

EXHIBIT B

Part 1

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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 28, 2011

Boise, Idaho

Volume I - Pages 1 - 231

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 Tuesday, the 28th day of June, 2011, commencing at the hour of 9:30 a.m. in the above-entitled matter.

APPEARANCES:

For the Debtor:

D.B. CLARK LAW
By: D. Blair Clark, Esq.
1513 Tyrell Lane, Suite 130
Boise, ID 83706
Telephone: (208) 475-2050
Facsimile: (208) 475-2055
dbc@dbclarklaw.com

For Alamar Ranch, LLC, and YTC, LLC:

STOEL RIVES, LLP
By: Mark E. Hindley, Esq.
201 S. Main Street, Suite 1100
Salt Lake City, UT 84111
Telephone: (801) 328-3131
Facsimile: (801) 578-6999
mehindley@stoelrives.com

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APPEARANCES (continued):

For Alamar Ranch, LLC, and YTC, LLC:

BANDUCCI WOODARD SCHWARTZMAN, PLLC

By: Thomas A. Banducci, Esq.

Wade L. Woodard, Esq.

802 W. Bannock Street, Suite 500

Boise, ID 83702

Telephone: (208) 342-4411

Facsimile: (208) 342-4455

tbanducci@bswlawgroup.com

wwoodward@bwsllawgroup.com

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NO.	MARKED	ADMITTED
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<p>1 PROCEEDINGS 2 THE COURT: I would like the 3 appearances of all Counsel, please. 4 MR. CLARK: Yes, Blair Clark appearing 5 on behalf of the debtor. 6 MR. BANDUCCI: Thomas Banducci 7 appearing on behalf of Alamar. 8 MR. HINDLEY: Mark Hindley appearing on 9 behalf of Alamar. 10 MR. WOODARD: Wade Woodard on behalf of 11 Alamar. 12 THE COURT: Okay. Very well. 13 Preliminary matters. We've set up a hearing this 14 morning on motion for disqualification, also a 15 motion in limine to strike. 16 I want to hear those matters first, 17 unless they've been resolved by discussion of 18 Counsel. 19 MR. CLARK: They have not, Your Honor. 20 THE COURT: All right. Let's take up 21 the motion to disqualify. I'll listen to 22 argument. I'll allow you to remain seated, 23 Mr. Clark. I would like the argument to focus on 24 something that's not in the written papers, all 25 of which I've read.</p> <p style="text-align: right;">Page 5</p>	<p>1 likely potential witness. And in that case while 2 holding that he could not be a witness on the 3 topic at hand. The court specifically said, and 4 I'm quoting now from that case that, "Kempon, who 5 was the attorney, should have disqualified 6 himself so as to be available and testify and 7 dispute Morris' testimony about the stolen ring." 8 They quote, Rule 3.7 of the Washington rules, 9 which is identical to the Idaho rules. 10 This is all based on the Model Code of 11 Professional Responsibility. And the standard 12 was announced that the withdrawal should be done 13 whenever a lawyer learns, or is obvious that a 14 lawyer in his firm ought to be called as a 15 witness on behalf of the client. 16 Now, we don't think it goes quite that 17 far when you are talking about other people in 18 the firm, because the Idaho rule allows that. 19 But in this particular case, Mr. Woodard and 20 Mr. Banducci are both on Alamar's witness list. 21 Mr. Woodard is on our witness list. And under 22 the circumstances, and for all the reasons cited, 23 we think they not only should be disqualified as 24 participants in this hearing, but frankly, they 25 have acquired an interest in the litigation by</p> <p style="text-align: right;">Page 7</p>
<p>1 MR. CLARK: Very good, Your Honor. 2 Your Honor, I think probably the only thing 3 that's not in the written documentation is the 4 point about, that that rule only applies in a 5 trial, not a hearing. I would point out that 6 that is somewhat antagonistic to the bankruptcy 7 system, and it also appears to be contrary to 8 Rule 9014, which applies most of the provisions 9 of the adversary rules, which incorporate the 10 federal rules to contested matters, which this 11 is. 12 Secondly, while we certainly recognize 13 there is a split of authority on the subject, not 14 in bankruptcy cases, but in other cases pre-trial 15 matters in which Rule 3.7 does not apply, 16 usually, stop at the time that we're talking 17 about, something that involves the taking and 18 resolution of matters of evidence. 19 And one case that -- if I could have 20 just a moment -- brought this to the forefront is 21 a Ninth Circuit case that we found called <i>Manhalt</i> 22 <i>versus Reed</i>, and it's 847 Fed 2nd 576. And in 23 that case, it was a criminal case. But one of 24 the attorneys involvement as counsel of record 25 was also compromised, because he was also a</p> <p style="text-align: right;">Page 6</p>	<p>1 virtue of their contract. And they have actually 2 independent creditor status as opposed to simply 3 counsel. 4 Mr. Hindley can certainly handle this 5 matter quite adequately, Your Honor, and I think 6 that the claim of prejudice is something that 7 should be overlooked -- not overlooked, but 8 disregarded in this case, because I don't think 9 there is any prejudice. More than that, Your 10 Honor, I believe we've already briefed it. 11 THE COURT: Thank you. 12 Mr. Banducci? 13 MR. BANDUCCI: Your Honor, I'm more 14 comfortable standing, if that's all right with 15 the Court? 16 THE COURT: Actually, I prefer all 17 people to use the podium. I've given Mr. Clark a 18 dispensation for his argument. 19 MR. BANDUCCI: Thank you, Your Honor. 20 MR. CLARK: Which we appreciate, Your 21 Honor. 22 MR. BANDUCCI: May it please the Court, 23 Counsel. I appreciate the Court's direction that 24 we address issues, other than those addressed in 25 the brief. And I will keep my comments within</p> <p style="text-align: right;">Page 8</p>

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<p>1 the confines of that instruction. 2 What I would like to point out to the 3 Court, are a few other matters raised in the 4 comment of 3.7 of the rules of professional 5 conduct that I think bear mention here. 6 Specifically, the comments point out that there 7 are -- there is the primary purpose of Rule 3.6 8 is to protect the tribunal, and to protect the 9 opposing party. With respect to the tribunal, 10 the objection is, is the trier of fact going to 11 be confused? 12 With respect to opposing party the 13 question is, is the trier of fact going to be 14 confused; and therefore, some advantage given to 15 the side where the witness lawyer is representing 16 and testifying? 17 Whether the tribunal is likely to be 18 confused is based on various factors, including 19 the nature of the case, the importance of the 20 lawyer's testimony, and the likelihood that it 21 conflicts with other testimony. 22 My testimony, Mr. Woodard's testimony, 23 is set out in our affidavits. It is not 24 controversial, Your Honor. It describes our 25 participation, and discussions, and negotiations</p> <p style="text-align: right;">Page 9</p>	<p>1 time it filed for bankruptcy. Neither 2 Mr. Woodard's testimony, nor my testimony, 3 touches that issue in any way, shape, or form. 4 The case law says, that the motions to 5 disqualify should be reviewed with great 6 suspicion. And, in fact, the case cited in its 7 brief by Boise County states, "Because of the 8 potential for abuse, disqualification motions 9 should be subjected to particularly strict 10 judicial scrutiny." 11 We submit that there is no chance of 12 confusion by the trier of fact. And in that 13 respect then, what is the purpose of this motion? 14 There is no jury. What we have here is an 15 experienced, federal judge. This fact alone has 16 not been addressed by Boise County. 17 Boise County has not said how, you, 18 Your Honor, are going to be confused by the 19 affidavits put in direct testimony by Mr. Woodard 20 and myself, on behalf of our client, and our 21 performance as examining Counsel. Moreover, we 22 are not making closing arguments. Neither 23 Mr. Woodard, nor myself will be standing before 24 you, commenting on the evidence. The Court has 25 allowed post hearing brief on this. There is no</p> <p style="text-align: right;">Page 11</p>
<p>1 on behalf of our clients. Because that issue, 2 because the negotiations and discussions are 3 germane to this motion, it is our intention to 4 put that testimony in. However, I doubt there 5 will be any conflict, or much conflict, with 6 other witness testimony. 7 For example, Mr. Woodard has been 8 identified as a witness to simply testify that he 9 wrote a letter. And that there is a certain 10 statement in that letter, regarding intention to 11 execute on the funds, or cash of accounting. 12 That letter speaks for itself. There is no 13 debate as to whether or not that letter was sent. 14 It is not controversial. 15 Likewise, my involvement, and my 16 testimony will relate to conversations with 17 Counsel, negotiations after the judgment was 18 entered, and before the filing of the petition. 19 I have reviewed the affidavits of Boise 20 County witnesses. And with respect to the 21 substance of those communications, they 22 corroborate the testimony in my affidavit, rather 23 than contradict it. 24 The primary issue in this motion is 25 whether or not Boise County was solvent at the</p> <p style="text-align: right;">Page 10</p>	<p>1 opportunity for confusion or comment on the 2 evidence, by either Mr. Woodard or myself. 3 You have to ask yourself, what is the 4 harm to Boise County? The answer is, none. What 5 is available to them is a tactical advantage 6 created by removing Mr. Woodard and myself from 7 examining Boise County's witnesses. We know 8 Boise County. We've litigated with them for 9 three years. We know their systems. We know 10 their Commissioners. If, instead, Mr. Hindley is 11 required to examine all nine of these witnesses, 12 it will be a substantial prejudice to our client. 13 Last, but not least, Your Honor, as to 14 the conflict of interest, I believe that that is 15 a misstatement of the rule of conflict of 16 interest as it relates to 3.7. What 3.7 is 17 concerned about, is where a lawyer witness is 18 called, and in effect, his testimony is adverse, 19 or is impliedly adverse to the position of his 20 client. That is the conflict of interest that 21 we're worried about in this context. 22 Mr. Clark has suggested that our 23 contingency agreement violates Section 1.5. 24 That's just completely baseless. I would 25 represent to the Court that we had ethics</p> <p style="text-align: right;">Page 12</p>

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1 counsel, independent ethics counsel, pass on our
 2 representation agreements before we started using
 3 them at my law firm.
 4 In parting, Your Honor, it is quite
 5 important that Mr. Woodard and I be allowed to
 6 testify -- excuse me -- be allowed to examine.
 7 If this Court deems that there is some prejudice
 8 to the system, to the court, or a substantial
 9 prejudice that outweighs prejudice to this
 10 client, that would prevent us from acting in both
 11 capacities, we would withdraw as witnesses. I
 12 will be withdrawn as a witness in our case, or
 13 proffer testimony in chief.
 14 That leaves Mr. Woodard, who has been
 15 identified by Boise County. Now, Mr. Woodard has
 16 been identified by Boise County, because of his
 17 participation in correspondence, communications,
 18 et cetera, with Boise County. The same role
 19 played by Mr. Clark here. And we didn't identify
 20 Mr. Clark, because we didn't see the necessity
 21 for doing so.
 22 And I think that it would be highly
 23 inappropriate to disqualify Mr. Woodard from
 24 acting as counsel in this, because he has been
 25 designated by Boise County, as a witness, without

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1 any showing of absolute necessity.
 2 Thank you.
 3 THE COURT: Thank you.
 4 Mr. Clark, anything else?
 5 MR. CLARK: Yes, Your Honor. What I
 6 haven't seen, frankly, in many of the cases that
 7 I've looked at, and that were briefed, including
 8 the Hawaii case, including the Ninth Circuit
 9 case, including the New Jersey case that we've
 10 cited, is any indication of a no harm, no foul
 11 approach on following the rules.
 12 I know this Court most often does not
 13 follow a no harm, no foul rules with regard to
 14 the application of the rules. The rules are
 15 there. The IRPC has been adopted by this court
 16 of the local rules. It's not a new rule. The
 17 cases that construe Rule 3.7 go back 30 years and
 18 more. This is something that Alamar, frankly,
 19 should have received.
 20 And they talk about gainsmanship. I
 21 think one of the items of gainsmanship is the
 22 fact that ever since Mr. Hindley's involvement in
 23 this case, Mr. Banducci and Mr. Woodard's
 24 involvement has ceased, until it came up in the
 25 motion in limine. That's the first time that we

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1 ever had any indication that they would possibly
 2 want to use them as counsel, as opposed to
 3 witnesses.
 4 Why would I presume, Your Honor, that
 5 two experienced and ethical people would want to
 6 violate the ethical rules? That's not an
 7 assumption that I think I dare make.
 8 Secondly, I have questions for
 9 Mr. Woodard, more than just the involvement of
 10 these letters. I think that we're entitled to
 11 ask Mr. Woodard, for example, when a judgment is
 12 due? What is their intention with regard to
 13 execution? How do they handle the question of
 14 whether or not some of these quote/unquote
 15 "funds" are able to be levied. Because that goes
 16 not only to the issue of good faith, that goes to
 17 the issue of solvency, and that goes to the issue
 18 of preferential transfer. Mr. Woodard's
 19 testimony is not uncontroversial. Mr. Woodard's
 20 testimony is necessary.
 21 With regard to Mr. Banducci's proffer
 22 about having ethics counsel review his fee
 23 agreement, and that my argument on that is
 24 facetious. I simply look at the rule, itself.
 25 This Court has always held that there is a

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1 difference between a representative and a
 2 creditor. What we have here is not a lien. This
 3 Court has construed attorneys' liens questions
 4 before. The attorneys' fees liens questions have
 5 come up frequently.
 6 I have never seen a case involving
 7 absolute ownership, where the fee agreement,
 8 itself, is so specific. The title to that 40
 9 percent is vested already. I think that
 10 definitely poses substantial conflicts of
 11 interest. I think that certainly can sway their
 12 testimony. I think that this Court needs to
 13 enforce the rule as it's written.
 14 Mr. Hindley has been the one who has
 15 prepared this case, throughout, ever since Docket
 16 69 was filed. He's perfectly capable of doing
 17 it. If Mr. Banducci wants to withdraw as a
 18 witness, I guess that's his prerogative.
 19 Mr. Woodard, however, I'm not willing to do.
 20 THE COURT: Very well. I appreciate
 21 that the reply probably motivates a desire for
 22 sur-reply, but I'm going to obviate that, and
 23 rule on the matter.
 24 I am well aware of the Rule 3.7. I'm
 25 well aware that this Court has adopted under

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<p>1 9010.1 of the local rules, the application of the 2 IRPC to lawyers appearing before it, that are 3 admitted to the practice in this Court. 4 Two things guide my analysis of the 5 disqualification motion in my reading of the 6 voluminous briefing on the subject, in which I 7 appreciate having in advance, so that I can 8 evaluate your arguments in more detail. 9 One is the function of the rule. The 10 rule is designed to avoid the trier of fact being 11 confused when a lawyer is speaking as a 12 percipient fact witness, when a lawyer is 13 speaking in a role as an advocate to comment on 14 evidence, and suggest argument. 15 The case law, in my view, clearly 16 explains that for a bench trial, that the 17 magnitude of risk is minimized. I have every 18 reason to believe that I can avoid confusing 19 comments made by either Mr. Woodard or 20 Mr. Banducci, as a percipient fact witness, from 21 comment that might be otherwise inappropriate to 22 consider as evidence. 23 If I feel that the roles are 24 transgressed, I have ample recourse and remedy to 25 deal with the issue, should there be a problem.</p> <p style="text-align: right;">Page 17</p>	<p>1 anticipated. It probably was anticipated, and 2 evaluated. Certain lawyers might have approached 3 the issue differently, because there is always an 4 obligation of lawyers to evaluate their conduct 5 in light of the rules of professional conduct. 6 That being said, my role is different 7 here. And in a bench trial, I can deal with the 8 question presented under Rule 3.7. The motion to 9 disqualify for those reasons will be denied. 10 We'll turn next to the motion in 11 limine, and the motion to strike. 12 Mr. Hindley? 13 MR. HINDLEY: Thank you, Your Honor. 14 Your Honor, this is Alamar's motion to exclude 15 some of the statements that are in the County's 16 declarations on a variety of grounds: hearsay, 17 foundation, personal knowledge, speculation, and 18 legal conclusions. Excuse me. 19 THE COURT: Actually, preliminary 20 question concerning that aspect? 21 MR. HINDLEY: Yes, Your Honor. 22 THE COURT: The parties entered into a 23 stipulation, which indicated that affidavits may 24 be used to provide affirmative direct 25 testimonies, so long as the affiant is available</p> <p style="text-align: right;">Page 19</p>
<p>1 I believe that Boise County has the ability 2 through its cross-examination, and its ability as 3 trial counsel, to address issues that they 4 believe step too far. 5 The second aspect that leads me to this 6 idea is something that I find in the preamble to 7 the Idaho Rules of Professional Conduct. It 8 specifically warns that, quote, "The purpose of 9 the rules can be subverted when they are invoked 10 by opposing parties as procedural weapons. The 11 fact that a rule is a just basis for a lawyers 12 self assessment, or for sanctioning a lawyer 13 under administration of a disciplinary authority, 14 does not imply that an antagonist in a collateral 15 proceeding or transaction has standing to seek 16 enforcement of the rule." 17 That's not to say that it is 18 inappropriate for me to hear this matter, or for 19 Boise County to raise it. I don't question the 20 fact that there is an issue. I don't think that 21 the responses question the fact that there is an 22 issue worthy of discussion. In fact, it seems to 23 me that from the time the parties, at least on 24 June 14, identified witnesses, and probably 25 before, that this issue should have been</p> <p style="text-align: right;">Page 18</p>	<p>1 to be cross examined by opposing counsel; 2 correct? 3 MR. HINDLEY: That's correct, Your 4 Honor. 5 THE COURT: But that stipulation 6 further tries to limit that the affidavit would 7 be used to strike testimony subject to this 8 motion in limine? 9 MR. HINDLEY: That's correct, Your 10 Honor. 11 THE COURT: That suggests that there 12 are areas of the affiant's testimony that are 13 disputed. That dispute, either on the basis that 14 they are disputed factually by other witnesses 15 that will be testimony, or that you believe that 16 there may be evidentiary issues with a certain of 17 the statements? 18 MR. HINDLEY: At least evidentiary 19 issues with a certain of the statements, yes, 20 Your Honor. 21 THE COURT: I remember one that stood 22 out to me. It was a question of whether 23 Ms. Buxton's statement about her perception of 24 Mr. Banducci's confusion was within her capacity 25 to opine, or whether it should be accepted, and</p> <p style="text-align: right;">Page 20</p>

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1 that sort of thing. They kind of run the gamut.
2 MR. HINDLEY: They do run the gamut.
3 Your Honor, they are a variety. And, in
4 fact -- and maybe I can short circuit this.
5 Quite, frankly, I think, Your Honor, and I may be
6 on the exact same wave length. I think that we
7 do not need to take up the time to argue this
8 motion right now, but rather have the Court
9 evaluate the limine issues that we have raised as
10 the Court reviews the declarations, itself.
11 Otherwise, we are going to be bogged down in
12 looking at each one of the paragraphs
13 individually, to determine whether or not there
14 is hearsay, or whether or not it's speculation,
15 or whether or not it's anything else.
16 What I would be willing to do, and we'd
17 stipulate to, is this: The objections in the
18 limine motion be preserved. The Court can rule
19 on those, and look at those, and determine those
20 as the Court, itself, looks through the
21 declarations, itself. And that --
22 THE COURT: I think your mind reading,
23 Mr. Hindley, was partially accurate.
24 MR. HINDLEY: Partially accurate.
25 Great.

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1 THE COURT: I think it was partially
2 accurate in the sense that I didn't want to take
3 the next two to three hours to go through the
4 affidavits one by one, and identify and rule upon
5 each of the various objections after hearing
6 argument.
7 Where I think that I may go forward is
8 this: Rule 9014(d) of the Federal Rules of
9 Bankruptcy Procedure applies in contested
10 matters. And what it states is, that if there
11 are disputed issues of fact, the testimony is
12 taken the same way it is in an adversary
13 proceeding. It's before me, from the witness
14 stand, subject to objections and
15 cross-examination.
16 My inclination, and my probable ruling
17 would be this: If the parties agree that the
18 entirety of an affiant's affidavit can come in as
19 direct testimony, subject to cross-examination,
20 great. We just save the direct testimony. We'll
21 go straight to cross-examination.
22 MR. HINDLEY: And that's what the
23 courts have done.
24 THE COURT: And if the parties cannot
25 agree, because there are objections to that

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1 direct testimony, then there is no deal. 9014(d)
2 applies, and I will hear both direct and
3 cross-examination from the witness on the witness
4 stand. And that leaves the parties to evaluate
5 whether or not the objections are significant,
6 serious enough to deal with, whether they can be
7 adequately illuminated through cross-examination,
8 or whether you think they invade the direct
9 testimony to such a degree, that you want to get
10 the direct testimony in on the witness stand.
11 MR. HINDLEY: Your Honor, I believe
12 that both Mr. Blair Clark and I have already
13 agreed, that the affidavits and declarations can
14 come in as direct testimony. I certainly
15 wouldn't want to go against that stipulation. So
16 having said that, if the Court's desire, in that
17 regard then, is to the have them come in
18 directly, we're okay with that.
19 THE COURT: And then I think we have no
20 function to the motion in limine. We'll let you
21 argue in your closing argument that a particular
22 statement in an affidavit should be given little
23 weight, and particularly, true with
24 relevancy-style objections. And we'll go forward
25 with the cross-examination.

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1 MR. HINDLEY: Thank you, Your Honor.
2 THE COURT: Thank you.
3 MR. HINDLEY: Your Honor, just one
4 question. A couple of housekeeping matters.
5 THE COURT: Yes.
6 MR. HINDLEY: I guess more than one
7 question. First of all the debtor and Alamar
8 have certain document stipulations as to
9 evidence, and what can come in.
10 THE COURT: That was the next subject
11 on my list as well. Go ahead.
12 MR. HINDLEY: Okay. And I just want to
13 make sure that Mr. Clark and I are on the same
14 page, as far as what is coming in. The document
15 stipulations, as I have them, is that debtor's
16 marked Exhibits 101 through 107; 110 through 117;
17 and 127 through 140, are all coming in; is that
18 correct?
19 MR. CLARK: That's correct.
20 MR. HINDLEY: Okay. Your Honor, we
21 will stipulate that the Court can take judicial
22 notice of debtor's marked Exhibit No. 110, that's
23 the application for writ of attachments.
24 THE COURT: I'm sorry. I thought 110
25 was in your listing previously?

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1 MR. HINDLEY: Oh, yes. You know,
2 actually 110 was not in the original stipulation,
3 but we will agree. We do agree that 110 can come
4 in.
5 THE COURT: All right. Then 110 is
6 still on the list?
7 MR. HINDLEY: Yes.
8 THE COURT: All right. Very well.
9 MR. HINDLEY: Exhibit 118 and 119 can
10 come in to show that the plan, the schedules, and
11 disclosures that the debtor has filed in this
12 case, that they have actually been filed, but
13 rather than the substantive -- the substance of
14 what's in those, in those reports.
15 Essentially, we don't dispute that they
16 filed the plan, Your Honor. And if that's all
17 they are trying to do, we stipulate to that, and
18 that can come in for that purpose.
19 THE COURT: I love to entertain
20 conditional, limited, qualified admission of
21 documents. If a document is admitted into
22 evidence, and it's in evidence, and the parties
23 can argue at what length they feel it's
24 appropriate. But the idea that it's admitted for
25 a limited purpose is something that I'm not fond

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1 of. I don't understand the nature of the
2 argument. The debtor has filed what the debtor
3 has filed. It says what it says.
4 MR. HINDLEY: That's right.
5 THE COURT: I don't know what else it
6 might be argued to indicate, unless you and
7 Mr. Clark have some brewing argument that relates
8 to these two documents that I'm not aware of yet.
9 I would like to know.
10 MR. HINDLEY: No, Your Honor, I believe
11 that's the stipulation that we have agreed to is,
12 essentially, what the Judge just said. It is
13 what it is. It came in. But the substance of
14 what is in the actual -- in the disclosure
15 statements or the representations is not
16 evidence, in and of, itself. It is all hearsay.
17 So for the purpose.
18 THE COURT: It's an assertion by the
19 debtor in a disclosure statement. It's an
20 assertion of the debtor, of what it believes the
21 plan will provide.
22 MR. HINDLEY: Well, there are also
23 historical representations, and that's what I'm
24 concerned about. So we can play that one by ear,
25 I guess. And so if the Court would not entertain

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1 the stipulation by both of us for that limited
2 entry into evidence of those two exhibits, then I
3 would say, that he's going to have to put on the
4 case, and try to get those in as substantive
5 evidence, rather than just showing what has been
6 filed.
7 THE COURT: Mr. Clark, can you help
8 overcome this particular hurdle?
9 MR. CLARK: Your Honor, the purpose of
10 filing 108 and 109 --
11 MR. HINDLEY: 118 and 119?
12 MR. CLARK: I'm sorry.
13 MR. HINDLEY: 118 and 119?
14 MR. CLARK: Right -- was two fold. It
15 was simply to show that the County intended to
16 file a plan, and intended to resolve its debts,
17 which was part of the Vallejo standard. And
18 secondly, we were going to use, basically, the
19 discussion of the funds, through witnesses, to
20 show what the funds are, how they work, and so
21 forth.
22 MR. HINDLEY: And for that purpose,
23 Your Honor, we have no problem.
24 MR. CLARK: I mean, the disclosure
25 statement certainly hasn't been set for a

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1 disclosure statement hearing. There has been no
2 objection on it. I don't think it can be used
3 for any other purpose.
4 MR. HINDLEY: That's right.
5 THE COURT: Well, I understand the
6 nature of it. I don't think that there is really
7 a disagreement here between the parties. I will
8 allow 118 and 119 to be admitted.
9 MR. CLARK: Thank you, Your Honor.
10 (Exhibits 118 and 119 admitted into
11 evidence.)
12 MR. HINDLEY: Your Honor, Alamar has
13 marked Exhibits 200 through 209; 211 through 222;
14 and 224 through 246.
15 THE COURT: That would be the three
16 pieces of 224?
17 MR. HINDLEY: Yes.
18 THE COURT: They're what?
19 MR. HINDLEY: 246. Did I get that
20 right, Blair?
21 MR. CLARK: That's 247; wasn't it? 247
22 is your latest?
23 MR. HINDLEY: Right. And do we have a
24 stipulation on 246?
25 MR. CLARK: I believe.

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1 MR. HINDLEY: And then 247 has just
 2 been filed, and we have not had a chance to
 3 discuss that. And I'm assuming that there is not
 4 going to be a problem with that one as well.
 5 There is a stipulation on 247, as well, Your
 6 Honor.
 7 THE COURT: All right. Then if I
 8 understood your recitation correctly, it's
 9 everything except 210 and 223.
 10 MR. HINDLEY: That's right, Your Honor.
 11 THE COURT: Mr. Clark so agrees. They
 12 will all be admitted with the exception of 210
 13 and 223.
 14 (Exhibits 200 through 209, 211 through
 15 222, 224 through 227 admitted into evidence.)
 16 MR. CLARK: We will have one more
 17 exhibit tomorrow, Your Honor, that will come in
 18 through the testimony of the gentleman from the
 19 Tax Commission, Mr. Dornfest. I don't think
 20 that's going to be objectionable, but it hasn't
 21 been submitted yet.
 22 MR. HINDLEY: And, Your Honor, as well,
 23 we may have one or two as well.
 24 THE COURT: Well, I understand that
 25 rebuttal exhibits sometimes show up. But the

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1 parties can address it in the first instance.
 2 And if there are no objections, then just make
 3 sure that Ms. Patrick gets it, so that we can
 4 mark it, and keep a good record of what's been
 5 admitted, and what's not.
 6 All right. The documentary evidence
 7 has been addressed. The disqualification, and
 8 motion in limine, and to strike has been
 9 addressed.
 10 Are there other preliminary matters
 11 that we have not yet addressed?
 12 MR. HINDLEY: I believe the only other
 13 two preliminary matters, Your Honor, and one is
 14 witnesses. The Court has already addressed this,
 15 in some part. The parties have agreed that the
 16 stipulations have stipulated, the declarations of
 17 the declarants can't come in as direct evidence
 18 subject to the cross-examination.
 19 What I would propose, is that for those
 20 witnesses that are both on our list and on their
 21 list, that when, for example, I'm cross-examining
 22 one of their witnesses who is also on our list, I
 23 have leave to take my direct evidence as well, so
 24 I do not have to call that witness twice. I
 25 would like to cross-examine the witness. And

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1 then also, while that witness is still on the
 2 stand, conduct my direct.
 3 We've spoken, and I think both
 4 Mr. Clark and I agree, that that will save time
 5 and, hopefully, resources of the court. Is that
 6 acceptable?
 7 THE COURT: That's fine. If the
 8 parties can figure out how to do that, I'm not
 9 adverse to calling them once, rather than twice.
 10 MR. HINDLEY: Okay.
 11 THE COURT: Okay. Anything else?
 12 MR. CLARK: I don't believe so, Your
 13 Honor.
 14 MR. HINDLEY: The only other issue is
 15 whether or not the Court would like to hear
 16 opening statements?
 17 THE COURT: I don't believe they will
 18 be required, given the volume of the briefing on
 19 the subject.
 20 MR. HINDLEY: Thank you, Your Honor.
 21 THE COURT: Mr. Clark, do you have
 22 anything else, preliminarily, that we need to
 23 address?
 24 MR. CLARK: I do not, Your Honor.
 25 THE COURT: All right. My

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1 interpretation reading of the authorities,
 2 indicates that the debtor has the burden of proof
 3 on eligibility. The objection having been filed
 4 consistent with the Notice issued by the Court.
 5 Mr. Clark, you can proceed.
 6 MR. CLARK: Very good, Your Honor. I
 7 would like to call Mary Prisco, please.
 8 THE COURT: Ms. Prisco, if you'll come
 9 forward and be sworn.
 10 MARY PRISCO,
 11 first duly sworn to tell the truth relating to
 12 said cause, testified as follows:
 13 THE CLERK: Please state your name, and
 14 spell your last name for the record.
 15 THE WITNESS: My full name is Mary
 16 Theresa Prisco. My last name is spelled P, as in
 17 Paul, r-i-s-c-o.
 18 THE COURT: Mr. Clark.
 19 MR. CLARK: Thank you.
 20 DIRECT EXAMINATION
 21 BY MR. CLARK:
 22 **Q. Ms. Prisco, could you please tell us**
 23 **where you live?**
 24 A. My address is 640 Robie Creek Road,
 25 Boise, 83716.

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11 (Pages 29 to 32)

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1 **Q. Is that in Boise County?**
2 A. It is.
3 **Q. Okay. How long have you been a**
4 **resident of Boise County?**
5 A. I have lived in Boise County for nearly
6 14 years.
7 **Q. What is your current occupation?**
8 A. My current occupation is Clerk of the
9 District Court for Boise County.
10 **Q. Okay. What's the full title of that?**
11 A. Exactly that. It's an elected
12 position, and the title is Clerk of the District
13 Court.
14 **Q. Do you have other functions that go**
15 **with it?**
16 A. I have many. There is -- I'm clerk to
17 the district court. I'm clerk to the
18 Commissioners. I'm also the ex-fusio (phonetic)
19 auditor. I'm the recorder -- these are my
20 official duties, by the way. And also, I'm the
21 chief elections officer.
22 Would you like me to go into beyond the
23 official --
24 **Q. We're going to get there.**
25 A. Okay.

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1 operations for the Boise office for,
2 approximately, four years, almost five years.
3 Subsequent to that, I stayed home with
4 my children as a stay-at-home mom for almost six
5 years. And then I went back to work for a local
6 CPA firm, Pulliam & Associates for,
7 approximately, three years.
8 **Q. What type of accounting have you**
9 **performed in your professional practice?**
10 A. Primarily audit, although working with
11 a local firm, I did do -- I expanded upon that,
12 and also performed tax services, and other attest
13 services.
14 **Q. During your professional career, did**
15 **you ever have to perform any audit or accounting**
16 **functions with respect to municipal governments?**
17 A. I have had some experience with
18 municipal governments, a couple of cities, and
19 then as a -- on a volunteer basis I was the
20 treasurer for Wilderness Fire Protection
21 District, which is a district of Boise County,
22 which is \$100,000, or so, budget.
23 **Q. So when did you become the clerk for**
24 **Boise County?**
25 A. I was sworn into office on January

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1 **Q. What is your professional background?**
2 A. I worked for at the time, a big eight
3 accounting firm starting in 1986, Deloitte,
4 Haskins & Sales.
5 **Q. As what?**
6 A. As a CPA, accountant.
7 **Q. You are a CPA?**
8 A. I am a CPA.
9 **Q. And how long have you been a CPA?**
10 A. I was originally licensed in California
11 in the '90s. I don't recall what year. And I'm
12 currently licensed in Idaho.
13 **Q. Okay.**
14 A. So about 20 years.
15 **Q. Okay. And you say, you started working**
16 **for Deloitte?**
17 A. I started with Deloitte, Haskins &
18 Sales, which then became Deloitte & Touche. I
19 started in the Oakland, California office,
20 transferred to the Boise, Idaho office in 1990.
21 And I remained with Deloitte & Touche until 1997,
22 when I left as a senior audit manager, and went
23 to work for a start-up subsidiary company of
24 Deloitte & Touche, by the name of Resources
25 Connection. And I was their director of

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1 10th, 2011.
2 **Q. Is that an elected position?**
3 A. It is an elected position.
4 **Q. Can you basically describe, Ms. Prisco,**
5 **what are the duties of that office?**
6 A. Well, as I mentioned, there are
7 statutory duties that are lined out. That's
8 those five functions that I originally mentioned.
9 Also, in that role, in Boise County, I am the
10 risk manager. I'm also the human resource
11 manager, the payroll function falls beneath me.
12 I'm in charge of the building maintenance. I'm
13 also the chief budget officer, which I guess,
14 falls under the auditor classification. And
15 also -- I think, that probably sums it up.
16 **Q. How did you learn what those various**
17 **duties were?**
18 A. Well, the five statutory functions, I
19 researched prior to taking office. The other
20 aspects of the position, hands-on, day-to-day.
21 **Q. Did you take any courses when you were**
22 **elected?**
23 A. I did a number of courses. I took
24 three different governmental-related continuing
25 education courses in the fall; intermediate

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12 (Pages 33 to 36)

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1 government accounting, financial reporting for
 2 governments, and then the third one was with
 3 regards to the budgeting process for governments.
 4 I also attended the newly elected officials
 5 conference in November of 2010.
 6 **Q. What's that on?**
 7 A. That is an annual conference that they
 8 have -- well, in years of elections, whereby, all
 9 elected officials of the state are invited to
 10 attend, and it's an introduction course to the
 11 officials, in terms of what they should be
 12 looking to, in terms of their particular offices.
 13 **Q. Okay.**
 14 A. I also took a course through PRMA,
 15 which is Public Risk Management Association. I
 16 did take a day course, I believe, in October of
 17 2010 as well.
 18 **Q. So when you took office, which was**
 19 **January, what?**
 20 A. 10.
 21 **Q. 10. Okay. When did you start noticing**
 22 **issues with the County records?**
 23 A. I would say, pretty much immediately.
 24 The first week there, first week or two there,
 25 was a number of things that were noted.

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1 **Q. What did you notice?**
 2 A. There was -- one of the first things
 3 that came to my attention was that one of our
 4 funds, a sheriff's vessel fund, had a report
 5 prepared by my predecessor Constance Swearingen
 6 for the September 30th, 2010 year end. And in
 7 looking through the detail supporting that
 8 report, I noted that Ms. Swearingen had used
 9 financial data from our accounting system, of a
 10 date, of 9-30, 2008.
 11 **Q. Okay. And then what?**
 12 A. Additionally, there was a -- it became
 13 apparent when the road and bridge department came
 14 to a Commissioners' meeting and presented an
 15 annual report. So similar to the sheriff's
 16 vessel fund report, when that was presented, it
 17 was noted that the ending cash fund balance for
 18 road and bridge, according to the road and bridge
 19 department, was significantly different than what
 20 the accounting records of the County showed.
 21 That has been reconciled since, and the
 22 differences identified.
 23 But, essentially, I took from that,
 24 that there were no regular, or even annual
 25 reconciliations going on between the home office

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1 of the County and the different departments.
 2 **Q. Are those reconciliations important?**
 3 A. Very. I consider it an important
 4 internal control.
 5 **Q. Okay. Now, tell me, if you could, how**
 6 **your office interfaces with the treasurer's**
 7 **office?**
 8 A. Primarily it's -- our interaction is
 9 one of check -- was what's referred to as a check
 10 and balance. I call it internal controls. The
 11 treasurer's office is in charge of managing the
 12 cash and investments, and reconciling the bank
 13 accounts associated with those cash and
 14 investment accounts.
 15 On a monthly, quarterly, and then
 16 annually basis, the treasurer does perform those
 17 reconciliations, does provide a statement of
 18 treasurer's report, and then my office prepares
 19 an operation and funds summary report of which
 20 the two in total must agree.
 21 **Q. Okay. But as far as working on the**
 22 **budget, handling the budget, determining the**
 23 **budget, things like that, that's not her**
 24 **function, that's your function?**
 25 A. That's correct.

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1 **Q. All right. Did you find other issues,**
 2 **perhaps with indigency claims?**
 3 A. The indigency program was a very large
 4 item that was -- I believe, the first week that I
 5 was there in Boise County, in Idaho City, Mollie
 6 Thurman, who is our deputy clerk, that handles
 7 the indigent program now, did come and talk to me
 8 about the fact that during 2010, the indigency
 9 program was basically ignored, was not
 10 administered according to statute.
 11 **Q. Now, what is the indigency program?**
 12 **Let's see what that is.**
 13 A. The indigency program is statutorily
 14 set up to provide medical, and in some cases,
 15 non-medical aid to individuals who qualify
 16 because of their financial status to
 17 pay primarily health care claims.
 18 **Q. Do those claims come through your**
 19 **office?**
 20 A. They do.
 21 **Q. Okay. And what is the clerk's function**
 22 **with regard to those claims?**
 23 A. They -- there are specific timelines in
 24 terms of, once a claim is received, approving or
 25 denying that claim based on the information

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13 (Pages 37 to 40)

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1 obtained from the claimant. And then there are
 2 continuing timelines beyond that for the appeal
 3 process, denied, or the process to process the
 4 health insurance -- I mean -- excuse me, not the
 5 insurance -- but the health costs associated with
 6 that claim.

7 **Q. If the claims are processed, is there a
 8 provision which some other entity picks up part
 9 of this bill?**

10 A. Yes. The state maintains -- it's
 11 referred to as the CAT program, and it's
 12 catastrophic -- I can't remember the rest of the
 13 acronym. But the state has a CAT fund whereby
 14 the counties have, essentially, an insurance
 15 deductible of \$11,000 up to -- where the counties
 16 pay for medical costs on indigent claims up to
 17 \$11,000. Beyond that, then the claim then goes
 18 on to the state, and is administered by the
 19 state.

20 **Q. Through that CAT fund?**

21 A. Yes.

22 **Q. What happens if the claims are not
 23 properly processed?**

24 A. It exposes the -- in this case, Boise
 25 County to the full and total liability of the

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1 medical claims.

2 **Q. Without any reduction?**

3 A. Yes, no reduction.

4 **Q. Is there also a provision that if the
 5 claims are processed correctly, the amount that
 6 the County pays is governed by a different rate?**

7 A. Yes, there is. The rate that we start
 8 with is the rate charged by the health care
 9 provider, which, you know, the larger part of
 10 that is the two large hospitals in Boise. So
 11 that's the starting number. That's what
 12 originally is billed.

13 We then take that billing, and in
 14 detail, trace all procedures, or other health
 15 care items back to a Medicaid rate, which would
 16 typically result in a lesser billing for those
 17 services.

18 **Q. And if they are not processed
 19 correctly, you don't get the benefit of that?**

20 A. Not to my knowledge.

21 MR. HINDLEY: Objection, Your Honor,
 22 motion to strike; lack of foundation, lack of
 23 knowledge.

24 THE COURT: I'll let the answer stand.
 25 It's overruled.

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1 **Q. (BY MR. CLARK) When we're talking
 2 about these indigency claims, Ms. Prisco, how far
 3 do these go back?**

4 A. Most of -- well, all of 2010, and
 5 then --

6 **Q. All of 2010?**

7 A. All of 2010. So -- and in that
 8 terminology, I would say, a calendar year 2010
 9 versus fiscal year. Also, there were a few cases
 10 that were in the latter part of 2009.

11 **Q. Do you know how much money we're
 12 talking about?**

13 A. Our best estimate at this point in
 14 time, given what all of the cases that we're
 15 aware of is, approximately, 550,000.

16 **Q. You don't know how much?**

17 A. No, we don't.

18 **Q. Do you know who they are owed to?**

19 A. We know who the health care providers
 20 are, but we don't have totals yet. We've been
 21 working with the health care providers, asking
 22 them to provide us with the billing information,
 23 the amount by claimant. We have to do all of it
 24 by case, by each individual claimant's case. So
 25 that's the number that we've been trying to

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1 identify with the health care providers as to how
 2 much per claim is owed.

3 **Q. So those claims weren't paid when they
 4 were supposed to be?**

5 A. No, they were not.

6 **Q. Did you also find some tax issues?**

7 A. I've been made aware of two different
 8 tax situations. The first being, a letter that I
 9 received from the IRS, and responded to in, I
 10 believe, March -- the month of -- sometime during
 11 the month of March. And that was with regards to
 12 a payroll deposit that was made one day late. I
 13 believe that happened in May or June of 2010.

14 I did find correspondence between
 15 Ms. Swearingen and the IRS, where she was
 16 protesting the County's culpability in that. I
 17 did review the underlying documents. Clearly,
 18 Boise County was one day late in depositing their
 19 funds, and the IRS was due that money.

20 **Q. Did you find others?**

21 A. Yes. The last one was just recently.
 22 I received a phone call from an IRS
 23 representative for -- with regards to an item
 24 that was pulled for audit, either the end of
 25 2009, or the beginning of 2010. It was with

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14 (Pages 41 to 44)

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1 regards to a transaction, dated April 9th of
 2 2009, for a form 8038-GC, which is a form that is
 3 signed by a representative of a county, or the
 4 person receiving the financing.
 5 Basically, what that form does, is it
 6 establishes tax exempt status on interest
 7 earnings for any sort of financing transaction.
 8 So he had -- the representative from the IRS had
 9 been in, I don't know how many, but numerous
 10 conversations and communications with
 11 Ms. Swearingen, and she was unable to identify
 12 the underlying information for the audit
 13 selection that he had made. I was able to
 14 determine that it was a Pitney Bowes transaction,
 15 and that matter has been resolved.
 16 **Q. And that matter had been pending for a**
 17 **year?**
 18 A. At least a year.
 19 **Q. Did you also find problems with**
 20 **payroll?**
 21 A. Yes.
 22 **Q. What did you find?**
 23 A. It was brought to my attention in -- I
 24 think, March, possibly April -- there is a lot
 25 that has happened in the last six months. And so

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1 gross.
 2 **Q. You've now had the position now a**
 3 **little over six months. Do you think you've**
 4 **caught it all?**
 5 A. No, I do not.
 6 **Q. Are you still looking for things?**
 7 A. Yes. And I think I will be for, I
 8 think, probably another six months.
 9 **Q. Have you found discrepancies or errors**
 10 **with what's known as trust accounts?**
 11 A. Yes, in that, there are three trust
 12 accounts that have come to my attention. They
 13 are classified as trust accounts, but the actual
 14 use of those accounts, and what comes in and out
 15 of those accounts, is not -- does not meet the
 16 definition of a trust account.
 17 **Q. What is it, then?**
 18 A. They're -- one holds, primarily, has
 19 been a location for depositing payment in lieu of
 20 tax payments from the federal government. The
 21 other has been the location where, again,
 22 primarily interest earnings have been deposited.
 23 **Q. Do you know why they are referred to as**
 24 **trust funds?**
 25 A. I do not.

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1 it was brought to my attention by our payroll
 2 clerk, that we needed to amend payroll reports,
 3 that we had supported, to the Idaho Department of
 4 Labor.
 5 In looking through the work paper files
 6 for those amendments, which were, by the way, for
 7 2009, 2010, one of the issues that was requiring
 8 amendment was that my predecessor,
 9 Ms. Swearingen, had on those payroll reports
 10 included, not only employees of the County, but
 11 had included compensation information for all
 12 elected officials of the County. Which as an
 13 elected official, we are not an employee.
 14 And it also came to my attention in
 15 that particular case, that Ms. Swearingen had
 16 applied for unemployment benefits, and had
 17 received them for a short period of time. I'm
 18 not certain how long, prior to the error being
 19 caught.
 20 **Q. Even though she was an elected**
 21 **official?**
 22 A. Yes. There was one other error on
 23 those reports, and that was the gross wages that
 24 was reported was incorrect. I believe the Social
 25 Security wages were picked up, rather than the

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1 **Q. Okay. Have you also found**
 2 **discrepancies with your revenue?**
 3 A. Yes. In the most recent round of
 4 budgeting, we did determine that in the
 5 appropriated 2011 budget, classified as revenues,
 6 it did include an amount that was not revenue,
 7 but was an asset.
 8 **Q. And what asset was that?**
 9 A. That asset being previous years, and I
 10 don't know which years it would pertain to, but
 11 previous years, i.e., previous to fiscal year
 12 2011, payment in lieu of tax payments.
 13 **Q. What is a payment in lieu of tax**
 14 **payments?**
 15 A. Our County has, as many of the counties
 16 in Idaho do have, much of their property is
 17 federal government lands. And so payment in lieu
 18 of taxes is a way of compensating, since we do
 19 not receive property taxes on those -- that
 20 acreage, it is a way of compensating the counties
 21 for that land.
 22 **Q. So it's basically paid by the**
 23 **government?**
 24 A. Yes.
 25 **Q. Because otherwise, they wouldn't pay**

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15 (Pages 45 to 48)

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1 tax at all?
 2 A. Right.
 3 **Q. So if there is a question about a PILT**
 4 **is that what it is?**
 5 A. PILT, yes, that's what we refer to it
 6 as.
 7 **Q. When did you first become familiar with**
 8 **the Alamar judgment?**
 9 A. I believe it was the week following the
 10 judgment. I believe it was the week following
 11 the judgment, I attended -- as a citizen of Boise
 12 County, I attended a Commissioner meeting, where
 13 that judgment was briefly discussed.
 14 **Q. Okay. Are you familiar with the**
 15 **governmental accounting standards, G-A-S-B, GASB?**
 16 A. Somewhat.
 17 **Q. What is that?**
 18 A. It's basically the next level of
 19 Generally Accepted Accounting Principles, that
 20 deal specifically with governmental entities.
 21 And provides recording requirements for those
 22 governmental entities.
 23 **Q. And why is it necessary to have**
 24 **different standards for governmental entities?**
 25 A. Government entities are -- well, by the

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1 nature of fund accounting distinguishes them, but
 2 there are other reasons as well. They really
 3 lend themselves to a completely separate set of
 4 standards in terms of reporting.
 5 **Q. Okay. If I could have just a moment?**
 6 **(Pause in the proceeding.)**
 7 **Q. (BY MR. CLARK) Can you tell me what**
 8 **fund are?**
 9 A. I'm sorry. The question, again?
 10 **Q. Can you tell me what "funds,"**
 11 **f-u-n-d-s, what does that mean?**
 12 A. Well, a fund is designed to separate,
 13 and thus, is separately accounted for different
 14 functions, or I guess, that's how I would
 15 describe it, different functions. Sometimes they
 16 are statutorily required. Sometimes they are set
 17 at so that, from an accounting standpoint, you
 18 can provide -- contract and provide information
 19 for each individual fund, itself.
 20 **Q. So are funds, bank accounts?**
 21 A. No.
 22 **Q. They are not?**
 23 A. No.
 24 **Q. What are they?**
 25 A. We account for them each individually,

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1 and they do have a cash -- and by the way, we are
 2 on a cash method of accounting. So they do have
 3 a cash fund balance associated with them through
 4 the accounting system, but it's not an account.
 5 It's not a bank account. I'm assuming, you are
 6 referring to a bank account?
 7 **Q. Right. If I went down and looked at**
 8 **your bank accounts, would I find a road and**
 9 **bridge account?**
 10 A. No, you would not.
 11 **Q. Would I find a general account?**
 12 A. You would find -- there are general
 13 sweep accounts.
 14 **Q. Are they tied into funds?**
 15 A. No.
 16 **Q. They are separate?**
 17 A. They are separate.
 18 **Q. Separate concepts?**
 19 A. Two different things.
 20 **Q. Okay. And so does Boise County have**
 21 **various funds set up?**
 22 A. We have a number of funds.
 23 **Q. Okay. Let's go through them a little**
 24 **bit. Do you have a road and bridge fund?**
 25 A. We have a road and bridge fund.

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1 **Q. What is that?**
 2 A. The road and bridge fund is responsible
 3 for all road maintenance, as well as capital
 4 projects that relate to road or bridge.
 5 **Q. Where does the money come from?**
 6 A. The money -- the funding source for
 7 road and bridge is through the highway users
 8 allocation, and the SRS, which is the rural
 9 school rules, or sometimes it's referred to as
 10 Craig Wide funding.
 11 **Q. It doesn't come from property tax?**
 12 A. No, none of it.
 13 **Q. Okay. Do you have a justice fund?**
 14 A. We do. We have a justice fund.
 15 **Q. What is a justice fund?**
 16 A. The justice fund encompasses the
 17 sheriff's department, as well as the prosecuting
 18 attorney's office, as well as the -- it's
 19 referred to in our system, as a community
 20 justice. That really provides services to
 21 juveniles. That's the primary purpose of that.
 22 **Q. Do you have a solid waste fund?**
 23 A. Excuse me, Mr. Clark. It also has
 24 dispatch.
 25 **Q. It also has what?**

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16 (Pages 49 to 52)

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1 A. Dispatch within the justice fund.
2 **Q. Is that also part of the 911 system?**
3 A. The E 911 is a separate fund.
4 **Q. It's a separate fund altogether?**
5 A. Yes.
6 **Q. And do you have a solid waste fund?**
7 A. Yes, we do.
8 **Q. And where does the money come from for**
9 **that?**
10 A. The solid waste fund uses a fee system.
11 It's similar to property tax, but it is not
12 property tax. It is a fee that is assessed to
13 the citizens. And some of it -- and, actually,
14 some of the solid waste funding, not a large
15 portion of it, but some of it does come through
16 fees charged at the different sites --
17 **Q. Okay.**
18 A. -- waste sites.
19 **Q. Does it also have money for closure of**
20 **prior landfills?**
21 A. Yes, it does. We have a -- the Warm
22 Springs landfill site, which is just outside of
23 Idaho City, has been closed -- I don't recall
24 what year it was closed. But we do have closure
25 costs, post closure costs associated with that.

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1 **Q. How about the indigency fund? You said**
2 **you had one of those?**
3 A. Yes.
4 **Q. And is that the purpose of it, to pay**
5 **the claims that you've talked about?**
6 A. Yes.
7 **Q. A noxious weed fund?**
8 A. There is a noxious weed fund, and that
9 is, as it states, it's a eradication of noxious
10 weeds. The funding for that comes from the
11 federal government.
12 **Q. And you have a district court fund?**
13 A. Yes, the district court fund holds all
14 the operations of the district court, and all the
15 services that are provided through the district
16 court.
17 **Q. Then a community college fund. What's**
18 **that?**
19 A. The junior college fund is funded by
20 liquor tax, and it's set up to provide tuition
21 reimbursement to Boise County residents, who
22 attend, I think, there is three or four different
23 colleges. The largest, being the College of
24 Western Idaho. But it provides reimbursement on
25 their tuition up to a certain amount, for a

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1 certain period of time; undergraduate only.
2 **Q. And then you have a tort fund?**
3 A. The tort fund is set up -- well, it
4 carries two items: insurance coverage, so
5 through our main insurance, as well as our
6 workers' comp insurance, as well as our legal
7 fees associated with all of this.
8 **Q. Then you have a revaluation fund?**
9 A. Right, the revaluation fund is to
10 accommodate the statutory requirement, I believe,
11 it's every five years. There must be a full
12 assessment -- reassessment of values within the
13 County.
14 **Q. And that's done by the assessor's**
15 **office?**
16 A. Yes, it is. It falls under his office.
17 **Q. You've already talked, I believe, about**
18 **the sheriff's vessel fund. What is that?**
19 A. The sheriff's vessel fund is set
20 up -- it receives funding from the parks and rec
21 department of the state, as well as pass through
22 boating licensure fees. That, it has a specific
23 purpose, and that is to build a building to house
24 our watercraft; our watercraft equipment.
25 **Q. And you have an ambulance service fund?**

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1 A. Yes, that's East Boise County Ambulance
2 District. It's important --
3 **Q. So that's a separate district, itself?**
4 A. Yes, it is. It has its own taxing
5 authority. The County does -- what the county
6 provides to the EBCA District is administrative
7 assistance. So in terms of processing vouchers
8 and checks, we do that for them.
9 **Q. Where is the money kept?**
10 A. It's part of the total accounts. It's
11 separately accounted for as a fund within the
12 County.
13 **Q. Right.**
14 A. And then it's part of the total of the
15 cash accounts.
16 **Q. It's not set up separately or anything?**
17 A. No.
18 **Q. Okay.**
19 A. Well, I mean, only separate in terms of
20 a fund.
21 **Q. How about the snow groomers?**
22 A. There are two snow groomer funds; one
23 in Idaho City, one in Garden Valley. They are
24 smaller funds, and they are set up specifically
25 to provide grooming activities for snowmobilers.

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17 (Pages 53 to 56)

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1 **Q. Where does the money come from for that**
2 **fund?**
3 A. Those, I believe, come from -- I think
4 that's from the parks and rec as well.
5 **Q. So most of these special funds that**
6 **you've described have sources from, other than**
7 **property tax; would that be correct?**
8 A. Yes.
9 **Q. Okay.**
10 A. The property tax -- I don't know if I
11 could give you a total list. But the property
12 tax does fund a substantial portion of the
13 justice fund.
14 **Q. Okay.**
15 A. And a good portion of the district
16 court.
17 **Q. Okay. So the property taxes go for the**
18 **justice fund?**
19 A. District court.
20 **Q. And the district court fund. How about**
21 **the indigency fund?**
22 A. The indigent fund, the tort fund.
23 **Q. The 911 fund?**
24 A. No, that actually is through the
25 telephone surcharge.

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1 **Q. The weed fund?**
2 A. That is -- there is no property taxes
3 that go there.
4 **Q. Okay. The community college fund?**
5 A. No.
6 **Q. The torts fund?**
7 A. The tort fund, yes.
8 **Q. How about the revaluation?**
9 A. Yes.
10 **Q. Water vessel?**
11 A. No.
12 **Q. And then do you have a general fund?**
13 **And --**
14 A. Yes. And I was just going to add, that
15 the general fund, which includes my office, the
16 clerk's office, the assessor's office, the
17 treasurer's office, planning and zoning
18 department, emergency management services
19 department, those are all included in that fund.
20 And so that fund does receive property taxes to
21 support those operations.
22 **Q. Okay. Do you have an understanding as**
23 **to whether or not any of these designated funds**
24 **are usable by the County for any other purpose**
25 **than that for which they are designated?**

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1 MR. HINDLEY: Objection, Your Honor. A
2 legal conclusion; foundation.
3 THE COURT: Overruled.
4 If you have an understanding?
5 THE WITNESS: No.
6 **Q. (BY MR. CLARK) They cannot be?**
7 A. They cannot be.
8 **Q. The general fund can?**
9 A. The general fund can. I mean, by its
10 description, I think we get there.
11 **Q. Okay. How often does the County**
12 **receive property taxes?**
13 A. It's billed once per year. But in
14 terms of when the receipts come in, that's two
15 periods. Generally, it hits the records,
16 generally, in January and July. The billing
17 periods are -- the taxes are due by November 20th
18 and June 20th.
19 **Q. Okay. Now, can you describe to me what**
20 **your understanding is with the County budgeting**
21 **process?**
22 THE COURT: Before we wander into that
23 subject, let's take a mid morning recess, and
24 give everyone a break, Mr. Clark.
25 MR. CLARK: That sounds fine, Your

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1 Honor. Thank you.
2 THE CLERK: All rise, please.
3 (A recess was had.)
4 THE COURT: Mr. Clark.
5 MR. CLARK: Thank you, Your Honor.
6 **Q. (BY MR. CLARK) Mary, just before the**
7 **break, we were talking about the budget process.**
8 **Can you basically tell me your understanding of**
9 **how the budget works?**
10 A. I can. I would like to preface it by
11 saying, I have not actually gone through the
12 budget process before. And I would like to also
13 say, that there is a statutory time frame
14 associated with the budget process.
15 **Q. Okay.**
16 A. That begins in April, whereby, the
17 districts of the county are required to submit to
18 the county offices, the date, time, and location
19 for the individual districts public hearing for
20 their budgets. And then it continues on from
21 there.
22 During May, the first two weeks of May,
23 the departments, including department heads and
24 elected officials, are required to submit their
25 revenue and expense budget worksheets to the

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18 (Pages 57 to 60)

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1 clerk's office. And then we have planned for
 2 meetings between the commission, and the clerk,
 3 and the department heads, to discuss those
 4 budgets, the last two weeks of July.
 5 **Q. Okay.**
 6 A. Our public hearing is set for -- for
 7 the County is set for August. We do have to have
 8 the budget hearing finalized; therefore, our
 9 budget finalized, on or before the Tuesday,
 10 following the first Monday of September.
 11 **Q. So, essentially, the Tuesday after**
 12 **Labor Day?**
 13 A. Yeah, I think that's how it turns out.
 14 I did look at the calendar, but I don't recall
 15 exactly how it fell. So that's the overall
 16 process in terms of the statutory requirements.
 17 There is some other requirements in
 18 terms of providing assessment values to the
 19 districts, and that sort of thing, that I've left
 20 out. But overall, it's a matter of working with
 21 the department heads, and the elected officials,
 22 and coming to a final decision on the budget as
 23 it will be appropriated.
 24 Also, included in that process, is
 25 communications from the clerk's office to the

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1 department with regards to more of what I would
 2 call, the more administrative pieces of the
 3 budget. In other words, you know, what is
 4 happening with health insurance, any
 5 contracts -- all our contracts need to be
 6 renewed, annually. So to the extent there are
 7 changes that need to be made with those, there is
 8 communication back and forth between the clerk's
 9 office and the departments.
 10 **Q. And you are basically doing part of**
 11 **that now; are you not?**
 12 A. We've done a great deal of it, because
 13 of the bankruptcy process. So what we've done
 14 thus far -- would you like me to explain that?
 15 **Q. Please.**
 16 A. What we've done this far is, we've
 17 obtained the worksheets from the departments and
 18 the elected officials. And I've had in depth
 19 discussions with each of them, both regarding the
 20 fiscal year as 2011, as well as anything that
 21 relates then into 2012.
 22 What I've done for 2011 is, we took the
 23 year-to-date numbers through April 30th, and the
 24 report that we used is -- that I used for this
 25 process is expenditures; expenditures against

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1 budget to date.
 2 And so for 2011, we looked at, for any
 3 material accounts, we looked at whether or not
 4 they were already in a negative budget remaining
 5 position, or would likely be in a negative
 6 position in the next four, five months.
 7 We also looked at the time
 8 elapsed -- the time elapsed versus the percentage
 9 of expenses incurred to date, and any material
 10 differences, either less than or greater than
 11 that time elapsed percentage, we also examined
 12 and discussed with the department heads and the
 13 elected officials.
 14 We also discussed timing. The majority
 15 of expenses are expended ratably over the year.
 16 On the revenue side, that's not necessarily the
 17 case. Usually, the revenue sources come in
 18 either quarterly, or semi-annually with regards
 19 to property taxes, et cetera, et cetera.
 20 Then with 2012, we took the worksheets
 21 from the departments and the elected officials,
 22 and examined those in relation to 2011, looked
 23 through the individual accounts, and asked
 24 additional questions, if need be. And also, put
 25 that information into a monthly format, rather

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1 than just an annual format. And that's mostly
 2 based on the timing of expenditures and revenues
 3 that occurred in 2011 and in 2010.
 4 **Q. It's a fairly complicated system?**
 5 A. Yes.
 6 **Q. So as far as the Alamar judgment is**
 7 **concerned, were you involved on behalf of the**
 8 **County as one of the people trying to work out**
 9 **how to handle this?**
 10 A. Most, certainly.
 11 **Q. Okay. And how big is the Alamar**
 12 **judgment?**
 13 A. The judgment, itself, is \$4,000,000.
 14 **Q. Okay. You had more than that in cash;**
 15 **didn't you?**
 16 A. Yes, in total. Yes.
 17 **Q. Why didn't you just pay it?**
 18 A. Well, because in order to pay that, I
 19 would, as the clerk, be responsible for
 20 determining what funds those amounts would be
 21 coming out of, or expended to, if you'd like.
 22 And that, therein lies the problem.
 23 **Q. In what respect?**
 24 A. Well, our two largest funds are road
 25 and bridge, and solid waste, neither of which, we

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19 (Pages 61 to 64)

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1 have access to. I mean, the funding for road and
 2 bridge, for example, those federal funds
 3 have -- they must be used for the purposes of
 4 road and bridge; the road and bridge department.
 5 **Q. Those are federal funds?**
 6 A. Those are federal funds.
 7 **Q. Okay. How about solid waste?**
 8 A. Solid waste is an enterprise fund, and
 9 so it -- though it has a different source, it's
 10 still identified for a specific use; and
 11 therefore, an issue in terms of taking money out
 12 of there.
 13 **Q. So what did you -- let me rephrase it.**
 14 **Who was primarily involved, as far as**
 15 **the County is concerned, in attempting to resolve**
 16 **the Alamar judgment prior to the time we filed**
 17 **the Chapter 9?**
 18 A. All of the Commissioners, all three
 19 Commissioners; and myself, as the clerk; and then
 20 Cherese McLain, our prosecuting attorney was also
 21 involved in that process.
 22 **Q. Okay. And what did you look at?**
 23 A. Initially, I think we're talking about
 24 here?
 25 **Q. Yes.**

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1 A. Well, initially, we looked at what
 2 manner we might be able to -- since we could not
 3 pay for it directly, currently, out of the cash
 4 fund balance that we had, we looked at what other
 5 options were out there for us. Basically,
 6 long-term financing is what it came down to.
 7 We looked at the possibility of a
 8 promissory note. We looked at bonding. We
 9 looked at property tax increases, of which, we
 10 are limited on.
 11 **Q. When you say, long-term debt, what are**
 12 **you talking about with long-term debt?**
 13 A. Well, my definition of "long-term debt"
 14 is any financing arrangement greater than one
 15 year.
 16 **Q. Okay. What is your understanding of**
 17 **what is required to incur long-term debt for a**
 18 **county?**
 19 MR. HINDLEY: Objection; legal
 20 conclusion, Your Honor.
 21 THE COURT: I'm going to overrule the
 22 legal conclusion objection. I'm going to let the
 23 witness testify as to her understanding. You can
 24 plumb it on cross-examination.
 25 However, I would like a little

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1 foundation, because I'm not sure that I had heard
 2 anything in your earlier inquiry, Mr. Clark,
 3 concerning her background and her review that
 4 leads to that question.
 5 MR. CLARK: Very good, Your Honor.
 6 THE COURT: So lay some more
 7 foundation, so that we all have an understanding.
 8 MR. CLARK: Okay. I will do that, Your
 9 Honor.
 10 THE COURT: All right.
 11 **Q. (BY MR. CLARK) Have you had occasion**
 12 **to review and determine the requirements, the**
 13 **statutory requirements for long-term debt?**
 14 A. Yes, we've had -- I was involved in
 15 numerous, and I really could not tell you, how
 16 many meetings, executive session meetings with
 17 legal counsel, and learning about what we could,
 18 or could not do, legally.
 19 **Q. Did you also review the code, yourself?**
 20 A. I did with regards to the three percent
 21 cap on property tax.
 22 **Q. Let's talk about that for a second,**
 23 **first. What is the three percent you are talking**
 24 **about?**
 25 A. There is a limit of three percent on

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1 the property tax budget amount, which provides
 2 that. And this also is for districts as well.
 3 As governmental entities, county, or districts,
 4 we cannot raise our property tax budgeted amount
 5 by greater than three percent any given year.
 6 **Q. And you've read that code section,**
 7 **yourself?**
 8 A. Yes.
 9 **Q. And what -- do you have an**
 10 **understanding of whether or not the County can**
 11 **simply go out and sign a long-term debt contract?**
 12 A. My understanding of long-term debt
 13 contracts -- and I've seen this in the contracts
 14 that we actually have, they are all either
 15 renewable annually, required to be renewed
 16 annually, and/or with some of the equipment
 17 financing, they are not -- they are leases. They
 18 are not purchased. They are not capital leases.
 19 **Q. Now, do you have the exhibits in front**
 20 **of you?**
 21 A. I have them right here (indicating).
 22 **Q. Okay. Do you have Exhibit 101 in front**
 23 **of you?**
 24 A. I do.
 25 **Q. What is that?**

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20 (Pages 65 to 68)

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1 A. This is the summary level fiscal year
2 2011. It's appropriated budget for Boise County.
3 **Q. And where did you get that document?**
4 A. Well, this document was provided to me
5 in my budget book that was compiled by my deputy
6 clerk, Kristen Vadross.
7 **Q. And she works for you?**
8 A. Yes, she does.
9 **Q. Okay. And is this the budget that was**
10 **approved -- accepted?**
11 A. Yes, it is.
12 **Q. And this is the type of document you**
13 **are working on fiscal year 2011, or 2012?**
14 A. For 2012.
15 **Q. Okay.**
16 A. This is -- yes, it is. But I would
17 just say that, the level we're working at is a
18 much more detailed level than this provides.
19 This document, that exhibit -- that 101 is the
20 information that was published in the Idaho World
21 as according to statutory law. That's -- this is
22 what is published.
23 **Q. And this breaks out, does it not, the**
24 **budget items for each department?**
25 A. It does.

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1 **Q. Does it also review and discuss the**
2 **various funds?**
3 A. It is set up by fund.
4 **Q. It is set up by fund?**
5 A. Yes.
6 **Q. Okay. Now, let's talk about Exhibit**
7 **102.**
8 A. All right.
9 **Q. You've got that?**
10 A. Yep.
11 **Q. Okay. What is that?**
12 A. This is the cash flow -- well, it's
13 entitled, "Cash Flow Summary." I have come to
14 call it a financial model for fiscal year 2012.
15 So it's our projection, by month, for each
16 individual fund, and in total for the County, for
17 fiscal year 2012.
18 **Q. And that starts in October of 2011.**
19 **Why is that?**
20 A. Our year end is September 30th of each
21 year.
22 **Q. Okay. Now, is that broken out by fund?**
23 A. It is. So I think the way it's
24 provided in the exhibit -- it is, in fact, an
25 Excel spreadsheet. But on the exhibit,

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1 it's -- each page is --
2 **Q. Right.**
3 A. -- by fund.
4 **Q. So like page 1, is general?**
5 A. Yes.
6 **Q. Page 2 is road and bridge?**
7 A. Yes.
8 **Q. Okay. And each page is identified as**
9 **to what fund we're referring to; does it not?**
10 A. That's correct.
11 **Q. And those are the funds that we've**
12 **discussed previously in your testimony here this**
13 **morning?**
14 A. That is true.
15 **Q. Okay. Now, how about 103?**
16 A. 103 is the operation fund summary.
17 This particular one is for the fiscal year ended
18 September 30th of 2010.
19 **Q. Okay. Where does that document come**
20 **from?**
21 A. That comes from our accounting system,
22 which our software is Computer Arts, Inc.
23 **Q. And is Computer Arts the name of the**
24 **company that manufactures, prepares it?**
25 A. It is.

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1 **Q. And manufactures it?**
2 A. It is. It is. And I could not tell
3 you the exact number of counties, but a large
4 majority of counties in the state of Idaho use
5 this software program.
6 **Q. Okay. So based on your understanding,**
7 **you would say that, the Computer Arts program is**
8 **a generally accepted program and used by the**
9 **county government?**
10 A. Yes.
11 **Q. Okay. And did that come from the**
12 **records in your office?**
13 A. It did.
14 **Q. As a matter of fact, up at the very**
15 **top, there is a date and timestamp; is there not?**
16 A. Yes.
17 **Q. And it shows it came from you, Mary**
18 **Prisco, clerk?**
19 A. Yes.
20 **Q. All right. Okay. How about 104?**
21 A. Operation and expenses, also, from the
22 Computer Arts system, our accounting system.
23 **Q. And, again, the same basic questions.**
24 **Did this come from your office?**
25 A. Yes, this is provided through the

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21 (Pages 69 to 72)

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<p>1 clerk's reports. 2 Q. And that, basically, is -- would I be 3 correct to say, that's a three year comparison of 4 the various line items? 5 A. It is. Well, it's -- it's grouped by 6 fund. And then within each fund, it's grouped by 7 the four major types of expenses. 8 Q. Okay. Now, let me ask you this 9 question. If somebody showed up at Mountain West 10 Bank, which as I understand it, is your primary 11 bank? 12 A. That's correct. 13 Q. And they said, I don't want any money 14 in the watercraft fund, and I don't want any 15 money in the road and bridge fund, but I want all 16 the money in the general fund. Would anybody 17 know what that was? 18 A. No. 19 Q. All -- 20 A. You mean, are you asking me, would 21 anybody at the bank know what the person was 22 talking about? 23 Q. Sure. 24 A. No. 25 Q. Would anybody have the ability to know?</p> <p style="text-align: right;">Page 73</p>	<p>1 Q. But you've got it from her? 2 A. Yes, I did. 3 Q. And do you get it from her on a regular 4 basis? 5 A. Yes, every month. 6 Q. And then do you cross-check your report 7 with her report? 8 A. I do. 9 Q. Is that the reconciliations you've been 10 discussing? 11 A. It's one of them, yes. 12 Q. So at the end of each month, this 13 document, does it not, especially, on page 2, 14 shows what your various cash balances are? 15 A. Yes. And, Mr. Clark, this second 16 page -- it's actually labeled page 3 at the top. 17 Q. Okay. 18 A. This is the page that I looked to as 19 the clerk. 20 Q. And you compared that with your cash 21 documentation to verify that? 22 A. Right, correct. I compare it to the 23 operation and funds summary. 24 Q. Okay. So if I look down there and I 25 see that on 9-30, 2010, you had 8,434,434.70,</p> <p style="text-align: right;">Page 75</p>
<p>1 A. No, they would not. 2 Q. Would you? 3 A. No. 4 Q. You simply know the balance of your 5 checking account, and your various bank accounts? 6 A. Yes. And I know that in the total, at 7 the end of each month, after reconciliation, it 8 does, indeed, in total, agree to the total of all 9 fund cash balances. 10 Q. The total of all fund cash balances. 11 And when you spread the checks, then you 12 can -- if a check was written for the sheriff's 13 watercraft fund you know to put that in the 14 Computer Arts software, into the sheriff's 15 watercraft fund account? 16 A. Correct. 17 Q. But you don't send a report to the bank 18 that says that? 19 A. No. 20 Q. Okay. All right. Let's talk about 21 105. What's that document? 22 A. This is the statement of treasurer's 23 cash. This report does come from the treasurer's 24 office. I do not have the ability to produce 25 this report.</p> <p style="text-align: right;">Page 74</p>	<p>1 that's with all the different accounts? 2 A. Yes, that's the accumulation of all the 3 different cash fund balances. 4 Q. As well as all the different bank 5 account balances? 6 A. Yes. 7 Q. All right. Does that include, as you 8 look at it, the Freddie Mac debenture? 9 A. This report is as of September 30th, 10 2010. And my understanding is that investment 11 was not made until subsequent to September 30th. 12 I cannot tell you the date. That would be the 13 treasurer's transaction. 14 Q. Okay. Is there such a thing as a 15 Freddie Mac debenture? 16 A. There is an account that -- I'm not 17 sure where in the exhibits. It's the 2011 18 periods are, but I could -- there is a specific 19 account that holds that. And it's the general 20 operating investment account. The one page I'm 21 looking at is as of 1-31, January 31st, 2011, and 22 there is a balance in that particular account of 23 1,198.46 -- excuse me -- \$46.11. 24 Q. Okay. And that's -- if you go down to 25 106.</p> <p style="text-align: right;">Page 76</p>

22 (Pages 73 to 76)

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1 A. All right.
2 **Q. That's another statement of the**
3 **treasurer's cash; is it not?**
4 A. Yes, it is.
5 **Q. And if you would go to page 3.**
6 A. Yes.
7 **Q. And it shows the last entry, does it**
8 **not, Gen operating in?**
9 A. "INV," yes.
10 **Q. Is that the Freddie Mac debenture?**
11 A. Yes.
12 **Q. And that's when the money was put into**
13 **that account; is that right?**
14 A. I'm not sure the date that account was
15 created. I believe it was in the fall of 2010,
16 but I don't know that exact date.
17 **Q. To the best of your knowledge, does**
18 **anybody know what the source is, of what the fund**
19 **is, used to make that?**
20 A. We attempted to determine that, and we
21 could not.
22 **Q. And when you say "we," who was**
23 **included?**
24 A. That included myself, and the
25 treasurer.

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1 financial model, labeled as cash flow summary for
2 fiscal year 2012. It is set up similar to the
3 other that we discussed, which is by fund, by
4 month. And then the final page, I believe,
5 should be the total of all funds.
6 **Q. And what's the primary difference**
7 **between that one, and the first one we looked at?**
8 A. That was -- I think, the first one was
9 2011.
10 **Q. Right. This is 2012?**
11 A. Right. And so the difference would be
12 between the years, the fiscal years covered.
13 **Q. Okay. Do you see at any time in**
14 **Exhibit 112, in the general fund, enough cash to**
15 **pay the Alamar judgment?**
16 A. No, I do not.
17 **Q. Okay.**
18 A. You are -- I think your question -- may
19 I rephrase?
20 **Q. Right. In Exhibit 112, we're looking**
21 **at that.**
22 A. Yes. So there is no ending cash
23 balance in the general fund. Any month end,
24 quarter end, or you don't have the year end on
25 here, but -- well, we do, by the end of

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1 **Q. Okay. So if I were going to get a**
2 **picture of the financial status of Boise County**
3 **at any one particular point in time, what**
4 **documents would I look at to do that?**
5 A. Well, unfortunately, our accounting
6 system does not have a report that includes both
7 revenues and expenses on one report. So you
8 would have to look at two different reports, at
9 least two different reports. You would have to
10 look at the revenue, either summary or
11 detail -- that's the revenue report. And then
12 you would also have to look at -- what I use is
13 the operation and funds detail. There is one
14 report that I use, as well as the expenditures to
15 budget, I think, is what it's called.
16 **Q. So there is really no one place that I**
17 **can go look at?**
18 A. No, not -- there is no report that you
19 can produce off the system that includes those.
20 Not to my knowledge. I have not found it.
21 **Q. All right. If I could ask you,**
22 **Ms. Prisco, to jump over to 112.**
23 A. (Witness complying.) Yes.
24 **Q. And what is that document?**
25 A. This is a number of pages from the

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1 September. There is nothing that would be large
2 enough to pay the judgment.
3 **Q. Okay. And that's basically a running**
4 **balance; isn't it?**
5 A. Right. The ending balance is the
6 beginning balance of the next period.
7 **Q. Okay. Revenues go up substantially in**
8 **December. Is that because that's the first**
9 **increase in property tax?**
10 A. That's correct.
11 **Q. Okay. And that's actually your biggest**
12 **increase in that year; isn't it, was December?**
13 **The rest of the months don't have near that much?**
14 A. No, they don't.
15 **Q. Even though property taxes are payable**
16 **by halves?**
17 A. This is a result at -- in the revenue
18 line, it's the one component of our accounting
19 that is -- the entire amount is billed on for the
20 first half payment. And then we adjust for the
21 fact that that is billed entirely through changes
22 in the accounts receivable balance. So if you
23 look at the other source and use area, you'll see
24 that there is a line for receivables. And so
25 we -- we adjust for -- because we're dealing with

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23 (Pages 77 to 80)

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1 cash. And so if you billed out 100 percent, you
 2 are not going to have 100 percent of your revenue
 3 sitting in your fund cash balance for that.
 4 **Q. So let's now turn to a specific review,**
 5 **again, of the Alamar situation. Were you**
 6 **involved in attempting to determine with Alamar**
 7 **how the judgment could be paid?**
 8 A. Yes, I was.
 9 **Q. Did you and the Commissioners discuss**
 10 **the possibility of a bond election?**
 11 A. We did. And we quickly concluded that,
 12 because it would require a two-thirds majority
 13 vote, that it would not pass.
 14 **Q. You didn't think it would?**
 15 A. No, we did not. And we still believe
 16 that it's not viable. Voters in Boise County
 17 will not approve that.
 18 **Q. In fact, have there been bond elections**
 19 **brought up this year for Boise County?**
 20 A. There have been two.
 21 **Q. What were they?**
 22 A. The Garden Valley School District in
 23 March. It failed. And then the City of Crouch
 24 in May, and it failed.
 25 **Q. Failed by a small percentage, or a**

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1 **large percentage?**
 2 A. I don't remember the exact numbers.
 3 But it was certainly not a close call.
 4 **Q. It wasn't a nail biter?**
 5 A. No.
 6 **Q. Were you present at a meeting in**
 7 **February of -- approximately, February 15th?**
 8 A. Yes. On February 15th, a meeting with
 9 the Alamar plaintiffs and their legal counsel.
 10 **Q. And where was the meeting?**
 11 A. That meeting was held at the offices of
 12 Brassey, Wetherell, Crawford.
 13 **Q. Is Mr. Brassey's firm one of the**
 14 **counsel for Boise County?**
 15 A. He has been. He was -- Andy Brassey
 16 was the litigator in the Alamar trial.
 17 **Q. Okay. Did the County retain outside**
 18 **counsel to assist in this matter?**
 19 A. We did.
 20 **Q. Who would that be?**
 21 A. Moore, Smith, Buxton & Turcke.
 22 **Q. And would that be, in particular,**
 23 **Ms. Buxton?**
 24 A. Yes, Susan Buxton.
 25 **Q. And what is her function?**

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1 A. She assisted us with the legal aspects
 2 of all the different paths that we did try to
 3 take in terms of settling the judgment.
 4 **Q. Okay. So at the meeting on February**
 5 **15th, can you tell me who was there?**
 6 A. From the County, Cheresse McLain; Jamie
 7 Anderson; myself, I was there; and then Tom
 8 Banducci; Wade Woodard; Eric Oaas; Steve Laney;
 9 Mike Moore from Moore, Smith, Buxton & Turcke,
 10 and Susan Buxton.
 11 **Q. Do you recall what the discussion was**
 12 **at that meeting?**
 13 A. It was, like, sort of an odd meeting.
 14 Much of it did not take place in front of me.
 15 **Q. Okay. Well, just tell me about the**
 16 **part that you remember that did.**
 17 A. That would be towards the end of the
 18 meeting. Mr. Banducci went through, with us,
 19 several points. One being that \$5,000,000 was
 20 their number.
 21 **Q. 5,000,000 total?**
 22 A. 5,000,000 total.
 23 **Q. That would include the judgment, plus**
 24 **what?**
 25 A. Plus attorney fees.

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1 **Q. All right. So that was discussed?**
 2 A. Also, it was discussed that there could
 3 be a payment plan. I believe, five to ten years
 4 was the time frame that Mr. Banducci put on that.
 5 Interest was discussed, as likely to be prime,
 6 plus something.
 7 **Q. Something wasn't determined?**
 8 A. No, not to my recollection, it was not.
 9 **Q. Okay.**
 10 A. And we also talked about some of the
 11 problems with the long-term nature of a note.
 12 There was a lot of discussion with regards to
 13 judicial confirmation and that process, which I'm
 14 not really familiar with.
 15 Mr. Moore did describe, as well as, I
 16 think, Susan Buxton did as well, those issues
 17 that we faced in terms of bonding, or long-term
 18 note, restrictions, if you will, that we had.
 19 **Q. Would that be --**
 20 MR. HINDLEY: Your Honor, motion to
 21 strike testimony. It was hearsay. She was
 22 discussing something that somebody else was
 23 saying --
 24 THE COURT: I believe you were talking
 25 about the portion of the meeting where you were

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24 (Pages 81 to 84)

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1 present?
 2 THE WITNESS: Correct.
 3 THE COURT: Overruled.
 4 **Q. (BY MR. CLARK) So after that meeting,**
 5 **what happened?**
 6 A. The County representatives left, and we
 7 met. I could not tell you how many days. I
 8 haven't -- it was numerous days of executive
 9 session in the days following. I think that
 10 meeting took place, I want to say, Tuesday, and I
 11 think we met two or three of the days, weekdays
 12 following that, to try to sort out what we could
 13 put together in terms of a payment.
 14 **Q. Could you come up with \$5,000,000?**
 15 A. No, we could not. I would add, too,
 16 that at the end of the meeting on the 15th, the
 17 meeting for February 22nd was set.
 18 **Q. It was set at that time?**
 19 A. Yes.
 20 **Q. All right. So what did you do to come**
 21 **up with a settlement proposal for the February**
 22 **22nd meeting?**
 23 A. We looked at each of the different
 24 funds. We did have legal counsel from
 25 Ms. Buxton, as part of that, looking at the

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1 different funds, to try and determine if there
 2 were funds that had cash fund balances that we
 3 could pull out and use for payment. We also
 4 looked at -- and eventually, did have in the
 5 settlement offer that we made, the three percent
 6 increase in property taxes.
 7 **Q. Is this the same three percent that we**
 8 **talked about earlier?**
 9 A. Yes.
 10 **Q. All right.**
 11 A. In our settlement, that three percent
 12 in its entirety was provided to settle the
 13 judgment, which made me a little nervous.
 14 **Q. Yeah.**
 15 A. And we also looked at -- we researched
 16 what our foregone amount was. And we may have
 17 done that --
 18 **Q. Now, that's a new term. What is a**
 19 **foregone amount?**
 20 A. The foregone amount is, if an entity
 21 does not max out on the three percent, so they
 22 leave some on the table, if you will, a property
 23 tax increase, they can go back in time and levy
 24 for that. Unfortunately, ours is \$123,000 and
 25 change, so it's not a very big number.

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1 **Q. It doesn't sound like it.**
 2 A. No.
 3 **Q. All right. So did you and the rest of**
 4 **the people that represent the County prepare a**
 5 **settlement proposal?**
 6 A. Yes, we did.
 7 **Q. If you could put 204 up. If you could**
 8 **take the other binder, there is two sets of**
 9 **binders up there, and take a look at Exhibit 204?**
 10 A. (Witness complying.) 203?
 11 **Q. No, 204.**
 12 A. 204.
 13 **Q. Do you recognize Exhibit 204?**
 14 A. I do.
 15 **Q. And what is that?**
 16 A. It's the letter on -- to the
 17 plaintiff's counsel, and signed by our Commission
 18 Chair, Jamie Anderson.
 19 **Q. Okay.**
 20 A. And then the supporting documents
 21 behind it reflect components of the financial
 22 model that we've discussed, in different, you
 23 know, version, I guess.
 24 **Q. A different format?**
 25 A. That we discussed earlier. As well as

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1 the calculation of the three percent increase in
 2 property tax. We have a schedule in there for
 3 that as well.
 4 **Q. And if you'll look, I think it's up at**
 5 **the top, you'll see an exhibit tracker for the**
 6 **court docket. And it says, "69-3, page 6 of 22."**
 7 **Is that the three percent estimate?**
 8 A. Yes, it is.
 9 **Q. Okay. Did you prepare some of this**
 10 **documentation?**
 11 A. I did. I was instrumental in putting
 12 together the cash model.
 13 **Q. Okay. And the cash model is the bulk**
 14 **of the attachments to the letter, itself; is it**
 15 **not?**
 16 A. That's correct.
 17 **Q. And it corresponds with the other**
 18 **spreadsheets we've looked at, that are already in**
 19 **evidence here?**
 20 A. It does. Although I would say, that
 21 the ones that we've looked at already are far
 22 more refined.
 23 **Q. Okay. In what way are those more**
 24 **refined?**
 25 A. Well, at the point that this was

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25 (Pages 85 to 88)

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1 prepared --
2 **Q. And when you say "this," you are**
3 **referring to 204?**
4 A. Yes, I am.
5 **Q. Okay.**
6 A. At the point in time in which Exhibit
7 204 was prepared, I had been in office for a
8 month and a week, I believe, or maybe just a
9 month. And since that time, we talked earlier
10 about some of the accounting issues that were
11 discovered. So throughout time, we've discovered
12 more information. We, also, had more of the
13 actual data behind us now, as well as part of the
14 bankruptcy process, required us to pull together
15 all of the contracts and leases that the County
16 had.
17 We did not -- prior to that, the County
18 did not have -- the central location would have
19 been the clerk's office, but we did not have a
20 current, complete file of contracts and leases
21 until --
22 **Q. Is that for vehicles, and equipment,**
23 **and things like this?**
24 A. No, we did not.
25 **Q. Okay.**

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1 A. So in order to execute that, I
2 communicated with the department heads, and
3 relied on them for information to come into our
4 office.
5 **Q. Have you subsequently been able to get**
6 **those documents?**
7 A. Well, we have it -- yes, we have a file
8 now in the clerk's office. That has all the
9 contracts and leases.
10 **Q. And the current exhibits in the current**
11 **spreadsheets reflect those?**
12 A. Yes, they do -- well --
13 **Q. But the ones on 204 do not?**
14 A. Correct -- well, let me clarify.
15 **Q. Okay.**
16 A. For the information that we've provided
17 as part of the bankruptcy, which is the 2011 and
18 2012 monthly budget, forecasted budget --
19 **Q. That's correct.**
20 A. -- that we talked about. We did pull
21 out -- we wanted to reflect purely revenues and
22 expenses of the County. So in doing that, any
23 scheduled lease payments subsequent to March 1st,
24 which was the petition date for the filing of
25 bankruptcy, we pulled those amounts out, since

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1 they would be subject to whatever the bankruptcy
2 settlement ends up being, payment.
3 And then we also pulled out
4 administrative expenses. We have a process
5 whereby we allocate some of the, what I call home
6 office expenses of administration, we allocate
7 those out to the different funds, or departments,
8 if you will. And so in that situation, it's
9 revenue to the general fund, and expense to the
10 other funds. So it's just between funds, and we
11 did pull that out. This document that we're
12 looking at currently, Exhibit 204, would not have
13 those removed.
14 **Q. Very good. But based on the**
15 **information you had, and based on the data you**
16 **were familiar with, that was your best idea?**
17 A. It was the best we could do, yes.
18 **Q. Okay. And it didn't propose**
19 **\$5,000,000; did it?**
20 A. No, it did not. It just showed what we
21 thought was going to happen.
22 **Q. It did propose a down payment of 1.9**
23 **million; did it not?**
24 A. The February 22nd did, yes.
25 **Q. Okay. Where did you, as the clerk,**

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1 **figure that the County had surplus, excess,**
2 **whatever you want to call it, money to the tune**
3 **of 1.9 million dollars?**
4 A. Well, it was a compilation of different
5 items. We had -- prior to that time frame, we
6 had looked -- we had gone through the process of
7 trying to identify what funds we had. We had
8 come up with an amount of approximating 1.2
9 million, which was composed of primarily amounts
10 from the County improvement and auditor's trust
11 accounts, as well as, I believe, the foregone
12 amount was in there. And I think something --
13 **Q. Was that 1.9?**
14 A. Yes. Yes.
15 **Q. The foregone amount?**
16 A. Yes.
17 **Q. Okay.**
18 A. There is also a component of solid
19 waste. At that point, we had determined with the
20 assistance of legal counsel, that we could at
21 least borrow from that fund.
22 **Q. The solid waste fund?**
23 A. Yes.
24 **Q. All right.**
25 A. We could at least borrow from that

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26 (Pages 89 to 92)

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1 fund, which would provide us with immediate cash
 2 from the settlement, but it would have to be paid
 3 back. And then to get to the 1.9 million, my
 4 recollection is, we looked at some amount coming
 5 from the Freddie Mac investments. I consider the
 6 1.9 million a stretch financially.
 7 **Q. At the time.**
 8 A. I did, but that is what we have in our
 9 settlement offer.
 10 **Q. Were you there when it was presented?**
 11 A. I was.
 12 **Q. And when was that?**
 13 A. February 22nd.
 14 **Q. And where was that meeting?**
 15 A. That meeting was at -- I'm trying to
 16 remember where it was. It was at the offices of
 17 Moore, Smith, Buxton & Turcke.
 18 **Q. Okay. Can you tell me, besides**
 19 **yourself, who was there?**
 20 A. Yes, it was the same individuals. You
 21 know, I excluded Andy Brassey from the February
 22 15th meeting.
 23 **Q. Okay.**
 24 A. I apologize. And he was there on the
 25 22nd, as well as all the other members that were

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1 present at the February 15th meeting.
 2 **Q. What was Alamar's response to the offer**
 3 **you presented, Exhibit 204?**
 4 A. They were not happy. They considered
 5 it -- well, I think that's overstating it. They
 6 were upset. They were --
 7 **Q. They were upset?**
 8 A. Yes, they were bothered that it was so
 9 much less than the \$5,000,000 they had discussed
 10 with us on the February 15th meeting.
 11 **Q. Did you, yourself, attempt to explain**
 12 **why you couldn't come up with 5,000,000?**
 13 A. We did have a question-and-answer
 14 session, which included discussion of the budget,
 15 the forecasted budget, as well as the parameters
 16 that we were having to work within, in order to
 17 try and satisfy the judgment.
 18 **Q. What was their response to your**
 19 **explanation?**
 20 A. Well, Mr. Oaas referred to our budget
 21 as -- our forecasted budget as a doomsday budget.
 22 And Mr. Banducci was quite expressively angry
 23 with Mr. Moore, in terms of the discussion that
 24 was taking place on Mr. Moore's part for
 25 explanation of those parameters.

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1 **Q. Prior to the time that you filed the**
 2 **Chapter 9, did you receive any counteroffer to**
 3 **Exhibit 204?**
 4 A. Not that I'm aware of.
 5 **Q. As you sit here today, and as you've**
 6 **gone through all of the financial records of the**
 7 **County, and looking back on Exhibit 204, do you**
 8 **think the County had, now that you know the**
 9 **system better, the 1.9 million to pay down?**
 10 A. No.
 11 **Q. And why do you not think so?**
 12 A. Well, for a number of reasons. But one
 13 of them is, you know, a large portion of that was
 14 coming from that auditor and County improvement
 15 trust. One of the things I've discovered in the
 16 last month or two, is that some of that money was
 17 earmarked, if you will, in the 2011 appropriated
 18 budget, to fulfill that budget.
 19 **Q. Okay.**
 20 A. And I'm not entirely certain
 21 that -- well, I know, from my perspective, we did
 22 not take that into account, in terms of
 23 determining what amounts could go out. So that's
 24 one area.
 25 Secondly, I just feel like I have a far

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1 greater understanding of what our funds are, how
 2 they work. I have a far better understanding of
 3 what our limitations are -- not just in paying
 4 the judgment, but in just operating the County,
 5 our statutory guidelines, if you will, for
 6 operations.
 7 **Q. Okay. Now, if you would take a look at**
 8 **Exhibit 205 and 206.**
 9 A. Okay.
 10 **Q. Now, I noticed that this wasn't**
 11 **addressed to you. But have you seen a copy of**
 12 **it?**
 13 A. I did see a copy of this letter.
 14 **Q. And we're referring now to which one?**
 15 A. Exhibit 205.
 16 **Q. Okay. Did that letter cause you**
 17 **concern?**
 18 A. It caused me a great deal of concern,
 19 both in terms of my role -- my job, as the clerk
 20 to Boise County, as well as, individually,
 21 because of the last line on here.
 22 **Q. Okay. How about 206?**
 23 A. 206, I have seen before today, but I
 24 did not see this at the time. I did not see that
 25 in February.

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27 (Pages 93 to 96)

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1 **Q. So you saw it after the February time**
2 **frame. Did you see it before the filing of the**
3 **bankruptcy on March 1?**
4 A. I don't believe I did.
5 MR. CLARK: Okay. Very good.
6 THE COURT: Mr. Clark, do you have
7 something you can wrap up before we stop for
8 lunch, or is this a good stopping point?
9 MR. CLARK: I think this is as good a
10 time as any, Your Honor.
11 THE COURT: All right. We'll adjourn
12 until 1:30, and reconvene after we've had a lunch
13 break.
14 MR. CLARK: Thank you very much, Your
15 Honor.
16 (A lunch recess was had.)
17 THE COURT: Good afternoon. Go ahead
18 and have a seat.
19 Mr. Clark, are we ready to proceed?
20 MR. CLARK: We are, Your Honor.
21 THE COURT: Okay. Go ahead.
22 MR. CLARK: Thank you.
23 **Q. (BY MR. CLARK) Mary, could you take a**
24 **look at Exhibit 206?**
25 A. (Witness complying.) Okay.

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1 THE COURT: You asked her before about
2 205, and whether she was worried by the assertion
3 in the last paragraph of 205. I don't recall
4 that it was a question about being worried on
5 garnishment.
6 MR. CLARK: It was about --
7 THE COURT: But since she has already
8 testified that she hasn't seen 206 until after
9 the bankruptcy --
10 MR. CLARK: That's right.
11 THE COURT: -- I want you to rephrase
12 the question, and talk to her about her concerns
13 of garnishment.
14 MR. CLARK: Okay.
15 **Q. (BY MR. CLARK) Did you, as the clerk,**
16 **have a concern about garnishment or levy on the**
17 **County's bank accounts?**
18 A. Yes, I did.
19 **Q. Do you know, from your discussions,**
20 **whether or not that concern was shared by the**
21 **Commissioners?**
22 MR. HINDLEY: Hearsay, Your Honor.
23 THE COURT: I'll sustain, Mr. Clark.
24 MR. CLARK: Okay.
25 **Q. (BY MR. CLARK) So as the clerk, and**

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1 **Q. Have you seen that document before?**
2 A. I don't recall seeing this document
3 before.
4 **Q. Okay. The document, though, is a**
5 **letter from Mr. Woodard. And if I'm looking at**
6 **it correctly, down toward the bottom, they ask**
7 **for a commitment by March 2nd, to pay the full**
8 **amount of the judgment before March 25th. Do you**
9 **see that?**
10 A. Yes, I do.
11 **Q. Okay. How could that have been done?**
12 A. I don't know.
13 **Q. Okay. Did the County have the ability**
14 **to do that?**
15 A. It did not have the ability to do that.
16 **Q. Now, you have seen, though, Exhibit**
17 **205; is that right?**
18 A. Yes, I do recall this one.
19 **Q. Okay. Were you worried, after you saw**
20 **those documents, that Alamar may actually try to**
21 **garnish a levy on your bank accounts?**
22 MR. HINDLEY: Asked and answered, Your
23 Honor.
24 MR. CLARK: I don't think I asked her
25 that question, though.

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1 **based upon your financial position of the County,**
2 **let's assume that Alamar would have garnished the**
3 **bank accounts, the Mountain West Bank account,**
4 **the Wells Fargo account, whatever, to get their**
5 **judgment paid in full, what would have happened**
6 **to the County?**
7 MR. HINDLEY: Speculation.
8 THE COURT: It's too broad, Mr. Clark.
9 Rephrase it.
10 MR. CLARK: I will rephrase it.
11 **Q. (BY MR. CLARK) What would have**
12 **happened, in your opinion, if, on or about March**
13 **1st, somewhere between 4,000,000 and \$5,000,000**
14 **would have been taken from the County's bank**
15 **accounts, as far as your ability to operate the**
16 **County, and to perform the duties that you**
17 **described previously?**
18 MR. HINDLEY: Speculation.
19 THE COURT: I'll overrule it. And you
20 can cross-examine later.
21 Go ahead.
22 THE WITNESS: I believe that if that
23 were to occur, that we may have been able to
24 operate a mere month or two, but I do not think
25 we would have been able to sustain operations, as

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28 (Pages 97 to 100)

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1 well as, I think, it would have caused huge
2 issues with some of our funding sources, most
3 particularly the federal government.
4 **Q. (BY MR. CLARK) How often does the**
5 **County pay bills?**
6 A. The County pays bills twice per month.
7 **Q. Does the County try to pay bills as**
8 **they become due?**
9 A. They certainly do.
10 **Q. And to find out what bills that are**
11 **payable under any particular month, what**
12 **documents would you look at, that we have seen so**
13 **far?**
14 A. There is -- some of the bills that are
15 attributable -- that I'm responsible for, as the
16 clerk, come through my office. So those, I have
17 firsthand knowledge of the invoice, and any other
18 underlying data. And I sign off on those.
19 The other department heads are
20 responsible for expenditures coming out of their
21 department, or fund, as the case may be. So
22 those are submitted to my office, and processed
23 within the accounting system. A claims proof
24 report is put together. That is reviewed by both
25 myself and the Commissioners, as well as I review

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1 a year-to-date expense report -- a year-to-date
2 expenses against budget report, as part of that
3 process.
4 **Q. If I looked, for example, at Exhibit**
5 **111. Let's just take a look at that.**
6 A. (Witness complying.) Okay.
7 **Q. And first of all, Exhibit 111, just so**
8 **we're all familiar with it, is a document**
9 **prepared by your office?**
10 A. It is.
11 **Q. Incidentally, is that document**
12 **accurate?**
13 A. Well, the actuals in this particular
14 document, the actuals are from our tools, our
15 accounting system through April 30th --
16 **Q. Okay.**
17 A. -- of 2011. So they are accurate in
18 that sense.
19 **Q. As of that particular point in time?**
20 A. As of that particular date. They are
21 simply what has been input into the accounting
22 system. Beyond that, is a projection. And so
23 they -- it is accurate to the degree that the
24 information we use to prepare it is accurate.
25 **Q. Okay. And that information all came**

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1 **from your office, or the department heads office,**
2 **or the treasurer's office; would that be**
3 **accurate?**
4 A. That is accurate. My office
5 spearheaded it, but it came from different
6 sources outside of my office.
7 **Q. And if we wanted to look, by fund, at**
8 **what your average expenses are per month, for**
9 **example, the March 2011 Commissioners**
10 **expenditures were \$9,054. Would that be a way to**
11 **do that?**
12 A. Yes.
13 **Q. Okay. Incidentally, how much of the**
14 **County revenue is property tax?**
15 A. Approximately, one-third.
16 **Q. And the rest of it comes from where?**
17 A. It comes from the -- from federal or
18 state sources makes up the remaining two-thirds.
19 **Q. Have you, yourself, been spearheading**
20 **the new projections for use in the 2011 budget,**
21 **fiscal year 2011?**
22 A. Yes, I've looked at that for the
23 remainder of 2011, as well as the 2012.
24 **Q. Okay. In your projections, do you show**
25 **revenues increasing or decreasing?**

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1 A. I show them, generally, declining.
2 **Q. Is that something you expected?**
3 A. I'm not surprised. You know, if you
4 look at property tax, our economy is such, that I
5 had the expectation that property tax payments
6 would be -- I would expect the payment to
7 decline. And I don't think it's any secret that
8 our state government and our federal government
9 is under pressure for budget cuts, and that does
10 flow down to the counties.
11 MR. HINDLEY: Your Honor, I move to
12 strike; unresponsive, and speculative as to
13 budget cuts.
14 THE COURT: I think it was a general
15 observation of her general sense of the economy.
16 I'll let it stand. And you can explore it
17 further, if you think it's important.
18 Go ahead. Another question, please.
19 MR. CLARK: Okay.
20 **Q. (BY MR. CLARK) Have you actually seen,**
21 **based on a comparison of what the budget is,**
22 **versus what you actually spent, whether or not**
23 **revenues are declining or increasing?**
24 A. They are decreasing.
25 **Q. In reality?**

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29 (Pages 101 to 104)

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1 A. Yes.
2 **Q. Now, as far as whether or not the**
3 **County had the ability to pay its debts as they**
4 **came to it, which you said, the file back was the**
5 **normal practice that you tried to do, did the**
6 **County -- how much money did the County have in**
7 **the indigent fund -- I just passed it -- which is**
8 **on Exhibit 111, it's the 6th page. Does that**
9 **show what the indigent fund cash flow projections**
10 **were and are?**
11 A. Yes, it is.
12 **Q. Is that \$550,000 in there?**
13 A. Yes -- at what point in time are you
14 speaking to?
15 **Q. Is it in there as of March 1st?**
16 A. Oh, I'm sorry. I misunderstood. You
17 are talking about the indigent claims that we
18 were discussing earlier?
19 **Q. That's right.**
20 A. No, they are not in here.
21 **Q. Are they in here at all?**
22 A. No, they are not.
23 **Q. Okay. And as far as your general fund**
24 **budget is concerned, that's page 1 of Exhibit**
25 **111; is that correct?**

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1 A. Correct.
2 **Q. Okay. And if you assume that the**
3 **Alamar judgment of either 4,000,000, or**
4 **5,000,000, or 5,500,000 were due now, could that**
5 **have been paid as of March 1st, 2011?**
6 MR. HINDLEY: Your Honor, objection.
7 It's mischaracterization of the judgment. It's
8 only \$4,000,000.
9 MR. CLARK: The judgment, itself, is
10 4,000,000. Their settlement discussions, Your
11 Honor, were for 5,000,000. The stipulated
12 exhibits show that they filed a request for
13 attorney fees, which has not been ruled on yet
14 for 1.5, which would make 5.5. I am not assuming
15 facts not in evidence.
16 THE COURT: Well --
17 MR. HINDLEY: The judgment is only
18 four, Your Honor.
19 THE COURT: Well, it is. Why don't you
20 ask her if it could pay four, and then ask her if
21 it could pay five. And get to the point, rather
22 than the characterization of the grounding of the
23 point.
24 MR. CLARK: All right.
25 **Q. (BY MR. CLARK) Was there sufficient**

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1 **funds in the general fund to pay a \$4,000,000**
2 **judgment?**
3 A. No, there was not.
4 **Q. From your observations, Ms. Prisco, are**
5 **the property owners of Boise County paying**
6 **property taxes when they are billed?**
7 A. Some are.
8 **Q. Some are not?**
9 A. Some are not.
10 **Q. Okay. How does the County proceed to**
11 **try to collect the taxes from those who do not?**
12 A. This -- it's long term. There is a
13 three-year time frame, which has to pass before
14 the County can take action to take that property;
15 and therefore, obtain the past due taxes on that
16 property. Once that three-year period has
17 passed, there is another, I believe, it's 14
18 months -- I could be wrong -- period in which
19 that taking of property process takes place. So
20 in total, we're looking at four years past the
21 initial due date.
22 **Q. So there is nothing you can do right**
23 **now to try to collect those arrearages?**
24 MR. HINDLEY: Objection, Your Honor, as
25 to time.

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1 **Q. (BY MR. CLARK) Is there anything you**
2 **can do right now to collect property taxes that**
3 **are owed, less than three years old?**
4 A. No, there is not.
5 **Q. All right.**
6 MR. CLARK: I'm checking, Your Honor,
7 to see if there is information in the affidavit,
8 itself, which was not objected to, that we can
9 simply submit on cross, that might be able to
10 save some time on this.
11 THE COURT: Okay.
12 **Q. (BY MR. CLARK) In your affidavit,**
13 **Ms. Prisco, and that is an exhibit. In fact, if**
14 **you want to look at it, it is -- take a look at**
15 **Exhibit 120.**
16 A. (Witness complying.) All right.
17 **Q. Okay. You and I worked on that**
18 **document together; did we not?**
19 A. Yes, we did.
20 **Q. Okay. Now, take a look at paragraph**
21 **18. That's the Crouch bridge project paragraph?**
22 A. Yes.
23 **Q. How much money are we talking about as**
24 **far as that particular project?**
25 A. I'm actually not certain what the

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30 (Pages 105 to 108)

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1 entire project is scheduled to be. I can tell
 2 you that the County has spent a little over
 3 \$300,000 at the point in time that the Board of
 4 Commissioners determined to delay the project
 5 into a future year. Of which, those funds would
 6 need to be paid back to the federal government.
 7 **Q. Need to be paid back to whom?**
 8 A. To the federal government. If the
 9 project was --
 10 **Q. So if the bridge isn't built, the**
 11 **County doesn't get to keep the money?**
 12 A. Correct.
 13 **Q. It has to pay it back?**
 14 A. Correct.
 15 MR. CLARK: Your Honor, I think with
 16 the balance of the exhibits and the affidavit, I
 17 have no further direct.
 18 THE COURT: Cross-examination?
 19 MR. HINDLEY: Yes, Your Honor.
 20 CROSS-EXAMINATION
 21 BY MR. HINDLEY:
 22 **Q. Good afternoon. Ms. Prisco, you hold**
 23 **several positions within Boise County; is that**
 24 **correct?**
 25 A. I have one elected official position,
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1 and which does serve many functions.
 2 **Q. Okay. And one of those positions is as**
 3 **auditor?**
 4 A. Yes.
 5 **Q. And one of your primary duties as**
 6 **auditor is to examine and settle up on the**
 7 **County's debts; is that correct?**
 8 A. That's correct.
 9 **Q. Now, you were elected in January, came**
 10 **into office in January of 2011; is that right?**
 11 A. That's correct.
 12 **Q. Prior to that time, isn't it true that**
 13 **you had no governmental accounting experience,**
 14 **other than being a treasurer for a small fire**
 15 **department?**
 16 A. I was the treasurer for a fire
 17 district.
 18 **Q. Fire district?**
 19 A. For five years, uh-huh.
 20 **Q. Okay. Is that the only governmental**
 21 **accounting experience that you did have?**
 22 A. No, I did participate on the city of
 23 Mountain Home audit. And then with Deloitte, I
 24 had city audit as well.
 25 **Q. You don't hold yourself out as any**
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1 **governmental accounting expert; do you?**
 2 A. No, I do not.
 3 **Q. Okay. Now, in your role as auditor,**
 4 **and trying to find out how to pay a debt, as I**
 5 **understand what you do, is you try to understand**
 6 **what the debt is, you try to find a way to pay**
 7 **it, and then you submit it to the Commissioners**
 8 **for their final approval; is that correct?**
 9 A. Correct.
 10 **Q. Okay. Now, your office -- and you do**
 11 **not, as a matter of course, make any financial**
 12 **projections into the future; isn't that right?**
 13 A. My office has not, in the past, done
 14 so.
 15 **Q. Okay. And, in fact, to your knowledge,**
 16 **nobody in the County's government, as a matter of**
 17 **course, makes financial projections into the**
 18 **future; isn't that correct?**
 19 A. In the past, we have not.
 20 **Q. Okay. Up until your**
 21 **administration -- or the time that you've been**
 22 **auditor; is that right?**
 23 A. Yes.
 24 **Q. Okay. Now, I understand that about the**
 25 **time when you came into office, is when you**
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1 **learned about the Alamar judgment; is that right?**
 2 A. Yes.
 3 **Q. You understood --**
 4 A. Well, just a couple weeks prior to
 5 taking office.
 6 **Q. And you understood that it was for**
 7 **\$4,000,000?**
 8 A. I did.
 9 **Q. And the County has appealed that**
 10 **judgment?**
 11 A. I'm not sure when I learned that
 12 information, but, yes.
 13 **Q. Is that true?**
 14 A. Yes.
 15 **Q. It's in dispute; correct?**
 16 A. It was appealed, yes.
 17 **Q. Okay. And you also understand that**
 18 **Alamar has made an application, or a petition to**
 19 **the court, for an award of about 1,500,000 in**
 20 **attorneys' fees and costs?**
 21 A. I am aware of that.
 22 **Q. Okay. And do you understand that the**
 23 **County has objected to that petition?**
 24 A. I am aware of that.
 25 **Q. Would you agree with me that that is a**
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June 28, 2011

Motion to Dismiss

1 dispute between Alamar and the County; the amount
2 of the attorneys' fees?
3 A. Yes.
4 **Q. Okay. Now, you understood, after you**
5 **came into office, that Alamar wanted to get paid**
6 **its judgment; fair?**
7 A. Yes. Yes.
8 **Q. Okay. And you understand and recognize**
9 **that a judgment is a mandatory expense required**
10 **by law?**
11 A. I certainly do.
12 **Q. Okay. But if I understand your**
13 **testimony from earlier today, you could not find**
14 **a way in which to pay that judgment?**
15 A. That's correct.
16 **Q. All right. Let's talk about some of**
17 **the avenues then, that you talked about this**
18 **morning, that the County and yourself explored.**
19 **The first one that I don't think was mentioned,**
20 **but I would like to hit now, and that is the**
21 **bankruptcy option. Did the County consider**
22 **bankruptcy immediately after the judgment, as one**
23 **way to deal with the judgment?**
24 A. The first -- probably, my first day in
25 office, in executive session, the Commissioners

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1 were provided a variety of different options, and
2 Chapter 9 was included in that.
3 **Q. Okay.**
4 A. Yes.
5 **Q. Another option that you mentioned was a**
6 **bond issuance, perhaps; right?**
7 A. Correct.
8 **Q. All right. What kind of bonds were**
9 **considered?**
10 A. We didn't specifically talk about what
11 kind of bonds, but just bonding in general.
12 **Q. All right. What happened to that**
13 **general proposal or general idea of issuing**
14 **bonds, then?**
15 A. My recollection is, is that with the
16 bonding option, we would need to have voter
17 approval of two-thirds to pass a bond. And we
18 felt it extremely unlikely that would pass in
19 Boise County.
20 **Q. Okay. So isn't it true, that the**
21 **County was advised by legal counsel, that issuing**
22 **bonds was legal, but that it was then determined**
23 **not to be the right course, because of the**
24 **two-third vote requirement?**
25 A. And the expense associated with doing a

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1 bond issue.
2 **Q. What was that expense?**
3 A. I don't know what the quantity would
4 be, but there is -- I'm sure you know there is a
5 lot of expense --
6 **Q. Okay.**
7 A. -- associated with that; legal fees, as
8 well as, you know, underwriting fees, et cetera.
9 **Q. All right. So it was legal, but you**
10 **determined that the two-thirds requirement, plus**
11 **the costs outweighed the effort to go into and**
12 **try to pass a bond issuance?**
13 A. I guess, speaking for the County, I
14 would say, that would not be a prudent choice.
15 **Q. Okay. Now, in your deliberations about**
16 **issuing bonds within the County governing body,**
17 **was there a distinction drawn about bonding for,**
18 **or issuing bonds for involuntary indebtedness**
19 **versus voluntary debt?**
20 A. I don't recall that discussion.
21 **Q. Okay. Now, you've already acknowledged**
22 **the judgment is an existing debt; right?**
23 A. Yes.
24 **Q. One payable by law?**
25 A. Yes.

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1 **Q. Okay. In the County's deliberations**
2 **then, about the ability to issue bonds, was there**
3 **ever a distinction drawn, or discussed between**
4 **new and existing debts?**
5 A. I need you to clarify that.
6 **Q. Sure. The debts -- I'm sorry. The**
7 **judgment was already an existing debt; correct?**
8 A. Yes.
9 **Q. And the issuing of bonds would be the**
10 **County issuing debt, to pay off another debt;**
11 **correct?**
12 A. Correct.
13 **Q. So was that relationship between what**
14 **was being paid off, and the issuance of bond,**
15 **ever discussed? In other words, you could bond**
16 **for new projects, like a road, or a county could**
17 **bond for a judgment, which is existing debt. Was**
18 **there ever a discussion about bonding for new**
19 **obligations as opposed to existing obligations?**
20 A. My recollection on that subject is that
21 there was discussion about the fact that we did
22 not have any sort of physical -- I think, what
23 you are referring to is some sort of physical
24 structure that we could bond for versus some sort
25 of general bond. And the discussion was -- and I

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