday. If you could  
19 just take a second to flip through it?**

20 A. (Witness complying.)

21 **Q. Are you familiar with this document?**

22 A. I'm aware of it, but I have not  
23 utilized it. I hate to say that, as a clerk, but  
24 I have not.

25 **Q. Do you have any idea who prepared it**

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1 **for the IAC?**

2 A. I am not sure who was the author of it.  
3 I have been asked to work on the improvements of  
4 this, and bringing it up to current statute, and  
5 date of this. And what they have done in those  
6 processes, is ask different members of the Idaho  
7 Association of Counties to review certain areas  
8 of it, and help them prepare it, so that the  
9 final co-author would either be Dan Chadwick, our  
10 executive director, or deputy assistant, Tony  
11 Panelli.

12 **Q. Okay. And this manual, I did notice  
13 that there are some statutes that are referenced  
14 in it that no longer exist; correct?**

15 A. Right.

16 **Q. Correct. Okay. And that's part of  
17 what you've been asked to do, is update that part  
18 of the manual? Okay.**

19 **And did -- and so you don't use this  
20 manual as a guide in your work as the county  
21 clerk?**

22 A. I haven't personally used it. But I  
23 know several clerks have used it. It is a good  
24 guide. I find that as a clerk, we have an  
25 emailing process, that we will send out an email

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1 to other questions to the clerks, and say, hey, I  
 2 have a question. How do you handle this type of  
 3 a procedure? And what statutes have you used to  
 4 back that up? That's common practice in the  
 5 clerks organization.  
 6 **Q. Okay. The intended purpose of this**  
 7 **guide is to be there to assist clerks in**  
 8 **performing their duties?**  
 9 A. Yes.  
 10 **Q. Okay. Exhibit 247 should also be up**  
 11 **there. And it may also be loose. It will either**  
 12 **be attached to the black binder or loose. And it**  
 13 **is --**  
 14 A. I think it's in the binder.  
 15 THE COURT: The County one?  
 16 MR. WOODARD: Yes.  
 17 **Q. (BY MR. WOODARD) And just to help you**  
 18 **out. It's the Fremont County financial**  
 19 **statement.**  
 20 A. Okay.  
 21 **Q. Were you able to find that?**  
 22 A. I haven't got turned to it. But I am  
 23 familiar with our financial statement. (Witness  
 24 complying.)  
 25 **Q. You know what, Ms. Mace, maybe to make**

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1 **it easier, we can have it on the computer for**  
 2 **you, and then you don't have to fumble around**  
 3 **with the binder. The first page there, that's**  
 4 **the cover page of the Fremont County financial**  
 5 **statement. As the county clerk, do you review**  
 6 **this financial statement, and work with the**  
 7 **outside auditors to prepare it?**  
 8 A. Yes, I do. In our county, our outside  
 9 auditor asks myself, and all the department  
 10 heads -- they sit down with all of us. Usually,  
 11 they come in for two weeks with a team of about  
 12 five individuals, and review our records in all  
 13 departments, discuss what has happened throughout  
 14 the year with all the different department heads,  
 15 and especially, myself, I get asked probably more  
 16 questions than anyone else on how the  
 17 transactions have transpired throughout the year.  
 18 **Q. Okay. Thank you.**  
 19 MR. WOODARD: And let's turn,  
 20 Ms. Savell, if you can turn -- it's page 3. You  
 21 are right there. Thank you. And let's blow up  
 22 the bottom under "Net Assets."  
 23 **Q. (BY MR. WOODARD) Okay. Now, Ms. Mace,**  
 24 **here on page 3 of the financial statement for**  
 25 **Fremont County for the fiscal year ending**

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1 **September 30th, 2010, there is a line item,**  
 2 **"State net assets." And under that, do you see**  
 3 **there is a line item for "Restricted"?**  
 4 A. Yes, I do.  
 5 **Q. And when you are talking about, there**  
 6 **are funds that are restricted in their use. Is**  
 7 **that represented there, in the financial**  
 8 **statement?**  
 9 A. I'm not sure exactly, on this page, if  
 10 this is a combination of all of our funds, or  
 11 just a portion of our funds, because there are  
 12 several spreadsheets. I would like to look at  
 13 the whole thing more closely.  
 14 **Q. Okay. Why don't you pull up the full**  
 15 **thing?**  
 16 A. This is talking about the net assets of  
 17 the County, yes.  
 18 **Q. Okay. And when it says, the**  
 19 **restricted, is referring to those assets that are**  
 20 **restricted; right?**  
 21 A. Yes.  
 22 **Q. And restriction, is that the same**  
 23 **restriction you were talking about with**  
 24 **Mr. Clark?**  
 25 A. The restriction I was talking about

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1 with Mr. Clark, are statutory restrictions that  
 2 are indicated by statute on how monies can be  
 3 spent. In this, I am not sure exactly what the  
 4 determination of our auditor meant by  
 5 unrestricted. I don't know if that includes just  
 6 cash, or if that includes --  
 7 **Q. Physical assets?**  
 8 A. Yeah, I'm not sure.  
 9 **Q. All right. We can move on from there.**  
 10 **If we can show the full page? There under**  
 11 **"liabilities," there is a section for "warrants**  
 12 **payable." Do you see that?**  
 13 A. Yes.  
 14 **Q. Now, is it your understanding that a**  
 15 **warrant is basically issued by the county, and**  
 16 **it's a promise to pay; is that accurate?**  
 17 A. Our county, instead of operating under  
 18 the check system that Boise operates under, we  
 19 operate under the warrant system. Very similar,  
 20 it looks like a check. It cashes like a check.  
 21 But it's a warrant, and they are redeemed on a  
 22 daily basis.  
 23 **Q. Okay. And now, if you can turn back to**  
 24 **Exhibit 253? That's the budget manual.**  
 25 A. Yes.

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1 **Q. And turn to page 63.**  
 2 A. (Witness complying.) Okay.  
 3 MR. WOODARD: And, Ms. Savell, that  
 4 first paragraph under "emergency expenditures."  
 5 **Q. (BY MR. WOODARD) Now, Ms. Mace, are**  
 6 **you aware of Idaho Code, Section 31-1608, which**  
 7 **authorizes the emergency expenditures?**  
 8 A. I am.  
 9 **Q. Okay. And here in this manual, it says**  
 10 **Section 31-1608, Idaho Code, which governs**  
 11 **emergency expenditures, actually, describes two**  
 12 **different types. One is a true emergency caused**  
 13 **by flood, fire explosion, public health concerns,**  
 14 **et cetera. The other is to meet mandatory**  
 15 **expenditures required by law, which would**  
 16 **normally consist of catastrophic medical**  
 17 **indigency payments, extraordinary public**  
 18 **defender/court appointed attorneys expenses, tort**  
 19 **payments, et cetera.**  
 20 **Is that your understanding of how that**  
 21 **emergency expenditures works?**  
 22 A. Yes, we luckily have not had to do  
 23 that.  
 24 **Q. Okay. Now, if we can Ms. --**  
 25 MR. WOODARD: Ms. Savell, if we can go  
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1 to the third paragraph on that -- there under  
 2 that section. Thank you.  
 3 **Q. (BY MR. WOODARD) This says that when**  
 4 **you take one of these emergency expenditures for**  
 5 **those two types, the emergency must be charged**  
 6 **against the proper fund. And any cash available**  
 7 **in that fund must be used including reserves and**  
 8 **unreserved fund balances.**  
 9 **So if the emergency was -- I don't know**  
 10 **for indigency, then this says that, first you**  
 11 **must take the money to pay for that emergency out**  
 12 **of the indigency fund; right? Is that your**  
 13 **understanding?**  
 14 A. Yes.  
 15 **Q. Okay. Then it says, "If there is not**  
 16 **enough cash on hand in the proper fund, then**  
 17 **registered warrants must be issued, or there may**  
 18 **be an ability to transfer monies from other funds**  
 19 **as allowed by Idaho Code 31-1608." Is that your**  
 20 **understanding of how it works?**  
 21 A. Yes, it is.  
 22 **Q. Okay. It goes on to say that, "If part**  
 23 **or all of those registered warrants remained**  
 24 **unpaid into the next budget year, and sufficient**  
 25 **levy authority exist in the obligated fund to**  
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1 **cover the unpaid warrants, and also the new**  
 2 **budget, those warrants should be paid from the**  
 3 **new budget for that fund."**  
 4 **So then as I understand what this is**  
 5 **saying, first you looked to see whether there is**  
 6 **any money. If there is not enough money in the**  
 7 **fund, you register warrants -- you must issue**  
 8 **warrants; right?**  
 9 A. Yes.  
 10 **Q. And then it talks about how they are**  
 11 **going to pay the warrants. And it says, they**  
 12 **remain unpaid by the next budget year, that you**  
 13 **use a tax levy; right, to pay those? But there**  
 14 **is tax levies on those; right?**  
 15 A. Yes.  
 16 MR. WOODARD: You know, what, Kathy,  
 17 keep that there, because I have to read the first  
 18 five words.  
 19 **Q. (BY MR. WOODARD) It says, "If there is**  
 20 **insufficient levy" -- now, let's go to the next**  
 21 **page-- "authority available in the obligated**  
 22 **fund, a warrant redemption fund must be**  
 23 **established to levy for and pay the outstanding**  
 24 **registered warrants."**  
 25 **So is it your understanding, that when**  
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1 **you have this emergency expenditure, the first**  
 2 **thing you do, as we talked about, is you look to**  
 3 **see whatever money is in the fund?**  
 4 A. Correct.  
 5 **Q. For whatever the emergency is? If**  
 6 **there is not enough money in the fund, you issue**  
 7 **warrants; correct?**  
 8 A. Yes.  
 9 **Q. And if the warrant remains unpaid, you**  
 10 **do a tax levy; correct?**  
 11 A. As long as it falls within the  
 12 statutory requirements.  
 13 **Q. Yes. And if within the cap of the tax**  
 14 **levy, there is not enough money, then it says,**  
 15 **you set up a warrant redemption fund; correct?**  
 16 A. You still have to follow statutory  
 17 requirement.  
 18 **Q. Okay. But isn't that what the statute**  
 19 **says, if there is not enough money, you set up a**  
 20 **warrant redemption fund? I'll talk to you in a**  
 21 **minute about how you fund that warrant redemption**  
 22 **fund. But isn't that what it says? You agree**  
 23 **with that?**  
 24 A. I would say that, yes, it does.  
 25 MR. WOODARD: Okay. You know, Your  
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1 Honor, this may now be a good breaking point.  
 2 THE COURT: That would be fine.  
 3 MR. WOODARD: Okay.  
 4 THE COURT: We'll continue the  
 5 examination this afternoon. We'll start,  
 6 roughly, around 1:30 this afternoon.  
 7 (A lunch recess was had.)  
 8 THE COURT: Good afternoon. Have a  
 9 seat, please.  
 10 Are we ready to continue with the  
 11 examination?  
 12 MR. WOODARD: Your Honor, I don't have  
 13 any further questions.  
 14 THE COURT: Very good. Thank you.  
 15 Mr. Clark, is there anything else?  
 16 MR. CLARK: I do, Your Honor.  
 17 REDIRECT EXAMINATION  
 18 BY MR. CLARK:  
 19 **Q. Abbie, just a couple follow-up**  
 20 **questions. Before the lunch break, you were**  
 21 **asked about warrant redemptions.**  
 22 A. Yes.  
 23 **Q. Is there a levy limit on a specific**  
 24 **warrant redemption fund?**  
 25 A. Yes, there is.

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1 A. Yes. And the three percent limit isn't  
 2 three percent of the taxable value. It's three  
 3 percent more than you and the taxpayers had to  
 4 pay the year before, or the highest of the last  
 5 three years, is what the law says.  
 6 **Q. Okay. Do you know -- and just asking**  
 7 **you. Do you know of any exceptions to either the**  
 8 **warrant levy limit, or the three percent limit?**  
 9 A. There is none that I'm aware of.  
 10 MR. WOODARD: Objection. It calls for  
 11 a legal conclusion.  
 12 THE COURT: Overruled.  
 13 Go ahead.  
 14 THE WITNESS: As far as I am aware of,  
 15 there is not any.  
 16 MR. CLARK: Thank you, ma'am. I have  
 17 nothing further.  
 18 THE COURT: Anything else?  
 19 Thank you. You may step down.  
 20 MR. CLARK: Your Honor, I promised this  
 21 witness, if we could, that we would let her get  
 22 back to Saint Anthony today. May she be excused?  
 23 MR. WOODARD: No objection, Your Honor.  
 24 THE COURT: All right. Very well.  
 25 Thank you very much for attending.

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1 **Q. Okay. Now, I'm showing you what is**  
 2 **page 3 of Exhibit 141, which is Mr. Dornfest's**  
 3 **policy list. You see where it says, "warrant**  
 4 **redemption"?**  
 5 A. Yes.  
 6 **Q. Okay. And how much is that?**  
 7 A. .002.  
 8 **Q. Now, just so we all know, what does**  
 9 **.002 mean?**  
 10 A. It is two percent of the taxable  
 11 levy -- or the taxable -- let me back up.  
 12 When you are calculating the levy, you  
 13 take the proposed amount to be levied, and times  
 14 it by the value that -- the net taxable value of  
 15 the taxing district, to come up with the nine  
 16 digit number, which is your levy rate. And so  
 17 then, that's how you come up with the levy rate,  
 18 and it can't exceed that .002.  
 19 **Q. And .002 is two-tenths of one percent;**  
 20 **isn't it?**  
 21 A. Yes.  
 22 **Q. Yeah. And then is that -- and then**  
 23 **within that levy limit, does your entire budget,**  
 24 **then, have to comport with the three percent**  
 25 **limit?**

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1 MR. CLARK: Much appreciate it.  
 2 (Witness excused.)  
 3 THE COURT: The next witness, please.  
 4 MR. CLARK: One little housekeeping  
 5 matter, if I could, Your Honor?  
 6 THE COURT: Yes.  
 7 MR. CLARK: The stipulation was that  
 8 certain affidavits could be admitted as actual  
 9 exhibits if the witnesses were here and ready for  
 10 cross-examination.  
 11 And with that regard, I would think  
 12 that 120, 121, 122 and 123 should be admitted.  
 13 That's Ms. Prisco, Ms. Anderson, Mr. Fry, and  
 14 Ms. Buxton, who is my next witness, incidentally.  
 15 MR. WOODARD: No objection, Your Honor.  
 16 THE COURT: All right. 120 through 123  
 17 offered, and admitted without objection.  
 18 MR. CLARK: Thank you.  
 19 (Exhibits 120 through 123 admitted into  
 20 evidence.)  
 21 MR. CLARK: And I would like to call  
 22 Susan Buxton, please.  
 23 THE COURT: Okay. Ms. Buxton, if  
 24 you'll come forward and be sworn, please.  
 25 SUSAN BUXTON,

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1 first duly sworn to tell the truth relating to  
2 said cause, testified as follows:  
3 THE CLERK: Please, have a seat.  
4 Please state your name, and spell your last name  
5 for the record.  
6 THE WITNESS: Susan Buxton,  
7 B-u-x-t-o-n.  
8 THE CLERK: Thank you.  
9 DIRECT EXAMINATION  
10 BY MR. CLARK:  
11 Q. Ms. Buxton, you did submit an affidavit  
12 in this case; correct?  
13 A. I did.  
14 Q. Okay. And just for a little  
15 background; your occupation is, what?  
16 A. I'm an attorney.  
17 Q. Okay. And you practice with Moore,  
18 Smith, Buxton & Turcke?  
19 A. That's correct.  
20 Q. All right. How long have you done  
21 that?  
22 A. Since December 1st, 1993.  
23 Q. What's your field of practice?  
24 A. Currently, my main field of practice is  
25 representing local government, and other

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1 the lawfulness of undertaking that debt.  
2 Q. So would it be fair to say, that to be  
3 a bond counsel, you have to have a considerable  
4 amount of expertise in municipal finance?  
5 A. You should.  
6 Q. And is part of your practice advising  
7 clients on municipal finance issues?  
8 A. It is.  
9 Q. Okay. When were you hired to represent  
10 Boise County, in this particular case?  
11 A. The -- I don't remember the exact date.  
12 But it was in about the second week of January,  
13 2011.  
14 Q. Okay. So you weren't involved with  
15 Boise County, as far as this matter is concerned,  
16 during the litigation, itself, the underlying  
17 litigation?  
18 A. I, personally, was not.  
19 Q. Okay. Did you examine the funds and  
20 the reports of Boise County?  
21 A. Only to the extent that I was asked,  
22 specifically, whether certain funds, what their  
23 limitation would be, with regard to options to  
24 pay a judgment. I did not undertake any type of  
25 audit, or did I undertake any type of accounting

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1 governmental clients, like cities, counties,  
2 sewer district, water district, cemetery  
3 district, ambulance districts, the Dairy  
4 Commission. We represent a myriad of districts,  
5 either as general counsel, or special counsel  
6 across the State of Idaho, and in Utah, and  
7 Montana.  
8 Q. Okay. Are you in the Red Book?  
9 A. I believe my name is listed in the  
10 National Association of Bond Lawyers, Red Book,  
11 that's correct.  
12 Q. And that was going to be my next  
13 question is, what is the Red Book?  
14 A. It lists bond counsel that are members  
15 of the National Association of Bond Lawyers that  
16 have -- and mainly, that is people who have  
17 signed bond opinions for bond issuances.  
18 Q. What does it mean to be a bond  
19 attorney? How do you define that?  
20 A. Bond counsel is somebody who comes in  
21 when bonds are being issued, or, like, if this  
22 taxes of bonds, where there is indebtedness  
23 that's being undertaken by governmental entity  
24 that the issuer, which is the entity, has its  
25 bond counsel, who would write an opinion as to

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1 function at any point.  
2 Q. Okay. What are -- just so we  
3 understand. What are restricted funds? What  
4 does the term mean?  
5 MR. HINDLEY: Objection; legal  
6 conclusion.  
7 THE COURT: Overruled.  
8 THE WITNESS: Restricted funds are a  
9 term of art that are defined both by -- that are  
10 defined by state law, but I will give you a  
11 general answer there for, since I don't have any  
12 books in front of me.  
13 Restricted funds are those that would  
14 have restriction, either some sort of a statutory  
15 restriction as to their use.  
16 Q. (BY MR. CLARK) Can a restricted fund  
17 be paid for another purpose not specified for  
18 that fund?  
19 A. Not unless there is an exemption in the  
20 law, or in how that fund was acquired.  
21 Q. Are there consequences to the County  
22 official, who does?  
23 A. There are civil -- there are civil  
24 penalties that could run to a personal liability  
25 for doing so. And there is also criminal

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30 (Pages 584 to 587)

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1 penalties for misappropriation of public funds  
 2 under certain circumstances.  
 3 **Q. Okay. Now, drawing your attention to**  
 4 **the meeting of January 26th, which is referred to**  
 5 **in your affidavit. Did you discuss with**  
 6 **Mr. Banducci, the issue of funds and restrictions**  
 7 **on those funds?**  
 8 A. We did, in general terms, during that  
 9 meeting.  
 10 **Q. Okay. Can you recall what you said?**  
 11 A. We specifically discussed the inability  
 12 of the County to pay the entire judgment that  
 13 they were -- they were there for settlement  
 14 purposes, to see if we come up with a mutually  
 15 agreed upon number, and then determine whether or  
 16 not the available funds that were unrestricted,  
 17 that the County could have access to, could be  
 18 paid, at least down in part, and then trying to  
 19 figure out, once we got a settlement amount, how  
 20 to pay the remainder, realizing we had issues  
 21 with regards to issues of long-term debt, under a  
 22 constitutional and state statutory limits in the  
 23 State of Idaho.  
 24 **Q. Okay. At that time, was there any,**  
 25 **what you would call, an adverse response to that**  
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1 about a number of items. On the 26th, I believe,  
 2 I had authority, along with my co-counsel, and  
 3 others at the meeting, that we could -- that we  
 4 thought that the County might look like we would  
 5 be able to come with around at least a million  
 6 dollars to Pat to pay. And at that 26th meeting,  
 7 I -- we were going to go back and continue  
 8 looking at the account.  
 9 And they'd explained on the 26th, that  
 10 we had a new clerk, and that we were looking at  
 11 new accounts. That the funds, themselves,  
 12 are -- not to confuse these terms -- the funds,  
 13 in order to see which one could, like I say,  
 14 either transfer or borrow from.  
 15 **Q. Now --**  
 16 A. And --  
 17 **Q. I'm sorry.**  
 18 A. So back on the 10th, I reported back to  
 19 Mr. Banducci about the progress that they  
 20 were -- that we were still having to spend a lot  
 21 of time looking through those funds, and that the  
 22 County Clerk had hired a professional accountant  
 23 to assist her in looking at those funds, to help  
 24 run down where we might be able to get additional  
 25 funds.  
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1 **statement?**  
 2 A. Not that I recall.  
 3 **Q. Okay. So then what did you do? Did**  
 4 **you go back, and look at those funds with the**  
 5 **County to try to make some sort of determination?**  
 6 A. During the meeting, we discussed that  
 7 we would go back and ask our clients to look at  
 8 their fund, determine under the state law,  
 9 whether there were funds available that they  
 10 could transfer from -- that were unrestricted,  
 11 such that they could transfer them, to be able to  
 12 pay the judgment.  
 13 We also discussed whether or not there  
 14 were funds that were restricted that may be able  
 15 to be transferred, and then paid back, you know,  
 16 basically, borrowing from them, under Title 31 of  
 17 the code.  
 18 **Q. Okay. Now, a lot of this material is**  
 19 **in your affidavit. And I'm not going to go back**  
 20 **and re-plow most of that.**  
 21 **But let's go now to February 10th. Was**  
 22 **there another meeting on February 10th?**  
 23 A. If I recollect correctly, and I could  
 24 be wrong on the dates, but I believe that was a  
 25 day that I talked to Mr. Banducci, and we talked  
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1 **Q. Now, as far as the February 10th**  
 2 **meeting is concerned, did you discuss tax**  
 3 **anticipation notes?**  
 4 A. I recall talking about those briefly.  
 5 One of the items that we talked about, that is a  
 6 number of different things, we could try to do to  
 7 give value to paying back the judgment. One of  
 8 them was the foregone amount, we had determined  
 9 at that time, to be, approximately, \$123,000.  
 10 The foregone amount would qualify under the tax  
 11 anticipation -- tax anticipation note process  
 12 that's under Idaho Code, because it is something  
 13 that's already -- that you could -- it's already  
 14 been -- you could basically take out of the  
 15 budget, and then be able to pay back within the  
 16 allotted period of time, and would meet levy  
 17 window that's there, too.  
 18 **Q. Is there a limit on how long a tax**  
 19 **anticipation note can be out there?**  
 20 A. It's one year.  
 21 **Q. No more?**  
 22 A. Well, there is a way to extend them.  
 23 And then if you extend the TAN -- I'm sorry.  
 24 I'll call it a TAN, tax anticipation note -- then  
 25 you have the ability to lend levy for it. That  
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1 there is no exemption or exception under that TAN  
 2 levy, you know, to go beyond the three percent  
 3 cap.  
 4 **Q. So the tax anticipation note, the TAN,  
 5 would be within the three percent requirement?**  
 6 A. So long as that amount meant that it  
 7 was -- that it met all the other requirements of  
 8 the tax anticipation note statute, not exceed 75  
 9 percent of the budgeted amount, and did not  
 10 exceed the three percent levy limit.  
 11 So in looking at the TAN, that TAN was  
 12 never going to be available to use for the entire  
 13 judgment. It was too large. It would not -- it  
 14 would violate the TAN statute.  
 15 **Q. How about registered warrants? You've  
 16 heard a lot of questions this morning about  
 17 registered warrants?**  
 18 A. Registered warrants carry the same  
 19 problems with regard to the amount, the high  
 20 amount of -- let's say, if the city -- excuse  
 21 me -- if the County was able to give some amount  
 22 of money against the judgment, you would still  
 23 have to make sure that those registered warrants  
 24 would be able to meet the levy limits, both where  
 25 specific levy -- the levy rate for the warrants,

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1 themselves, as well as the three percent cap.  
 2 And it did not appear that the cash  
 3 that the County was able to find, was going to be  
 4 able to get that number low enough to have  
 5 registered warrants be able to be utilized --  
 6 **Q. Okay.**  
 7 A. -- for the entire deficiency.  
 8 **Q. Now, you've also heard discussion about  
 9 the concept of judicial confirmation. What is  
 10 that?**  
 11 A. Under Idaho Code -- excuse me -- not  
 12 Idaho Code. Under the Idaho Constitution,  
 13 Article 8, Section 3, counties are limited for  
 14 their ability to enter into a long-term debt.  
 15 And a long-term debt would be something that  
 16 would not be paid within one year, or not within  
 17 one budget amount.  
 18 And in order to do that, you could get  
 19 two-thirds vote of the electorate at a special  
 20 election. And that you would be able to have a  
 21 bond issued. And that would extend. That would  
 22 be able to go above the three percent. Bear in  
 23 mind, though, that counties have under Title 31,  
 24 certain enumerated items that they can utilize a  
 25 bond for, even an election.

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1 And in our research, it does not appear  
 2 that judgments are within that. But that would  
 3 still be something that we were willing to try,  
 4 and look at to see if that was something we  
 5 should do, it would be an election.  
 6 What you can do, too, under Article 8,  
 7 Section 3, is there is a judicial confirmation  
 8 law that allows -- that has a process by which a  
 9 judge would hear a taxing district's argument  
 10 that undertaking a long-term debt, is ordinary,  
 11 and necessary; and therefore, should be allowed.  
 12 And that they could issue -- so they could have a  
 13 long-term debt.  
 14 The judicial confirmation law does not,  
 15 however, have a provision in it, that  
 16 issue -- that you will be able to issue a tax  
 17 levy, or levy the bond, and that you would be  
 18 able to have a debt. You would be able to -- in  
 19 other words, it's like a loan. And you would  
 20 have to pay that down, you know, yearly  
 21 installments. But it does not issue -- it does  
 22 not have bond issuance capabilities.  
 23 **Q. Okay. Does judicial confirmation  
 24 require compliance with the three percent?**  
 25 A. The judicial confirmation would -- if

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1 you were going to enter into a long-term debt,  
 2 pursuant to the judicial confirmation, you  
 3 usually would have to have some sort of a loan  
 4 document from a suitable lending institution  
 5 already available. And to pay that back, if you  
 6 are going to utilize -- like I said, you can  
 7 issue a bond. But if you are going to utilize a  
 8 payment plan that would utilize any add  
 9 (inaudible) taxes or something like that. You  
 10 could not use those -- you couldn't, say, raise  
 11 your taxes in order to pay that debt beyond that  
 12 three percent.  
 13 **Q. Okay. Now, at that meeting, I was  
 14 looking now at your affidavit on paragraph 8.  
 15 And there was discussion about the County, for  
 16 giving property taxes of other property owned by  
 17 Mr. Oaas and Mr. Laney; is that right?**  
 18 A. Correct. That was another option that  
 19 we talked about. I had understood that during  
 20 previous negotiations prior to the trial, one of  
 21 the things that was discussed is the forgiveness  
 22 of taxes that were due on other parcels that were  
 23 related to, or were somehow owned by Mr. Oaas and  
 24 Mr. Laney, or other principals of Alamar. We  
 25 discussed whether that could be an option.

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1 And in that discussion with  
 2 Mr. Banducci, and other discussions both with  
 3 Mr. Banducci, Mr. Woodard, Mr. Oaas, and  
 4 Mr. Laney, during this similar time frame, we  
 5 threw that out there. And there was no objection  
 6 to us looking at that. The limitation on that,  
 7 however, was that the County would only have the  
 8 ability to forgive the tax that the County had  
 9 levied or assessed, and not that any other taxing  
 10 district had, say, an ambulance district, or a  
 11 fire district, or something like that, or the  
 12 library district. They could -- the County has  
 13 no jurisdiction to forgive those levies.  
 14 **Q. Because those districts are independent**  
 15 **districts?**  
 16 A. That's correct.  
 17 **Q. Okay. When did you start working on**  
 18 **the February 22nd offer?**  
 19 A. We had -- I was -- I had been part of a  
 20 meeting with Mr. Banducci, Mr. Woodard, Mr. Oaas,  
 21 Mr. Laney, and several county officials, that I  
 22 think I list them all correctly in my affidavit,  
 23 on February 15th.  
 24 And on February 15th, the Alamar group  
 25 provided the County with an offer to settle the

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1 did have several meetings, as I say in my  
 2 affidavit, and it took it -- took us all the way  
 3 into -- until the morning of the 22nd, toward the  
 4 meeting, to provide information back to the  
 5 client, and have people review it, and be able to  
 6 give that to Alamar.  
 7 **Q. Were you one of the authors of Exhibit**  
 8 **204, which is the February 22nd offer?**  
 9 A. Yes.  
 10 **Q. Okay. And what was Alamar's response**  
 11 **to that offer?**  
 12 A. They rejected it.  
 13 **Q. Who rejected it?**  
 14 A. My impression, that the entire group  
 15 rejected it.  
 16 **Q. Okay. Do you recall Mr. Banducci**  
 17 **saying anything at that February 22nd meeting**  
 18 **about enough cash in the treasury?**  
 19 A. Yes. The first time that Mr. Banducci,  
 20 in my recollection, had stated that it would be  
 21 his intent, on behalf of his clients, to take the  
 22 cash of the County, and then discuss the Title  
 23 11, among other things, where he would be able to  
 24 try and attach property in order to execute on a  
 25 judgment.

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1 matter at \$5,000,000, and then ask that the  
 2 County respond to that, and then also provide  
 3 the -- the County also provide a way, an offer on  
 4 how to pay it by February 22nd.  
 5 **Q. Okay.**  
 6 A. So after the 15th, the County officials  
 7 went back, and worked back amongst themselves to  
 8 try to just, again, continue looking at their  
 9 funds, to determine which funds they felt that  
 10 they may have some excess funds that would be  
 11 available, to either -- to utilize on some of  
 12 those, maybe even borrow.  
 13 One of the issues of borrowing, and  
 14 then paying back under Title 31, Chapter 15,  
 15 would be that they would have to pay them back  
 16 over a period of time, and pay interest on them.  
 17 And so in the event of trying to pay the  
 18 judgment, there was a real issue as to whether or  
 19 not you could ever pay those funds back from, you  
 20 know, over time when you were providing the  
 21 maximum amount that you could possibly pay, to  
 22 payoff the rest of the judgment over time as  
 23 well.  
 24 So that was one of the things we were  
 25 looking at. So we started working on that. We

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1 **Q. Title 11 of the Idaho Code?**  
 2 A. That's correct.  
 3 **Q. Did that surprise you?**  
 4 A. Yes.  
 5 **Q. Did Mr. Banducci say how much of it he**  
 6 **thought was exempt?**  
 7 A. Mr. Banducci indicated that in his  
 8 review of the writ of execution statutes, that  
 9 would -- and I am not a collection lawyer, so I'm  
 10 not going to try and recite those. That under  
 11 his review of them, that the cash was not an  
 12 enumerated exemption under Title 11.  
 13 **Q. Any of it?**  
 14 A. That is what he said.  
 15 **Q. Okay. Did they make a counteroffer to**  
 16 **you, at that time?**  
 17 A. Not at that time.  
 18 **Q. Okay.**  
 19 A. That I can recollect.  
 20 **Q. Then did you receive the two letters of**  
 21 **February 24th?**  
 22 A. I did.  
 23 **Q. Was there any doubt in your mind, after**  
 24 **those two February 24th letters, at the February**  
 25 **22nd meeting, that they were going to do exactly**

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1 what they said they were?  
 2 A. No, especially, after receipt of the  
 3 February 24th letter.  
 4 **Q. Okay. Do you know whether or not they**  
 5 **actually applied for a writ of execution?**  
 6 A. I received a copy of it on February  
 7 28th.  
 8 **Q. One more question, Ms. Buxton. Are you**  
 9 **aware, from your knowledge of governmental law,**  
 10 **if there is any sort of public hearing**  
 11 **requirement before a Chapter 9 is filed?**  
 12 A. The term "public hearing" is a term of  
 13 art, and under Idaho Code, and so there is no  
 14 requirement for there to be a public hearing to  
 15 undertake an action pursuant to Chapter 9.  
 16 **Q. Are you aware of any prohibition about**  
 17 **it being discussed in an executive session?**  
 18 A. No, that would be part of a litigation  
 19 item that was -- that would have been required to  
 20 have been listed on an agenda posted by the  
 21 entity.  
 22 MR. CLARK: Subject to your affidavit,  
 23 ma'am, I have no further questions on direct.  
 24 THE COURT: Thank you, Mr. Clark.  
 25 Cross-examination?

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1 right?  
 2 **Q. Yes.**  
 3 A. Okay.  
 4 **Q. If you look at the fourth page, which**  
 5 **is now up on the screen. This is the financial**  
 6 **information, or part of the financial information**  
 7 **that was given to Alamar as part of that letter;**  
 8 **correct?**  
 9 A. It appears to be, yes.  
 10 **Q. Oh, all right. And then at the bottom**  
 11 **of the page, it says -- there is a line item that**  
 12 **says, "Cash balance ending." Do you see that?**  
 13 A. I do.  
 14 **Q. And the number is, roughly, 2.6 million**  
 15 **dollars, plus some change?**  
 16 MR. BANDUCCI: 6.2.  
 17 MR. HINDLEY: All right. My dyslexia  
 18 is kicking in --  
 19 **Q. (BY MR. HINDLEY) 6.2 million dollars.**  
 20 **Do you see that?**  
 21 A. I see that.  
 22 **Q. Now, is that figure more than the**  
 23 **judgment of \$4,000,000?**  
 24 A. It is.  
 25 **Q. Okay. Now, at that meeting of February**

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1 MR. HINDLEY: Yes, Your Honor.  
 2 CROSS-EXAMINATION  
 3 QUESTIONS BY MR. HINDLEY:  
 4 **Q. Good afternoon. My name is Mark**  
 5 **Hindley, and I represent Alamar. Just a couple**  
 6 **of things to follow-up on.**  
 7 **You said that you were one of the**  
 8 **authors of Exhibit No. 204, the settlement**  
 9 **letter. Were you the principal author?**  
 10 A. No, it's a collaboration of a number of  
 11 people.  
 12 **Q. Okay. You were just one of several,**  
 13 **then?**  
 14 A. That's correct.  
 15 **Q. And could you characterize one**  
 16 **individual as being the principal author?**  
 17 A. No.  
 18 **Q. Okay. Now, along with that letter,**  
 19 **let's pull up 204. I don't have it here. There**  
 20 **we go.**  
 21 A. Mr. Hindley, if you don't mind, I would  
 22 like to have the hard copy, so I can see the  
 23 whole thing. I'll grab it.  
 24 **Q. Sure.**  
 25 A. Just give me one second. 204; is that

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1 **22nd, Mr. Banducci asked about whether or not**  
 2 **that cash was exempt from execution under Idaho**  
 3 **law; isn't that right?**  
 4 A. He stated that it was his opinion, that  
 5 it was exempt.  
 6 **Q. Okay. And he said, it was his opinion**  
 7 **that it was -- that it was --**  
 8 A. That -- I'm sorry. I clarify. It was  
 9 Mr. Banducci's opinion, during that meeting, that  
 10 that amount of money was not exempt under Chapter  
 11 11 of the Idaho Code.  
 12 **Q. All right. And you disagree with him?**  
 13 A. I indicated to him that I did -- I  
 14 believe that there would be exceptions to that,  
 15 and that I would have to look into it.  
 16 **Q. Okay. And you told Mr. Banducci that**  
 17 **you would look into it; isn't that right? Just**  
 18 **like you just said?**  
 19 A. I said that I would have to look into  
 20 it.  
 21 **Q. Okay. And did Mr. Banducci request**  
 22 **that you provide Alamar with the conclusions of**  
 23 **you looking into it?**  
 24 A. I don't recollect him asking me to  
 25 undertake any research for Alamar.

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1 Q. Okay. But you said that -- you said  
 2 that you would look into it; right?  
 3 A. I did.  
 4 Q. And did you look into it?  
 5 A. I did.  
 6 Q. All right. And did you come to any  
 7 kind of conclusion?  
 8 A. I believe that Mr. Banducci's review of  
 9 the enumerated exemptions, does not include cash,  
 10 with regard to counties. But in looking at other  
 11 relevant parts of the Idaho Code, it does appear  
 12 that the County would be able to argue to a court  
 13 that the restricted nature of the funds would be  
 14 an exclusion for the County to have, to provide  
 15 these funds to pay the judgment.  
 16 Q. All right. And was that research that  
 17 you did just in the next couple of days or so,  
 18 after the February 22nd meeting?  
 19 A. I don't recollect of when I did that.  
 20 Q. So right after the February 22nd  
 21 meeting, you said, Mr. Banducci said, are they  
 22 exempt or not exempt? I don't think that they  
 23 are. And you said, I'm not quite sure. I'm  
 24 going to have to look into it. Right?  
 25 A. Right.

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1 Q. Okay. And then, how much later did you  
 2 come to the conclusions, that you just referenced  
 3 now? Was that in the next couple of days, or was  
 4 that sometime after?  
 5 A. My conclusions, really -- I confirmed  
 6 that I -- that -- I confirmed later that my  
 7 assumptions that there would be at least an  
 8 arguable way to seek at least -- what's the -- I  
 9 don't use the right term with regard to  
 10 collections, but I don't do collection law. So I  
 11 apologize for that.  
 12 Q. I understand.  
 13 A. With regard to Title 11 of Idaho Code,  
 14 and I've seen this -- I've done this before with  
 15 other local governmental entities when dealing  
 16 with attachments and garnishments. Where  
 17 somebody is trying to come after restricted funds  
 18 that are held by a public entity, that we have  
 19 filed, and been successful in seeing an exception  
 20 to use of those funds held by both entities.  
 21 Q. I'm just asking about timing.  
 22 A. And I told you, I don't recollect when  
 23 I came to a final conclusion about that.  
 24 Q. Was it any time before bankruptcy?  
 25 A. No.

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1 Q. Okay. Now, is there a reason why you  
 2 didn't look into it? I mean, obviously, the  
 3 22nd, that was a big issue on Mr. Banducci's  
 4 mind; right? I mean, you had that impression  
 5 that that was an issue that Alamar wanted  
 6 answered; correct?  
 7 A. That's correct.  
 8 Q. Okay. And was there any reason why you  
 9 didn't look into it, at any time, prior to the  
 10 petition date?  
 11 A. I have to go look at my calendar to  
 12 determine what I'm doing.  
 13 Q. All right. Fair enough. Fair enough.  
 14 But would you agree with me, that prior to the  
 15 bankruptcy filing, that you, in fact, did not get  
 16 back to Alamar with the conclusions of you  
 17 looking into this issue?  
 18 A. I would. I was not under the  
 19 impression that Mr. Banducci was requiring me to  
 20 answer his question, and do research with Alamar  
 21 on that point.  
 22 Q. I understand. But you've already  
 23 testified, that it was a question, that you said,  
 24 that you wanted to look into; right?  
 25 A. Correct.

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1 Q. Okay. And you knew that it was an  
 2 issue that Alamar and Mr. Banducci had; right?  
 3 A. They stated, it was.  
 4 Q. Okay. And it's also true that, I'm  
 5 assuming if you found authority to support your  
 6 position, that would be something that you would  
 7 have wanted to let them know, so that perhaps,  
 8 you know, further negotiations and discussions  
 9 could take place; accurate?  
 10 A. No.  
 11 Q. That's not accurate? You would not  
 12 have wanted them to find out what your  
 13 conclusions were, on that particular issue, about  
 14 whether or not the funds were exempt or not  
 15 exempt?  
 16 A. As of the 22nd, I was assuming that we  
 17 would have more conversations with Mr. Banducci  
 18 or Mr. Woodard, prior to them undertaking any  
 19 action, like filing a writ of execution.  
 20 Q. All right. So you would have thought  
 21 that during those negotiations, this question  
 22 that you were going to look into, could have been  
 23 addressed with them; is that fair?  
 24 A. I would have hoped to have had notice  
 25 that they were intending to file that, so we

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1 could have had at least one more opportunity to  
 2 discuss some options.  
 3 **Q. Fair enough. Let's take a look at 205.**  
 4 A. (Witness complying.)  
 5 **Q. I think this is a letter that was**  
 6 **written to you; correct, by Mr. Woodard?**  
 7 A. That's what it appears to be.  
 8 **Q. All right. And did you receive this**  
 9 **letter?**  
 10 A. I did.  
 11 **Q. All right. And if you take a look at**  
 12 **the second sentence, it says, "At the meeting,**  
 13 **you mentioned that you believe that certain funds**  
 14 **belonging to Boise County are exempt from**  
 15 **execution, because those funds have been**  
 16 **dedicated for certain uses. Our research has not**  
 17 **revealed any such exemptions. If you provide us**  
 18 **with such legal authority in the next week, we**  
 19 **will take it into consideration when undertaking**  
 20 **efforts to collect the amounts owing under the**  
 21 **judgment."**  
 22 **So you just mentioned that you thought**  
 23 **there would be another opportunity, perhaps, for**  
 24 **these issues to arise; right?**  
 25 A. I did say that.

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1 **Q. Sure, I can do that. The issue about**  
 2 **whether or not the County's funds were exempt**  
 3 **under Idaho law.**  
 4 MR. CLARK: Clarification, Your Honor.  
 5 Is he referring to fund, in the generic sense, or  
 6 the specific sense?  
 7 MR. HINDLEY: I'm talking about,  
 8 however, you guys were talking about it at that  
 9 meeting. You were the one who, on direct, I  
 10 believe, used the word "exempt." So I'm talking  
 11 about the term "exempt" as you talked about it,  
 12 and meant it at that meeting.  
 13 THE WITNESS: As I recollect, my direct  
 14 testimony -- my direct testimony talked about the  
 15 word exempt, and exemption being terms of art,  
 16 under Article 11 of -- excuse me -- Title 11, not  
 17 article, Idaho Code.  
 18 **Q. (BY MR. HINDLEY) The issue about**  
 19 **exemption came on the 22nd; correct?**  
 20 A. Correct.  
 21 **Q. You said you would look into it;**  
 22 **correct?**  
 23 A. Correct.  
 24 **Q. On the 24th, the issue was, again,**  
 25 **raised by Mr. Woodard in this letter, 205;**

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1 **Q. Okay. And was this letter another**  
 2 **opportunity? Did this open up the door for**  
 3 **another opportunity for that issue to, perhaps,**  
 4 **be addressed?**  
 5 A. Until you read the next paragraph.  
 6 **Q. Well, does that language, does it say,**  
 7 **if you provide us with such legal authority the**  
 8 **next week, we'll take it into consideration? It**  
 9 **does; right?**  
 10 A. I think the letter speaks for itself.  
 11 **Q. Okay. Well, I'm not interested in how**  
 12 **the letter speaks. I want to know what your**  
 13 **interpretation of it was. And did you understand**  
 14 **that they wanted to know from you, what your**  
 15 **understanding about exemption was?**  
 16 A. With this letter, we forwarded it to  
 17 our client. And I believe that I, as a lawyer,  
 18 would have to discuss with my client, whether  
 19 they wanted me to provide such a document to  
 20 Alamar.  
 21 **Q. All right. Fair enough. So the issue**  
 22 **came up on the 22nd, the meeting of the 22nd;**  
 23 **correct?**  
 24 A. You said, "the issue." I'm going to  
 25 require you to be a little more specific.

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1 **correct?**  
 2 A. Among other things that he raised in  
 3 the letter of the 24th --  
 4 **Q. Fair enough.**  
 5 A. -- that play into that.  
 6 **Q. And then it's fair to say, that prior**  
 7 **to bankruptcy, you or nobody else from the County**  
 8 **that you know of, got back to the Alamar,**  
 9 **regarding the issue of exemption. That which you**  
 10 **are going to look into; is that fair?**  
 11 A. It is -- I have no personal knowledge  
 12 of anybody from the County talking to Alamar  
 13 during that period.  
 14 **Q. All right. A couple of other**  
 15 **questions, and then we should be done.**  
 16 **You indicated that you are bond**  
 17 **counsel; is that right?**  
 18 A. No, I did not indicate that I am bond  
 19 counsel for the County.  
 20 **Q. Just a bond counsel. I thought that**  
 21 **was a terminology that was being used. That you**  
 22 **are a bond attorney?**  
 23 A. I have been bond counsel to entities.  
 24 **Q. Fair enough. Now, do you know whether**  
 25 **or not Idaho courts have recognized that the**

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